



## REQUEST FOR BOARD ACTION

ITEM NO. 20.

**DATE OF MEETING:** June 4, 2012

**REQUESTED BY:** Southeastern Center for Mental Health

**SHORT TITLE:** Joint Resolution to Approve the Formation of an Area Authority to Operate a Program for Mental Health, Developmental Disabilities, and Substance Abuse Services in Brunswick, Carteret, New Hanover, Onslow and Pender Counties; and Appointment of Four Current Board Members to the New Authority: One Commissioner and Three Non-Commissioners.

**BACKGROUND:** The North Carolina General Assembly passed legislation entitled *An Act to Establish Requirements for the Department of Health and Human Services and Local Management Entities with Respect to Statewide Expansion of the 1915(b)/(c) Medicaid Waiver*, S.L. 2011-264 (hereinafter the "Act"), which established a statewide restructuring of the management responsibilities for the delivery of services for individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders. Among other things, the Act established that the catchment area of an area authority must contain a minimum population of at least 500,000 individuals by July 1, 2013.

**SPECIFIC ACTION REQUESTED:** To adopt a resolution approving the attached resolution entitled "Joint Resolution to Approve the Formation of an Area Authority to Operate a Program for Mental Health, Developmental Disabilities, and Substance Abuse Services in Brunswick, Carteret, New Hanover, Onslow and Pender Counties."

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

  
Initial

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the attached resolution entitled Joint Resolution to Approve the Formation of an Area Authority to Operate a Program for Mental Health, Developmental Disabilities, and Substance Abuse Services in Brunswick, Carteret, New Hanover, Onslow and Pender Counties” is hereby approved. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ Tate \_\_\_ Rivenbark \_\_\_ Ward \_\_\_ Williams \_\_\_

\_\_\_\_\_  
George R. Brown, Chairman      6/4/12  
Date

\_\_\_\_\_  
ATTEST      6/4/12  
Date

**Joint Resolution to Approve the Formation of an Area Authority to Operate a Program for Mental Health, Developmental Disabilities, and Substance Abuse Services in Brunswick, Carteret, New Hanover, Onslow and Pender Counties**

WHEREAS, the North Carolina General Assembly passed legislation entitled *An Act to Establish Requirements for the Department of Health and Human Services and Local Management Entities with Respect to Statewide Expansion of the 1915(b)/(c) Medicaid Waiver*, S.L. 2011-264 (hereinafter the "Act"), which established a statewide restructuring of the management responsibilities for the delivery of services for individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders. Among other things, the Act established that the catchment area of an area authority must contain a minimum population of at least 500,000 individuals by July 1, 2013; and

WHEREAS, Southeastern Center for MH/DD/SA Services (the area authority serving Brunswick, New Hanover and Pender counties with a total population estimated at 361,084)("SEC"), and Onslow Carteret Behavioral Healthcare Services ( the area authority serving Carteret and Onslow counties with a total population estimated at 247,131) ("OCBHS") have voluntarily engaged in amicable affiliation discussions with the intent to consolidate into an entity that will satisfy the minimum population requirements of the Act and achieve new cost efficiencies and improved treatment outcomes for the citizens and families in need of mental health, developmental disabilities, and substance abuse services in the five counties that will be served by the post-consolidation entity; and

WHEREAS, in response to a North Carolina Department of Health and Human Services (NCDHHS) Request for Applications, SEC and OCBHS submitted a joint application to be a

participating local management entity under the 1915 b/c Medicaid waiver for mental health, developmental disabilities and substance abuse services; and

**WHEREAS**, on October 31, 2011, NCDHHS notified OCBHS and SEC of their selection to jointly become a Medicaid 1915 (b) (c) Waiver site, effective January 1, 2013; and

**WHEREAS**, both SEC and OCBHS have recommended to their respective constituent counties that these two distinct area programs should consolidate to form a single area authority; and

**WHEREAS**, OCBHS and SEC have represented to the undersigned board of commissioners that they entered into a formal written agreement to set out terms and conditions upon which the two entities separate area authorities would effectively consolidate and reorganize to form a single area authority, which would carry out the local management entity functions within the five county area; and

**WHEREAS**, SEC has represented that it will properly advertise and hold a public hearing satisfying the requirements of N.C. Gen. Stat. § 122C-115.3(d) on or before June 15, 2012; and

**WHEREAS**, OCBHS has represented that it will properly advertise and hold a public hearing satisfying the requirements of N.C. Gen. Stat. § 122C-115.3(d) on or before June 15, 2012.

**NOW, THEREFORE, BE IT RESOLVED** by joint resolution of the Brunswick County Board of Commissioners, the Carteret County Board of Commissioners, the New Hanover County Board of Commissioners, the Onslow County Board of Commissioners and the Pender County Board of Commissioners as follows:

1. The undersigned board of commissioners finds that it is in the public interest and will best meet the needs of persons with mental illness, developmental disabilities and substance abuse issues residing in the respective county served by the board for OCBHS and SEC to consolidate and reorganize into one area authority, which will carry out the local management entity functions within the five county area.

2. Pursuant to GS 122C-115(c), the undersigned board of commissioners authorizes and approves of the establishment of the Consolidated Area Authority that will carry out the local management entity functions to serve the mental health, developmental disabilities and substance abuse needs of the five county catchment area of the Consolidated Area Authority, contingent upon signing a formal written agreement consistent with the terms and conditions set forth in this Joint Resolution (the "Agreement").

3. As it pertains to the operation of a program for mental health, developmental disabilities and substance abuse services within its territorial borders, the undersigned board of commissioners authorizes the consolidation of OCBHS and SEC resulting in (i) the formation of a consolidated area authority effective as of 12:01 AM on July 1, 2012 ("Consolidated Area Authority"), and (ii) the cessation of SEC or OCBHS as separate entities (other than as a part of the Consolidated Area Authority) as of 12:01 AM on July 1, 2012, or as soon thereafter as practicable. The undersigned board of commissioners authorizes the following transactions necessary to accomplish the formation of the Consolidated Area Authority, which shall be incorporated into the Agreement:

- a. All property, real and personal, and any other assets of SEC and OCBHS shall be transferred to the Consolidated Area Authority effective July 1, 2012;

- b. The audited fund balance of SEC and OCBHS, both restricted and unrestricted, shall be transferred to the Consolidated Area Authority effective July 1, 2012. The Consolidated Area Authority shall assume and be liable for all the liabilities and obligations of OCBHS and SEC, except to the extent to which any liability or obligation is covered by any insurance maintained by OCBHS or SEC, as applicable. No liability or obligation due or to become due, claim or demand for any cause existing against OCBHS or SEC, or any officer or director of OCBHS or SEC, shall be released or impaired by the formation of the Consolidated Area Authority, and no action or proceeding, whether civil or criminal, then pending by or against OCBHS or SEC, or any officer or director of OCBHS or SEC, shall abate or be discontinued by the formation of the Consolidated Area Authority, but may be enforced, prosecuted, settled or compromised as if the consolidation of OCBHS and SEC had not occurred, or the Consolidated Area Authority may be substituted in any such action or special proceeding in place of OCBHS or SEC;
- c. Any individual who accepts employment by the post-consolidation entity shall be subject to the personnel policies of the post-consolidation entity, which shall provide among other things that: (i) longevity and tenure under SEC or OCBHS shall be counted as credit for employment with the post-consolidation entity, and (ii) any probationary period shall be waived for any person who has already served such a period for either SEC or OCBHS;

- d. Prior to the consolidation of OCBHS and SEC into a single area authority, OCBHS and SEC shall have entered into a formal written agreement documenting plans for the retention and disposition of: (i) business, administrative and financial records of OCBHS and SEC; and (ii) any patient medical records in the custody of SEC or OCBHS. The provisions of the formal written agreement shall ensure compliance with any applicable federal or state laws including, but not limited to, the protection of confidentiality related to health information and specific record retention and disposition requirements applicable to North Carolina local management entities; and
- e. All other actions or transactions necessary to implement or effectuate the terms of the Agreement consistent with this Joint Resolution.

4. The undersigned board of commissioners acknowledges that governance of the Consolidated Area Authority shall reside with the board of the Consolidated Area Authority (“Consolidated Area Authority Board”), which shall be constituted and structured as set forth in Paragraph 7 below and shall comply with the statutory requirements relevant to its composition, responsibilities and operation.

5. The undersigned board of commissioners authorizes and approves the formation of a Consolidated Area Authority Board that shall initially be comprised of twenty members, appointed as follows:

- a. Each of the undersigned board of commissioners shall appoint, from among its membership, one commissioner to serve as a member of the Consolidated Area Authority Board.

- b. Each of the undersigned board of commissioners also shall appoint three additional members to the Consolidated Area Authority Board
- c. In making any appointment to the Consolidated Area Authority Board, the undersigned board of commissioners shall comply with the requirements of N.C. General Statutes §122C-118.1.
- d. To the extent practicable, whenever making an appointment to a vacancy on the Consolidated Area Authority Board allocated to the county served by it, the undersigned board of commissioners will give due consideration to (i) the compositional requirements of NCGS §122C-118.1, (ii) the current composition of the of the Consolidated Area Authority Board, and (iii) the qualifications and background of any individual who has particular knowledge or experience that might be relevant and beneficial to the Consolidated Area Authority Board, including but not limited to, representation from: (1) county human services agencies with whom the Consolidated Area Authority must collaborate in order to insure access and coordination of services at the local level, (2) persons with experience in administration or finance in the health care industry (including, if possible, the delivery of mental health, developmental disabilities or substance abuse services), and (3) persons representing the interests of people with disabilities.
- e. The method of appointment set forth in the Agreement shall be consistent with the method of appointment described in this Paragraph 7 and shall comply with all applicable statutory requirements.

6. The Consolidated Area Authority Board shall operate under a set of duly adopted bylaws that shall be consistent with the provisions of the Agreement and this Joint Resolution.

7. Prior to the consolidation, OCBHS and SEC shall enter into a written agreement documenting plans for the retention and disposition of OCBHS business, administrative and financial records as well as patient medical records, all in accordance with the *Records Retention and Disposition Schedule – DMH/DD/SAS Local Management Entity (LME)* dated October 26, 2011, confidentiality laws (*HIPAA*, NCGS Chapter 122C and 42 CFR Part 2), and other applicable law.

8. The undersigned board of commissioners hereby authorizes the officers of OCBHS and SEC to take any and all actions necessary or desirable to effectuate all actions consistent with this Joint Resolution. ;

9. This Joint Resolution is effective upon the adoption by the last of the board of county commissioners of Brunswick, Carteret, New Hanover, Onslow and Pender counties to so adopt.

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THE FOREGOING JOINT RESOLUTION WAS INTRODUCED BY \_\_\_\_\_, WHO MOVED ITS ADOPTION. THE MOTION TO ADOPT THE RESOLUTION WAS SECONDED BY \_\_\_\_\_, AND THE VOTE ON THE ADOPTION WAS:

THOSE VOTING "AYE" WERE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THOSE VOTING "NAY" WERE:

\_\_\_\_\_  
\_\_\_\_\_

The Chairman of the Pender County Board of Commissioners declared the Joint Resolution adopted this the 4<sup>th</sup> day of June, 2012.

Pender County

By: George R. Brown  
Chairman, Board of Commissioners

ATTEST:

\_\_\_\_\_  
Mickey Duvall, Clerk to the Board

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**SOUTHEASTERN CENTER FOR MENTAL HEALTH  
PENDER COUNTY REPRESENTATIVES**

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