

Proposed Changes to 122c and Public Authority Comparison Chart

9-26-11

G.S. 122C is designed for use with local governmental entities that operate on fixed, administrative budgets and whose function is to managed appropriated funds on behalf of the state and counties. LMEs neither control, nor are they responsible for, their administrative budget allocations or the availability of appropriated funds they manage. 122C was not intended for use with the Medicaid program. It was certainly not designed to create or operate public Managed Care Organizations capable of operating Medicaid waivers on capitated, at-risk contracts. It is a restrictive statute, limiting the functions and powers of LMEs to not more than their intended purpose. Therefore, neither the statute nor LMEs can lawfully be expanded to meet the operational demands of Medicaid waivers. This is in sharp contrast to G.S. 131E, which is used to create and operate public hospitals. 131E is an authorizing statute, meaning it sets the purpose and minimum functions of public hospitals, but allows the hospitals to operate as required to achieve that purpose and conduct those functions. Because of the limitations of 122C, only a major modification of the statute – likely an entirely new section – would be effective in creating the necessary statutory framework for waiver operations.

We are also proposing to eliminate the requirement for single county LMEs to be part of county government (122c-116), but this is not specifically detailed in the chart.

	Statute	Provision	Problem	Solution	Other Authorities with Similar Provisions/Exemptions
Board Members	N.C.G.S. 122C-118.1	Board size (as large as 30 members depending on catchment size)	Board size is too large to be fully and actively engaged and provide meaningful governance.	Ideal size: 9-15 members.	Public Transportation Authorities are governed by Boards consisting of 11 members as determined by the governing board. N.C.G.S. 160A-577. The governing board of the county/municipality is the appointing authority for Public Transportation Authorities. There are very few other public authorities whose Board size is as small as PBH is seeking. Even Hospital Authorities are allowed to have a 30-member Board.
	N.C.G.S. 122C-118.1	Board membership specifications	Greater expertise in health care administration among board members is	Board member specifications need to be less restrictive and allow for	Hospital Authority Commissioners submit a list of nominees to the mayor or the chairman of the county board that created the Authority. The

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			<p>essential for boards to effectively govern complex organizations.</p> <p>County commissioners comprise a significant percentage of the board, as required by 122c. Often commissioners have very little expertise in the health care field.</p> <p>As expansion occurs, requiring a commissioner from each county will result in large boards that would violate the current size limitations set by the statute.</p> <p>Many commissioners are not able to attend on a regular basis due to other demands on their time. This will create problems in meeting quorums, especially if commissioner percentage of board membership increases to 50% or more.</p>	<p>appointment of persons with real expertise in appropriate fields, such as behavioral health, healthcare, insurance, finance, managed care, etc.</p> <p>Exempt, or abolish requirement that the board contain one member from each county. Board member composition should take into account geographical makeup, but not be beholden to it. The Secretary should have final say on board appointments.</p>	<p>mayor/chairman then appoints new Commissioners from that list. N.C.G.S. 131E-18. This is the county that authorized the formation of the hospital authority.</p> <p>Members of the Board of Governors of the University of North Carolina are qualified based on training and experience and selected for their interest in, and ability to contribute to, the fulfillment of the purposes of the Board. N.C.G.S. 116-7. The Board of Governors is selected by the North Carolina General Assembly, with the Senate and the House of Representatives each appointing one-half of the members up for election each biennium. Each house is responsible for generating a list of candidates having the qualifications above and appointments are made from that list. Members of the Board of Governors may serve no more than three consecutive four-year terms.</p>
	N.C.G.S. 122C-118.1	Length of appointment	Two three year terms is too short given the complexity of the role. It takes years for board	Two four year terms would allow board members time to become acclimated	The governing body of a Public Transportation Authority has the discretion to determine the term of its board members. N.C.G.S. 160A-577.

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			members to fully understand the business model.	and to be effective before their terms expire.	University of North Carolina Board of Governors members have four year terms. A member of the Board of Governors may serve no more than three consecutive four-year terms. N.C.G.S. 116-6.
Role of the Counties	N.C.G.S. 122C-115-115.1	Formation of LMEs	Requires agreement among large numbers of counties. Counties have the ability to block mergers and waiver expansion by withholding merger approval for various local reasons, unrelated to healthcare, managed care, or Medicaid.	MCO/LMEs should be formed by resolution of existing LME Boards that have been selected for waivers.	
	N.C.G.S. 122C-118.1	Appoint Board members	Counties no longer have a financial stake in Medicaid expenditures. The purpose of MCO/LMEs is to operate Medicaid waivers. More	Boards should be self-perpetuating, with DHHS oversight.	Hospital Authority Commissioners (Board Members) have the authority to increase or decrease board size, elect a chair and vice-chairs, and determine the pool of nominees for Board members from which subsequent Board members are

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	N.C.G.S. 122C-115.1-115.3	County involvement in formation and dissolution	<p>than 80% of funding for MCO/LMEs will be Medicaid.</p> <p>County commissioners have the authority to dissolve an LME or withdraw from participation at any time</p>	<p>MCOs operate as a healthcare entity that is independent of the counties; therefore counties should not have authority to dissolve the MCO/LME.</p> <p>County satisfaction with an MCO/LME's performance should be managed by DHHS through its monitoring and oversight activities.</p>	<p>appointed. N.C.G.S. 131E-18. (The statute refers to them as Commissioners)</p> <p>Cities and counties responsible for creating a hospital authority are not given the ability to unilaterally withdraw from participation or dissolve an authority once created. N.C.G.S. 131E</p>
	N.C.G.S. 122C-115.1, 123.1, 125 HB916	Ultimate liability for MCO/LME failure belongs to the state, not to counties.	<p>The entity with the largest stake in the successful operation of the MCO/LMEs is DHHS.</p> <p>If an MCO/LME fails, DHHS must find another contractor to assume the failed entities operations. Likely DHHS will absorb any losses.</p> <p>The counties have no liability for overspending by MCO/LMEs.</p>	Effective MCO/LME governance is a DHHS issue, not a county issue.	

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Business model		122C was written for governmental agencies managing appropriated funds	<p>MCO/LMEs are public entities that operate like private companies in order to serve a public purpose (such as hospital authorities, transit authorities) MCO/LMEs are no-profit managed care companies.</p> <p>MCO/LMEs are AT RISK for revenue (contracts), operations, and outcomes.</p>	Local Government Finance Act (G.S. 159), which is intended for governmental agencies, should not apply.	Hospital Authorities are exempted from the Local Government Budget and Fiscal Control Act, with a few exceptions, and have the ability to determine accounting and budgeting methods that best fit the needs of the organization. N.C.G.S. 159-39 (Specifically hospital authorities are exempted from the Local Government Budget and Fiscal Control Act.)
		Fund balance restrictions	<p>Like any business, MCO/LMEs must continually invest in infrastructure in order to be effective and competitive. For example, to keep IT systems current with rapidly changing state and federal requirements for electronic connectivity, information exchange and reporting. MCO/LMEs must be free to invest in infrastructure.</p>	There should be no restrictions in the use of fund balance other than requirements for the Risk Reserve in accordance with contract provisions.	<p>Is there even a requirement that other public authorities report their fund balance? The only thing that comes close is the requirement that several public authorities authorized under Chapter 160A of the General Statutes make the accounts and books of the authority available to the county or city responsible for the authority's formation. But, no authority is required to report on its fund balance.</p> <p>Even Hospital Authorities are required to file annual audits with the LGC. N.C.G.S. 159-39(f).</p>
		8%-15%	8% cash on hand is	Healthy fund	

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	allowance for fund balance	<p>inadequate to provide needed cash flow or to insure against Medicaid waiver risk. One late monthly Medicaid payment would completely deplete the MCO/LME's reserve. This could have devastating impacts on providers and service delivery. 15% is only barely adequate.</p> <p>Although state funding is not a large part of MCO/LME funding, these payments are frequently several months behind.</p>	<p>balance/risk reserves serves to insulate the state from liability in the event of an MCO/LME failure.</p> <p>Allow the MCO/LME to determine its undesignated reserve level based on its own risk management assessment/needs.</p> <p>Protect MCO/LMEs from future reductions in fund balance to balance the state budget.</p>	
N.C.G.S. 122C-117	Powers of an LME	The powers of an LME do not provide flexibility for the MCO/LME to take on new business lines, or adjust to changes in healthcare funding that will develop as Health Reform rolls out.	MCO/LMEs must have flexibility to organize to manage changing requirements in management of public funds as well as to take advantage of emerging opportunities, so long as any new business line is consistent with the	<p>Hospital Authorities are granted the power to establish corporations for the purpose of carrying out any of the powers granted to the Authority. N.C.G.S. 131E-23.</p> <p>The Board of Trustees of Community Colleges has the power to encourage the establishment of private, nonprofit corporations whose purpose is to support the college. N.C.G.S. 115D-20(9)</p> <p>The Board of Governors of the University of North Carolina are similarly required to</p>

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	Limited Liability for Directors and Officers	Liability of MCO/LME officers and Board members, when acting within the scope of official duties, is not limited. This presents a problem when trying to attract highly qualified individuals to serve on the board or as officers of the MCO. Especially because Board service is uncompensated.	Provide for limited liability of officers and directors of MCO/LMEs.	<p>encourage the establishment of private, nonprofit corporations whose purpose is to support the constituent institutions of the University. N.C.G.S. 116-30.20</p> <p>Directors, trustees, and officers of public hospitals have limited liability when acting within the scope of their official duties. N.C.G.S. 131E-47.1.</p>
	Annual Budgeting Requirements and Borrowing	<p>MCO/LME must budget like businesses, not governmental agencies.</p> <p>MCO/LMEs cannot invest funds not necessary for current operations, or borrow to fund necessary investments or opportunities.</p>	MCO/LMEs must be able to invest and borrow money like healthcare organizations in order to operate efficiently.	<p>Hospital Authorities have the power to invest funds held in reserves in property or securities. N.C.G.S. 131E-23(24). Hospital Authorities also have the power to issue revenue bonds and may borrow upon those bonds subject to the Local Government Revenue Bond Act. N.C.G.S. 131E-26. Authorities have the ability to enter into financing arrangements for the purpose of purchasing real or personal property without obtaining approval from the LGC, subject to certain conditions. N.C.G.S. 131E-32.</p> <p>Regional Public Transportation Authorities may issue bonds, and finance the purchase of real and personal property through installment contracts subject to approval by LGC. N.C.G.S. 160A-610(9a).</p>

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					Community colleges are free to invest funds and may enter into lease purchase agreements and installment purchase contracts without obtaining LGC approval so long as the contract meets the requirements of the statute. N.C.G.S. 115D Article 4A
Guardianship	N.C.G.S. 122C-122	Prohibited by state and federal law	Although the law is clear, implementing the law has proven difficult because there is no clear alternative plan and Clerks of Court are unsure how to transfer wards from MCO/LMEs.	The state must develop other mechanisms to fund public guardianship.	
State Personnel Act	N.C.G.S. 122C-154, 156 N.C.G.S. 122C-156	State Restrictions on MCO/LME Personnel Limitations on Salary to the Highest County	MCO/LMEs are competing with private-sector insurance companies and managed care organizations for staff with specific expertise. Such expertise is not addressed in the state personnel classification system and salary limitations are simply not competitive.	Exempt from State Personnel Act. MCO/LMEs must manage their own personnel plans, based on their own needs and local job market. The MCO/LME must determine how to balance compensation against revenue and performance in order to recruit and retain necessary talent. The amount of	The following are exempt from the State Personnel Act: Community Colleges N.C.G.S. 115D-5; North Carolina Turnpike Authority N.C.G.S. 126-5(c1)(22); North Carolina Global TransPark Authority N.C.G.S. 126-5(c1)(15); North Carolina State Ports Authority N.C.G.S. 126-5(c1)(14); Hospital Authorities N.C.G.S. 131E-257, 257.1.

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	N.C.G.S. 122C-120.1	Job Classifications for Director and Finance Officer	<p>Both statute and the Office of State Personnel have the responsibility of determining job qualifications and classifications for director and finance officer.</p> <p>The needed qualifications of MCO/LME staff will change as the healthcare sector evolves. It is difficult to obtain adjustments in statute or personnel rules to address the rapidly changing needs of the healthcare sector.</p>	<p>funding allowed for administrative expenses is limited by DHHS through contract. This ensures excessive funds are not spent on non-service expenses.</p> <p>Qualifications and compensation for the Director and Finance Officer should be determined by the Board of the MCO/LME.</p>	<p>The Board of Trustees of a community college has the power to elect a President of Chief Administrative Officer, and may elect or employ all other personnel subject only to the requirements imposed by the State Board of Community Colleges, the organization with ultimate oversight authority for individual colleges. N.C.G.S. 115D-20.</p> <p>Hospital Authorities have the power to appoint an administrator of a hospital facility and any assistants deemed necessary by the Authority. N.C.G.S. 131E-23(10).</p>
Medicaid Appeals		OAH as Final Decision Authority for Medicaid State Fair Hearings	This plainly violates the federal statutes. This past legislative session, NC made OAH the final	Remove Medicaid waiver appeals from OAH hearing process. State fair	The Utilities Commission presides directly over hearings involving a dispute between an individual and a public utility and its decision is final and binding on the

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			<p>authority in determining Medicaid Appeals, in violation of federal law.</p> <p>Administrative Law Judges do not understand Medicaid regulations or waivers.</p> <p>It is not cost effective to defend cases in OAH. This is a poor use of resources and drives up administrative costs.</p>	<p>hearings for waivers should be decided by a DMA hearing officer.</p>	<p>parties. N.C.G.S. 62-40.</p>
Real Property Ownership	122C-147(c)	County Approval Required to Hold Title	<p>Title to real property is automatically held by the county in which it is located, unless the county Board of Commissioners approves otherwise.</p> <p>Local Government Commission approval is required for financing purchase of real property.</p>	<p>MCO/LMEs must be able to purchase, hold title, improve, and finance real property.</p>	<p>Regional Public Transportation Authorities have the ability to own real property without approval from the municipalities in which the Authority operates. N.C.G.S. 160A-610(7).</p> <p>Hospital Authorities have the power to purchase and finance real property and to own, hold, clear, and improve such property. N.C.G.S. 131E-23(7).</p> <p>Board of trustees of each community college holds title to all real property purchased with funds provided by tax-levying authorities. Title only vests in the county upon dissolution of the institution. N.C.G.S. 115D-14.</p>
Intellectual Property	N.C.G.S 132-1.2	Public Records Laws	Public records laws effectively prevent an	MCO/LMEs should have some	Competitive healthcare information created and maintained by Hospital

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			MCO/LME from controlling the use of its intellectual property because there are no exemptions.	exemptions from the public records law, like hospitals, universities, and even some government agencies do (like for financial incentive packages). Specifically, Competitive Healthcare Information, should be exempted.	Authorities, is confidential information and not subject to public records laws. Hospital Authorities are not obligated to disclose such information upon request. A court of law is responsible for making the ultimate determination as to whether such information is, in fact, confidential healthcare information. N.C.G.S. 131E-97.3.
Legal Representation		LMEs rely on public law firms (County Attorneys, AGs, etc.) for legal advice and defense.	LMEs lack the legal capacity to operate as MCOs. The state lacks the capacity to defend MCOs. Bad legal precedent will affect the entire system.	MCO/LMEs must have the power to sue and be sued, and to employ their own legal counsel and staff, so they can defend themselves in matters that threaten how they determine medical necessity, service allocations and overall management of at risk Medicaid funding.	<p>Hospital Authorities have the power to sue and be sued and to employ their own counsel and legal staff. N.C.G.S. 131E-23.</p> <p>Regional Public Transportation Authorities have the power to employ legal counsel and to sue or be sued. N.C.G.S. 160A-610(1), (6).</p> <p>The Board of Trustees of a community college has the power to institute and defend legal actions and suits. N.C.G.S. 115D-14.</p> <p>The Board of Governors of the University of North Carolina is "capable in law to sue and be sued in all courts whatsoever." N.C.G.S. 116-3.</p>