

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 399
Committee Substitute Favorable 4/3/13
PROPOSED COMMITTEE SUBSTITUTE H399-PCS80322-SA-25

Short Title: Amend Laws Pertaining to DHHS.-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES REQUESTED BY THE DEPARTMENT OF HEALTH
3 AND HUMAN SERVICES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT,
4 AND DEPENDENCY; MEDICAID; AND PUBLIC HEALTH.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. CHANGES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND**
8 **DEPENDENCY**

9 **SECTION 1.** G.S. 7B-507 reads as rewritten:

10 **"§ 7B-507. Reasonable efforts.**

11 (a) An order placing or continuing the placement of a juvenile in the custody or
12 placement responsibility of a county department of social services, whether an order for
13 continued nonsecure custody, a dispositional order, or a review order:

- 14 (1) Shall contain a finding that the juvenile's continuation in or return to the
15 juvenile's own home would be contrary to the juvenile's best interest;
- 16 (2) Shall contain specific findings as to whether a county department of social
17 services has made reasonable efforts to either prevent the need for placement
18 or eliminate the need for placement of the juvenile, unless the court has
19 previously determined under subsection (b) of this section that such efforts
20 are not required or shall cease;
- 21 (3) Shall contain findings as to whether a county department of social services
22 should continue to make reasonable efforts to prevent or eliminate the need
23 for placement of the juvenile, unless the court has previously determined or
24 determines under subsection (b) of this section that such efforts are not
25 required or shall cease;
- 26 (4) Shall specify that the juvenile's placement and care are the responsibility of
27 the county department of social services and that the department is to
28 provide or arrange for the foster care or other placement of the juvenile.
29 After considering the department's recommendations, the court may order a
30 specific placement the court finds to be in the juvenile's best interest; and
- 31 (5) May provide for services or other efforts aimed at returning the juvenile to a
32 safe home or at achieving another permanent plan for the juvenile.

33 A finding that reasonable efforts have not been made by a county department of social services
34 shall not preclude the entry of an order authorizing the juvenile's placement when the court
35 finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the



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1 need for the juvenile's placement were precluded by an immediate threat of harm to the
2 juvenile, the court may find that the placement of the juvenile in the absence of such efforts
3 was reasonable.

4 (b) In any order placing a juvenile in the custody or placement responsibility of a
5 county department of social services, whether an order for continued nonsecure custody, a
6 dispositional order, or a review order, the court may direct that reasonable efforts to eliminate
7 the need for placement of the juvenile shall not be required or shall cease if the court makes
8 written findings of fact that:

- 9 (1) Such efforts clearly would be futile or would be inconsistent with the
10 juvenile's health, safety, and need for a safe, permanent home within a
11 reasonable period of time;
- 12 (2) A court of competent jurisdiction has determined that the parent has
13 subjected the child to aggravated circumstances as defined in G.S. 7B-101;
- 14 (3) A court of competent jurisdiction has terminated involuntarily the parental
15 rights of the parent to another child of the parent; or
- 16 (4) A court of competent jurisdiction has determined that: the parent has
17 committed murder or voluntary manslaughter of another child of the parent;
18 has aided, abetted, attempted, conspired, or solicited to commit murder or
19 voluntary manslaughter of the child or another child of the parent; ~~or~~ has
20 committed a felony assault resulting in serious bodily injury to the child or
21 another child of the ~~parent~~ parent; has committed sexual abuse against the
22 child or another child of the parent; or has been required to register as a sex
23 offender on any government-administered registry.

24 (c) When the court determines that reunification efforts are not required or shall cease,
25 the court shall order a plan for permanence as soon as possible, after providing each party with
26 a reasonable opportunity to prepare and present evidence. If the court's determination to cease
27 reunification efforts is made in a hearing that was duly and timely noticed as a permanency
28 planning hearing, then the court may immediately proceed to consider all of the criteria
29 contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to
30 achieve a safe, permanent home within a reasonable period of time. If the court's decision to
31 cease reunification efforts arises in any other hearing, the court shall schedule a subsequent
32 hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any
33 hearing at which the court orders that reunification efforts shall cease, the affected parent,
34 guardian, or custodian may give notice to preserve the right to appeal that order in accordance
35 with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof
36 as to any evidence that party sought to offer in opposition to cessation of reunification that the
37 court refused to admit.

38 (d) In determining reasonable efforts to be made with respect to a juvenile and in
39 making such reasonable efforts, the juvenile's health and safety shall be the paramount concern.
40 Reasonable efforts to preserve or reunify families may be made concurrently with efforts to
41 plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the
42 juvenile in another permanent arrangement."

43 **SECTION 2.** G.S. 7B-909 reads as rewritten:

44 "**§ 7B-909. Review of agency's plan for placement.**

45 (a) The director of social services or the director of the licensed private child-placing
46 agency shall promptly notify the clerk to calendar the case for review of the department's or
47 agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile ~~matters~~
48 in any case where matters. The review shall be held within six months of accepting a
49 relinquishment of a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter
50 48 of the General Statutes unless the juvenile has become the subject of a decree of adoption.

1 (1) ~~One parent has surrendered a juvenile for adoption under the provisions of~~
2 ~~Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination~~
3 ~~of parental rights proceedings have not been instituted against the~~
4 ~~nonsurrendering parent within six months of the surrender by the other~~
5 ~~parent, or~~

6 (2) ~~Both parents have surrendered a juvenile for adoption under the provisions~~
7 ~~of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile~~
8 ~~has not been placed for adoption within six months from the date of the more~~
9 ~~recent parental surrender.~~

10 (b) Repealed by 2007-276, s. 6, effective October 1, 2007.

11 (c) Notification of the court under this section shall be by a petition for review. ~~The~~
12 ~~petition shall set forth the circumstances necessitating the review under subsection (a) of this~~
13 ~~section.~~ The review shall be conducted within 30 days following the filing of the petition for
14 review unless the court shall otherwise direct. The court shall conduct reviews every six
15 months until the juvenile is the subject of a decree of adoption. The initial review and all
16 subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental
17 rights have been terminated shall not be considered a party to the review unless an appeal of the
18 order terminating parental rights is pending, and a court has stayed the order pending the
19 appeal."
20

21 **PART II. CHANGES TO LAWS PERTAINING TO MEDICAID**

22 **SECTION 3.** G.S. 108A-70.5(b)(2) reads as rewritten:

23 "(2) Estate. – All the real and personal property considered assets of the estate
24 available for the discharge of debt pursuant to G.S. 28A-15-1. The
25 Department has all rights available to estate creditors, including the right to
26 qualify as personal representative or collector of an estate. For individuals
27 who have received benefits under a qualified long-term care partnership
28 policy as described in G.S. 108A-70.4, "estate" also includes any other real
29 and personal property and other assets in which the individual had any legal
30 title or interest at the time of death (to the extent of such interest), including
31 assets conveyed to a survivor, heir, or assign of the deceased individual
32 through joint tenancy, tenancy in common, survivorship, life estate, living
33 trust, or other arrangement."

34 **SECTION 4.** G.S. 28A-14-1(b) reads as rewritten:

35 "(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal
36 representative and collector shall personally deliver or send by first class mail to the last known
37 address a copy of the notice required by subsection (a) of this section to all persons, firms, and
38 corporations having unsatisfied claims against the decedent who are actually known or can be
39 reasonably ascertained by the personal representative or collector within 75 days after the
40 granting of letters-letters and, if at the time of the decedent's death the decedent was receiving
41 medical assistance as defined by G.S. 108A-70.5(b)(1), to the Department of Health and
42 Human Services, Division of Medical Assistance. Provided, however, no notice shall be
43 required to be delivered or mailed with respect to any claim that is recognized as a valid claim
44 by the personal representative or collector."

45 **SECTION 5.** G.S. 28A-19-6(a) reads as rewritten:

46 "(a) After payment of costs and expenses of administration, the claims against the estate
47 of a decedent must be paid in the following order:

48 First class. Claims which by law have a specific lien on property to an amount not
49 exceeding the value of such property.

50 Second class. Funeral expenses to the extent of three thousand five hundred dollars
51 (\$3,500). This limitation shall not include burial place or gravestone. The preferential limitation

1 herein granted shall be construed to be only a limit with respect to preference of payment and
2 shall not be construed to be a limitation on reasonable funeral expenses which may be incurred;
3 nor shall the preferential limitation of payment in the amount of three thousand five hundred
4 dollars (\$3,500) be diminished by any Veterans Administration, social security or other federal
5 governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

6 Third class. Costs associated with gravestones and reasonable costs for the purchase of a
7 suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred
8 dollars (\$1,500). The preferential limitation herein granted shall be construed to be only a limit
9 with respect to preference of payment and shall not be construed to be a limitation on
10 reasonable gravestone or burial place expenses which may be incurred; nor shall the
11 preferential limitation of payment in the amount of one thousand five hundred dollars (\$1,500)
12 be diminished by any Veterans Administration, social security or other federal governmental
13 benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

14 Fourth class. All dues, taxes, and other claims with preference under the laws of the United
15 States.

16 Fifth class. All dues, taxes, and other claims with preference under the laws of the State of
17 North Carolina and its subdivisions.

18 Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and
19 in force, to the extent to which they are a lien on the property of the decedent at the decedent's
20 death. The Department of Health and Human Services is a sixth-class creditor for purposes of
21 determining the order of claims against the estate; provided, however, that judgments in favor
22 of other sixth-class creditors docketed and in force before the Department seeks recovery for
23 medical assistance shall be paid prior to recovery by the Department.

24 Seventh class. Wages due to any employee employed by the decedent, which claim for
25 wages shall not extend to a period of more than 12 months next preceding the death; or if such
26 employee was employed for the year current at the decease, then from the time of such
27 employment; for medical services within the 12 months preceding the decease; for drugs and
28 all other medical supplies necessary for the treatment of such decedent during the last illness of
29 such decedent, said period of last illness not to exceed 12 months.

30 Eighth class. A claim for equitable distribution.

31 Ninth class. All other claims."

32 **SECTION 6.** Article 8A of Chapter 36C of the General Statutes is amended by
33 adding a new section to read as follows:

34 **"§ 36C-8-818. Notice of deceased Medicaid beneficiaries.**

35 If a trust was established by a person who at the time of that person's death was receiving
36 medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time
37 of that person's death, then any trustee of that trust who knows of the medical assistance within
38 90 days of the person's death shall provide notice of that person's death to the Department of
39 Health and Human Services, Division of Medical Assistance within 90 days of the person's
40 death."

41 **SECTION 7.** G.S. 108C-3 reads as rewritten:

42 **"§ 108C-3. Medicaid and Health Choice provider screening.**

43 ...

44 (c) Limited Categorical Risk Provider Types. – The following provider types are hereby
45 designated as "limited" categorical risk:

46 ...

47 (15) Hearing aid dealers.

48 (16) Portable X-ray suppliers.

49 (17) Religious nonmedical health care institutions.

50 (18) Registered dieticians.

51 (19) Clearinghouses, billing agents, and alternate payees.

1 ...
2 (e) Moderate Categorical Risk Provider Types. – The following provider types are
3 hereby designated as "moderate" categorical risk:

- 4 ...
5 (13) Revalidating agencies providing private duty nursing, home health, personal
6 care services or in-home care services, or home infusion.
7 (14) Local health departments.
8 (15) Nonemergency medical transportation.

9"

10 11 **PART III. CHANGES TO LAWS PERTAINING TO PUBLIC HEALTH**

12 **SECTION 8.** G.S. 130A-22(b3) reads as rewritten:

13 "(b3) The Secretary may impose an administrative penalty on a person who violates
14 Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this
15 Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed
16 ~~one five thousand dollars (\$1,000)~~(\$5,000) for each day the violation continues for Article 19A
17 of this Chapter. The penalty shall not exceed ~~seven hundred fifty five thousand~~
18 ~~(\$750.00)~~(\$5,000) for each day the violation continues for Article 19B of this Chapter. The
19 penalty authorized by this section does not apply to a person who is not required to be certified
20 under Article 19A or 19B."

21 **SECTION 9.** G.S. 130A-101(a) reads as rewritten:

22 "(a) A certificate of birth for each live birth, regardless of the gestation period, which
23 occurs in this State shall be filed with the local registrar of the county in which the birth occurs
24 within ~~10~~five days after the birth and shall be registered by the registrar if it has been
25 completed and filed in accordance with this Article and the rules."

26 **SECTION 10.** G.S. 130A-209(a) reads as rewritten:

27 "**§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

28 (a) ~~All~~By no later than October 1, 2014, all health care facilities and health care
29 providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors
30 shall submit by electronic transmission a report to the central cancer registry each diagnosis of
31 cancer or benign brain or central nervous system tumors in any person who is screened,
32 diagnosed, or treated by the facility or provider. The electronic transmission of these reports
33 shall be in a format prescribed by the United States Department of Health and Human Services,
34 Centers for Disease Control and Prevention, National Program of Cancer Registries. The
35 reports shall be made within six months ~~of~~after diagnosis. Diagnostic, demographic and other
36 information as prescribed by the rules of the Commission shall be included in the report."

37 38 **PART IV. EFFECTIVE DATE**

39 **SECTION 11.** This act becomes effective October 1, 2013.