



REPORT

A Report on Multidisciplinary Evaluations Assembled by LME/MCOs in Adult Guardianship Proceedings in North Carolina

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Executive Summary

Over the course of a year, the UNC School of Government (SOG) convened meetings among clerks of superior court, local management entities/managed care organizations (LME/MCOs), and LME/MCO providers on the topic of multidisciplinary evaluations (MDEs) in adult guardianship proceedings. Guardianship proceedings may result in a significant deprivation of rights for the respondent to the proceeding, and clerks may order LME/MCOs to prepare MDEs when information is lacking or conflicting regarding the respondent's capacity or guardianship needs. When ordered to prepare an MDE, an LME/MCO will delegate that responsibility to one of its contracted service providers. There is a significant disparity across the state in courts' access to quality and timely prepared MDEs. The purpose of the meetings was to bring together stakeholders to improve relationships and collaboration related to court-ordered MDEs.

The meeting participants identified the following issues.

- There are multiple, inadequate sources of funding to cover the cost of MDEs and there is confusion regarding the process for accessing the limited funds that are available.
- The current statutory law governing MDEs does not account for the many changes made to the delivery of public mental health services in North Carolina over the last few decades.
- There is no comprehensive data on the demand for MDEs in North Carolina.
- Clerks statewide report problems with the quality of MDEs in that they lack information that is useful and relevant to the court and the content does not adhere to NC Department of Health and Human Services (DHHS) guidelines.
- Many LME/MCOs do not submit the MDE to the court within statutorily prescribed deadlines, and clerks regularly must continue hearings to allow more time to complete MDEs.
- LME/MCO provider networks do not have a sufficient number of appropriately trained professionals to perform the components of an MDE.
- When an LME/MCO engages a contracted provider to perform the MDE, the providers and the process require greater oversight by the LME/MCO to ensure the quality of the MDE and the timely return of the MDE to the court.
- Existing LME/MCO providers performing MDEs would like MDE- and guardianship-specific training, but few training opportunities are available.

In light of these issues, it is clear that there are areas for improvement of the MDE process in North Carolina. In a few areas of the state, the process works well. One key to a successful process is local collaboration among community stakeholders. This and other action steps recommended by meeting participants to address issues with MDEs across the state are included in this report together with a more detailed description of each of the issues identified above.

A. The Meetings (Methodology)

From May 2016 through July 2017, the SOG facilitated eight meetings among clerks of superior court, LME/MCOs, and LME/MCO providers on the topic of MDEs in adult guardianship proceedings. At least one meeting was held in each of the seven LME/MCO catchment areas. Ninety clerks from 71 counties participated in the meetings. Every LME/MCO sent multiple representatives to the meeting in their respective catchment areas. Provider representatives attended all but two meetings. The DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division of MH/DD/SA Services), which serves as liaison to the LME/MCOs, also attended the meetings, in part because under statute DHHS must pay the costs of the MDE in certain circumstances.

The goal of each meeting was to establish relationships and create better cooperation and communication among clerks, LME/MCOs, and providers related to ordering, preparing, and paying for MDEs. While the clerk has the discretion to order an LME/MCO, a county department of social services (DSS), or a public health department, among others, to prepare or cause the MDE to be prepared, a survey of clerks conducted before the meetings revealed that building and reinforcing the relationship between clerks and LME/MCOs was particularly important in improving the MDE process. DSS representatives attended two of the meetings to explore collaborative opportunities with LME/MCOs for preparing the component parts of an MDE. But the primary goal of these meetings remained establishing an operational framework for the clerks, LME/MCOs, and providers.

At each meeting, SOG representatives provided a brief summary of the law concerning MDEs. The participants then engaged in a discussion to identify current practice, including any issues they encounter following the statutory procedure for ordering, preparing, and paying for MDEs. Each meeting ended with the participants working together to draft a uniform guide for the catchment area establishing a process for ordering, preparing, and paying for MDEs. Subsequent to each meeting, SOG faculty drafted a post-meeting report that documented this process.

As a result of these meetings, a report is now available for each catchment area in the state that establishes a process for communication between the court and the LME/MCO related to MDEs. This means every clerk in the state has a point of contact and process identified with each LME/MCO to obtain an MDE in a guardianship proceeding. Each report also summarizes ways to improve the MDE process and the next steps toward that end as identified by the meeting participants.

B. Findings

Although the meetings laid a foundation for communication and cooperation among key stakeholders regarding MDEs, there is a continued need for action to improve the MDE process. A large disparity continues to exist across the state in the ability of courts to access timely and substantive MDEs. The most common impediments identified by meeting participants to obtaining an effective MDE as well as the action items they recommended to improve the process are discussed below.

1. Payment of the Costs of the MDE

a. Insufficient funding. The Division of MH/DD/SA Services has recurring annual funding intended to cover the costs of certain MDEs¹ and forensic evaluations² for the entire state in the amount of \$36,448. The Division of MH/DD/SA Services staff noted that this funding typically runs out in late February or early March of each fiscal year. It is unclear what happens when the court orders an MDE after funding runs out and DHHS is ordered by the court to pay the cost of the MDE. In some of these cases, it appears the LME/MCO absorbs the costs of the MDE.

The demand for these funds will likely grow in the future due to (1) a greater awareness of MDEs and an appreciation of their importance in certain guardianship proceedings as a result of the MDE meetings and (2) the elimination of LME/MCO funding to cover the costs of MDEs. For example, one LME/MCO that historically allocated \$100,000 per year in single-stream dollars to cover the costs of MDEs eliminated that funding starting July 1, 2017.³

Action item: Awareness and advocacy by constituent groups. Meeting participants suggested raising awareness and support among guardianship constituency groups impacted by a lack of access to MDEs, such as disability rights groups, the elder law section of the NC Bar Association, and others. Specifically, participants suggested the Conference of Clerks of Superior Court articulate the need for additional funding by way of a letter to the director of the Division of MH/DD/SA Services.

1. DHHS is obligated to pay the costs of an MDE when ordered by the court. N.C. GEN. STAT. (hereinafter G.S.) 35A-1116(b). The court may order DHHS to pay when (1) the respondent is indigent and adjudicated incompetent or (2) if the respondent is not adjudicated incompetent and there were reasonable grounds to bring the petition. G.S. 35A-1116(a) and (b).

2. Forensic evaluations include evaluations to determine whether an individual has the capacity to proceed in a criminal case.

3. Vaya Health, letter to clerks of superior court in the Vaya catchment area, June 14, 2017, copy on file with author.

b. Lack of clarity regarding public funding sources. When the court orders an LME/MCO to complete an MDE, common practice is that the LME/MCO engages a provider to prepare the MDE, guarantees payment to the provider, and then pays the provider directly for the evaluations that comprise the MDE using LME/MCO funds. LME/MCOs do not typically seek and the court does not regularly enter orders specifically allocating the costs of MDEs. Instead, most LME/MCOs absorb all of the costs of the MDEs despite other statutory sources of funding. These sources include

1. DHHS, if the respondent is indigent or not adjudicated incompetent;
2. private insurance, if the respondent has applicable coverage;
3. the petitioner, if there were no reasonable grounds to bring the petition or the respondent is not adjudicated incompetent;
4. the respondent's estate, if the respondent has funds; and
5. Medicaid for certain medically necessary components of an MDE, provided the respondent is Medicaid-eligible.⁴

The most confusion seems to exist around funding when the respondent is indigent, specifically the appropriate use of and access to DHHS and Medicaid funding. DHHS data for fiscal year 2016–17 shows that five of seven LME/MCOs did not access any DHHS funds allocated for MDEs. One LME/MCO accessed over 80 percent of the total funds used statewide that year all for MDEs. Table 1 lists the amount DHHS reimbursed each LME/MCO for the cost of MDEs and forensic evaluations during fiscal year 2016–17.

Table 1: DHHS MDE and Forensic Evaluation Reimbursements for 2016–17

LME/MCO	Amount Reimbursed for Forensic Evaluations	Amount Reimbursed for MDEs
Vaya Health	\$0.00	\$0.00
Eastpointe	\$0.00	\$0.00
Alliance Behavioral Healthcare	\$3,100.00	\$0.00
Cardinal Innovations Healthcare	\$4,300.00	\$0.00
Partners Behavioral Health Management	\$3,200.00	\$15,159.17
Sandhills Center	\$7,700.00	\$0.00
Trillium Health Resources	\$1,388.83	\$2,988.83
TOTAL	\$19,688.83	\$18,148.00

As for Medicaid funding, participants at almost every meeting indicated that they did not have a clear understanding as to whether and to what extent Medicaid funds could be accessed to cover the cost of MDE components, including the psychological, social work, and medical evaluations.

4. See G.S. 35A-1116(a) and (b).

Action item: DHHS policy guidance. Participants expressed a desire for guidance from the Division of MH/DD/SA Services as to the expectations for billing the cost of MDEs, including what may be billed to Medicaid, the procedure for recouping costs from DHHS, and what should occur when DHHS funding is exhausted but the court continues to order MDEs during a fiscal year.

Action item: Revise Form SP-200. Participants recommended revising NC Administrative Office of the Courts (AOC) Form SP-200, the Petition for Adjudication of Incompetence and Application for Appointment of a Guardian or Limited Guardian, to elicit information from the petitioner about whether the respondent has health or other insurance that might cover part or all of MDE costs. If the court provides a copy of the petition to the LME/MCO, the LME/MCO and the provider preparing the MDE will have more information about potential funding sources.

Action item: Revise Form SP-202. It was noted at a number of the meetings that the current AOC Form SP-202, Order on Petition for Adjudication of Incompetence, does not allow the court to specifically address the costs of the MDE.⁵ The form allows the court to assess all costs against the petitioner or the respondent, or to waive the costs if the respondent is indigent. Because providers conducting the MDEs are private providers, the costs may not be waived; they must be allocated according to the statute and paid from an appropriate funding source. Therefore, participants suggested revising Form SP-202 to include boxes that would allow the court to allocate MDE costs in accordance with statute and available funding sources.

c. Lack of procedure for recoupment of costs from private funds. The availability of various funding sources, in particular private funding sources, disperses the cost of MDEs and reduces the strain on state funds. However, at the time of the meetings, no LME/MCO had an established process for recouping costs from the petitioner or the respondent in guardianship proceedings. This is despite the fact that under certain circumstances statute allows the court to allocate costs of the MDE to the petitioner or the respondent when either is able to pay them.

Action item: Draft procedure for recoupment. Participants suggested that LME/MCOs establish a process for recouping costs from the various funding sources. The process could, for example, include the following:

- The LME/MCO files a motion for costs with the court each time an MDE is returned to the court.
- The court rules on the motion after the incompetency hearing⁶ and provides a copy of the order to the LME/MCO.
- If the court orders the petitioner or respondent to pay, the LME/MCO requests reimbursement from that party directly.
- If the petitioner or respondent fails to pay, the court may enforce its order via contempt.

5. See AOC Form SP-202, <http://nccourts.org/Forms/Documents/439.pdf>.

6. Whether the respondent is adjudicated incompetent and whether the respondent is indigent both have a bearing on how the court allocates costs. Therefore, the court would not be able to enter a final order allocating costs until final disposition of the incompetency petition after a hearing.

2. Legislative Change

The statutes pertaining to MDEs in Chapter 35A of the North Carolina General Statutes (hereinafter G.S.) became law in 1987. The delivery of public mental health services in the state has drastically changed since that time. Many meeting participants noted that the statutory scheme does not adequately address the current LME/MCO landscape. Therefore, existing challenges could be remedied through legislative change. This may include creating guidance for collaboration between various public agencies charged with the responsibility of performing MDEs, streamlining the system of payment of costs, and increasing the time allowed to complete an MDE.

Action item: Convene legislative work group. Participants suggested convening a legislative work group that would analyze the statutory scheme in light of the current method for delivery of mental health and other public services in North Carolina and make recommendations for legislative change. The work group would consist of representatives from LME/MCOs, providers, DSS, public health, clerks, representatives from the Elder Law section of the NC Bar Association, and the AOC, among others.

3. Collection of MDE Data

In 2016–17, AOC data shows that over 4,700 adult guardianship cases were filed in North Carolina. However, the AOC does not currently track the number of MDE orders entered by the court in these cases each year. This lack of data creates challenges in determining the total demand for MDEs and the related funding needs. In addition, various clerks noted that they often refrain from ordering an MDE even when it is needed because of the strain and confusion related to the availability of funding to cover the costs of the MDE. In fact, a number of counties in the state stopped ordering MDEs because of confusion about who should be ordered to prepare them given the changes in the state mental health system and the difficulty and delays in obtaining the MDEs if they were ordered.

Action item: Track MDE orders. Participants recommended that the AOC work with clerks to begin tracking MDE orders (Form SP-901M, Request and Order for Multidisciplinary Evaluation) to obtain an accurate reflection of the number of MDEs ordered statewide each year.

Action item: Court to order MDEs when necessary. Participants recommended that clerks order an MDE whenever necessary, regardless of funding concerns, to ensure that the data accurately reflects the demand for MDEs. Until clerks actually order what is needed, participants acknowledged that gauging appropriate funding is impossible.

4. Quality of MDEs

The court has discretion to determine what evaluations must be included in the MDE. By default, an MDE includes a psychological, social work, and medical evaluation of the respondent. Upon completion of the evaluations contained in the MDE, the evaluators are expected to confer and

write summary recommendations to the court regarding: (1) the nature and extent of the respondent's incompetency; (2) the respondent's assets, liabilities, and needs; (3) a recommended guardianship plan or program; and (4) the suitability of a particular guardian, if requested by the court. The MDE returned to the court should include each court-ordered evaluation along with the summary recommendations.

Clerks noted issues with the quality of MDEs at every meeting. Some clerks stated that the MDEs returned to the court fail to contain information beyond what is already available in the court file. Others said that the MDEs do not regularly provide information as outlined in (1) through (4) above or the reasons behind evaluators' ultimate conclusions of incompetency. At all meetings, clerks expressed concern that they do not receive copies of each evaluation ordered along with summary recommendations.

LME/MCO representatives noted limitations on their ability to complete parts of an MDE due to the cost of such evaluations and lack of access to appropriate evaluators in their provider networks,⁷ particularly for the medical component of an MDE.

Action item: Revise Form SP-901M. At every meeting, participants recommended revising AOC Form SP-901M,⁸ Request and Order for Multidisciplinary Evaluation, to provide more information and clarity from the court to the providers conducting the MDE. In addition, it was suggested that the form include a way for the clerk to identify the specific evaluations needed in each case rather than to rely on the default (three evaluations) in all cases, which is how the form is currently drafted. A list of information recommended to be added to the form is included in Figure 1.

Action item: Create a model MDE. Participants suggested creating model medical, social work, and psychological evaluations that could be used by providers when preparing the component pieces of the MDE as well as model summary recommendations to help guide them as to what information the court needs for the guardianship proceeding.

Action item: Update DHHS guidelines. Another suggestion at multiple meetings was that DHHS revise the MDE guidelines to update the testing standards, establish recommendations regarding gathering of medical records and other information when appropriate, and clarify and expand upon the information needed by the court in the MDE, among other things.

Action item: Disseminate and follow DHHS guidelines. A repeated recommendation at multiple meetings was that the LME/MCO distribute a copy of the DHHS MDE guidelines to all providers who conduct MDEs and establish by contract expectations that the providers follow the guidelines when completing an MDE.

7. One option available under the statute is for the LME/MCO provider to collaborate with a respondent's existing provider, such as a primary care physician if the respondent has one, to gather the respondent's records or other medical history.

8. See AOC Form SP-901M for the MDE order, <http://nccourts.org/Forms/Documents/668.pdf>.

Figure 1. Form SP-901M Additions Suggested by Meeting Participants

- Information related to the respondent, including the following:
 - Date of birth
 - Phone number
 - Address
- Hearing date
- Additional contacts of the respondent, including next of kin and phone numbers
- Guardian ad litem name and contact information
- Space for the court to include an explanation as to why the court is ordering an MDE
- Definitions for MDE, incompetent adult, guardian of the person, general guardianship, guardian of the estate, and limited guardianship
- A box for each of the three types of evaluations: social work, medical, and psychological, along with a box for “other” with space to write in another type of evaluation ordered by the court to be included in the MDE
- A box for the court to select a request to evaluate the suitability of a particular guardian as part of the order along with a space to write in the name of that person
- Other information the court requests
 - Nature and extent of respondent’s incapacity
 - Type of guardianship needed
 - Whether limited guardianship is appropriate
 - The assets, liabilities, and needs of the respondent
 - A recommended guardianship plan or program

5. Timeliness of MDEs Returned to the Court

Current statute affords the LME/MCO 30 days to complete the MDE, unless the court extends the time for good cause.⁹ LME/MCO representatives and providers expressed difficulty in complying with this 30-day deadline given the coordination that must occur between providers and respondents to schedule and attend the MDE evaluations. Clerks stated that in some cases it would take up to six months or more to receive an MDE back from the LME/MCO. All parties expressed a desire to increase the initial time period allowed to complete the MDE.

Clerks also noted that given the sensitive and expedited nature of guardianship proceedings, LME/MCOs should complete the MDE as soon as possible or notify the court that the evaluation will not be completed before the 30-day deadline expires. Timely completion of the MDE or notification of its delay will also allow the court to avoid the situation where all the parties appear for a hearing and the hearing must be continued because the MDE has not yet been returned to the court. If the LME/MCO notifies the court of any delays, the court can appropriately adjust the hearing calendar to ensure an efficient use of judicial resources.

Action item: Revise legislation to allow more time to complete MDEs. Participants suggested revising G.S. 35A-1111 to increase the time period to complete the MDE from 30 days to 45 days with an additional 45-day period extension available to align with an interim guardian appointment. This would give the court sufficient

9. G.S. 35A-1111(b).

flexibility to protect the respondent in the event of an emergency while waiting for an MDE to be returned.

Action item: Establish communication protocols regarding the status of the MDE.

Participants suggested that each LME/MCO should implement protocols with providers whereby the providers would regularly communicate with the LME/MCO regarding the status of the MDE and indicate whether the MDE will be completed within the required timeframe. The protocols would also require the LME/MCO to notify the court of an anticipated delay as soon as possible but no later than five days before the scheduled hearing. Such notice would provide the court with sufficient time to postpone the hearing, if necessary.

6. Provider Network, Oversight, and Training

a. Network. Participants raised concerns regarding the network of providers in each catchment area capable of performing MDEs, including the number of providers engaged to perform MDEs, the location of the providers, and the reimbursement rate offered to each provider for performing MDEs. For example, one clerk noted that respondents in the clerk's county had to travel over an hour to reach a provider for an evaluation, another clerk in a heavily urban area highlighted that there was no provider engaged in the clerk's county to perform MDEs, and multiple clerks stated that providers in the clerks' counties indicated an unwillingness to perform MDEs because of low LME/MCO reimbursement rates.

Action item: Expand provider network. Participants strongly suggested that LME/MCOs expand their provider networks to ensure that respondents in each county can attend MDE evaluations at locations within a reasonable travel distance.

Action item: DHHS policy guidance on reimbursement rate. Participants asked that DHHS develop policy guidance for LME/MCOs regarding appropriate reimbursement rates for providers performing the various components of an MDE.

b. Oversight. In some of the catchment areas, once the clerk orders an MDE, he or she sends the order directly to the provider. The provider then returns the MDE to the court. The LME/MCO, the entity legally responsible for complying with the court's MDE order, was not involved with the process. It did not, for example, track MDE orders, provider compliance with the orders, or the quality of the MDEs.

Action item: LME/MCO to establish greater oversight of MDE process. Participants encouraged LME/MCOs to charge the LME/MCO point of contact that oversees the MDE process with not only receiving and tracking MDE orders entered in the catchment area, but also ensuring the timeliness of the response and the quality of the MDEs performed.

c. Training. Many participants, including providers and clerks, expressed concern over the lack of appropriate training for providers involved with preparing MDEs.

Action item: Train providers. Participants would like to see specific training developed and offered for providers that addresses the adult guardianship proceedings and MDEs, including DHHS guidelines; information the clerk needs to make a decision; and the process for returning an MDE to the court.

7. Collaboration among Community Partners

The areas in the state where meeting participants expressed satisfaction with the MDE process were the ones where engagement, collaboration, and communication among community partners are the strongest. In one county, DSS, public health, and the LME/MCO work together to complete the component parts of the MDE and then make summary recommendations to the court, despite the fact that only the LME/MCO is named as the designated agency on the clerk's order to complete the MDE. These agencies met regularly with the clerk to discuss MDEs, devise a plan to improve the process, and make the system work within the current resources and statutory structure.

Action item: Regularly convene county stakeholders. Participants recommended greater ongoing collaboration among county stakeholders through regular meetings and communication to devise an MDE process that is workable within current resources and responds to the needs and orders of the court.