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SENATE BILL 208
Health Care Committee Substitute Adopted 3/28/13
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Short Title: Effective Operation of 1915(b)/(c) Waiver. (Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO ENSURE EFFECTIVE STATEWIDE OPERATION OF THE 1915 (B)/(C) MEDICAID WAIVER.

Whereas, S.L. 2011-264, as amended by Section 13 of S.L. 2012-151, required the Department of Health and Human Services (Department) to restructure the statewide management of the delivery of services for individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders through the statewide expansion of the 1915(b)/(c) Medicaid Waiver; and

Whereas, a local management entity/managed care organization (LME/MCO) that is awarded a contract to operate the 1915(b)/(c) Medicaid Waiver was required to maintain fidelity to the Piedmont Behavioral Health (PBH) demonstration model; and

Whereas, LME/MCOs are acting as Medicaid vendors and the Department must ensure that they are compliant with the provisions of S.L. 2011-264, as amended by Section 13 of S.L. 2012-151, as well as all applicable federal, State, and contractual requirements; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-3 is amended by adding a new subdivision to read:

"(20c) "Local management entity/managed care organization" or "LME/MCO" means a local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act."

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

"§ 122C-124.2. Actions by the Secretary to ensure effective management of behavioral health services under the 1915(b)/(c) Medicaid Waiver.

(a) For all local management entity/managed care organizations, the Secretary shall certify whether the LME/MCO is in compliance or is not in compliance with all requirements of subdivisions (1) through (3) of subsection (b) of this section. The Secretary's certification shall be made every six months beginning August 1, 2013. In order to ensure accurate evaluation of administrative, operational, actuarial and financial components, and overall performance of the LME/MCO, the Secretary's certification shall be based upon an internal and external assessment made by an independent external review agency in accordance with applicable federal and State laws and regulations. Beginning on February 1, 2014, and for all



1 subsequent assessments for certification, the independent review will be made by an External
2 Quality Review Organization approved by the Centers for Medicare and Medicaid Services and
3 in accordance with applicable federal and State laws and regulations.

4 (b) The Secretary's certification under subsection (a) of this section shall be in writing
5 and signed by the Secretary and shall contain a clear and unequivocal statement that the
6 Secretary has determined the local management entity/managed care organization to be in
7 compliance with all of the following requirements:

8 (1) The LME/MCO has made adequate provision against the risk of insolvency
9 with respect to capitation payments for Medicaid enrollees. "Adequate
10 provision" includes all of the following:

11 a. The LME/MCO has submitted to the Department all the financial
12 records and reports required to be submitted to the Department under
13 the Contract, including monthly balance sheets.

14 b. There are no consecutive three-month periods during which the
15 LME/MCO's ratio of current assets to current liabilities is less than
16 1.0, based on a monthly review of the LME/MCO's balance sheets
17 for each month of the three-month period, as determined by the
18 Secretary.

19 c. An intradepartmental monitoring team, as designated by the
20 Secretary and consisting of the Secretary or a designee,
21 representatives of the Division of Medical Assistance, and
22 representatives of the Division of Mental Health, Developmental
23 Disabilities, and Substance Abuse Services, utilizing the monitoring
24 team's solvency measures, determines that the LME/MCO has made
25 adequate provisions against the risk of insolvency based on a
26 quarterly review of the financial reports submitted to the Department
27 by the LME/MCO.

28 (2) The LME/MCO is making timely provider payments. The Secretary shall
29 certify that an LME/MCO is making timely provider payments if there are
30 no consecutive three-month periods during which the LME/MCO paid less
31 than ninety percent (90%) of clean claims for covered services within the
32 30-day period following the LME/MCO's receipt of these claims during that
33 three-month period. As used in this subdivision, a "clean claim" is a claim
34 that can be processed without obtaining additional information from the
35 provider of the service or from a third party. The term includes a claim with
36 errors originating in the LME/MCO's claims system. The term does not
37 include a claim from a provider who is under investigation by a
38 governmental agency for fraud or abuse or a claim under review for medical
39 necessity.

40 (3) The LME/MCO is exchanging billing, payment, and transaction information
41 with the Department and providers in a manner that complies with all
42 applicable federal standards, including all of the following:

43 a. Standards for information transactions and data elements specified in
44 42 U.S.C. § 1302d-2 of the Healthcare Insurance Portability and
45 Accountability Act (HIPAA), as from time to time amended.

46 b. Standards for health care claims or equivalent encounter information
47 transactions specified in HIPAA regulations in 45 C.F.R. § 162.1102,
48 as from time to time amended.

49 c. Implementation specifications for Electronic Data Interchange
50 standards published and maintained by the Accredited Standards

Committee (ASC X12) and referenced in HIPAA regulations in 45 C.F.R. § 162.920, as from time to time amended.

(c) If the Secretary does not provide a local management entity/managed care organization with the certification of compliance required by this section based upon the LME/MCO's failure to comply with any of the requirements specified in subdivisions (1) through (3) of subsection (b) of this section, the Secretary shall do the following:

- (1) Prepare a written notice informing the LME/MCO of the provisions of subdivision (1), (2), or (3) of subsection (c) of this section with which the LME/MCO is deemed not to be in compliance and the reasons for the determination of noncompliance.
- (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- (3) Not later than 10 days after the Secretary's notice of noncompliance is provided to the LME/MCO, assign the Contract of the noncompliant LME/MCO to a compliant LME/MCO.
- (4) Oversee the transfer of the operations and contracts from the noncompliant LME/MCO to the compliant LME/MCO in accordance with the provisions in subsection (e) of this section.

(d) If, at any time, in the Secretary's determination, a local management entity/managed care organization is not in compliance with a requirement of the Contract other than those specified in subdivisions (1) through (3) of subsection (b) of this section, then the Secretary shall do all of the following:

- (1) Prepare a written notice informing the LME/MCO of the provisions of the Contract with which the LME/MCO is deemed not to be in compliance and the reasons therefor.
- (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- (3) Allow the noncompliant LME/MCO 30 calendar days from the date of receipt of the notice to respond to the notice of noncompliance and to demonstrate compliance to the satisfaction of the Secretary.
- (4) Upon the expiration of the period allowed under subdivision (3) of this subsection, make a final determination on the issue of compliance and promptly notify the LME/MCO of the determination.
- (5) Upon a final determination that an LME/MCO is noncompliant, allow no more than 30 days following the date of notification of the final determination of noncompliance for the noncompliant LME/MCO to complete negotiations for a merger or realignment with a compliant LME/MCO that is satisfactory to the Secretary.
- (6) If the noncompliant LME/MCO does not successfully complete negotiations with a compliant LME/MCO as described in subdivision (5) of this subsection, assign the Contract of the noncompliant LME/MCO to a compliant LME/MCO.
- (7) Oversee the transfer of the operations and contracts from the noncompliant LME/MCO to the compliant LME/MCO in accordance with the provisions in subsection (e) of this section.

(e) If the Secretary assigns the Contract of a noncompliant local management entity/managed care organization to a compliant LME/MCO under subdivision (3) of subsection (c) of this section, or under subdivision (6) of subsection (d) of this section, the Secretary shall oversee the orderly transfer of all management responsibilities, operations, and contracts of the noncompliant LME/MCO to the compliant LME/MCO. The noncompliant LME/MCO shall cooperate with the Secretary in order to ensure the uninterrupted provision of services to Medicaid recipients. In making this transfer, the Secretary shall do all of the following:

- 1 (1) Arrange for the providers of services to be reimbursed from the remaining
2 fund balance or risk reserve of the noncompliant LME/MCO, or from other
3 funds of the Department if necessary, for proper, authorized, and valid
4 claims for services rendered that were not previously paid by the
5 noncompliant LME/MCO.
- 6 (2) Effectuate an orderly transfer of management responsibilities from the
7 noncompliant LME/MCO to the compliant LME/MCO, including the
8 responsibility of paying providers for covered services that are subsequently
9 rendered.
- 10 (3) Oversee the dissolution of the noncompliant LME/MCO, including
11 transferring to the compliant LME/MCO all assets of the noncompliant
12 LME/MCO, including any balance remaining in its risk reserve after
13 payments have been made under subdivision (1) of this subsection. Risk
14 reserve funds of the noncompliant LME/MCO may be used only to pay
15 authorized and approved provider claims. Any funds remaining in the risk
16 reserve transferred under this subdivision shall become part of the compliant
17 LME/MCO's risk reserve and subject to the same restrictions on the use of
18 the risk reserve applicable to the compliant LME/MCO. If the risk reserves
19 transferred from the noncompliant LME/MCO are insufficient, the Secretary
20 shall guarantee any needed risk reserves for the compliant LME/MCO
21 arising from the additional risks being assumed by the compliant LME/MCO
22 until the compliant LME/MCO has established fifteen percent (15%) risk
23 reserves. All other assets shall be used to satisfy the liabilities of the
24 noncompliant LME/MCO. In the event there are insufficient assets to satisfy
25 the liabilities of the noncompliant LME/MCO, it shall be the responsibility
26 of the Secretary to satisfy the liabilities of the noncompliant LME/MCO.
- 27 (4) Following completion of the actions specified in subdivisions (1) through (3)
28 of this subsection, direct the dissolution of the noncompliant LME/MCO and
29 deliver a notice of dissolution to the board of county commissioners of each
30 of the counties in the dissolved LME/MCO. An LME/MCO that is dissolved
31 by the Secretary in accordance with the provisions of this section may be
32 dissolved at any time during the fiscal year.

33 (f) The Secretary shall provide a copy of each written, signed certification of
34 compliance or noncompliance completed in accordance with this section to the Senate
35 Appropriations Committee on Health and Human Services, the House Appropriations
36 Subcommittee on Health and Human Services, the Legislative Oversight Committee on Health
37 and Human Services, and the Fiscal Research Division.

38 (g) As used in this section, the following terms mean:

- 39 (1) Contract. – The contract between the Department of Health and Human
40 Services and a local management entity for the operation of the 1915(b)/(c)
41 Medicaid Waiver.
- 42 (2) Compliant local management entity/managed care organization. – An
43 LME/MCO that has undergone an independent external assessment and been
44 determined by the Secretary to be operating successfully and to have the
45 capability of expanding."

46 **SECTION 3.** G.S. 122C-112.1(a) is amended by adding a new subdivision to read:

47 "(39) Develop and use a standard contract for all local management
48 entity/managed care organizations for operation of the 1915(b)/(c) Medicaid
49 Waiver that requires compliance by each LME/MCO with all provisions of
50 the contract to operate the 1915(b)/(c) Medicaid Waiver and with all
51 applicable provisions of State and federal law."

1 **SECTION 4.(a)** G.S. 122C-115(a) reads as rewritten:

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

13 **SECTION 4.(b)** G.S. 122C-115(a3) reads as rewritten:

14 "(a3) A county that wishes to disengage from a local management entity/managed care
15 organization and realign with another multicounty area authority operating under the
16 1915(b)/(c) Medicaid Waiver may do so with the approval of the Secretary. The Secretary shall
17 adopt rules to establish a process for county disengagement that shall ensure, at a minimum, the
18 following:

19 (1) Provision of services is not disrupted by the disengagement.

20 (2) The disengaging county either is in compliance or plans to merge with an
21 area authority that is in compliance with population requirements provided
22 in G.S. 122C-115(a) of this section.

23 (3) The timing of the disengagement is accounted for and does not conflict with
24 setting capitation rates.

25 (4) Adequate notice is provided to the affected counties, the Department of
26 Health and Human Services, and the General Assembly.

27 (5) Provision for distribution of any real property no longer within the
28 catchment area of the area authority."

29 **SECTION 4.(c)** G.S. 122C-115(c1) reads as rewritten:

30 "(c1) Area authorities may add one or more additional counties to their existing catchment
31 area by agreement of a majority of the existing member counties upon the adoption of a
32 resolution to that effect by a majority of the members of the area board and the approval of the
33 Secretary."

34 **SECTION 5.(a)** G.S. 122C-115.3(a), (c), (d), (f), and (g) are repealed.

35 **SECTION 5.(b)** G.S. 122C-115.3(b) reads as rewritten:

36 "(b) Notwithstanding the provisions of subsection (a) of this section, no ~~No~~ county shall
37 withdraw from an area authority nor shall an area authority be dissolved ~~without first~~
38 ~~demonstrating that continuity of services will be assured and~~ without prior approval of the
39 Secretary."

40 **SECTION 5.(c)** G.S. 122C-115.3(e) reads as rewritten:

41 "(e) Any fund balance available to an area authority at the time of its dissolution shall be
42 distributed to those counties comprising the area authority on the same pro rata basis that the
43 counties appropriated and contributed funds to the area authority's budget during the current
44 fiscal year. Distribution to the counties shall be determined on the basis of an audit of the
45 financial record of the area authority. The area authority board shall select a certified public
46 accountant or an accountant who is subsequently certified by the Local Government
47 Commission to conduct the audit. The audit shall be performed in accordance with
48 G.S. 159-34. The same method of distribution of funds described in this subsection shall apply
49 when one or more counties of an area authority withdraw from the area authority that is not
50 utilized to pay liabilities shall be transferred to the area authority contracted to operate the
51 1915(b)/(c) Medicaid Waiver in the catchment area of the dissolved area authority. If the fund

1 balance transferred from the dissolved area authority is insufficient to constitute fifteen percent
2 (15%) of the anticipated operational expenses arising from assumption of responsibilities from
3 the dissolved area authority, the Secretary shall guarantee the operational reserves for the area
4 authority assuming the responsibilities under the 1915(b)/(c) Medicaid Waiver until the
5 assuming area authority has reestablished fifteen percent (15%) operational reserves."

6 **SECTION 6.** G.S. 122C-118.1(a) reads as rewritten:

7 "(a) An area board shall have no fewer than 11 and no more than 21 voting members.
8 The board of county commissioners, or the boards of county commissioners within the area,
9 shall appoint members consistent with the requirements provided in subsection (b) of this
10 section. The process for appointing members shall ensure participation from each of the
11 constituent counties of a multicounty area authority. If the board or boards fail to comply with
12 the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented
13 category. The boards of county commissioners within a multicounty area with a catchment
14 population of at least 1,250,000 shall have the option to appoint members of the area board in a
15 manner or with a composition other than as required by this section by each county
16 ~~unanimously~~ adopting a resolution to that effect and receiving written approval from the
17 ~~Secretary by January 1, 2013.~~ Secretary. A member of the board may be removed with or
18 without cause by the initial appointing authority. The area board may declare vacant the office
19 of an appointed member who does not attend three consecutive scheduled meetings without
20 justifiable excuse. The chair of the area board shall notify the appropriate appointing authority
21 of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before
22 the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first,
23 and the appointments shall be for the remainder of the unexpired term."

24 **SECTION 7.** G.S. 122C-118.1 is amended by adding the following new subsection
25 to read:

26 "(f) An area authority that adds one or more counties to its existing catchment area
27 under G.S. 122C-115(c1) shall ensure that the expanded catchment area is represented through
28 membership on the area board, with or without adding area board members under this section,
29 as provided in G.S. 122C-118.1(a)."

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

32 **§ 122C-118.2. Establishment of county commissioner advisory board.**

33 (a) There is established a county commissioner advisory board for each catchment area,
34 consisting of one county commissioner from each county in the catchment area, designated by
35 the board of commissioners of each county. The county commissioner advisory board shall
36 meet on a regular basis, and its duties shall include serving as the chief advisory board to the
37 area authority and to the director of the area authority on matters pertaining to the delivery of
38 services for individuals with mental illness, intellectual or other developmental disabilities, and
39 substance abuse disorders in the catchment area. The county commissioner advisory board
40 serves in an advisory capacity only to the area authority, and its duties do not include authority
41 over budgeting, personnel matters, governance, or policymaking of the area authority.

42 (b) Each board of commissioners within the catchment area shall designate from its
43 members the commissioner to serve on the county commissioner advisory board. Each board of
44 commissioners may determine the manner of designation, the term of service, and the
45 conditions under which its designee will serve on the county commissioner advisory board."

46 **SECTION 9.** G.S. 122C-142(a) is rewritten to read:

47 "(a) When the area authority contracts with persons for the provision of services, it shall
48 use the standard contract adopted by the Secretary and shall assure that these contracted
49 services meet the requirements of applicable State statutes and the rules of the Commission and
50 the Secretary. However, an area authority ~~or county program~~ may amend the contract to
51 comply with any court-imposed duty or responsibility. An area authority ~~or county program~~

1 that is operating under a Medicaid waiver may amend the contract subject to the approval of the
2 Secretary. Terms of the standard contract shall require the area authority to monitor the contract
3 to assure that rules and State statutes are met. It shall also place an obligation upon the entity
4 providing services to provide to the area authority timely data regarding the clients being
5 served, the services provided, and the client outcomes. The Secretary may also monitor
6 contracted services to assure that rules and State statutes are met."

7 **SECTION 10.** G.S. 150B-1(e) is amended by adding a new subdivision to read:

8 "(21) The Department of Health and Human Services for actions taken under
9 G.S. 122C-124.2."

10 **SECTION 11.** By no later than August 1, 2013, the Secretary of the Department of
11 Health and Human Services shall complete an initial certification of compliance, in accordance
12 with G.S. 122C-124.2(a), for each local management entity/managed care organization that has
13 been approved by the Department to operate the 1915(b)/(c) Medicaid Waiver and provide a
14 copy of the certification to the Senate Appropriations Committee on Health and Human
15 Services, the House Appropriations Subcommittee on Health and Human Services, the
16 Legislative Oversight Committee on Health and Human Services, and the Fiscal Research
17 Division.

18 **SECTION 12.** Section 4(a) of this act becomes effective January 1, 2014. The
19 remainder of this act is effective when it becomes law.