

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 2116**

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

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Sponsors: Senators Nesbitt; and Bingham.

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Referred to: Appropriations/Base Budget.

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May 28, 2008

A BILL TO BE ENTITLED

1 AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN  
2 SERVICES, DIVISION OF MEDICAL ASSISTANCE, TO TAKE CERTAIN  
3 ACTIONS TO ADDRESS OVERBUDGETED EXPENDITURES FOR THE  
4 COMMUNITY SUPPORTS PROGRAM.  
5

6 The General Assembly of North Carolina enacts:

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

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

27 **SECTION 2.(b).** The Department of Health and Human Services, Division  
28 of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall  
29 develop a service authorization process that separates the assessment function from the

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

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

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

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

32 **"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.**

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

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

36 (1a) "Client" means an individual who is admitted to or receiving public  
37 services from an area facility. "Client" includes the client's personal  
38 representative or designee.

39 (1b) "Contract" means a contract with an area authority or county program  
40 to provide services, other than personal services, to clients and other  
41 recipients of services.

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

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

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

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

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

15           (2) A contractor or a former contractor who claims that a requirement of  
16 the contract substantially compromises the ability of the contractor to  
17 fulfill the contract;

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

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

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

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

41           (e) Decision. – The State MH/DD/SA Appeals Panel shall make a written  
42 decision on each appeal to the Panel within the time set by the Secretary. A decision  
43 may direct a contractor, an area authority, or a county program to take an action or to  
44 refrain from taking an action, but it shall not require a party to the appeal to pay any

1 amount except payment due under the contract. In making a decision, the Panel shall  
2 determine the course of action that best protects or benefits the clients of the area  
3 authority or county program. If a party to an appeal fails to comply with a decision of  
4 the Panel and the Secretary determines that the failure deprives clients of the area  
5 authority or county program of a type of needed service, the Secretary may use funds  
6 previously allocated to the area authority or county program to provide the service.

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

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

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

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

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

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

36 **SECTION 4.** The Secretary of Health and Human Services shall adopt  
37 guidelines requiring that certain facilities and providers authorized to provide mental  
38 health, developmental disabilities, and substance abuse services be accredited by a  
39 national accrediting organization chosen by the Secretary. The Secretary shall apply to  
40 the Centers for Medicare and Medicaid Services for an amendment to the State Medical  
41 Assistance Plan, if such amendment is required, to implement the guidelines. If a State  
42 plan amendment is approved, the Secretary shall adopt rules for implementing  
43 accreditation requirements. The guidelines adopted by the Secretary shall contain  
44 benchmarks for meeting the timeline for obtaining national accreditation.

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