Considerations When Creating a Consolidated Human Services Agency

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In 2012, the North Carolina General Assembly passed Session Law ("S.L.") 2012-126, which provided counties with new options regarding organization and governance of their human services functions. Specifically, S.L. 2012-126, which amended G.S. 153A-76 and G.S. 153A-77:

1. Allowed any Board of County Commissioners ("BOCC") in a county with a county manager appointed pursuant to G.S. 153A-81 to combine two or more human services functions into a single consolidated human services agency ("CHSA"); and
2. Allowed any BOCC to directly assume the powers and duties of one or more of the governing boards responsible for overseeing a local human services agency, including a consolidated human services board.[1]

This document is intended to provide information to counties about creating a CHSA. For more information on the other organization and governance options available for human services agencies in North Carolina, please see "North Carolina Human Services Agencies: Options for Organization and Governance."

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This resource draws upon the work of the author's colleagues, Aimee Wall and Jill Moore, who have spent years providing guidance to North Carolina counties regarding the creation of consolidated human services agencies. The author is indebted to Wall and Moore for their legal analysis and insight on this topic.

1. Amendments to G.S. 153A-76 prohibit county commissioners from abolishing and assuming the powers and duties of any of the following: (i) An area mental health, developmental disabilities, and substance abuse services board (though a special clause provides an exception for Mecklenburg county, at G.S. 153A-76(6)); (ii) a public health authority assigned the power, duties, and responsibilities to provide public health services as outlined in G.S. 130A-1.1.3; (iii) a public hospital authority authorized to provide public health services under S.L. 1997-502.4; or (iv) a public hospital as defined in G.S. 159-39(a).

Options for Governance of Consolidated Human Services Agencies

CHSA with Appointed CHS Governing Board	
Organization. The BOCC creates a new CHSA by combining two or more human services functions, departments, or agencies.	**Governance.** The BOCC appoints a new consolidated human services ("CHS") board that serves as the CHSA's governing board.
CHSA with BOCC Governance	
Organization. The BOCC creates a new CHSA by combining two or more human services functions, departments, or agencies.	**Governance.** The BOCC becomes the CHSA's governing board when it directly assumes the powers and duties of the CHS board.

Decisions Facing a County When Creating a CHSA

1. Governance Options

A CHSA can be governed by an appointed CHS board or directly by the BOCC. More information on appointed CHS boards is included later in this document. If the CHSA includes public health and the BOCC assumes the powers and duties of the governing board, the BOCC must appoint an advisory committee for public health.[2] The advisory committee membership must, at a minimum, meet the requirements for a county board of health found in G.S. 130A-35. If the CHSA will include a department of social services ("DSS"), this advisory committee could have a broader scope and include people with social services expertise or interests. The BOCC also has the option of appointing a separate advisory committee for social services or other issues, but that is not required by law. If the BOCC becomes the governing body for a CHSA that includes public health, the BOCC should also keep in mind that it will assume all responsibilities of the local board of health, including acting as the adjudicatory body for public health, imposing certain fees for public heath services, public health rulemaking, and taking on activities necessary for state accreditation of the health department.[3]

2. Which Functions to Include in the CHSA

G.S. 153A-77(b)(3) authorizes a county to create a CHSA to "carry out the functions of any combination of commissions, boards, or agencies appointed by the board of county commissioners or acting under and pursuant to the authority of the board of county commissioners." Counties can choose which functions to include in a CHSA. The term "human services" is undefined in the law. A CHSA may incorporate a local health department and/or DSS, but other departments and agencies may also be involved (such as local departments focused on

2. G.S. 153A-77(a). The law does not specify whether the public health advisory committee needs to be appointed before or after the BOCC assumes the powers and duties of the CHS board. Note that the requirement for a health advisory committee applies only to counties that abolish their health or CHS boards after January 1, 2012. This amounts to an exception for Mecklenburg County, which abolished its boards (a county board of health, and subsequently a consolidated human services board) before that date.

3. For more information on these BOCC responsibilities related to public health, see Jill Moore, County Commissioners and Local Boards of Health: What Would Pending Legislation Allow and What Would it Mean, UNC School of Government Coates' Canons Blog, June 20, 2012, available at https://canons.sog.unc.edu/county-commissioners-and-local-boards-of-health-what-would-pending-legislation-allow-and-what-would-it-mean/.

veterans, aging populations, domestic violence, or transportation).[4] There are, however, some limitations. A CHSA may *not* include:

- A local management entity ("LME") involved with mental health, developmental disabilities, and substance abuse services (with the exception of the CHSA serving Mecklenburg County);
- A public health authority assigned the power, duties, and responsibilities to provide public health services as outlined in G.S. 130A-1.1;
- A public hospital authority authorized to provide public health services under S.L. 1997-502; or
- A public hospital as defined in G.S. 159-39(a).

3. Personnel Decisions

Employees of county departments of social services and local health departments are county employees but are subject to the State Human Resources Act ("SHRA"). When a county creates a new CHSA, the employees of the new agency are removed from SHRA coverage and become subject to county personnel policies, unless the BOCC affirmatively elects to keep them under the SHRA.[5] By default, if the resolution creating the CHSA is silent, the employees become subject to county personnel policies and are removed from SHRA coverage. If the BOCC wants to keep social services and public health employees covered under the SHRA, it must explicitly state this intention in the resolution creating the CHSA.

Regardless of whether or not a county opts to keep CHSA employees under the coverage of the SHRA, all CHSAs are required to comply with the federal merit personnel standards (found at 5 CFR § 900.603, attached as Appendix A). These standards are reflected in the SHRA. When a county wants to remove its CHSA employees from the coverage of the SHRA (which occurs by default if the resolution creating the CHSA does not state otherwise), the county should first conduct a careful review of its county personnel policies, procedures, and ordinances to ensure that they comply with and reflect each of the federal merit personnel standards. Among other things, the relevant federal merit personnel system standards mandate recruitment, selection, and retention of employees based on their ability, knowledge, skills, and performance. The federal merit personnel standards also require that employees be given fair and equitable treatment without regard to race, color, religion, sex, pregnancy, gender identity, national origin, age (as defined by the ADEA), disability, genetic information, marital status, political affiliation, sexual orientation, status as a parent, or labor organization affiliation or nonaffiliation.

For more information on the federal merit personnel system standards and the personnel decisions involved when creating a CHSA, please see "Personnel Decisions for North Carolina's Consolidated Human Services Agencies."

4. Appointment of the CHS Director and Organizational Structure

Counties have chosen many different methods by which to organize personnel within their CHSAs. In each county with a CHSA, a CHS director must be identified and appointed. The director of a CHSA is appointed by the county manager with the advice and consent of the CHS

4. To date, all CHSAs formed in North Carolina have incorporated departments of social services, though not all CHSAs have incorporated public health. There is, however, no requirement that a CHSA incorporate a county's department of social services.

5. G.S. 153A-77(d).

board.[6] This individual could be current director of an existing agency (the DSS director or the public health director) or could be someone different (a new hire or an employee from another agency, for example). In some counties, the assistant county manager serves as the CHS director. In other counties, the CHS director also continues to act as the director of social services or director of public health functions within the CHSA.

There are no minimum education and experience requirements for a CHS director set forth in state law. However, the CHS director needs to be someone who is prepared to administer a local agency that carries out numerous state and federal programs and typically has a relatively large budget and staff compared to other local departments.

If the CHSA includes the county DSS, the CHS director assumes most of the powers and duties granted to a DSS director (see G.S. 108A-15.1), with the limitation that the CHS director's hiring/firing decisions and executive responsibilities are subject to the oversight of the county manager. The CHS director would be allowed to exercise all of that authority or to delegate some of it to others within the agency. The DSS director holds many significant powers, including the ability to make end-of-life decisions for certain individuals in the county, so the delegation of this power should be thoughtfully considered.

If the CHSA includes public health, the CHS director acquires most of the powers and duties of a local health director, with the limitation that the CHS director's hiring/firing decisions and executive responsibilities are subject to the oversight of the county manager. Although the CHS director acquires the powers and duties of a local health director, the CHS director might not be the person who exercises them. The powers and duties of a local health director that appear in G.S. Chapter 130A may be delegated to another person.[7] If the CHS director does not have the statutory qualifications to be a local health director (found in G.S. 130A-40), then the CHS director must appoint a person who has those qualifications and is approved by the county manager.[8] All North Carolina counties that have formed CHSAs have identified someone who is serving as the local health director. In a few counties, the CHS director is identified as the local health director. However, most counties that have formed CHSAs to date have identified someone other than the CHS director to serve in the local health director role.

Like the DSS director, the local health director holds many significant powers, so the CHS director should give careful thought to the delegation of those powers. In the event that the CHS director appoints an individual (other than the CHS director) to be the local health director, G.S. 153A-77 and G.S. 130A-34.1 are silent on whether the CHS director must delegate the powers and duties of the local health director to that appointed individual. However, this appears to be the intent behind requiring such an appointment, so that the individual making decisions about important public health matters such as isolation/quarantine, use of imminent hazard authority, and disease investigations will have the appropriate training and qualifications to make those decisions.

For more information on the appointment of the CHS director and decisions regarding the internal personnel structure of a CHSA, please see this School of Government bulletin.

6. G.S. 153A-77(e).

7. For more information on this topic, see Jill Moore, Delegating Local Health Director Legal Powers & Duties, UNC School of Government Coates' Canons Blog, March 30, 2015, available at https://canons.sog.unc.edu/delegating-local-health-director-legal-powers-duties/.

8. G.S. 153A-77(e). This appointment is only necessary if the CHSA director does not already personally meet the statutory local health director requirements in G.S. 130A-40(a).

Procedural Matters to Consider When Forming a CHSA

1. Public Hearing

If the BOCC plans to serve as the governing board for the new CHSA, it must hold a public hearing. The law requires "30 days' notice of said public hearing given in a newspaper having general circulation in said county."[9] The hearing requirement is triggered by the BOCC assuming the powers and duties of another board – which could be a local board of health, a county board of social services, or a CHS board. The law does not explicitly state that a public hearing is required prior to forming a CHSA with an appointed CHS board (as opposed to having the BOCC as the governing board). However, holding such a hearing with appropriate notice is a best practice, given that the creation of a CHSA is a significant change for a county and is likely to create many questions from county residents and human services employees.

2. Drafting a Resolution

The law does not explicitly require that counties create a CHSA through the use of a resolution, unless the BOCC is also assuming the powers and duties of the agency governing board. However, the School of Government strongly recommends the use of a resolution to form a CHSA. Among other things, the language of the resolution establishes whether employees will be subject to the SHRA or subject to county personnel policies, as well as which departments or functions are being consolidated into the CHSA. To date, every county in North Carolina that has created a CHSA has done so through a resolution.

3. Order of Actions

When establishing a new CHSA, the county manager will have the authority to appoint the agency director, but may do so only with the advice and consent of the governing board.[10] Because of the advice and consent requirement, there is a logical sequence that should be followed when establishing the CHSA.

A. Establish the CHSA.
B. Appoint a CHS board or have the BOCC assume the powers and duties of the agency governing board.
C. The county manager identifies a candidate for CHS director and seeks the advice and consent of the agency governing board.
D. If the agency governing board consents to the appointment, the county manager appoints the CHS director.

These four steps may take place in the same meeting or on the same day, but the order of events is significant under the law. The CHS director cannot be appointed before the CHSA has been created and the governing board is in place, because the governing board must consent to the CHS director's appointment.

4. Appointing the Initial CHS Board

If a BOCC does not want to serve as the governing board of the CHSA, it will need to appoint a new CHS board. G.S. 153A-77(c) includes many details about CHS board composition, terms and term limits, and powers and duties. It also includes a specific process for appointing the

9. G.S. 153A-77(a).
10. G.S. 153A-77(e).

initial board. The BOCC must first create a nominating committee that includes members of the current (pre-consolidation) board of health and social services board, as well as the board responsible for managing mental health, developmental disabilities, and substance abuse services in the county. The nominating committee then recommends members for the new CHS board and the BOCC makes appointments based upon those recommendations. After the initial board is in place, the BOCC will fill vacancies based upon nominees presented by the members of the CHS board.

The CHS board must be composed of no more than 25 members. All members of the CHS board must be residents of the county. The composition of the CHS board must "reasonably reflect the population makeup of the county" and must include:

- Four persons who are consumers of human services.
- Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.
- Two physicians licensed to practice medicine in North Carolina, one of whom must be a psychiatrist.
- One member of the BOCC.
- Other persons, including "members of the general public representing various occupations."

The BOCC may elect to appoint a member of the CHS board to concurrently fill more than one category of membership (the categories described above) if the member has the qualifications or attributes of more than one category of membership.

The members of the CHS board must serve four-year terms. However, for purposes of establishing a uniform staggered term structure for the board, a member may be appointed for less than a four-year term when the CHS board is initially formed. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

Common Questions to Anticipate When Forming a CHSA

1. How is a CHSA or a CHS board different from our county's current governance and organization structure for human services?

Here are a few key differences:

- The CHS director is appointed by the county manager, not by the CHS board. The CHS board must, however, provide advice on the appointment and consent to the appointment.
- The CHS board plans and recommends the budget for the CHSA but does not transmit or present the budget to the county commissioners.
- The CHS director:
    - May only serve as the executive officer of the CHS board to the extent and in the manner authorized by the county manager; and
    - May only appoint CHSA staff upon the approval of the county manager.

Other CHS board duties:

- If the CHSA includes public health, the CHS board acquires all powers and duties of
- the local board of health except appointing the director. This includes adopting local health regulations, participating in enforcement appeals of local regulations, and performing regulatory health functions required by State law.
- If the CHSA includes social services, the CHS board acquires all powers and duties of the county board of social services except appointing the director.
- The CHS board sets fees for CHSA services (subject to constraints in the law).
- The CHS board must assure compliance with laws for state and federal programs and can conduct audits and reviews of human services programs.
- The CHS board recommends the creation of human services programs.
- The CHS board advises local officials via the county manager.
- The CHS board performs public relations and advocacy functions.

2. Will the consolidation save money?

The consolidation may ultimately create some cost savings (particularly through staff efficiencies and streamlining), but this is not guaranteed. Based on anecdotal reports from directors and county managers to the School of Government, some counties have experienced an initial increase in costs after the initial consolidation (though this may level out or decrease over time).[11] Some of the financial implications will depend on how staff will be structured and the extent to which the county wants departments to operate in a shared space, which may require a move and/or new construction.

3. How will this impact social services and public health employees?

This is one of the most complex questions to answer in connection with the formation of a CHSA. The BOCC should consult with the county attorney to analyze impacts on employees in advance of creating the CHSA. The impacts to employees will largely depend on: (1) whether the county plans to keep the employees subject to the SHRA or move them under county personnel policies, and (2) how the county's personnel policies align with the SHRA.

If the BOCC elects to keep CHSA employees subject to the SHRA, then any impacts on employees should largely happen at an operational level (for example, potential reorganization, position eliminations, or role transitions).

If the BOCC opts to move the employees under county personnel policies, employees may lose some protections and benefits that they would have had under the SHRA, including "just cause" protection for employees with career status under the SHRA and the right to appeal certain decisions to the state Office of Administrative Hearings.[12] In some cases, county personnel policies may provide protections that are similar to protections provided under the SHRA (for example, if a county provides that employees can only be terminated for "just cause" after a

11. The School of Government does not collect or maintain data regarding costs incurred or saved by counties as a result of creating a CHSA. Accordingly, the information provided in this paragraph is solely based on informal, anecdotal reports from county officials to the School of Government.

12. For more information on this topic, please see Kristi Nickodem, Personnel Decisions for North Carolina's Consolidated Human Services Agencies, Soc. Servs. Bulletin No. 49 (UNC School of Government, Dec. 2021).

certain length of service). In other cases, the county personnel policies will almost certainly be different than the SHRA (for example, county policies likely do not provide an employee with the right to appeal a county agency's decision to the state Office of Administrative Hearings).

4. What will happen to the current human services boards?

As noted above, the initial nominating committee for the CHS board must consist of the of the current (pre-consolidation) board of health and social services board, as well as the board responsible for managing mental health, developmental disabilities, and substance abuse services in the county. The initial CHS board could, in theory, consist (at least in part) of the existing board of health and social services board members, provided that they otherwise meet the membership qualifications of G.S. 153A-77(c). That could help to provide some continuity in board operations. However, in some situations, retaining the existing, pre-consolidation board members may not serve the county's goals in creating the CHSA and the CHS board.

5. How will consolidation impact operations?

The impact on day-to-day services and operations of the agencies being consolidated will largely depend on how the county intends to structure its CHSA. In some counties, staff positions have been eliminated as a result of consolidation. In others, new positions have been added. In some counties, the CHSA operates out of a single building incorporating public health and social services functions. In other counties, the departments consolidated into a CHSA continue to function largely independently in separate buildings and simply have a shared governance structure. Ideally, one of the benefits of the CHSA model is that it should promote more cross-departmental collaboration and a focus on holistic, integrated client service. However, this outcome largely depends on decisions made by the county and requires some strategic planning.

APPENDIX A

5 CFR § 900.603. Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as -

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family

medical history), marital status, political affiliation, sexual orientation, status as parent, labor organization affiliation or nonaffiliation in accordance with chapter 71 of title V, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.