

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75571-LN-348B (5/13)

Short Title: DHHS/Community Supports Changes. (Public)

Sponsors: Senator Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE, TO TAKE CERTAIN ACTIONS TO ADDRESS OVERBUDGETED EXPENDITURES FOR THE COMMUNITY SUPPORTS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Not later than June 30, 2008, the Department of Health and Human Services, Division of Medical Assistance, shall submit to the Centers for Medicare and Medicaid Services, revised service definitions for two Medicaid billable services (i) community support – adults and (ii) community support – children/adolescents. The revised definitions shall focus on rehabilitative services and be developed to ensure that community support services are provided as efficiently and effectively as possible to minimize overexpenditures in community support services in the 2008-2009 fiscal year and thereafter.

SECTION 2.(a) In order to ensure accountability for services provided and funds expended for community services, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a tiered rate structure to replace the blended rate currently used for community support services. Under the new tiered structure, services that are necessary but do not require the skill, education, or knowledge of a qualified professional should be paid at a lower rate than for services provided by qualified skilled professionals. The Department shall report on the development of the structure to the Joint Legislative Oversight Committee (LOC) on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than October 1, 2008. The Department shall not implement the tiered rate structure until after it has consulted with the LOC.

1 **SECTION 2.(b).** The Department of Health and Human Services, Division
2 of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall
3 develop a service authorization process that separates the assessment function from the
4 service delivery function at the LME level. In developing the process, the Department
5 shall consider as an option separate LME assessment centers, the duties of which would
6 include care coordination. In no event shall services be delivered without prior
7 authorization. The Department shall report on the development of the service
8 authorization process to the Joint Legislative Oversight Committee (LOC) on Mental
9 Health, Developmental Disabilities, and Substance Abuse Services not later than
10 October 1, 2008. The Department shall not implement the service authorization process
11 until after it has consulted with the LOC.

12 **SECTION 2.(c)** The Department of Health and Human Services shall
13 conduct a thorough study of the service authorization, utilization review, and utilization
14 management processes and shall develop a plan to return the service authorization,
15 utilization review, and utilization management functions to LMEs for all clients. Not
16 later than February 1, 2009, the Department shall report its findings and
17 recommendations to the House of Representatives Appropriations Subcommittee on
18 Health and Human Services, the Senate Appropriations Committee on Health and
19 Human Services, the Joint Legislative Oversight Committee on Mental Health,
20 Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research
21 Division. The Department shall comply with the requirements of S.L. 2007-323, Section
22 10.49(ee). The Department shall not contract with an outside vendor for service
23 authorization, utilization review, or utilization management functions, or otherwise
24 obligate the State for these functions beyond June 30, 2009. The Department shall
25 require LMEs to include in their service authorization, utilization management, and
26 utilization review a review of assessments, as well as person centered plans and random
27 or triggered audits of services and assessments. In no event shall services be delivered
28 without prior authorization.

29 **SECTION 2.(d)** The Department shall require that the licensed professional
30 that signs a medical order for behavioral health services must indicate on the order
31 whether the licensed professional (i) has had direct contact with the consumer, and (ii)
32 has reviewed the consumer's assessment. This requirement shall take effect no later
33 than October 1, 2008.

34 **SECTION 2.(e)** G.S. 122C-151.4 reads as rewritten:

35 **"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.**

36 (a) Definitions. – The following definitions apply in this section:

37 (1) "Appeals Panel" means the State MH/DD/SA Appeals Panel
38 established under this section.

39 (1a) "Client" means an individual who is admitted to or receiving public
40 services from an area facility. "Client" includes the client's personal
41 representative or designee.

42 (1b) "Contract" means a contract with an area authority or county program
43 to provide services, other than personal services, to clients and other
44 recipients of services.

1 (2) "Contractor" means a person who has a contract or who had a contract
2 during the current fiscal ~~year~~ year, or whose application for
3 endorsement has been denied by an area authority or county program.

4 (3) "Former contractor" means a person who had a contract during the
5 previous fiscal year.

6 (b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The
7 Panel shall consist of three members appointed by the Secretary. The Secretary shall
8 determine the qualifications of the Panel members. Panel members serve at the pleasure
9 of the Secretary.

10 (c) Who Can Appeal. – The following persons may appeal to the State
11 MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate
12 area authority or county program:

13 (1) A contractor or a former contractor who claims that an area authority
14 or county program is not acting or has not acted within applicable
15 State law or rules in denying the contractor's application for
16 endorsement or in imposing a particular requirement on the contractor
17 on fulfillment of the contract;

18 (2) A contractor or a former contractor who claims that a requirement of
19 the contract substantially compromises the ability of the contractor to
20 fulfill the contract;

21 (3) A contractor or former contractor who claims that an area authority or
22 county program has acted arbitrarily and capriciously in reducing
23 funding for the type of services provided or formerly provided by the
24 contractor or former contractor;

25 (4) A client or a person who was a client in the previous fiscal year, who
26 claims that an area authority or county program has acted arbitrarily
27 and capriciously in reducing funding for the type of services provided
28 or formerly provided to the client directly by the area authority or
29 county program; and

30 (5) A person who claims that an area authority or county program did not
31 comply with a State law or a rule adopted by the Secretary or the
32 Commission in developing the plans and budgets of the area authority
33 or county program and that the failure to comply has adversely
34 affected the ability of the person to participate in the development of
35 the plans and budgets.

36 (d) Hearing. – All members of the State MH/DD/SA Appeals Panel shall hear an
37 appeal to the Panel. An appeal shall be filed with the Panel within the time required by
38 the Secretary and shall be heard by the Panel within the time required by the Secretary.
39 A hearing shall be conducted at the place determined in accordance with the rules
40 adopted by the Secretary. A hearing before the Panel shall be informal; no sworn
41 testimony shall be taken and the rules of evidence do not apply. The person who appeals
42 to the Panel has the burden of proof. The Panel shall not stay a decision of an area
43 authority during an appeal to the Panel.

1 (e) Decision. – The State MH/DD/SA Appeals Panel shall make a written
2 decision on each appeal to the Panel within the time set by the Secretary. A decision
3 may direct a contractor, an area authority, or a county program to take an action or to
4 refrain from taking an action, but it shall not require a party to the appeal to pay any
5 amount except payment due under the contract. In making a decision, the Panel shall
6 determine the course of action that best protects or benefits the clients of the area
7 authority or county program. If a party to an appeal fails to comply with a decision of
8 the Panel and the Secretary determines that the failure deprives clients of the area
9 authority or county program of a type of needed service, the Secretary may use funds
10 previously allocated to the area authority or county program to provide the service.

11 (f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the
12 Panel may commence a contested case under Article 3 of Chapter 150B of the General
13 Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is
14 considered an agency for purposes of the limited appeal authorized by this section. If
15 the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the
16 Secretary, a contractor may appeal directly to the Office of Administrative Hearings
17 after having exhausted the appeals process at the appropriate area authority or county
18 program. The Secretary shall make a final decision in the contested case."

19 **SECTION 2.(f).** The Department of Health and Human Services shall adopt
20 guidelines for LME periodic review and re-endorsement of providers to ensure that only
21 qualified providers are endorsed and that LMEs hold those providers accountable for the
22 Medicaid and State-funded services they provide. Not less than fifty percent (50%) of
23 community services must be delivered by qualified professionals.

24 **SECTION 3.(a)** Section 10.49(ee)(5) and (6) of S.L. 2007-323 read as
25 rewritten:

26 "(5) All community support services are subject to prior approval ~~after the~~
27 ~~initial assessment and development of a person centered plan has been~~
28 ~~completed;~~ approval.

29 (6) ~~Providers are limited to four hours of community support for adults~~
30 ~~and eight hours of community support for children to develop the~~
31 ~~person centered plan. Those hours shall be provided only by a~~
32 ~~qualified professional. Providers that determine that additional hours~~
33 ~~are needed must seek and obtain prior approval. If additional hours are~~
34 ~~authorized, the LME may participate in the development of the~~
35 ~~person centered plan as part of its care coordination and quality~~
36 ~~management function as defined in G.S. 122C-115.4."~~

37 **SECTION 3.(b)** The Department of Health and Human Services, Division
38 of Medical Assistance, shall adopt a policy reducing the maximum allowable hours for
39 community support services to 8 hours per week.

40 **SECTION 4.** The Secretary of Health and Human Services shall adopt
41 guidelines requiring that certain facilities and providers authorized to provide mental
42 health, developmental disabilities, and substance abuse services be accredited by a
43 national accrediting organization chosen by the Secretary. The Secretary shall apply to
44 the Centers for Medicare and Medicaid Services for an amendment to the State Medical

1 Assistance Plan, if such amendment is required, to implement the guidelines. If a State
2 plan amendment is approved, the Secretary shall adopt rules for implementing
3 accreditation requirements. The guidelines adopted by the Secretary shall contain
4 benchmarks for meeting the timeline for obtaining national accreditation.

5 **SECTION 5.** This act becomes effective July 1, 2008.