

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 403
Mar 16, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40237-MGa-18F (01/12)

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

Sponsors: Representatives Dollar, Lambeth, Dobson, and White (Primary Sponsors).

Referred to:

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

35 "§ 122C-3. Definitions.

36 The following definitions apply in this Chapter:



* D R H 4 0 2 3 7 - M G A - 1 8 F *

- 1 (1) "Area authority" means the area mental health, developmental disabilities,
2 and substance abuse authority.
- 3 (2) "Area board" means the area mental health, developmental disabilities, and
4 substance abuse ~~board~~board that is the governing body for the area
5 authority, local management entity, or local management entity/managed
6 care organization.
- 7 (2a) "Area director" means the administrative head of the area ~~authority~~
8 ~~program~~authority, local management entity, or local management
9 entity/managed care organization appointed pursuant to G.S. 122C-121.
- 10 ...
- 11 (2b) "Board of county commissioners" includes the participating boards of county
12 commissioners for multicounty area ~~authorities~~~~and multicounty~~
13 ~~programs~~authorities.
- 14 ...
- 15 (5) "Catchment area" means the geographic part of the State served by a specific
16 area ~~authority or county program~~authority.
- 17 ...
- 18 (10a) ~~"County program" means a mental health, developmental disabilities, and~~
19 ~~substance abuse services program established, operated, and governed by a~~
20 ~~county pursuant to G.S. 122C-115.1.~~
- 21 (14) "Facility" means any person at one location whose primary purpose is to
22 provide services for the care, treatment, habilitation, or rehabilitation of the
23 mentally ill, the developmentally disabled, or substance abusers, and
24 includes:
- 25 a. An "area facility", which is a facility that is operated by or under
26 contract with the area ~~authority or county program~~authority. For the
27 purposes of this subparagraph, a contract is a contract, memorandum
28 of understanding, or other written agreement whereby the facility
29 agrees to provide services to one or more clients of the area ~~authority~~
30 ~~or county program~~authority. Area facilities may also be licensable
31 facilities in accordance with Article 2 of this Chapter. A State facility
32 is not an area facility;
- 33 b. A "licensable facility", which is a facility that provides services to
34 individuals who are mentally ill, developmentally disabled, or
35 substance abusers for one or more minors or for two or more adults.
36 These services shall be day services offered to the same individual
37 for a period of three hours or more during a 24-hour period, or
38 residential services provided for 24 consecutive hours or more.
39 Facilities for individuals who are substance abusers include chemical
40 dependency facilities;
- 41 c. A "private facility", which is a facility that is either a licensable
42 facility or a special unit of a general hospital or a part of either in
43 which the specific service provided is not covered under the terms of
44 a contract with an area authority;
- 45 d. The psychiatric service of the University of North Carolina Hospitals
46 at Chapel Hill;
- 47 e. A "residential facility", which is a 24-hour facility that is not a
48 hospital, including a group home;
- 49 f. A "State facility", which is a facility that is operated by the Secretary;
- 50 g. A "24-hour facility", which is a facility that provides a structured
51 living environment and services for a period of 24 consecutive hours

1 or more and includes hospitals that are facilities under this Chapter;
2 and

- 3 h. A Veterans Administration facility or part thereof that provides
4 services for the care, treatment, habilitation, or rehabilitation of the
5 mentally ill, the developmentally disabled, or substance abusers.

6 ...
7 (20b) "Local management entity" or "LME" means an area ~~authority, county~~
8 ~~program, or consolidated human services agency. It is a collective term that~~
9 ~~refers to functional responsibilities rather than governance~~
10 ~~structure.~~authority.

11 ...
12 (29a) ~~"Program director" means the director of a county program established~~
13 ~~pursuant to G.S. 122C-115.1.~~

14"

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

16 "(b) The primary functions of an LME are designated in this subsection and shall not be
17 conducted by any other entity unless an LME obtains the prior written approval of the
18 Secretary to voluntarily enters-enter into a contract with that entity under subsection (c) of this
19 section. The primary functions include all of the following:

- 20 (1) Access for all citizens to the core services and administrative functions
21 described in G.S. 122C-2. In particular, this shall include the implementation
22 of a 24-hour a day, seven-day a week screening, triage, and referral process
23 and a uniform portal of entry into care.
- 24 (2) Provider monitoring, technical assistance, capacity development, and quality
25 control. If at anytime the LME has reasonable cause to believe a violation of
26 licensure rules has occurred, the LME shall make a referral to the Division
27 of Health Service Regulation. If at anytime the LME has reasonable cause to
28 believe the abuse, neglect, or exploitation of a client has occurred, the LME
29 shall make a referral to the local Department of Social Services, Child
30 Protective Services Program, or Adult Protective Services Program.
- 31 (3) Utilization management, utilization review, and determination of the
32 appropriate level and intensity of services. An LME may participate in the
33 development of person centered plans for any consumer and shall monitor
34 the implementation of person centered plans. An LME shall review and
35 approve person centered plans for consumers who receive State-funded
36 services and shall conduct concurrent reviews of person centered plans for
37 consumers in the LME's catchment area who receive Medicaid funded
38 services.
- 39 (4) Authorization of the utilization of State psychiatric hospitals and other State
40 facilities. Authorization of eligibility determination requests for recipients
41 under a CAP-MR/DD waiver.
- 42 (5) Care coordination and quality management. This function involves
43 individual client care decisions at critical treatment junctures to assure
44 clients' care is coordinated, received when needed, likely to produce good
45 outcomes, and is neither too little nor too much service to achieve the
46 desired results. Care coordination is sometimes referred to as "care
47 management." Care coordination shall be provided by clinically trained
48 professionals with the authority and skills necessary to determine
49 appropriate diagnosis and treatment, approve treatment and service plans,
50 when necessary to link clients to higher levels of care quickly and
51 efficiently, to facilitate the resolution of disagreements between providers

1 and clinicians, and to consult with providers, clinicians, case managers, and
 2 utilization reviewers. Care coordination activities for high-risk/high-cost
 3 consumers or consumers at a critical treatment juncture include the
 4 following:

- 5 a. Assisting with the development of a single care plan for individual
 6 clients, including participating in child and family teams around the
 7 development of plans for children and adolescents.
 - 8 b. Addressing difficult situations for clients or providers.
 - 9 c. Consulting with providers regarding difficult or unusual care
 10 situations.
 - 11 d. Ensuring that consumers are linked to primary care providers to
 12 address the consumer's physical health needs.
 - 13 e. Coordinating client transitions from one service to another.
 - 14 f. Conducting customer service interventions.
 - 15 g. Assuring clients are given additional, fewer, or different services as
 16 client needs increase, lessen, or change.
 - 17 h. Interfacing with utilization reviewers and case managers.
 - 18 i. Providing leadership on the development and use of communication
 19 protocols.
 - 20 j. Participating in the development of discharge plans for consumers
 21 being discharged from a State facility or other inpatient setting who
 22 have not been previously served in the community.
- 23 (6) Community collaboration and consumer affairs including a process to
 24 protect consumer rights, an appeals process, and support of an effective
 25 consumer and family advisory committee.
- 26 (7) Financial management and accountability for the use of State and local funds
 27 and information management for the delivery of publicly funded services.
- 28 (8) Each LME shall develop a waiting list of persons with intellectual or
 29 developmental disabilities that are waiting for specific services. The LME
 30 shall develop the list in accordance with rules adopted by the Secretary to
 31 ensure that waiting list data are collected consistently across LMEs. Each
 32 LME shall report this data annually to the Department. The data collected
 33 should include numbers of persons who are:
- 34 a. Waiting for residential services.
 - 35 b. Potentially eligible for CAP-MRDD.
 - 36 c. In need of other services and supports funded from State
 37 appropriations to or allocations from the Division of Mental Health,
 38 Developmental Disabilities, and Substance Abuse Services, including
 39 CAP-MRDD.

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

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

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

46 "**§ 122C-116. Status of area authority; ~~status of consolidated human services~~**
 47 **agency authority.**

48 (a) An area authority is a local political subdivision of the ~~State~~ State established by
 49 counties pursuant to G.S. 122C-115(a) and (c) for the management and delivery of services for
 50 individuals with mental illness, intellectual or other developmental disabilities, and substance
 51 use disorders under a 1915(b)/(c) Medicaid Waiver. An area authority is a local management

1 entity that must perform the local management entity functions described in G.S. 122C-115.4
 2 and monitor and manage all public resources that may be available for mental health,
 3 intellectual and developmental disabilities, and substance use disorder services, including
 4 federal block grants, federal funding for Medicaid and Health Choice, and all other public
 5 funding sources as described in Section 1(a) of S.L. 2011-264 and in compliance with
 6 G.S. 122C-111 and G.S. 112.1(a)(39). LMEs are the single entities authorized to operate and
 7 manage the 1915(b)/(c) Medicaid Waiver, which operation and management must be
 8 performed in accordance with a standard contract developed by the Secretary under the
 9 authority of G.S. 122C-112.1(a)(39) that is subject to the enforcement provisions of
 10 G.S. 122C-124.1, G.S. 122C-124.2, and all other applicable provisions of this Chapter. LMEs
 11 are the sole entities authorized to enter into the contract described in G.S. 122C-124.2(g)(2) and
 12 G.S. 112.1(a)(39) for the operation of the 1915(b)/(c) Medicaid Waiver. A local management
 13 entity that is under contract with the Department to operate the combined Medicaid Waiver
 14 program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act shall
 15 be known as a "local management entity/managed care organization" or "LME/MCO."

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

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

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

19 ...

20 (7) Appoint an area director in accordance with
 21 ~~G.S. 122C-121(d),~~ G.S. 122C-121. All provisions of Chapter 122C of the
 22 General Statutes that apply to the area director also apply to the
 23 administrative head of the area authority, LME, or LME/MCO, regardless if
 24 (i) the administrative head uses the title "CEO" or any other name or title
 25 assigned to him or her by the area authority, LME, or LME/MCO and (ii) a
 26 contract, memorandum of understanding, or other agreement in effect
 27 between the Department and the area authority, LME, or LME/MCO refers
 28 to the administrative head as the "CEO" or any other name or title.

29"

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

31 **"§ 122C-118.1. Structure of area board.**

32 (a) An area board shall have no fewer than 11 and no more than 21 voting members.

33 ~~The~~

34 (a1) Unless the Secretary approves an alternative board appointment process pursuant to
 35 subsection (a2) of this section, the board of county commissioners, or the boards of county
 36 commissioners within the area, shall appoint members in a manner that ensures participation
 37 from each of the constituent counties of the area authority and is consistent with the
 38 requirements provided in subsection (b) of this section. If the board or boards fail to comply
 39 with the requirements of subsection (b) of this section, the Secretary shall appoint members of
 40 the unrepresented categories.

41 ~~(a2) The process for appointing members shall ensure participation from each of the~~
 42 ~~constituent counties of a multicounty area authority. If the board or boards fail to comply with~~
 43 ~~the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented~~
 44 ~~category. The boards of county commissioners within a multicounty area with a catchment~~
 45 ~~population of at least 1,250,000 shall have the option to appoint members of the area board in a~~
 46 ~~manner or with a composition through a process other than as required by subsection (a1) of~~
 47 ~~this section by if at least three-quarters of the constituent counties each county adopting adopt a~~
 48 ~~resolution to that effect and receiving obtain written approval from the Secretary. When~~
 49 ~~seeking written approval from the Secretary to use an alternative board appointment process,~~
 50 ~~the area authority shall submit to the Secretary its proposed board appointment process and~~
 51 ~~copies of county resolutions requesting approval of the proposed board appointment process. In~~

1 cases in which two or more area authorities seek to merge or consolidate, if one or more of
2 these area authorities received approval by the Secretary for an alternative board appointment
3 process prior to the merger or consolidation, all prior approvals for an alternative board
4 appointment process become void 30 days after the effective date of the merger or
5 consolidation. The newly merged or consolidated area authority and the boards of county
6 commissioners within the multicounty area may appoint members of the area board through a
7 process other than as provided in subsection (a1) of this section if at least three-quarters of the
8 constituent counties each adopt a resolution to that effect and obtain written approval from the
9 Secretary in the manner prescribed by this subsection. No area board shall be exempt from, and
10 the Secretary shall not waive, any provision of this section except as provided in subdivision
11 (a1) of this section with respect to the board appointment process.

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

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

- 22 (1) At least one member who is a current county commissioner.
- 23 (2) The chair of the local Consumer and Family Advisory Committee (CFAC)
24 or the chair's designee.
- 25 (3) At least one family member of the local CFAC, as recommended by the
26 local CFAC, representing the interests of the following:
 - 27 a. Individuals with mental illness.
 - 28 b. Individuals in recovery from addiction.
 - 29 c. Individuals with intellectual or other developmental disabilities.
- 30 (4) At least one openly declared consumer member of the local CFAC, as
31 recommended by the local CFAC, representing the interests of the
32 following:
 - 33 a. Individuals with mental illness.
 - 34 b. Individuals with intellectual or other developmental disabilities.
 - 35 c. Individuals in recovery from addiction.
- 36 (5) An individual with health care expertise and experience in the fields of
37 mental health, intellectual or other developmental disabilities, or substance
38 abuse services.
- 39 (6) An individual with health care administration expertise consistent with the
40 scale and nature of the managed care organization.
- 41 (7) An individual with financial expertise consistent with the scale and nature of
42 the managed care organization.
- 43 (8) An individual with ~~insurance expertise consistent with the scale and nature~~
44 ~~of the managed care organization.~~ health insurance, health plan
45 administration, or business expertise, or any combination of expertise in
46 these areas.
- 47 (9) An individual with social services expertise and experience in the fields of
48 mental health, intellectual or other developmental disabilities, or substance
49 abuse services.
- 50 (10) An attorney with health care expertise.

- 1 (11) A member who represents the general public and who is not employed by or
 2 affiliated with the Department of Health and Human Services, as appointed
 3 by the Secretary.
 4 (12) The President of the LME/MCO Provider Council or the President's
 5 designee to serve as a nonvoting member who shall participate only in Board
 6 activities that are open to the public.
 7 (13) An administrator of a hospital providing mental health, developmental
 8 disabilities, and substance abuse emergency services to serve as a nonvoting
 9 member who shall participate only in Board activities that are open to the
 10 public.

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

20 ...

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

- 23 (1) The area board appointment process, the process for filling vacancies on the
 24 area board, and the appointing authority for each area board position.
 25 (2) The membership of the area board.
 26 (3) The county of residence of each member.
 27 (4) How the membership composition requirements of subsection (b) of this
 28 section are being met.
 29 (5) The term of office of the chair of the area board and each member.
 30 (6) The LME/MCO's compliance status with training requirements for its board
 31 members.
 32 (7) The board's policies and procedures for conducting the area director's annual
 33 performance review, including at least all of the following:
 34 a. The criteria used to conduct the review.
 35 b. The criteria used to award bonuses to the area director and other
 36 employees.
 37 c. The process for soliciting comments from county commissioners.
 38 d. The results of the area director's most recent performance evaluation.

39"

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

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

45 **"§ 122C-147.3. LME/MCO use of funds.**

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

1 **SECTION 9.** G.S. 122C-124.2(c) reads as rewritten:

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

- 7 (1) Prepare a written notice informing the LME/MCO of the provisions of
8 subdivision (1), (2), or (3) of subsection (c) of this section or the provisions
9 of G.S. 122C-147.3 with which the LME/MCO is deemed not to be in
10 compliance and the reasons for the determination of noncompliance.
11 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
12 (3) Not later than 10 days after the Secretary's notice of noncompliance is
13 provided to the LME/MCO, assign the Contract of the noncompliant
14 LME/MCO to a compliant LME/MCO.
15 (4) Oversee the transfer of the operations and contracts from the noncompliant
16 LME/MCO to the compliant LME/MCO in accordance with the provisions
17 in subsection (e) of this section."

18 **SECTION 10.(a)** G.S. 122C-121 reads as rewritten:

19 "**§ 122C-121. Area director.**

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

26 (a1) The area board shall establish the area director's salary under Article 3 of Chapter
27 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a
28 salary that is in excess of the salary ranges established by the State Human Resources
29 Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall~~
30 ~~be Commission so long as all of the following requirements are met:~~

- 31 (1) The board must submit to the Director of the Office of State Human
32 Resources and the Secretary a request to exceed the maximum of the
33 applicable salary range. The request must be supported by documentation of
34 comparable salaries in comparable operations within the a comparable
35 region of North Carolina and shall also include the specific amount the board
36 proposes to pay the director. For the purpose of this subdivision, the
37 Secretary shall determine what constitutes comparable operations within a
38 comparable region of North Carolina.
39 (2) The board must obtain prior written approval for the proposed salary from
40 both the Director of the Office of State Human Resources and the Secretary.
41 In no instance shall the area board, the Director of the Office of State Human
42 Resources, or the Secretary approve a salary for an area director that is
43 higher than the maximum of the applicable salary range if it exceeds by
44 more than thirty percent (30%) the average salary of the area directors of the
45 remaining LME/MCOs, as determined by the Secretary. If the Secretary
46 determines that an area director's salary is higher than the maximum of the
47 applicable salary range and exceeds by more than thirty percent (30%) the
48 average salary of the area directors of the remaining LME/MCOs, that area
49 director's salary shall be reduced to achieve compliance with this subdivision
50 within 60 days after such determination by the Secretary.

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

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

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

20 (2) The board must obtain prior written approval for the proposed salary
21 adjustment from both the Director of the Office of State Human Resources
22 and the Secretary. In no instance shall the area board, the Director of the
23 Office of State Human Resources, or the Secretary approve a salary
24 adjustment for an area director that results in a salary that is higher than the
25 maximum of the applicable salary range if it exceeds by more than thirty
26 percent (30%) the average salary of the area directors of the remaining
27 LME/MCOs, as determined by the Secretary. If the Secretary determines
28 that an area director's salary is higher than the maximum of the applicable
29 salary range and exceeds by more than thirty percent (30%) the average
30 salary of the area directors of the remaining LME/MCOs, that area director's
31 salary shall be reduced to achieve compliance with this subdivision within
32 60 days after such determination by 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 (a3) If the Secretary determines that the compensation of an area director, including
40 salary, benefits, and bonuses, exceeds the limitations specified in this section, the area board
41 shall prospectively reduce that area director's compensation, including salary, benefits, and
42 bonuses, to achieve compliance with this section within 60 days after such determination by the
43 Secretary. If an area board does not bring an area director's compensation, including salary,
44 benefits, and bonuses, into compliance with this section within the 60-day period, the Secretary
45 shall notify, in writing, the area board and the applicable participating boards of county
46 commissioners of the area authority specifically how the area director's compensation,
47 including salary, benefits, and bonuses, does not comply with this section and that the area
48 board must bring the area director's compensation, including salary, benefits, and bonuses, into
49 compliance with this section or a caretaker board of directors will be appointed as provided in
50 subsection (c) of G.S. 122C-124.1. The area board shall have 60 days from the date it receives

1 notice under this subsection to bring the area director's compensation, including salary,
2 benefits, and bonuses, into compliance with this section.

3 If, at the end of the 60-day notice period, the area board has not brought the area director's
4 compensation, including salary, benefits, and bonuses, into compliance with this section, the
5 Secretary shall appoint a caretaker board of directors as provided in subsection (c) of
6 G.S. 122C-124.1. The Secretary may assign any or all of the powers and duties of the area
7 director or of the area board to the caretaker board as the Secretary deems necessary and
8 appropriate. In addition to performing all of these powers and duties, the caretaker board shall
9 bring the area director's compensation, including salary, benefits, and bonuses, into compliance
10 with this section. The Secretary may terminate the area director when it appoints a caretaker
11 board. Neither party to any applicable employment contract shall be entitled to damages. After
12 a caretaker board has been appointed, the General Assembly shall consider, at its next regular
13 session, the future governance of the identified area authority.

14 (a2)(a4) The area board shall not provide the area director with any benefits or bonuses
15 that are not also provided by the area board to all permanent employees of the area program,
16 except that the area board may, in its discretion, offer severance benefits, relocation expenses,
17 or both, to an applicant for the position of area director as an incentive for the applicant to
18 accept an offer of employment. The area director shall be reimbursed only for allowable
19 employment-related expenses at the same rate and in the same manner as other employees of
20 the area program.

21 (a5) The total compensation provided or recommended to be provided by each area
22 board to its area director, including salary, benefits, and bonuses, shall be subject to review and
23 written approval by the Director of the Office of State Human Resources and the Secretary on
24 at least an annual basis. An area board shall not increase compensation to an area director
25 without prior written approval for the increase from the Director of the Office of State Human
26 Resources and the Secretary.

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

32 (b) The Secretary and the area board shall evaluate annually the area director for
33 performance based on criteria established by the Secretary and the area board. In conducting
34 the evaluation, the Secretary and the area board shall consider comments from the board of
35 county commissioners.

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

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

39 (2) Administer area authority services.

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

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

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

44 (6) Ensure compliance by the area authority with the following operational
45 requirements of the area authority:

46 a. Maintain disability specific infrastructure and competency to address
47 the clinical, treatment, rehabilitative, habilitative, and support needs
48 of all disabilities covered by the 1915(b)/(c) Medicaid Waiver.

49 b. Maintain administrative and clinical functions, including
50 requirements for customer service, quality management, due process,

1 provider network development, information systems, financial
2 reporting, and staffing.

3 c. Maintain full accountability for all aspects of Medicaid Waiver
4 operations and for meeting all contract requirements specified by the
5 Department. The Department shall not require LMEs to subcontract
6 any managed care functions or nonservice activities to other entities.
7 However, LMEs that choose to subcontract managed care functions
8 to other entities will be limited to the following:

- 9 1. Information systems.
- 10 2. Customer service (including call center) operations.
- 11 3. Claims processing.
- 12 4. Provider, enrollment, credentialing, and monitoring.
- 13 5. Professional services.
- 14 6. Treatment Plan development.
- 15 7. Referral to services.

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

- 18 (1) Masters degree.
- 19 (2) Related experience.
- 20 (3) Management experience.
- 21 (4) Any other qualifications required under G.S. 122C-120.1.

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

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

30 **SECTION 10.(b)** The limitations on compensation, including salary, benefits, and
31 bonuses specified in G.S. 122C-121, as amended by subsection (a) of this section, apply to
32 currently employed area directors hired prior to the effective date of this act as well as to area
33 directors hired on or after the effective date of this act. If the Secretary of the Department of
34 Health and Human Services determines that the compensation, including salary, benefits, and
35 bonuses, of a currently employed area director hired prior to the effective date of this act
36 exceeds the limitations specified in G.S. 122C-121, as amended by subsection (a) of this
37 section, the area board shall prospectively reduce that area director's compensation, including
38 salary, benefits, and bonuses, to achieve compliance with G.S. 122C-121, as amended by
39 subsection (a) of this section, within 60 days after such determination by the Secretary. If an
40 area board does not comply with the directive of this subsection to reduce an area director's
41 compensation, including salary, benefits, and bonuses, to achieve compliance with
42 G.S. 122C-121, as amended by subsection (a) of this section, within the 60-day period
43 prescribed by this subsection, the Secretary shall appoint a caretaker board of directors, as
44 prescribed in subsection (a3) of G.S. 122C-121, as amended by subsection (a) of this section.

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

51 **SECTION 11.** G.S. 122C-141(d)(1) reads as rewritten:

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

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

6 "**§ 122C-154. Personnel.**

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

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

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

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

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

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

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

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

49 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the
50 area board, the Director of the Office of State Human Resources, or the Secretary regardless of
51 whether the State Human Resources Commission has made a determination under G.S. 126-11

1 that all or a portion of the board's personnel system has been determined to be substantially
2 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General
3 Statutes."

4 **SECTION 13.** G.S. 126-11 reads as rewritten:

5 **"§ 126-11. Local personnel system may be established; approval and monitoring; rules**
6 **and regulations.**

7 (a) The board of county commissioners of any county may establish and maintain a
8 personnel system for all employees of the county subject to its jurisdiction, which system and
9 any substantial changes to the system, shall be approved by the State Human Resources
10 Commission as substantially equivalent to the standards established under this Chapter for
11 employees of local departments of social services, local health departments, ~~and~~-area mental
12 health programs, and local emergency management programs. If approved by the State Human
13 Resources Commission, the employees covered by the county system shall be exempt from all
14 provisions of this Chapter except Article 6.

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

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

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

34 (b2) Upon the merger or consolidation of two or more local management
35 entities/managed care organizations, any determination made prior to the effective date of that
36 merger or consolidation that all or a portion of any applicable area mental health authority
37 personnel system is substantially equivalent is void. The board of the newly merged or
38 consolidated area mental health authority, with the approval of each of the boards of
39 commissioners of the county or counties which comprise the newly merged or consolidated
40 area mental health authority, may petition the State Human Resources Commission to
41 determine whether any portion of its total personnel system meets the requirements of
42 subsection (a1) of this section. Upon such determination, area mental health authority
43 employees shall be exempt from the provisions of this Chapter relating to the approved portions
44 of the area mental health authority personnel system except as provided in G.S. 122C-121 and
45 G.S. 122C-154.

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

49 (d) In order to define "substantially equivalent," the State Human Resources
50 Commission is authorized to promulgate rules and regulations to implement the federal merit
51 system standards and these regulations at a minimum shall include: recruitment and selection of

1 employees; position classification; pay administration; training; employee relations; equal
2 employment opportunity; and records and reports."

3 **SECTION 14.** Section 12F.2(a) of S.L. 2015-241 reads as rewritten:

4 "**SECTION 12F.2.(a)** For the purpose of mitigating cash flow problems that many
5 LME/MCOs experience at the beginning of each fiscal year relative to single stream funding,
6 the Department of Health and Human Services, Division of Mental Health, Developmental
7 Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than
8 one-twelfth of each LME/MCO's ~~continuation-base budget~~ allocation at the beginning of the
9 fiscal year and subtract the amount of that distribution from the LME/MCO's total
10 reimbursements for the fiscal year. The Department of Health and Human Services, Division of
11 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall distribute
12 one-twelfth of each LME/MCO's single stream allocation on or before the last working day of
13 each month beginning with the first month of the fiscal year and continuing monthly
14 thereafter."

15 **SECTION 15.** G.S. 122C-115.1 and Part 2A of Article 4 of Chapter 122C of the
16 General Statutes are repealed.

17 **SECTION 16.** The Revisor of Statutes shall delete every reference to
18 G.S. 122C-115.1, G.S. 122C-127, and the phrases "county program" and "consolidated human
19 services agency" wherever they occur in Chapter 122C of the General Statutes.

20 **SECTION 17.** Section 14 of this act becomes effective July 1, 2017. The
21 remainder of this act is effective when it becomes law.