

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 425

Short Title: Medicaid Agency Omnibus.-AB (Public)

Sponsors: Senators Krawiec, Burgin, and Corbin (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 30, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE LAWS PERTAINING TO MEDICAID AND BEHAVIORAL
3 HEALTH.

4 The General Assembly of North Carolina enacts:

5
6 **ACCOUNT FOR DELAY OF BH IDD TAILORED PLANS**

7 **SECTION 1.(a)** Section 9D.7(a) of S.L. 2022-74 is repealed.

8 **SECTION 1.(b)** The Division of Health Benefits, Department of Health and Human
9 Services (DHHS), shall implement BH IDD tailored plans, as defined under G.S. 108D-1, no
10 later than October 1, 2023. The initial term of the BH IDD tailored plan shall end December 1,
11 2026, in alignment with the ending of the initial term of the standard benefit plan prepaid health
12 plan capitated contracts. If DHHS extends the standard benefit plan contracts, as authorized by
13 Section 7(b) of S.L. 2020-88, then DHHS shall offer to extend the initial term of the BH IDD
14 tailored plan contracts an equivalent amount of time.

15
16 **REVISE MEDICAID PRESCRIPTION DRUG LOCK-IN PROGRAM**

17 **SECTION 2.(a)** G.S. 108A-68.2 reads as rewritten:

18 **"§ 108A-68.2. Beneficiary lock-in program for certain controlled substances.**

19 (a) The following definitions apply in this section:

20 ...

21 (2) Lock-in program. – ~~A requirement that a Medicaid beneficiary select a single~~
22 ~~prescriber and a single pharmacy for obtaining covered substances.~~A
23 requirement, consistent with 42 C.F.R. § 431.54(e), that restricts the number
24 of prescribers from whom, and the number of pharmacies from which, a
25 Medicaid beneficiary may obtain covered substances.

26 (3) Prepaid health plan or PHP. – As defined in G.S. 108D-1.

27 ...

28 ~~(d) This section does not apply to any lock-in program for Medicaid beneficiaries who~~
29 ~~are not enrolled in a Prepaid Health Plan.~~

30 (e) ~~A Prepaid Health Plan may~~ PHP shall develop a lock-in program for Medicaid
31 beneficiaries who meet ~~any of the following criteria:~~ the criteria established in the Department's
32 Outpatient Pharmacy Clinical Coverage Policy adopted in accordance with G.S. 108A-54.2.

33 (1) ~~Have filled six or more prescriptions for covered substances in a period of two~~
34 ~~consecutive months.~~

35 (2) ~~Have received prescriptions for covered substances from three or more~~
36 ~~providers in a period of two consecutive months.~~



1 (3) ~~Are recommended as a candidate for the lock-in program by a provider.~~
2 (f) A lock-in program developed pursuant to subsection (e) of this section shall comply
3 with all of the following:

4 (1) A beneficiary shall not be subject to the lock-in program until the ~~Prepaid~~
5 ~~Health Plan-PHP~~ has notified the beneficiary in writing that the beneficiary
6 will be subject to the lock-in program.

7 (2) A beneficiary subject to the lock-in program shall be given the opportunity to
8 select a single prescriber and a single pharmacy from a list of prescribers and
9 pharmacies in the ~~Prepaid Health Plan's-PHP's~~ provider network. The
10 beneficiary may be allowed to select up to two prescribers and two pharmacies
11 when medically necessary, as designated by the State, in accordance with 42
12 C.F.R. § 431.54(e). For any beneficiary who fails to select a single prescriber,
13 the Prepaid Health Plan shall use algorithmic guidelines to assign the
14 beneficiary a single prescriber from a list of prescribers in the Prepaid Health
15 Plan's network. For any beneficiary who fails to select a single pharmacy,
16 prescribers or pharmacies, the Prepaid Health Plan-PHP shall use algorithmic
17 guidelines to assign the beneficiary a single pharmacy from a list of
18 prescribers or pharmacies enrolled in the Prepaid Health Plan's-PHP's
19 network.

20 (3) A beneficiary shall not be required to use the single prescriber or single
21 pharmacy selected for the lock-in program to obtain prescriptions drugs
22 covered by the Medicaid program or the ~~Prepaid Health Plan-PHP~~ that are not
23 covered substances.

24 (f1) If a PHP finds that a beneficiary has utilized Medicaid services at a frequency or
25 amount that is not medically necessary, as determined in accordance with utilization guidelines
26 established by the State, the restrictions in subsection (f) of this section may be imposed for a
27 period of two years.

28 (g) ~~A Prepaid Health Plan's-PHP's~~ use of a lock-in program developed pursuant to
29 subsection (e) of this section shall not constitute a violation of the terms of a contract between
30 the ~~Prepaid Health Plan-PHP~~ and the Department that relate to a beneficiary's ability to utilize a
31 prescriber or pharmacy of choice."

32 **SECTION 2.(b)** G.S. 58-51-37(l) reads as rewritten:

33 "*l*) An insurer's use of a lock-in program developed pursuant to G.S. 58-51-37.1 or
34 G.S. 108A-68.2 is not a violation of this section."

35 **SECTION 2.(c)** This section is effective on the later of the date this act becomes law
36 or the date that the NC Health Choice program is eliminated, as approved by the Centers for
37 Medicare and Medicaid Services (CMS) in accordance with Section 9D.15(a) of S.L. 2022-74.

38 39 **ADD BEHAVIORAL HEALTH SERVICES COVERED BY STANDARD BENEFIT** 40 **PLANS**

41 **SECTION 3.(a)** G.S. 108D-35(b) reads as rewritten:

42 "(b) The capitated contracts required by this section shall not cover any of the following:

43 (1) Medicaid services covered by the local management entities/managed care
44 organizations (LME/MCOs) under the combined 1915(b) and (c) ~~waivers~~
45 waivers, 1915(b)(3) services, and any services approved under the 1915(i)
46 option shall not be covered under a standard benefit plan, except that all
47 capitated PHP contracts shall cover the following services:

48 a. Inpatient behavioral health services.

49 b. Outpatient behavioral health emergency room services.

50 c. Outpatient behavioral health services provided by direct-enrolled
51 providers.

- 1 d. Mobile crisis management services.
 2 e. Facility-based crisis services for children and adolescents.
 3 f. Professional treatment services in a facility-based crisis program.
 4 g. Outpatient opioid treatment services.
 5 h. Ambulatory detoxification services.
 6 i. Nonhospital medical detoxification services.
 7 j. Partial hospitalization.
 8 k. Medically supervised or alcohol and drug abuse treatment center
 9 detoxification crisis stabilization.
 10 l. Research-based intensive behavioral health treatment.
 11 m. Diagnostic assessment services.
 12 n. Early and Periodic Screening, Diagnosis, and Treatment services.
 13 o. Peer support services.
 14 p. Behavioral health urgent care services.
 15 q. Substance abuse comprehensive outpatient treatment program
 16 services.
 17 r. Substance abuse intensive outpatient program services.
 18 s. Social settings detoxification services.
 19 ~~In accordance with this subdivision, 1915(b)(3) services shall not be covered~~
 20 ~~under a standard benefit plan.~~

21"

22 SECTION 3.(b) This section is effective October 1, 2023.

23
 24 **CLARIFY ACTIONS TO BE TAKEN UPON TERMINATION OF LME/MCO**
 25 **CONTRACTS**

26 SECTION 4.(a) Part 2 of Article 4 of Chapter 122C of the General Statutes is
 27 amended by adding the following new sections to read:

28 "**§ 122C-115.5. Alignment of counties with an area authority.**

29 (a) No county shall withdraw from an area authority nor shall an area authority be
 30 dissolved without prior approval of the Secretary.

31 (b) A county that wishes to disengage from one area authority and realign with another
 32 area authority operating a Medicaid waiver contract may do so with the approval of the Secretary.
 33 The Secretary shall adopt rules to establish a process for county disengagement that shall ensure,
 34 at a minimum, the following:

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

36 (2) The timing of the disengagement is accounted for and does not conflict with
 37 setting capitation rates.

38 (3) Adequate notice is provided to the affected counties, the Department of Health
 39 and Human Services, and the General Assembly.

40 (4) Provisions exist for the distribution of any real property no longer within the
 41 catchment area of the area authority.

42 (c) Area authorities may add one or more additional counties to their existing catchment
 43 area upon the adoption of a resolution to that effect by a majority of the members of the area
 44 board and the approval of the Secretary.

45 (d) The Secretary shall direct the dissolution of an area authority upon the termination of
 46 a BH IDD tailored plan contract with an area authority or upon the Secretary's delivery of a notice
 47 of noncompliance to an area authority under G.S. 122C-124.2(c)(2) or G.S. 122C-124.2(d)(4).

48 (e) When an area authority is dissolved at the direction of the Secretary, the following
 49 shall occur:

50 (1) The Secretary shall deliver a notice of dissolution to the board of county
 51 commissioners of each of the counties in the dissolved area authority.

- 1 (2) An area authority that is dissolved by the Secretary in accordance with the
2 provisions of this section shall be dissolved on a time line established by the
3 Department.
- 4 (3) The area authority being dissolved shall cooperate with the Secretary in order
5 to ensure the uninterrupted provision of services to Medicaid recipients and
6 the other individuals who received services through the area authority.
- 7 (4) The Secretary shall reassign the counties aligned with the area authority being
8 dissolved to one or more area authorities that are under contract for the
9 operation of a BH IDD tailored plan.
- 10 (5) The Secretary shall reassign the State-funded services contract between the
11 area authority being dissolved and the Division of Mental Health,
12 Developmental Disabilities, and Substance Abuse Services to the area
13 authorities receiving the realigned counties.
- 14 (6) The Secretary shall effectuate and oversee the orderly transfer of all
15 management responsibilities, operations, and contracts of the area authority
16 being dissolved, including the responsibility of paying providers for covered
17 services that are subsequently rendered.
- 18 (7) The Secretary shall arrange for the providers of services to be reimbursed from
19 the remaining fund balance or risk reserve of the area authority being
20 dissolved, or from other funds of the Department if necessary, for proper,
21 authorized, and valid claims for services rendered that were not previously
22 paid by the area authority being dissolved. In the event there are insufficient
23 assets to satisfy the liabilities of the area authority being dissolved, it shall be
24 the responsibility of the Secretary to satisfy the liabilities of the area authority
25 being dissolved.
- 26 (8) Effective until the date that BH IDD tailored plans begin operating, risk
27 reserve funds of the area authority being dissolved may be used only to pay
28 authorized and approved provider claims. Any funds remaining in the risk
29 reserve transferred under this subdivision shall become part of the risk reserve
30 of the area authorities receiving the realigned counties and shall be subject to
31 the same restrictions on the use of the risk reserve applicable to those area
32 authorities.
- 33 (9) The Secretary may assume control, in part or in full, of the financial affairs of
34 the area authority and appoint an administrator to exercise the powers assumed
35 by the Secretary. This assumption of control shall have the effect of divesting
36 the area authority of its authority as to the powers assumed, including service
37 delivery, adoption of budgets, expenditures of money, and all other financial
38 powers conferred on the area authority by law.
- 39 (10) County funding of the area authority shall continue and shall not be reduced
40 as a result of the dissolution. A county shall not withdraw funds previously
41 obligated or appropriated to the area authority.
- 42 (11) Any fund balance or risk reserve available to an area authority at the time of
43 its dissolution that is not utilized to pay liabilities shall be transferred to one
44 or more area authorities contracted to operate the 1915(b)/(c) Medicaid
45 Waiver or a BH IDD tailored plan in all or a portion of the catchment area of
46 the dissolved area authority, as directed by the Department in accordance with
47 G.S. 122C-115.6.
- 48 (12) Effective until the date that BH IDD tailored plans begin operating, if the fund
49 balance transferred from the dissolved area authority under subdivision (11)
50 of this subsection is insufficient to constitute fifteen percent (15%) of the
51 anticipated operational expenses arising from assumption of responsibilities

1 from the dissolved area authority, the Secretary shall guarantee the operational
2 reserves for the area authority assuming the responsibilities under the
3 1915(b)/(c) Medicaid Waiver until the assuming area authority has
4 reestablished fifteen percent (15%) operational reserves.

5 **"§ 122C-115.6. Transfer of area authority fund balance upon county realignment.**

6 (a) When a county disengages from one area authority and realigns with another area
7 authority under G.S. 122C-115.5, regardless of whether the realignment was due to reassignment
8 by the Secretary or another process, a portion of the risk reserve and other funds of the area
9 authority from which the county is disengaging shall be transferred to the area authority with
10 which the county is realigning. The amount of risk reserve and other funds to be transferred shall
11 be determined by the Department in accordance with a formula or formulas developed in
12 accordance with this section.

13 (b) Any formula developed by the Department under this section shall consider the
14 stability of both the area authority from which the county is disengaging and the area authority
15 with which the county is realigning. The formula shall support (i) the ability for each area
16 authority to carry out its responsibilities under State law, (ii) the successful operation of the
17 1915(b)/(c) waivers, (iii) the capitated arrangements authorized by G.S. 108D-60(b), and (iv) the
18 successful operation of BH IDD tailored plans under G.S. 108D-60. The formula shall assure
19 that the area authority from which the county is disengaging retains sufficient funds to pay any
20 outstanding liabilities to healthcare providers, staff-related expenses, and other liabilities.

21 (c) The area authority from which the county is disengaging and the area authority with
22 which the county is realigning shall provide the Department with all financial information
23 requested by the Department that is necessary to determine the amount of funds to be transferred
24 using the formula or formulas developed under this section, upon any of the following:

- 25 (1) The Secretary's approval of a county disengagement under G.S. 122C-115.5.
26 (2) The Secretary's delivery of a notice of dissolution to the area authority under
27 G.S. 122C-115.5(e)(1).

28 (d) Prior to finalizing any formula developed under this section, the Department shall
29 post the proposed formula on its website and provide notice of the proposed formula to all area
30 authorities, the Joint Legislative Oversight Committee on Health and Human Services, the Joint
31 Legislative Oversight Committee on Medicaid and NC Health Choice, and the Fiscal Research
32 Division. The Department shall accept public comment on the proposed formula. The
33 Department shall post the final version of the formula on its website.

34 (e) The Department may amend the formula as needed to ensure the requirements of
35 subsection (b) of this section are met. Prior to finalizing any amended formula developed under
36 this section, the Department shall post the proposed formula on its website and provide notice of
37 the proposed formula to all area authorities, the Joint Legislative Oversight Committee on Health
38 and Human Services, the Joint Legislative Oversight Committee on Medicaid and NC Health
39 Choice, and the Fiscal Research Division. The Department shall accept public comment on the
40 proposed formula. The Department shall post the final version of the formula on its website.

41 (f) Beginning July 15, 2023, and quarterly thereafter, the Department shall report to the
42 Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative
43 Oversight Committee on Medicaid and NC Health Choice, and the Fiscal Research Division on
44 any funds transferred as a result of disengagements during the previous quarter.

45 (g) The development and application of the formula or formulas under this section shall
46 be exempt from the rulemaking requirements and contested case provisions of Chapter 150B of
47 the General Statutes, as provided in G.S. 150B-1(d)(33) and G.S. 150B-1(e)(27)."

48 **SECTION 4.(b)** G.S. 122C-3 reads as rewritten:

49 **"§ 122C-3. Definitions.**

50 The following definitions apply in this Chapter:

51 ...

1 (2b) ~~"Behavioral~~ Behavioral health and intellectual/developmental disabilities
2 tailored ~~plan"~~ plan or "BH-BH IDD tailored plan" has the same meaning as
3 plan. – As defined in G.S. 108D-1.

4 ...

5 (29b) ~~"Prepaid-Prepaid health plan"~~ has the same meaning as plan. – As defined in
6 G.S. 108D-1.

7 ...

8 (35b) Specialty services. – Services that are provided to consumers from
9 low-incidence populations.

10 (35e) ~~State or Local Consumer Advocate. — The individual carrying out the duties~~
11 ~~of the State or Local Consumer Advocacy Program Office in accordance with~~
12 ~~Article 1A of this Chapter.~~

13 (35d) Standard benefit plan. – As defined in G.S. 108D-1.

14 (35e) State Plan. – The State Plan for Mental Health, Developmental Disabilities,
15 and Substance Abuse Services.

16 (35e)(35f) State resources. – State and federal funds and other receipts administered
17 by the Division.

18"

19 **SECTION 4.(c)** G.S. 122C-112.1(a)(25) is repealed.

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

21 "**§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and**
22 **cities.**

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

32 (a1) ~~Effective July 1, 2012, the Department shall reduce the administrative funding for~~
33 ~~LMEs that do not comply with the minimum population requirement of 300,000 to a rate~~
34 ~~consistent with the funding rate provided to LMEs with a population of 300,000.~~

35 (a2) ~~Effective July 1, 2013, the Department shall reassign management responsibilities for~~
36 ~~Medicaid funds and State funds away from LMEs that are not in compliance with the minimum~~
37 ~~population requirement of 500,000 to LMEs that are fully compliant with all catchment area~~
38 ~~requirements, including the minimum population requirements specified in this section.~~

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

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

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

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

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

1 (5) ~~Provision for distribution of any real property no longer within the catchment~~
2 ~~area of the area authority.~~

3 ...

4 (e1) ~~Area authorities may add one or more additional counties to their existing catchment~~
5 ~~area upon the adoption of a resolution to that effect by a majority of the members of the area~~
6 ~~board and the approval of the Secretary.~~

7 (d) Except as otherwise provided in this subsection, counties shall not reduce county
8 appropriations and expenditures for current operations and ongoing programs and services of
9 area authorities ~~or county programs~~ because of the availability of State-allocated funds, fees,
10 capitation amounts, or fund balance to the area ~~authority or county program~~ authority. Counties
11 may reduce county appropriations by the amount previously appropriated by the county for
12 one-time, nonrecurring special needs of the area ~~authority or county program~~ authority.

13 (e) ~~Beginning on the date that capitated contracts under Article 4 of Chapter 108D of the~~
14 ~~General Statutes begin, July 1, 2021, LME/MCOs shall cease managing Medicaid services for~~
15 ~~all Medicaid recipients other than recipients described in G.S. 108D-40(a)(1), (4), (5), (6), (7),~~
16 ~~(10), (11), (12), and (13), who are enrolled in a standard benefit plan.~~

17 (e1) Until BH IDD tailored plans become operational, all of the following shall occur:

18 (1) LME/MCOs shall continue to manage the Medicaid services that are covered
19 by the LME/MCOs under the combined 1915(b) and (c) waivers for Medicaid
20 recipients ~~described in G.S. 108D-40(a)(1), (4), (5), (6), (7), (10), (11), (12),~~
21 ~~and (13), who are covered by the those waivers and who are not enrolled in a~~
22 ~~standard benefit plan.~~

23 (2) The Division of Health Benefits shall negotiate actuarially sound capitation
24 rates directly with the LME/MCOs based on the change in composition of the
25 population being served by the LME/MCOs.

26 (3) Capitation payments under contracts between the Division of Health Benefits
27 and the LME/MCOs shall be made directly to the LME/MCO by the Division
28 of Health Benefits.

29 (f) ~~Entities LME/MCOs operating the BH IDD tailored plans under G.S. 108D-60 may~~
30 ~~continue to manage the behavioral health, intellectual and developmental disability, and~~
31 ~~traumatic brain injury services for any Medicaid recipients described in G.S. 108D-40(a)(4), (5),~~
32 ~~(7), (10), (11), (12), and (13) under any contract with the Department in accordance with~~
33 ~~G.S. 108D-60(b), who are not enrolled in a BH IDD tailored plan."~~

34 **SECTION 4.(e)** G.S. 122C-115.3(h) is repealed.

35 **SECTION 4.(f)** G.S. 122C-124.1 is repealed.

36 **SECTION 4.(g)** G.S. 122C-124.2 reads as rewritten:

37 "**§ 122C-124.2. Actions by the Secretary to ensure effective management of behavioral**
38 **health services under the 1915(b)/(c) Medicaid Waiver.**

39 ...

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

44 (1) The LME/MCO has made adequate provision against the risk of insolvency
45 ~~and and, in accordance with G.S. 122C-125.3, is either (i) is not required to~~
46 ~~be under a corrective action plan in accordance with G.S. 122C-125.2 or (ii)~~
47 ~~is—in compliance with a corrective action plan required under~~
48 ~~G.S. 122C-125.2, plan.~~

49 ...

50 (c) If the Secretary does not provide a local management entity/managed care
51 organization with the certification of compliance required by this section based upon the

1 LME/MCO's failure to comply with any of the requirements specified in subdivisions (1) through
2 (3) of subsection (b) of this section, the Secretary shall do the following:

3 ...

4 ~~(3) Not later than 10 days after the Secretary's notice of noncompliance is
5 provided to the LME/MCO, assign the Contract of the noncompliant
6 LME/MCO to a compliant LME/MCO.~~

7 ~~(4) Oversee the transfer of the operations and contracts from the noncompliant
8 LME/MCO to the compliant LME/MCO in accordance with the provisions in
9 subsection (e) of this section.~~

10 ~~(5) Direct the dissolution of the LME/MCO in accordance with
11 G.S. 122C-155.5(d).~~

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

16 ...

17 ~~(5) Upon a final determination that an LME/MCO is noncompliant, allow no
18 more than 30 days following the date of notification of the final determination
19 of noncompliance for the noncompliant LME/MCO to complete negotiations
20 for a merger or realignment with a compliant LME/MCO that is satisfactory
21 to the Secretary.~~

22 ~~(6) If the noncompliant LME/MCO does not successfully complete negotiations
23 with a compliant LME/MCO as described in subdivision (5) of this
24 subsection, assign the Contract of the noncompliant LME/MCO to a
25 compliant LME/MCO.~~

26 ~~(7) Oversee the transfer of the operations and contracts from the noncompliant
27 LME/MCO to the compliant LME/MCO in accordance with the provisions in
28 subsection (e) of this section.~~

29 ~~(8) Upon a final determination that an LME/MCO is noncompliant, direct the
30 dissolution of the LME/MCO in accordance with G.S. 122C-155.5(d).~~

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

38 ~~(1) Arrange for the providers of services to be reimbursed from the remaining
39 fund balance or risk reserve of the noncompliant LME/MCO, or from other
40 funds of the Department if necessary, for proper, authorized, and valid claims
41 for services rendered that were not previously paid by the noncompliant
42 LME/MCO.~~

43 ~~(2) Effectuate an orderly transfer of management responsibilities from the
44 noncompliant LME/MCO to the compliant LME/MCO, including the
45 responsibility of paying providers for covered services that are subsequently
46 rendered.~~

47 ~~(3) Oversee the dissolution of the noncompliant LME/MCO, including
48 transferring to the compliant LME/MCO all assets of the noncompliant
49 LME/MCO, including any balance remaining in its risk reserve after payments
50 have been made under subdivision (1) of this subsection. Risk reserve funds
51 of the noncompliant LME/MCO may be used only to pay authorized and~~

~~approved provider claims. Any funds remaining in the risk reserve transferred under this subdivision shall become part of the compliant LME/MCO's risk reserve and subject to the same restrictions on the use of the risk reserve applicable to the compliant LME/MCO. If the risk reserves transferred from the noncompliant LME/MCO are insufficient, the Secretary shall guarantee any needed risk reserves for the compliant LME/MCO arising from the additional risks being assumed by the compliant LME/MCO until the compliant LME/MCO has established fifteen percent (15%) risk reserves. All other assets shall be used to satisfy the liabilities of the noncompliant LME/MCO. In the event there are insufficient assets to satisfy the liabilities of the noncompliant LME/MCO, it shall be the responsibility of the Secretary to satisfy the liabilities of the noncompliant LME/MCO.~~

- (4) ~~Following completion of the actions specified in subdivisions (1) through (3) of this subsection, direct the dissolution of the noncompliant LME/MCO and deliver a notice of dissolution to the board of county commissioners of each of the counties in the dissolved LME/MCO. An LME/MCO that is dissolved by the Secretary in accordance with the provisions of this section may be dissolved at any time during the fiscal year.~~

...

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

...

- (2) Contract. – The contract between the Department of Health and Human Services and a local management entity for the operation of the 1915(b)/(c) Medicaid ~~Waiver~~ waiver or a BH IDD tailored plan."

SECTION 4.(h) G.S. 122C-125 is repealed.

SECTION 4.(i) G.S. 122C-125.2 is repealed.

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

"§ 122C-125.3. LME/MCO solvency; corrective action plan.

(a) The Department shall establish, in its contracts with LME/MCOs, solvency standards based on industry-standard financial accounting measures, such as the current ratio of assets to liabilities, defensive interval ratio of current assets to average monthly expenditure, capital reserves, and profit and loss. The contracts shall require the development of a corrective action plan when an LME/MCO does not meet the solvency standards specified in the contract.

(b) Each LME/MCO shall provide the Department with monthly financial reports containing the data needed to calculate the financial accounting measures and assess the LME/MCO's adherence to the solvency standards established in contract.

(c) On a quarterly basis, beginning on April 1, 2024, the Department shall publish to its website a dashboard reporting all of the following information for each LME/MCO for the previous quarter:

- (1) Each solvency standard applicable to the LME/MCO under its contracts with the Department, including any applicable minimum or maximum threshold.
- (2) The financial position of the LME/MCO relative to each solvency standard applicable to the LME/MCO under its contracts with the Department.
- (3) Whether the LME/MCO is under any corrective action plan related to the solvency standards applicable to the LME/MCO under its contracts with the Department, and whether the LME/MCO is in compliance with any such corrective action plan.

(d) The Department shall notify the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid and NC Health Choice,

1 and the Fiscal Research Division when the information required under subsection (c) of this
2 section has been published to the Department's website."

3 **SECTION 4.(k)** G.S. 108D-60(b) reads as rewritten:

4 "(b) The Department may contract with entities operating BH IDD tailored plans under a
5 capitated or other arrangement for the management of behavioral health, intellectual and
6 developmental disability, and traumatic brain injury services for any recipients ~~excluded from~~
7 PHP coverage under G.S. 108D-40(a)(4), (5), (7), (10), (11), (12), and (13) who are not enrolled
8 in a BH IDD tailored plan."

9 **SECTION 4.(l)** G.S. 108D-60 is amended by adding a new subsection to read:

10 "(c) Notwithstanding G.S. 108D-40(a)(12) and subdivision (10) of subsection (a) of this
11 section, upon the dissolution of an area authority under G.S. 122C-155.5 and as part of the orderly
12 transfer of operations of the area authority being dissolved, the enrollees of the area authority
13 being dissolved temporarily may be served through one or any combination of the following
14 delivery systems:

15 (1) The fee-for-service program.

16 (2) An arrangement authorized under subsection (b) of this section.

17 (3) A standard benefit plan.

18 (4) Any other system allowed under State law for the delivery of Medicaid
19 services or mental health, intellectual and developmental disabilities, and
20 substance use disorder services."

21 **SECTION 4.(m)** G.S. 150B-1(d) is amended by adding a new subdivision to read:

22 "(33) The Department of Health and Human Services with respect to the
23 development and application of any formula under G.S. 122C-155.6."

24 **SECTION 4.(n)** G.S. 150B-1(e)(21) reads as rewritten:

25 "(21) The Department of Health and Human Services for actions taken under
26 ~~G.S. 122C-124.2~~ G.S. 122C-124.2 and G.S. 122C-115.5(d)."

27 **SECTION 4.(o)** G.S. 150B-1(e) is amended by adding a new subdivision to read:

28 "(27) The Department of Health and Human Services with respect to the
29 development and application of any formula under G.S. 122C-155.6."

30 **SECTION 4.(p)** Section 3.5A of S.L. 2021-62 is repealed.

31 **SECTION 4.(q)** Section 9D.13(b) of S.L. 2022-74 is repealed.

32 **DEPARTMENTAL AUTHORITY OVER SINGLE STREAM FUNDS**

33 **SECTION 5.(a)** G.S. 122C-102(b) is amended by adding a new subdivision to read:

34 "(13) Identification of priority infrastructure, services, and supports that are needed
35 across the State related to mental health, intellectual or other developmental
36 disabilities, and substance use disorder."

37 **SECTION 5.(b)** G.S. 122C-112.1(a) is amended by adding a new subdivision to
38 read:

39 "(40) Direct and oversee the allocation and use of single-stream funding to support
40 the priority infrastructure, services, and supports identified in the State Plan
41 under G.S. 122C-102(b)."

42 **SECTION 5.(c)** G.S. 122C-112.1(b) reads as rewritten:

43 "(b) The Secretary may do the following:

44 ...

45 (4) Accept, allocate, and spend any federal funds for mental health, intellectual or
46 other developmental disabilities, and or substance abuse use disorder activities
47 that may be made available to the State by the federal government.
48 government for purposes of funding the priority infrastructure, services, and
49 supports identified in the State Plan under G.S. 122C-102(b)(13). This
50 Chapter shall be liberally construed in order that the State and its citizens may
51

benefit fully from these funds. Any federal funds received shall be deposited with the Department of State Treasurer and shall be appropriated by the General Assembly for the mental health, intellectual or other developmental disabilities, or substance abuse-use disorder purposes specified.

(4a) Spend any State funds allocated for mental health, intellectual or other developmental disabilities, and substance use disorder services and supports to contract for the provision of priority infrastructure, services, and supports identified in the State Plan under G.S. 122C-102(b)(13).

...."

SECTION 5.(d) G.S. 122C-117(a)(1) reads as rewritten:

"(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, intellectual or other developmental disabilities, and substance abuse services-use disorder services in coordination with the Secretary and in accordance with direction from the Secretary regarding the use or allocation of single-stream funding to support priority infrastructure, services, and supports identified in the State Plan under G.S. 122C-102(b)(13)."

DEPARTMENTAL AUTHORITY OVER LME/MCO SUBCONTRACTS

SECTION 6.(a) G.S. 122C-112.1(a)(6) reads as rewritten:

"(6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, ~~county programs,~~ third-party contractors of area authorities, and all providers of public services with State and federal policy, law, and standards. The procedures shall include the development and use of critical performance measures and report cards for each area ~~authority and county program authority.~~"

SECTION 6.(b) G.S. 122C-112.1(a)(9) reads as rewritten:

"(9) Provide ongoing and focused technical assistance to area authorities ~~and county programs~~ in the implementation of the LME functions and the establishment and operation of community-based programs. ~~The technical assistance required under this subdivision includes, but is not limited to, the technical assistance required under G.S. 122C-115.4(d)(2).~~ The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities ~~and county programs~~ in achieving these functions."

SECTION 6.(c) G.S. 122C-115.4(c) reads as rewritten:

"(c) Subject to subsection (b) of this ~~section and section,~~ all applicable State and federal laws and ~~rules~~ rules, and contractual requirements established by the Secretary, an LME may contract with a public or private entity for the implementation of LME functions designated under subsection (b) of this section. An LME shall cancel any such contract when directed by the Secretary under G.S. 122C-142(a)."

SECTION 6.(d) Subsections (d) and (e) of G.S. 122C-115.4 are repealed.

SECTION 6.(e) G.S. 122C-115.4(f)(3) is repealed.

SECTION 6.(f) G.S. 122C-142(a) reads as rewritten:

"(a) When ~~the an~~ area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State ~~statutes and the rules of the Commission and the Secretary.~~ However, an and federal laws and rules. An area authority may amend the contract to comply with any court-imposed duty or responsibility. An area authority that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms

1 of the standard contract shall require the area authority to monitor the contract to assure that State
 2 and federal laws and rules and State statutes are met. It shall also place an obligation upon the
 3 entity providing services to provide to the area authority timely data regarding the clients being
 4 served, the services provided, and the client outcomes. The Secretary may also monitor
 5 contracted services ~~to assure that rules and State statutes are met.~~ for compliance with the area
 6 authority's contractual requirements with the Department and State and federal law. If an area
 7 authority's oversight of a contract for services results in noncompliance, the Secretary may direct
 8 the area authority to cancel the contract for services."

10 EXEMPT LME/MCO EMPLOYEES FROM THE STATE HUMAN RESOURCES ACT

11 SECTION 7.(a) G.S. 126-5 reads as rewritten:

12 "§ 126-5. Employees subject to Chapter; exemptions.

13 (a) This Chapter applies to all of the following:

14 (1) All State employees not exempted by this section.

15 (2) All employees of the following local entities:

16 a. ~~Area mental health, developmental disabilities, and substance abuse~~
 17 ~~authorities, except as otherwise provided in Chapter 122C of the~~
 18 ~~General Statutes.~~

19 b. Local social services departments.

20 c. County health departments and district health departments.

21 d. Local emergency management agencies that receive federal
 22 grant-in-aid funds.

23 An employee of a consolidated county human services agency created
 24 pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed
 25 in this subdivision.

26 ...

27 (c1) Except as to Articles 6 and 7 of this Chapter, this Chapter does not apply to any of the
 28 following:

29 ...

30 (39) All employees of area authorities, as defined under G.S. 122C-3.

31"

32 SECTION 7.(b) This section applies to employees of area mental health,
 33 developmental disabilities, and substance abuse authorities, defined as area authorities under
 34 G.S. 122C-3, hired after the date this act becomes law.

36 CONFORM CONTESTED CASE HEARING EXEMPTION for VARIOUS MANAGED 37 CARE ENTITIES

38 SECTION 8. G.S. 150B-1(e)(25) reads as rewritten:

39 "(25) The Department of Health and Human Services with respect to disputes
 40 involving the performance, terms, or conditions of a contract between the
 41 Department and ~~a~~ any of the following:

42 a. A prepaid health plan, as defined in G.S. 108D-1.

43 b. A prepaid inpatient health plan, as defined in 42 C.F.R. § 438.2.

44 c. A primary care case management entity, as defined in 42 C.F.R. §
 45 438.2."

47 TECHNICAL CORRECTION REGARDING TIMING OF ANNUAL UPDATES

48 SECTION 9.(a) G.S. 108A-54.3A reads as rewritten:

49 "§ 108A-54.3A. Eligibility categories and income thresholds.

1 (a) The Department shall provide Medicaid coverage for individuals in accordance with
2 federal statutes and regulations and specifically shall provide coverage for the following
3 populations:

4 ...

5 (b) The applicable federal poverty guidelines for the eligibility categories in subsection
6 (a) of this section shall be updated annually on April 1 immediately following publication of the
7 federal poverty guidelines."

8 **SECTION 9.(b)** The Revisor of Statutes shall replace all references to
9 "G.S. 108A-54.3(24)" with "G.S. 108A-54.3(a)(24)" throughout the General Statutes.

10 **SECTION 9.(c)** Subsection (a) of this section is effective retroactively to June 26,
11 2020.

12 **EFFECTIVE DATE**

13 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes
14 law.
15