Coates' Canons Blog: General Assembly Changes County Requirements for Appointing LME Boards

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In North Carolina, public mental health, developmental disabilities, and substance abuse services are provided through local government agencies called area authorities (also called "local management entities" or "LMEs"). Each board of county commissioners, either singly or jointly with other boards of county commissioners, must establish and fund an area authority to serve their citizens. (G.S. 122C-115). They also must appoint the "area board" (or, LME board), the body that governs the area authority. (G.S. 122C-118.1). Earlier this week, the General Assembly enacted Senate Bill 191 that, among other things, changes the compositional requirements that counties must adhere to when appointing LME board members.

Background

After enacting legislation in 2011 that requires LMEs to reorganize themselves as managed care organizations under a federal Medicaid Waiver (S.L. 2011-264) and that, directly or indirectly, increases the responsibilities, budgets, geographic service area, and personnel and infrastructure needs of LMEs, the North Carolina General Assembly turned its attention to the LME board. The leadership of the Joint Health and Human Services Oversight Committee established a time-limited LME Governance Subcommittee that, among other things, examined the question of whether the statute governing the composition of LME boards prescribed the kind of professional expertise and community representation necessary for successful governance of public managed care organizations. The subcommittee's work product, Senate Bill 191, was enacted on July 3, 2012, and becomes effective upon the Governor's signature.

Before 2006, at least fifty percent of the LME board had to be composed of a physician, a clinical professional, three consumers of services, and three family members of consumers, guaranteeing that at least half of the board members would be appointed from these constituent groups. Legislation enacted in 2006 (S.L. 2006-142) deleted these requirements and, instead, required each LME to establish an advisory committee to the LME board composed exclusively of consumers and family members. Many, if not most, LME boards retained consumer and family representation and some professional health care expertise. But as LMEs began reorganizing themselves and their boards in response to S.L. 2011-264, counties began to look anew at the statutory requirements for LME boards and what kind of membership would be appropriate in the era of Medicaid managed care.

Since 2006 and until this week, G.S. 122C-118.1 prescribed very little in terms of LME board composition, requiring only that an LME board include two individuals with "financial expertise," one with "management or business" expertise, and one representing the "interests of children." Business expertise could include the owner of a small bakery, or the CEO of a large healthcare corporation, as the statute did not require that the business expertise be relevant to LME functions. Beyond these very general compositional requirements, the statute seemed to encourage counties to aspire to other compositional elements by "taking into account" sufficient citizen participation, representation of the disability groups, and equitable representation of participating counties. But, no particular professional expertise or consumer representation was required.

The New Requirements

Board size: Senate Bill 191 reduces the maximum size of the LME board from 25 to 21 members, while keeping the minimum size at eleven members.

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Term limits: Recognizing the need to retain experienced board members, the act increases the statutory limit on terms of service from 2 to 3.

Appointment Process: The new law deletes provisions that specified a particular process for appointing LME board members. That process permitted each county board of commissioners to appoint one commissioner to serve as an LME board member, with the resulting group of county commissioner LME board members then responsible for appointing the rest of the board. The law allowed counties to either follow this process or jointly agree to a different manner of appointment. If counties chose to utilize the process specified in the law, and most did, a nineteen-county LME would end up with 19 county commissioners on the LME board and a three-county LME would have at least 3 county commissioners on the LME board. As amended, the statute is now silent as to the method or manner of appointment, leaving counties that participate in a multicounty area authority the discretion to devise and agree to their own appointment process, with no fall back or de facto process.

***Composition*:** The new law leaves counties much less discretion when it comes to board composition, prescribing the following:

- At least one member who is a current county commissioner.
- The chair of the LME's Consumer and Family Advisory Committee (CFAC) or he chair's designee.
- At least one family member of the CFAC, as recommended by the CFAC, representing the interests of individuals with mental illness, in recovery from addiction, or with intellectual or other developmental disabilities.
- At least one openly declared consumer member of the CFAC, as recommended by the CFAC, representing the interests of individuals with mental illness, in recovery from addiction, or with intellectual or other developmental disabilities. (The appointment of consumer and family members as set forth in items 2 through 4 must provide for at least one member representing each of the three disability groups: mental health, intellectual or other developmental disabilities, and addiction.)
- An individual with health care expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.
- An individual with health care administration expertise consistent with the scale and nature of the managed care organization.
- An individual with financial expertise consistent with the scale and nature of the managed care organization.
- An individual with insurance expertise consistent with the scale and nature of the managed care organization
- An individual with social services expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.
- An attorney with health care expertise.
- 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 of HHS.
- The president of the LME's Provider Council or the president's designee to serve as a nonvoting member and who shall participate only in open meetings.
- An administrator of a hospital providing mental health, developmental disabilities, and substance abuse emergency services to serve as a nonvoting member and who shall participate only in open meetings.

While the board must include representation from all of the categories identified above, it is possible for one board member to fill multiple roles. (G.S. 122C-118.1(c)).

LME boards must meet these compositional requirements by October 1, 2013, and if the boards of county commissioners responsible for board appointments do not comply, the Secretary of Health and Human Services must appoint the unrepresented categories. There is, however, one important exception. Boards of county commissioners within a multicounty area with a catchment area population of 1,250,000 or more may depart from the compositional requirements of the new law if each county board unanimously adopts a resolution to that effect and receives written approval of the Secretary by January 1, 2013.

Links

- www.ncdhhs.gov/mhddsas/lmeonblue.htm

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- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_122C/GS_122C-115.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_122C/GS_122C-118.1.html
- www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=S+191&submitButton=Go
- www.ncdhhs.gov/mhddsas/providers/1915bcWaiver/index.htm
- www.ncga.state.nc.us/gascripts/EnactedLegislation/ELLookUp.pl?Type=SL&Year=2011&Number=264
- www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=H2077

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