

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 493
Transportation Committee Substitute Adopted 5/1/13
House Committee Substitute Favorable 6/18/14
House Committee Substitute #2 Favorable 6/18/14
PROPOSED HOUSE COMMITTEE SUBSTITUTE S493-PCS45209-TKf-60

Short Title: Health and Safety Regulatory Reform.

(Public)

Sponsors:

Referred to:

March 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR VARIOUS ADMINISTRATIVE REFORMS OF THE
3 HEALTH AND SAFETY LAWS BY UPDATING OUTDATED STATUTES AND
4 REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR
5 OUTDATED REGULATIONS, BY STUDYING HEALTH AND SAFETY MATTERS
6 OF CONCERN TO NORTH CAROLINA CITIZENS, AND BY MAKING VARIOUS
7 OTHER STATUTORY CHANGES.

8 The General Assembly of North Carolina enacts:

9
10 **AUTISM HEALTH INSURANCE COVERAGE**

11 **SECTION 1.(a)** Article 3 of Chapter 58 of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 58-3-192. Coverage for autism spectrum disorders.**

14 (a) As used in this section, the following definitions apply:

15 (1) Applied behavior analysis. – The design, implementation, and evaluation of
16 environmental modifications using behavioral stimuli and consequences to
17 produce socially significant improvement in human behavior, including the
18 use of direct observation, measurement, and functional analysis of the
19 relationship between environment and behavior.

20 (2) Autism spectrum disorder. – Any of the pervasive developmental disorders
21 or autism spectrum disorders, as defined by the most recent edition of the
22 Diagnostic and Statistical Manual of Mental Disorders (DSM) or the most
23 recent edition of the International Statistical Classification of Diseases and
24 Related Health Problems.

25 (3) Behavioral health treatment. – Counseling and treatment programs,
26 including applied behavior analysis, that are both of the following:

27 a. Necessary to (i) increase appropriate or adaptive behaviors, (ii)
28 decrease maladaptive behaviors, or (iii) develop, maintain, or restore,
29 to the maximum extent practicable, the functioning of an individual.

30 b. Provided or supervised by (i) a Board Certified Behavior Analyst or
31 (ii) a licensed psychologist or licensed psychological associate, so
32 long as the services performed are commensurate with the
33 psychologist's training and experience.



* S 4 9 3 - P C S 4 5 2 0 9 - T K F - 6 0 *

- 1 (4) Diagnosis of autism spectrum disorder. – Any medically necessary
2 assessments, evaluations, or tests to determine whether an individual has
3 autism spectrum disorder.
- 4 (5) Health benefit plan. – As defined in G.S. 58-3-167.
- 5 (6) Pharmacy care. – Medications prescribed by a licensed physician and any
6 health-related services deemed medically necessary to determine the need
7 for or effectiveness of the medications.
- 8 (7) Psychiatric care. – Direct or consultative services provided by a licensed
9 psychiatrist.
- 10 (8) Psychological care. – Direct or consultative services provided by a licensed
11 psychologist or licensed psychological associate.
- 12 (9) Therapeutic care. – Direct or consultative services provided by a licensed
13 speech therapist, licensed occupational therapist, licensed physical therapist,
14 licensed clinical social worker, or licensed professional counselor.
- 15 (10) Treatment for autism spectrum disorders. – Any of the following care for an
16 individual diagnosed with autism spectrum disorder, or equipment related to
17 that care, ordered by a licensed physician or a licensed psychologist who
18 determines the care to be medically necessary:
- 19 a. Behavioral health treatment.
- 20 b. Pharmacy care.
- 21 c. Psychiatric care.
- 22 d. Psychological care.
- 23 e. Therapeutic care.

24 (b) Every health benefit plan shall provide coverage for the screening, diagnosis, and
25 treatment of autism spectrum disorder for individuals 23 years of age or younger. No insurer
26 shall terminate coverage or refuse to issue, amend, or renew coverage to an individual solely
27 because the individual is diagnosed with autism spectrum disorder or has received treatment for
28 autism spectrum disorder. Individuals must have received a diagnosis of autism spectrum
29 disorder prior to the age of eight to qualify for required coverage under this section.

30 (c) Coverage under this section may not be subject to any limits on the number of visits
31 an individual may have for treatment of autism spectrum disorder.

32 (d) Coverage under this section may not be denied on the basis that the treatments are
33 habilitative or educational in nature.

34 (e) Coverage under this section may be subject to co-payment, deductible, and
35 coinsurance provisions of a health benefit plan that are not less favorable than the co-payment,
36 deductible, and coinsurance provisions that apply to substantially all medical services covered
37 by the health benefit plan.

38 (f) This section shall not be construed as limiting benefits that are otherwise available
39 to an individual under a health benefit plan.

40 (g) Coverage for behavioral health treatment under this section may be subject to a
41 maximum benefit of up to thirty-six thousand dollars (\$36,000) per year.

42 (h) Except for inpatient services, if an individual is receiving treatment for autism
43 spectrum disorder, an insurer shall have the right to request a review of that treatment not more
44 than once annually, unless the insurer and the individual's licensed physician or the individual's
45 licensed psychologist agree that a more frequent review is necessary. Any such agreement
46 regarding the right to review a treatment plan more frequently shall apply only to a particular
47 insured being treated for an autism spectrum disorder and shall not apply to all individuals
48 being treated for autism spectrum disorder by a physician or psychologist. The cost of
49 obtaining any review shall be borne by the insurer.

50 (i) Nothing in this section shall apply to non-grandfathered health plans in the
51 individual and small group markets that are subject to the requirement to cover the essential

1 health benefit package under 45 C.F.R. § 147.150(a). For purposes of this subsection,
2 "non-grandfathered health plan" is a health benefit plan not included in the plans defined under
3 G.S. 58-50-110(10a).

4 (j) This section shall not be construed as affecting any obligation to provide services to
5 an individual under an individualized family service plan, an individualized education program,
6 or an individualized service plan.

7 (k) The Commissioner of Insurance shall grant a health benefit plan issuer a waiver
8 from the provisions of this section for a health benefit plan if the issuer demonstrates to the
9 Commissioner, by actual claims experience over any consecutive 12-month period, that
10 compliance with this section has increased the cost of the health benefit plan by an amount of
11 one percent (1%) or greater in the premium rate charged under the health benefit plan over the
12 most recent calendar year."

13 **SECTION 1.(b)** Article 3 of Chapter 58 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 58-3-305. Report on mandated coverage requirements.**

16 (a) Each health insurance issuer that issues, sells, offers, or renews a health benefit plan
17 in this State shall submit a biennial report, on or before the first day of May of each
18 odd-numbered year, to the Commissioner with the following information:

19 (1) The cost and utilization information for each of the mandated coverage
20 requirements per number of covered lives per month.

21 (2) The number of members covered by the health insurance issuer.

22 (3) Any additional information specified in rules adopted by the Commissioner.

23 (b) The report required under subsection (a) of this section shall be in detail and form as
24 required by the Commissioner. Information provided in any report required under subsection
25 (a) of this section shall be held confidential by the Commissioner and shall not be considered a
26 public record.

27 (c) The Commissioner shall consolidate the information contained in the reports
28 received under subsection (a) of this section and report to the General Assembly, not later than
29 the first day of October of each odd-numbered year, the following information:

30 (1) The mandated coverage requirements contained in the report.

31 (2) The average costs of the mandated coverage requirements per number of
32 covered lives per month and the effect of those costs on premium pricing.

33 (3) The average utilization of services that are mandated coverage requirements.

34 (4) Other such information that the Commissioner deems appropriate.

35 (d) As used in this section, the following definitions apply:

36 (1) Health benefit plan. – As defined in G.S. 58-3-167.

37 (2) Mandated coverage requirements. – Benefits specific to care, treatment, and
38 services that an insurer is required to offer, as well as benefits relating to
39 coverage of provider types, cost-sharing, or reimbursement methods."

40 **SECTION 1.(c)** The Commissioner shall adopt rules implementing Section 1(b) of
41 this section and may adopt temporary rules as necessary to ensure that the reports required by
42 G.S. 58-3-305(a) are received by May 1, 2015.

43 **SECTION 1.(d)** Section 1(a) of this section becomes effective October 1, 2014,
44 and applies to insurance contracts issued, renewed, or amended on or after that date.

45 **BEHAVIOR ANALYST LICENSURE**

46 **SECTION 2.(a)** Chapter 90 of the General Statutes is amended by adding a new
47 Article to read:

48 "Article 43.

49 "Behavior Analyst Licensure.

50 **"§ 90-726.1. Declaration of purpose.**

1 The practice of behavior analysis in North Carolina is hereby declared to affect the public
2 health, safety, and welfare of citizens of North Carolina and to be subject to regulation to
3 protect the public from (i) the practice of behavior analysis by unqualified persons and (ii)
4 unprofessional, unethical, or harmful conduct by individuals licensed to practice behavior
5 analysis.

6 **"§ 90-726.2. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) Board. – The North Carolina Behavior Analyst Board.
9 (2) Certifying entity. – The nationally accredited Behavior Analyst Certification
10 Board, Inc., or its successor.
11 (3) Licensed assistant behavior analyst. – An individual who is certified by the
12 certifying entity as a Board Certified Assistant Behavior Analyst and to
13 whom a license has been issued pursuant to this Article, if the license is in
14 force and not suspended or revoked, and whose license permits the
15 individual to engage in the practice of behavior analysis under the
16 supervision of a licensed behavior analyst.
17 (4) Licensed behavior analyst. – An individual who is certified by the certifying
18 entity as a Board Certified Behavior Analyst and to whom a license has been
19 issued pursuant to this Article, if the license is in force and not suspended or
20 revoked.
21 (5) Practice of behavior analysis. – The design, implementation, and evaluation
22 of instructional and environmental modifications to produce socially
23 significant improvements in human behavior. The practice of behavior
24 analysis includes the empirical identification of functional relations between
25 behavior and environmental factors, known as functional assessment and
26 analysis. Behavior analysis interventions are based on scientific research and
27 the direct observation and measurement of behavior and the environment. In
28 the practice of behavior analysis, behavior analysts utilize contextual factors,
29 motivating operations, antecedent stimuli, positive reinforcement, and other
30 consequences to help people develop new behaviors, increase or decrease
31 existing behaviors, and emit behaviors under specific environmental
32 conditions. The practice of behavior analysis expressly excludes
33 psychological testing, cognitive therapy, sex therapy, psychoanalysis,
34 hypnotherapy, and long-term counseling as treatment modalities.
35 (6) Registered Behavior Technician. – An individual who is credentialed by the
36 certifying entity as a Registered Behavior Technician and who acts under the
37 extended authority or direction of a licensed behavior analyst or a licensed
38 assistant behavior analyst.

39 **"§ 90-726.3. North Carolina Behavior Analysis Board.**

40 (a) Establishment. – The North Carolina Behavior Analysis Board is created. The
41 Board shall consist of seven members who shall serve staggered terms. The initial Board shall
42 be selected on or before August 1, 2014, as follows:

- 43 (1) The General Assembly, upon the recommendation of the Speaker of the
44 House of Representatives, shall appoint the following three members:
45 a. One behavior analyst, who is certified by the certifying entity
46 as a Board Certified Behavior Analyst, to serve a one-year
47 term.
48 b. One behavior analyst, who is certified by the certifying entity
49 as a Board Certified Behavior Analyst, to serve a two-year
50 term.

1 c. One assistant behavior analyst, who is certified by the
2 certifying entity as a Board Certified Assistant Behavior
3 Analyst, to serve a three-year term.

4 (2) The General Assembly, upon the recommendation of the President Pro
5 Tempore of the Senate, shall appoint the following three members:

6 a. One assistant behavior analyst, who is certified by the
7 certifying entity as a Board Certified Assistant Behavior
8 Analyst, to serve a one-year term.

9 b. One behavior analyst, who is certified by the certifying entity
10 as a Board Certified Behavior Analyst, to serve a two-year
11 term.

12 c. One behavior analyst, who is certified by the certifying entity
13 as a Board Certified Behavior Analyst, to serve a three-year
14 term.

15 (3) The Governor shall appoint one public member to serve a two-year term.

16 Upon the expiration of the terms of the initial Board members, each member shall be
17 appointed by the appointing authorities designated in subdivisions (1) through (3) of this
18 subsection for a three-year term, shall be required to be licensed under this Article, and shall
19 serve until a successor is appointed and qualified. No member may serve more than two
20 consecutive full terms.

21 (b) Vacancies. – In the event that a member of the Board cannot complete a term of
22 office, the vacancy shall be filled in the same manner as the original appointment, for the
23 remainder of the unexpired term. No Board member shall participate in any matter before the
24 Board in which the member has a pecuniary interest or similar conflict of interest.

25 (c) Removal. – The Board may remove any of its members for neglect of duty,
26 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall
27 be disqualified from participating in Board business until the charges have been resolved.

28 (d) Meetings. – The Board shall elect annually a chair and other officers as it deems
29 necessary to carry out the purposes of this Article. The Board may hold additional meetings
30 upon the call of the chairperson or any two board members. A majority of the Board shall
31 constitute a quorum.

32 (e) Per Diem. – Each member of the Board may receive per diem and reimbursement
33 for travel and subsistence set forth in G.S. 93B-5.

34 **"§ 90-726.4. Powers and duties of Board.**

35 The Board shall have the following powers and duties:

36 (1) Administer, coordinate, and enforce the provisions of this Article.

37 (2) Adopt, amend, or repeal rules to administer and enforce this Article.

38 (3) Establish and determine qualification and fitness of applicants for licensure
39 under this Article.

40 (4) Issue, renew, and deny, suspend, revoke, or refuse to issue or renew any
41 license under this Article.

42 (5) Establish fees for applications, initial and renewal licenses, and other
43 services provided by the Board.

44 (6) Discipline persons licensed under this Article.

45 **"§ 90-726.5. License application.**

46 (a) Each individual desiring to obtain a license under this Article shall apply to the
47 Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish
48 evidence satisfactory to the Board that the applicant meets all of the following criteria:

49 (1) The individual is of good moral character and conducts his or her
50 professional activities in accordance with accepted professional and ethical
51 standards.

1 (2) The individual has not engaged in or is not engaged in any practice that
2 would be a ground for denial, revocation, or suspension of a license under
3 G.S. 90-726.11.

4 (3) The individual has submitted the required criminal history record, as
5 required by G.S. 90-726.13.

6 (4) The individual is qualified for licensure pursuant to the requirements of this
7 Article.

8 (b) A license obtained through fraud or by any false representation is void.

9 **"§ 90-726.6. Requirements for licensure as a behavior analyst.**

10 Each applicant shall be issued a license by the Board to engage in the practice of behavior
11 analysis as a licensed behavior analyst if the applicant meets the qualifications set forth in
12 G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following criteria:

13 (1) The applicant has passed the certifying entity's Board Certified Behavior
14 Analyst examination.

15 (2) The applicant has an active status with the certifying entity as a Board
16 Certified Behavior Analyst.

17 **"§ 90-726.7. Requirement of licensure as an assistant behavior analyst.**

18 Each applicant shall be issued a license by the Board to engage in the practice of behavior
19 analysis as a licensed assistant behavior analyst if the applicant meets the qualifications set
20 forth in G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following
21 criteria:

22 (1) The applicant has passed the certifying entity's Board Certified Assistant
23 Behavior Analyst examination.

24 (2) The applicant has an active status with the certifying entity as a Board
25 Certified Assistant Behavior Analyst.

26 (3) The applicant has an ongoing arrangement for supervision by a licensed
27 behavior analyst in a manner consistent with the certifying entity's
28 requirements for supervision of Board Certified Assistant Behavior
29 Analysts.

30 **"§ 90-726.8. Renewal of license.**

31 (a) A license shall be granted under this Article for the period of two years.

32 (b) The Board shall renew a license granted under this Article upon completion of the
33 following:

34 (1) Proof of completion of any continuing education required by the certifying
35 entity.

36 (2) Payment of the renewal fee.

37 (3) Evidence of active certification by certifying entity.

38 (4) For assistant behavior analysts, evidence of the ongoing arrangement for
39 supervision by a licensed behavior analyst, as required by G.S. 90-726.7.

40 **"§ 90-726.9. Temporary licensure.**

41 (a) An individual residing and practicing behavior analysis in another state and who is
42 certified as Board Certified Behavior Analyst by the certifying entity may apply to the Board
43 for a temporary license to practice behavior analysis in North Carolina.

44 (b) An individual residing and practicing behavior analysis in another state who is
45 actively licensed in another state as a behavior analyst may apply to the Board for a temporary
46 license to practice behavior analysis in North Carolina.

47 (c) A temporary license is available only if the behavior analysis services are to be
48 delivered during a limited and defined period of service approved by the Board.

49 **"§ 90-726.10. Reciprocity.**

50 (a) The Board shall issue a license to an individual who is actively licensed as a
51 behavior analyst or assistant behavior analyst in another state that currently imposes

1 comparable licensure requirements as those imposed by this Article and that offers reciprocity
2 to individuals licensed under this Article.

3 (b) Applicants for licensure by reciprocity shall submit the following items:

4 (1) Proof of ethical compliance.

5 (2) Proof of current licensure.

6 (3) Proof of current certification by the certifying entity.

7 (4) A criminal history record check as required by G.S. 90-726.13.

8 (5) Any other eligibility requirement as deemed appropriate by the Board.

9 **"§ 90-726.11. Sanction of licensee status.**

10 (a) The Board may deny or refuse to renew a license, may suspend or revoke a license,
11 or may impose probationary conditions on a license upon demonstration of ineligibility for
12 licensure under this Article, failure to maintain active certification by the certifying entity,
13 falsification of documentation submitted for licensure, or other reasons as specified in rules
14 adopted by the Board.

15 (b) The denial, refusal to renew, suspension, revocation, or imposition of a probationary
16 condition upon a license may be ordered by the Board after a hearing is held in accordance with
17 Chapter 150B of the General Statutes and rules adopted by the Board.

18 **"§ 90-726.12. Fees.**

19 The Board may collect fees established by its rules, but those fees shall not exceed the
20 amounts listed below:

21 (1) Application fee for licensure \$250.00

22 (2) License renewal \$200.00

23 (3) Late renewal fee \$50.00

24 (4) Reciprocal license application \$250.00

25 (5) Temporary license application \$100.00

26 **"§ 90-726.13. Criminal history record checks of applicants for licensure.**

27 (a) All applicants for licensure shall consent to a criminal history record check. Refusal
28 to consent to a criminal history record check may constitute grounds for the Board to deny
29 licensure to an applicant. The Board shall be responsible for providing to the North Carolina
30 Department of Justice the fingerprints of the applicant to be checked, a form signed by the
31 applicant consenting to the criminal history record check and the use of fingerprints and other
32 identifying information required by the State or National Repositories, and any additional
33 information required by the Department of Justice. The Board shall keep all information
34 obtained pursuant to this section confidential.

35 (b) The cost of the criminal history record check and the fingerprinting shall be borne
36 by the applicant. The Board shall collect any fees required by the Department of Justice and
37 shall remit the fees to the Department of Justice for expenses associated with conducting the
38 criminal history record check.

39 (c) If an applicant's criminal history record reveals one or more criminal convictions,
40 the conviction shall not automatically bar licensure. The Board shall consider all of the
41 following factors regarding the conviction:

42 (1) The level of seriousness of the crime.

43 (2) The date of the crime.

44 (3) The age of the person at the time of conviction.

45 (4) The circumstances surrounding the commission of the crime, if known.

46 (5) The nexus between the criminal conduct of the person and the job duties of
47 the position to be filled.

48 (6) The applicant's prison, jail, probation, parole, rehabilitation, and
49 employment records since the date the crime was committed.

50 If, after reviewing the factors, the Board determines that any of the grounds to deny
51 licensure exist, the Board may deny licensure of the applicant. The Board may disclose to the

1 applicant information contained in the criminal history record that is relevant to the denial if
2 disclosure of the information is permitted by applicable State and federal law. The Board shall
3 not provide a copy of the criminal history to the applicant. The applicant shall have the right to
4 appear before the Board to appeal the Board's decision. An appearance before the full Board
5 shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of
6 the General Statutes.

7 (d) The Board, its officers, and employees, acting in good faith and in compliance with
8 this section, shall be immune from civil liability for denying licensure to an applicant based on
9 information provided in the applicant's criminal history record."

10 **SECTION 2.(b)** Article 43 of Chapter 90 of the General Statutes is amended by
11 adding the following new sections to read:

12 **"§ 90-726.14. Prohibited acts and penalties.**

13 (a) Except as permitted in G.S. 90-726.16, it shall be a violation of this Article for any
14 person not licensed in accordance with the provisions of this Article to practice behavior
15 analysis or to hold himself or herself out to the public as a person practicing behavior analysis.

16 (b) Any person not licensed in accordance with the provisions of this Article practicing
17 behavior analysis or holding himself or herself out to the public as a person practicing behavior
18 analysis in violation of this Article is guilty of a Class 2 misdemeanor. Each violation shall
19 count as a separate offense.

20 **"§ 90-726.15. Injunction.**

21 The Board may apply to the superior court for an injunction to prevent violations of this
22 Article or any rules enacted pursuant thereto. The court is empowered to grant such injunctions
23 regardless of whether criminal prosecution or other action has been or may be instituted as a
24 result of such violation.

25 **"§ 90-726.16. Exemptions from licensure.**

26 (a) A person is exempt from the requirements of this Article if any of the following
27 conditions are met:

28 (1) The person is a duly licensed psychologist or psychological associate in this
29 State, or a person providing ancillary services pursuant to G.S. 90-270.21.

30 (2) The person is a Registered Behavior Technician and is acting under the
31 extended authority or direction of a licensed behavior analyst or a licensed
32 assistant behavior analyst.

33 (3) The person is a family member, guardian, or other caretaker implementing a
34 behavior analysis treatment plan under the direction of a licensed behavior
35 analyst or a licensed assistant behavior analyst.

36 (4) The person engages in the practice of behavior analysis with nonhuman
37 subjects. This includes, but is not limited to, persons who are animal
38 behaviorists and animal trainers.

39 (5) The person provides general behavior analysis services to organizations, so
40 long as the services are for the benefit of the organizations and do not
41 involve direct services to individuals.

42 (6) The person is a professional licensed under this Chapter or Chapter 90B of
43 the General Statutes, so long as the licensed professional does not represent
44 that he or she is a licensed behavior analyst or licensed assistant behavior
45 analyst and the services of the licensed professional are within the scope of
46 practice of the license possessed by that professional and the services
47 performed are commensurate with the licensed professional's education,
48 training, and experience.

49 (7) The activities are part of a defined college or university course program of
50 study, practicum, or intensive practicum, so long as that person is under
51 direct supervision of (i) a licensed behavior analyst, (ii) an instructor in a

1 course sequence approved by the certifying entity, or (iii) a qualified faculty
2 member.

3 (8) The person is pursuing experience in behavior analysis consistent with the
4 certifying entity's experience requirements, so long as the person's activities
5 are supervised by a licensed behavior analyst.

6 (9) The behavior analysis services are performed with a student while the person
7 is employed by a local board of education as part of the person's position or
8 regular duties of office. Any person exempted from this Article under this
9 subdivision who does not possess a license under this Article shall not
10 provide or offer to provide behavior analysis services to any persons other
11 than students and shall not accept remuneration for providing behavior
12 analysis services other than the remuneration received from the local board
13 of education."

14 **SECTION 2.(c)** G.S. 90-270.4 is amended by adding a new subsection to read:

15 "(f1) Nothing in this Article shall be construed to prevent a behavior analyst or an
16 assistant behavior analyst licensed under Article 43 of Chapter 90 of the General Statutes from
17 offering services within the scope of practice authorized by the North Carolina Behavior
18 Analysis Board."

19 **SECTION 2.(d)** The North Carolina Behavior Analysis Board shall adopt
20 temporary rules to implement this section no later than November 1, 2014. The temporary rules
21 shall remain in effect until permanent rules that replace the temporary rules become effective.

22 **SECTION 2.(e)** Section 2(b) and Section 2(c) of this section become effective
23 January 1, 2015.

24 **PHARMACY BENEFITS MANAGEMENT REGULATION**

25 **SECTION 3.(a)** Chapter 58 of the General Statutes is amended by adding a new
26 Article to read:

27 "Article 56A.

28 "Pharmacy Benefits Management.

29 **"§ 58-56A-1. Definitions.**

30 The following definitions apply in this Article:

31 (1) Health benefit plan. – As defined in G.S. 58-50-110(11). This definition
32 specifically excludes the State Health Plan for Teachers and State
33 Employees and any entity retained by that Plan while performing under
34 contract with that Plan.

35 (2) Insurer. – Any entity that provides or offers a health benefit plan.

36 (3) Maximum allowable cost price. – The per unit amount that a pharmacy
37 benefits manager reimburses a pharmacy for a prescription drug, excluding
38 dispensing fees, co-payments, coinsurance, and other cost-sharing charges, if
39 any.

40 (4) Pharmacy. – A pharmacy registered with the North Carolina Board of
41 Pharmacy.

42 (5) Pharmacy benefits management. – Administration or management of
43 prescription drug benefits, including the following activities:

44 a. Retail pharmacy network management.

45 b. Pharmacy discount card management.

46 c. Claims payment to a retail pharmacy for prescription medications
47 dispensed to covered individuals.

48 d. Clinical formulary development and management services, including
49 utilization and quality assurance programs.

50 e. Rebate contracting and administration.

- 1 f. Auditing contracted pharmacies.
2 g. Establishing pharmacy reimbursement pricing and methodologies.
3 h. Determining single- and multiple-source medications.
4 i. Mail service pharmacy.

5 (6) Pharmacy benefits manager. – A person who contracts a pharmacy on behalf
6 of an insurer or third-party administrator that provides pharmacy benefit
7 management services.

8 (7) Therapeutically equivalent drug substitute. – A drug identified as
9 therapeutically or pharmaceutically equivalent to another drug by the United
10 States Food and Drug Administration.

11 (8) Third-party administrator. – As defined in G.S. 58-56-2.

12 (9) Widely available. – Available to all pharmacies in this State for purchase,
13 without limitation, from regional or national wholesalers and not obsolete or
14 temporarily unavailable.

15 **"§ 58-56A-3. Maximum allowable cost price.**

16 (a) A pharmacy benefits manager may not set a maximum allowable cost price if the
17 prescription drug does not have two or more nationally available therapeutically equivalent
18 drug substitutes.

19 (b) A pharmacy benefits manager shall remove a maximum allowable cost price for a
20 prescription drug to remain consistent with changes in the national marketplace for prescription
21 drugs. A review of the maximum allowable cost prices for removal or modification made under
22 this subsection must be completed by the pharmacy benefits manager at least once every seven
23 business days, and any removal or modification shall occur within seven business days.

24 (c) A pharmacy benefits manager shall disclose to all pharmacies with which it
25 contracts the following information:

26 (1) At the beginning of each calendar year, the basis of methodology and the
27 sources used to establish the maximum allowable cost prices used by the
28 pharmacy benefits manager.

29 (2) Any changes made to the maximum allowable cost prices. This information
30 shall be, as promptly as possible, submitted to the pharmacies electronically
31 or be made available to pharmacies on the pharmacy benefits manager's
32 Internet Web site.

33 (3) At least once every seven business days, the maximum allowable cost price
34 used by the pharmacy benefits manager. This information shall be submitted
35 to the pharmacies electronically or made available to pharmacies on the
36 pharmacy benefits manager's Internet Web site.

37 **"§ 58-56A-5. Appeals of maximum allowable cost prices.**

38 (a) A pharmacy benefits manager must provide an appeals procedure to reasonably
39 allow a pharmacy to contest maximum allowable cost prices.

40 (b) The appeals procedure required under subsection (a) of this section shall meet the
41 following requirements:

42 (1) The pharmacy benefits manager must respond to a pharmacy not more than
43 seven calendar days after a pharmacy contests a maximum allowable cost
44 price.

45 (2) The pharmacy benefits manager shall retroactively make adjustments for all
46 pharmacies with which it contracts if an appealing pharmacy is successful in
47 an appeal. Adjustments shall be retroactive to the date of the appealed price
48 change."

49 **SECTION 3.(b)** The Department of Insurance, in collaboration with the
50 Department of Commerce and the North Carolina Board of Pharmacy, shall study the issue of
51 pharmacy benefits management company regulation. Specifically, the study shall include (i)

1 consumer protections and the disclosure of consumer health information by pharmacy benefits
2 managers, (ii) regulation of the various forms of incentives offered to a consumer by pharmacy
3 benefits managers and its effects on choice of pharmacy, and (iii) any further industry
4 regulation deemed necessary to study. The Department of Insurance shall report the collective
5 findings and recommendations, including any proposed legislation, to the 2015 General
6 Assembly on or before January 20, 2015.

7 **SECTION 3.(c)** Section 3(a) of this section becomes effective January 1, 2015, and
8 applies to contracts entered into, renewed, or amended on or after that date.

10 **LIMITED FOOD SERVICES AT LODGING FACILITIES**

11 **SECTION 4.(a)** G.S. 130A-247(7) reads as rewritten:

12 "(7) "Limited food services establishment" means an establishment as described
13 in G.S. 130A-248(a4), with food handling operations that are restricted by
14 rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that
15 prepares or serves food only in conjunction with amateur athletic events.
16 Limited food service establishment also includes lodging facilities that serve
17 only reheated food that has already been pre-cooked."

18 **SECTION 4.(b)** G.S. 130A-148(a4) reads as rewritten:

19 "(a4) For the protection of the public health, the Commission shall adopt rules governing
20 the sanitation of limited food service establishments. In adopting the rules, the Commission
21 shall not limit the number of days that limited food service establishments may operate.
22 Limited food service establishment permits shall be issued only to the following:

23 (1) ~~political~~ Political subdivisions of the ~~State,~~ State.

24 (2) ~~establishments~~ Establishments operated by volunteers that prepare or serve
25 food in conjunction with amateur athletic ~~events,~~ events.

26 (3) Lodging facilities that serve only reheated food that has already been
27 pre-cooked.

28 (4) ~~or for establishments~~ Establishments operated by organizations that are
29 exempt from federal income tax under section 501(c)(3) or section 501(c)(4)
30 of the Internal Revenue Code."

31 **SECTION 4.(c)** The Commission for Public Health shall adopt rules to conform to
32 the provisions of this section.

34 **YOUTH SKIN CANCER PREVENTION**

35 **SECTION 5.(a)** G.S. 104E-9.1(a) reads as rewritten:

36 "(a) Operators of tanning equipment and owners of tanning facilities subject to rules
37 adopted pursuant to this Chapter shall comply with or ensure compliance with the following:

38 (1) The operator shall provide to each consumer a warning statement that
39 defines the potential hazards and consequences of exposure to ultraviolet
40 radiation. Before allowing the consumer's initial use of the tanning
41 equipment, the operator shall obtain the signature of the consumer on the
42 warning statement acknowledging receipt of the warning.

43 (2) The operator shall not allow a person ~~13 years and younger under 18 years~~
44 of age to use tanning equipment without a written prescription from the
45 person's medical physician specifying the nature of the medical condition
46 requiring the treatment, the number of visits, and the time of exposure for
47 each visit.

48 (3) Neither an operator nor an owner shall claim or distribute promotional
49 materials that claim that using tanning equipment is safe or free from risk or
50 that using tanning equipment will result in medical or health benefits."

51 **SECTION 5.(b)** This section becomes effective October 1, 2014.

NURSING HOME ADMINISTRATOR ACT REVISION

SECTION 6. G.S. 90-280(a) reads as rewritten:

"(a) Each applicant for an examination ~~administered by the Board~~ and each applicant for an administrator-in-training program and reciprocity endorsement shall pay a processing fee set by the Board not to exceed five hundred dollars (\$500.00) plus the actual cost of the exam."

REPORT ON SEEK

SECTION 7. The Division of Child Development and Early Education shall report to the Joint Legislative Oversight Committee on Health and Human Services and the 2015 General Assembly prior to statewide implementation of the Subsidized Early Education for Kids (SEEK) system. The report shall be due no later than March 15, 2015, and shall include (i) outcomes of the SEEK system pilot implementation that has been ongoing since 2011 and the current system pilot, (ii) barriers to full implementation, and (iii) plans to ensure effective and efficient statewide implementation.

HOSPITAL AUTHORITY CONFLICT OF INTEREST PROVISIONS CONSISTENT WITH THOSE FOR PUBLIC HOSPITALS

SECTION 8. G.S. 131E-21 is amended by adding a new subsection to read:

"(c1) Subsection (a) of this section shall not apply if the commissioner or employee is not involved in making or administering the contract. A commissioner or employee is involved in administering the contract if the commissioner or employee oversees the performance of or interprets the contract. A commissioner or employee is involved in making a contract if the commissioner or employee participates in the development of specifications or terms or in the preparation or award of the contract. A commissioner or employee is not involved in making or administering the contract solely because of the performance of ministerial duties related to the contract. A commissioner is also involved in making a contract if the hospital authority takes action on the contract, whether or not the commissioner actually participates in that action, unless the contract is approved under an exception to this section under which the commissioner is allowed to benefit and is prohibited from voting."

REPORT ON MULTIPLICATIVE AUDITING AND MONITORING OF CERTAIN SERVICE PROVIDERS

SECTION 9. No later than December 1, 2014, the Deputy Secretary of Behavioral Health and Developmental Disabilities Services of the Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Health and Human Services on the status of multiplicative auditing and monitoring of all provider agencies under the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services who have been nationally accredited through a recognized national accrediting body. The report shall include all group home facilities licensed under Chapter 122C of the General Statutes. The report shall include a complete list of all auditing and monitoring and shall provide recommendations to remove all unnecessary regulatory duplication and to enhance efficiency.

END SUNSET FOR FACILITIES THAT USE ALTERNATIVE ELECTRONIC MONITORING SYSTEMS

SECTION 10. Section 4 of S.L. 2009-490, as amended by S.L. 2012-15, reads as rewritten:

"**SECTION 4.** The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot

1 program shall be implemented at a facility currently authorized to waive the requirement set
2 forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the
3 Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services
4 setting minimum overnight staffing requirements. The waiver shall remain in ~~effect until~~
5 ~~December 31, 2015; effect~~; however, the Division reserves the right to rescind the waiver if, at
6 the time of the facility's license renewal, there are outstanding deficiencies that have remained
7 uncorrected upon follow-up survey, that are related to electronic supervision."

8 9 STATE MEDICAID RECREDENTIALING PERIOD

10 SECTION 11.(a) Section 12H.7 of S.L. 2013-360 is codified as G.S. 108C-9(e).

11 SECTION 11.(b) Effective July 1, 2017, and applying to all recREDENTIALINGS due
12 on or after that date, G.S. 108C-9(e), as codified by subsection (a) of this section, reads as
13 rewritten:

14 "(e) The Department of Health and Human Services, Division of Medical Assistance,
15 shall charge an application fee of one hundred dollars (\$100.00), and the amount federally
16 required, to each provider enrolling in the Medicaid Program for the first time. The fee shall be
17 charged to all providers at recREDENTIALING every ~~three-five~~ years."

18 19 USE OF NATURAL SPRING WATER AT CO-LOCATED RESTAURANTS

20 SECTION 12.(a) Until the effective date of the revised permanent rule that the
21 Commission for Public Health is required to adopt pursuant to Section 12(c) of this section, the
22 Commission and the Department of Health and Human Services shall implement 15A NCAC
23 18A .1723 (Springs), as provided in Section 12(b) of this section.

24 SECTION 12.(b) Notwithstanding the provisions of 15A NCAC 18A .1723
25 (Springs), or any other applicable rule, a spring which transverses a property on which a
26 restaurant is located may be used for the purpose of water service to restaurant patrons, and for
27 employees of the restaurant, for consumption purposes without a requirement that it be
28 equipped with a continuous disinfection device, nor shall the owner of the restaurant be
29 required to submit a certification to the Department of Public Health concerning the spring, nor
30 be subject to any other requirements under law with respect to water service from the spring,
31 except as may be required by the federal Safe Drinking Water Act.

32 SECTION 12.(c) The Commission for Public Health shall adopt rules to amend
33 15A NCAC 18A .1723 consistent with Section 12(b) of this section. Notwithstanding
34 G.S. 150B-19(4), the rule adopted by the Commission pursuant to Section 12(c) of this section
35 shall be substantively identical to the provisions of Section 12(b) of this section. Rules adopted
36 pursuant to Section 12(c) of this section are not subject to Part 3 of Article 2A of Chapter 150B
37 of the General Statutes. Rules adopted pursuant to Section 12(c) of this section shall become
38 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
39 received, as provided by G.S. 150B-21.3(b2).

40 SECTION 12.(d) Article 10 of Chapter 130A of the General Statutes is amended
41 by adding a new section to read:

42 "§ 130A-330. Restaurants served by natural springs.

43 Notwithstanding any requirement of this Article, or other any other provision of law, a
44 spring which transverses a property on which a restaurant is located may be used for the
45 purpose of water service to restaurant patrons, and for employees of the restaurant, and shall be
46 exempt from any requirements for disinfection of the spring water, and other requirements that
47 may be applicable to a public water system. This provision shall only apply to the extent not
48 preempted by requirements of the federal Safe Drinking Water Act."

49 SECTION 12.(e) Section 12(b) of this section expires on the date that rules
50 adopted pursuant to Section 12(c) of this act become effective.

51

ANIMAL EUTHANASIA REQUIREMENTS

SECTION 13.(a) G.S. 19A-24 is amended by adding the following new subsections to read:

"§ 19A-24. Powers of Board of Agriculture.

...

(e) A certified euthanasia technician shall correctly calculate chemical agent dosage based upon the species, age, weight, and condition of the animal and record the identification number of the animal, its species, sex, weight, breed description, and date, dosages for drugs that are administered, and amounts for drugs wasted.

(f) When a certified euthanasia technician uses any chemical agent having instructions that direct the amount of the dosage be determined, in whole or in part, upon the animal's weight, the certified euthanasia technician shall weigh the animal to be euthanized using a mechanical or digital scale accurate to plus or minus one pound or plus or minus one half kilogram. If the certified euthanasia technician increases or decreases the dose of the chemical agent from the amount recommended for an animal of a given weight, the technician shall record the amount of chemical agent administered and the reason for administering an amount different from that recommended for an animal of that weight."

SECTION 13.(b) This section becomes effective July 1, 2015.

INTERSTATE CONNECTIVITY OF THE CONTROLLED SUBSTANCES REPORTING SYSTEM

SECTION 14. The Department of Health and Human Services shall execute a memorandum of understanding with the National Association of Boards of Pharmacy to participate in PMP InterConnect.

SECTION 15. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.