

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-151
SENATE BILL 191

AN ACT TO MAKE CHANGES IN GOVERNANCE OF LOCAL MANAGEMENT ENTITIES WITH RESPECT TO THE IMPLEMENTATION OF STATEWIDE EXPANSION OF THE 1915(B)/(C) MEDICAID WAIVER.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

- (1) ~~G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.~~
- (2) ~~G.S. 122C-119 and G.S. 122C-119.1.~~
- (3) ~~G.S. 122C-120 and G.S. 122C-121.~~
- (4) ~~G.S. 122C-127.~~
- (5) ~~G.S. 122C-147.~~
- (6) ~~G.S. 122C-152 and G.S. 122C-153.~~
- (7) ~~G.S. 122C-156.~~
- (8) ~~G.S. 122C-158."~~

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

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

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



~~appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation, representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board shall include two individuals with financial expertise, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term. An area board shall have no fewer than 11 and no more than 21 voting members. The board of county commissioners, or the boards of county commissioners within the area, shall appoint members consistent with the requirements provided in subsection (b) of this section. The process for appointing members shall ensure participation from each of the constituent counties of a multicounty area authority. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented category. The boards of county commissioners within a multicounty area with a catchment population of at least 1,250,000 shall have the option to appoint members of the area board in a manner or with a composition other than as required by this section by each county unanimously adopting a resolution to that effect and receiving written approval from the Secretary by January 1, 2013. A member of the board may be removed with or without cause by the initial appointing authority. The area board may declare vacant the office of an appointed member who does not attend three consecutive scheduled meetings without justifiable excuse. The chair of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.~~

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

- ~~(1) A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry. At least one member who is a current county commissioner.~~
- ~~(2) A clinical professional from the fields of mental health, developmental disabilities, or substance abuse. The chair of the local Consumer and Family Advisory Committee (CFAC) or the chair's designee.~~
- ~~(3) At least one family member or individual from a citizens' organization composed primarily of consumers or their family members, of the local CFAC, as recommended by the local CFAC, representing the interests of individuals: the following:
 - ~~a. With individuals with mental illness; illness.~~
 - ~~b. In individuals in recovery from addiction; or addiction.~~
 - ~~c. With individuals with intellectual or other developmental disabilities.~~~~
- ~~(4) At least one openly declared consumer member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
 - ~~a. With individuals with mental illness; illness.~~
 - ~~b. With individuals with intellectual or other developmental disabilities; or disabilities.~~
 - ~~c. In individuals in recovery from addiction.~~~~
- ~~(5) An individual with health care expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.~~
- ~~(6) An individual with health care administration expertise consistent with the scale and nature of the managed care organization.~~

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

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

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

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

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

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

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

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

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

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

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

"Part 4A. Consumer and Family Advisory Committees.

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

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

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

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

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

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

SECTION 7.(b) G.S. 122C-112.1 is amended by adding a new subdivision to read:
"(38) Adopt rules establishing a procedure for single-county disengagement from an area authority operating under a 1915(b)/(c) Medicaid Waiver."

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

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

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

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

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

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

- ...
(7) Appoint an area director in accordance with G.S. 122C-121(d).~~The appointment is subject to the approval of the board of county commissioners except that one or more boards of county commissioners may waive its authority to approve the appointment. The appointment shall be based on a~~

~~selection by a search committee of the area authority board. The search committee shall include consumer board members, a county manager, and one or more county commissioners. The Secretary shall have the option to appoint one member to the search committee.~~

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

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

...."

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

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

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

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

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

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

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

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

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

- (a) The provisions of this Chapter shall apply to:
 - (1) All State employees not herein exempt, and
 - (2) All employees of the following local entities:
 - a. ~~Area mental health, developmental disabilities, and substance abuse authorities-authorities, except as otherwise provided in Chapter 122C of the General Statutes.~~
 - b. Local social services departments.
 - c. County health departments and district health departments.
 - d. Local emergency management agencies that receive federal grant-in-aid funds.
- An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.
- (3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine."

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

"§ 122C-154. Personnel.

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

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

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

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

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

"§ 35A-1202. Definitions.

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

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

treatment to a ward does not disqualify that person from being appointed as guardian.

....
"

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

"§ 35A-1213. Qualifications of guardians.

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

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

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

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

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

(f) An individual who contracts with or is employed by an entity that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is a parent of that ward. The prohibition provided in this subsection shall not apply to a member of the ward's immediate family who is under contract with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services and is serving as a guardian as of January 1, 2013. For the purposes of this subsection, the term "immediate family" is defined as a spouse, child, sibling, parent, grandparent, or grandchild. The term also includes stepparents, stepchildren, stepsiblings, and adoptive relationships."

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

"§ 35A-1292. Resignation.

(a) Any guardian who wishes to resign ~~may apply in writing to the clerk, shall file a motion with the clerk~~ setting forth the circumstances of the case. If a general guardian or guardian of the estate, at the time of making the application, also exhibits his final account for settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may accept the resignation of the guardian and discharge him and appoint a successor guardian, but

~~the guardian. The guardian so discharged and his sureties are still liable in relation to all matters connected with the guardianship before the discharge-discharge and shall continue to ensure that the ward's needs are met until the clerk officially appoints a successor. The guardian shall attend the hearing to modify the guardianship, if physically able."~~

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:05 p.m. this 12th day of July, 2012