

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 838  
Health Care Committee Substitute Adopted 5/17/16  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S838-PCS45503-TR-9

Short Title: Medicaid Transformation Modifications.

(Public)

Sponsors:

Referred to:

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FURTHER REPORTING FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES RELATED TO TRANSFORMATION OF THE MEDICAID AND NC HEALTH CHOICE PROGRAMS AND TO MODIFY CERTAIN PROVISIONS OF THE MEDICAID TRANSFORMATION LEGISLATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** No later than October 1, 2016, the Department of Health and Human Services shall submit a report to the Joint Legislative Oversight Committee on Medicaid and NC Health Choice and the Fiscal Research Division containing the following items:

- (1) The status of the 1115 waiver submission to the Centers for Medicare and Medicaid Services (CMS), as well as any other submissions to CMS related to the transition of Medicaid and NC Health Choice from fee for service to capitation. The report shall specifically address the timeliness of the submission or submissions to CMS, responses received from CMS, and strategies necessary to ensure approval of a waiver for Medicaid transformation.
- (2) A detailed Work Plan for the implementation of the transformation of Medicaid and NC Health Choice programs. The Work Plan shall provide sufficient detail to allow the Joint Legislative Oversight Committee on Medicaid and NC Health Choice to monitor progress and identify challenges and impediments to the implementation of the transformation of Medicaid and NC Health Choice programs. The detailed Work Plan shall identify key milestones, tasks, and events necessary to the transition of the programs. For each milestone, task, and event, the Work Plan shall specify the expected completion dates and identify the individual who is assigned responsibility for accomplishing or ensuring the accomplishment of the milestone, task, or event.
- (3) A sufficiently detailed description of any developments or changes during the planning process to enable the General Assembly to address any barriers to successful implementation of the Medicaid and NC Health Choice transformation.

**SECTION 2.(a)** Section 3 of S.L. 2015-245 reads as rewritten:

**"SECTION 3.** Time Line for Medicaid Transformation. – The following milestones for Medicaid transformation shall occur no later than the following dates:

- (1) When this act becomes law. –
  - a. The Division of Health Benefits of the Department of Health and Human Services (DHHS) is created pursuant to Section 10 of this act.



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1           b.       The Joint Legislative Oversight Committee on Medicaid and NC Health  
2                   Choice is created pursuant to Section 15 of this act to oversee the  
3                   Medicaid and NC Health Choice programs.

4           c.       ~~The Division of Health Benefits-DHHS~~ shall begin development of the  
5                   1115 waiver and any other State Plan amendments and waiver  
6                   amendments necessary to effectuate the Medicaid transformation  
7                   required by this act.

8           (2)       March 1, 2016. – ~~The DHHS, through the Division of Health Benefits, DHHS~~  
9                   shall report its plans and progress on Medicaid transformation, including  
10                  recommended statutory changes, to the Joint Legislative Oversight Committee  
11                  on Medicaid and NC Health Choice, as required by subdivision (12) of Section  
12                  5 of this act.

13          (3)       On or before June 1, 2016. – ~~The DHHS, through the Division of Health~~  
14                  ~~Benefits-DHHS~~ shall submit the waivers and State Plan amendments required  
15                  by this act to the Centers for Medicare & Medicaid Services (CMS).

16          (4)       Eighteen months after approval of all necessary waivers and State Plan  
17                  amendments by CMS. – Capitated contracts shall begin and initial recipient  
18                  enrollment shall be complete."

19           **SECTION 2.(b)** Section 4 of S.L. 2015-245 reads as rewritten:

20           **"SECTION 4.** Structure of Delivery System. – The transformed Medicaid and NC Health  
21           Choice programs described in Section 1 of this act shall be organized according to the following  
22           principles and parameters:

23           (1)       DHHS authority. – The Department of Health and Human Services (DHHS)  
24                   shall have full authority to manage the State's Medicaid and NC Health Choice  
25                   programs provided that the total expenditures, net of agency receipts, do not  
26                   exceed the authorized budget for each program, except the General Assembly  
27                   shall determine eligibility categories and income thresholds. ~~DHHS through the~~  
28                   ~~Division of Health Benefits, created in Section 10 of this act,~~ shall be  
29                   responsible for planning and implementing the Medicaid transformation  
30                   required by this act.

31           ...

32           (4)       Services covered by PHPs. – Capitated PHP contracts shall cover all Medicaid  
33                   and NC Health Choice services, including physical health services, prescription  
34                   drugs, long-term services and supports, and behavioral health services for NC  
35                   Health Choice recipients, except as otherwise provided in this subdivision. The  
36                   capitated contracts required by this subdivision shall not cover:

37           a.       Behavioral health services for Medicaid recipients currently covered by  
38                   the local management entities/managed care organizations  
39                   (LME/MCOs) ~~shall be excluded from the capitated contracts until~~for at  
40                   least four years after the date capitated contracts begin.

41           b.       ~~The capitated contracts required by this subdivision shall not cover~~  
42                   dentalDental services.

43           c.       Services provided through the Program of All-Inclusive Care for the  
44                   Elderly (PACE).

45           d.       Audiology, speech therapy, occupational therapy, physical therapy,  
46                   nursing, and psychological services prescribed in an Individualized  
47                   Education Program (IEP) and performed by schools or individuals  
48                   contracted with Local Education Agencies.

49           e.       Services provided directly by a Children's Developmental Services  
50                   Agency (CDSA) or by a provider under contract with a CDSA if the

- 1 service is authorized through the CDSA and is included on the child's  
 2 Individualized Family Service Plan.  
 3 f. Services for Medicaid program applicants during the period of time  
 4 prior to eligibility determination.  
 5 (5) Populations covered by PHPs. – Capitated PHP contracts shall cover all  
 6 Medicaid and NC Health Choice program aid categories except ~~recipients for~~  
 7 the following categories:  
 8 a. Recipients who are dually eligible for Medicaid and Medicare.  
 9 Recipients in the aged program aid category that are eligible for  
 10 Medicare shall be considered recipients who are dually eligible for  
 11 Medicaid and Medicare. The Division of Health Benefits shall develop a  
 12 long-term strategy to cover dual eligibles through capitated PHP  
 13 contracts, as required by subdivision (11) of Section 5 of this act.  
 14 b. Qualified aliens subject to the five-year bar for means-tested public  
 15 assistance under 8 U.S.C. § 1613 who qualify for emergency services  
 16 under 8 U.S.C. § 1611.  
 17 c. Undocumented aliens who qualify for emergency services under 8  
 18 U.S.C. § 1611.  
 19 d. Medically needy Medicaid recipients.  
 20 e. Members of federally recognized tribes. Members of federally  
 21 recognized tribes shall have the option to enroll voluntarily in PHPs.  
 22 f. Presumptively eligible recipients, during the period of presumptive  
 23 eligibility.  
 24 g. Recipients who participate in the North Carolina Health Insurance  
 25 Premium Payment (NC HIPP) program.  
 26 (6) Number and nature of capitated PHP contracts. – The number and nature of the  
 27 contracts required under subdivision (3) of this section shall be as follows:  
 28 a. Three contracts between the Division of Health Benefits and PHPs to  
 29 provide coverage to Medicaid and NC Health Choice recipients  
 30 statewide (statewide contracts).  
 31 b. Up to ~~40~~12 contracts between the Division of Health Benefits and PLEs  
 32 for coverage of regions specified by the Division of Health Benefits  
 33 pursuant to subdivision (2) of Section 5 of this act (regional contracts).  
 34 Regional contracts shall be in addition to the three statewide contracts  
 35 required under sub-subdivision a. of this subdivision. Each regional  
 36 contract shall provide coverage throughout the entire region for the  
 37 Medicaid and NC Health Choice services required by subdivision (4) of  
 38 this section. A PLE may bid for more than one regional contract,  
 39 provided that the regions are contiguous.  
 40 c. Initial capitated PHP contracts may be awarded on staggered terms of  
 41 three to five years in duration to ensure against gaps in coverage that  
 42 may result from termination of a contract by the PHP or the State.

43 ...."

44 **SECTION 2.(c)** Section 5 of S.L. 2015-245 reads as rewritten:

45 **"SECTION 5.** Role of DHHS. – The role and responsibility of ~~DHHS, through the Division~~  
 46 ~~of Health Benefits, DHHS~~ during Medicaid transformation shall include the following activities  
 47 and functions:

48 ...

- 49 (6) Enter into capitated PHP contracts for the delivery of the Medicaid and NC  
 50 Health Choice services described in subdivision (4) of Section 4 of this act. All  
 51 contracts shall be the result of requests for proposals (RFPs) issued by DHHS

and the submission of competitive bids by PHPs. ~~DHHS, through the Division of Health Benefits, DHHS~~ shall develop standardized contract terms, to include at a minimum, the following:

- a. Risk-adjusted cost growth for its enrollees must be at least two percentage (2%) points below national Medicaid spending growth as documented and projected in the annual report prepared for CMS by the Office of the Actuary for nonexpansion states.
- b. A requirement that PHP spending for prescribed drugs, net of rebates, ensures the State realizes a net savings for the spending on prescription drugs. All PHPs shall be required to use the same drug formulary, which shall be established by ~~DHHS, through the Division of Health Benefits, DHHS.~~
- c. Until final federal regulations are promulgated governing medical loss ratio, a minimum medical loss ratio of eighty-eight percent (88%) for health care services, with the components of the numerator and denominator to be defined by ~~DHHS, through the Division of Health Benefits, DHHS.~~
- d. A requirement that PHPs develop and maintain provider networks that meet access to care requirements for their enrollees. PHPs may not exclude providers from their networks except for failure to meet objective quality standards or refusal to accept network rates. Notwithstanding the previous sentence, PHPs must include all providers in their geographical coverage area that are designated essential providers by DHHS pursuant to subdivision (13) of this section, unless DHHS approves an alternative arrangement for securing the types of services offered by the essential providers.
- e. A requirement that all PHPs assure that enrollees who do not elect a primary care provider will be assigned to one.

...

(11) Develop a Dual Eligibles Advisory Committee, which must include at least a reasonably representative sample of the populations receiving long-term services and supports covered by Medicaid. ~~The Division of Health Benefits, DHHS,~~ upon the advice of the Dual Eligibles Advisory Committee, shall develop a long-term strategy to cover dual eligibles through capitated PHP contracts and report the strategy to the Joint Legislative Oversight Committee on Medicaid and NC Health Choice by January 31, 2017.

...

(13) Designate Medicaid and NC Health Choice providers as essential providers if the provider either offers services that are not available from any other provider within a reasonable access standard or provides a substantial share of the total units of a particular service utilized by Medicaid and NC Health Choice recipients within the region during the last three years, and the combined capacity of other service providers in the region is insufficient to meet the total needs of the Medicaid and NC Health Choice enrollees. DHHS shall not classify physicians and other practitioners as essential providers. At a minimum, providers in the following categories shall be designated essential providers:

- a. Federally qualified health centers.
- b. Rural health centers.
- c. Free clinics.
- d. Local health departments.

1 e. State Veterans Homes."

2 **SECTION 2.(d)** Section 8 of S.L. 2015-245 reads as rewritten:

3 **"SECTION 8.** Innovations Center. – DHHS shall submit a program design and budget  
4 proposal no later than May 1, 2016, to the Joint Legislative Oversight Committee on Medicaid and  
5 NC Health Choice that will create a Medicaid and NC Health Choice Transformation Innovations  
6 Center ~~within the Division of Health Benefits~~ with the purpose of assisting Medicaid and NC  
7 Health Choice providers in achieving the ultimate goals of better health, better care, and lower  
8 costs for North Carolinians. The center should be designed to support providers through technical  
9 assistance and learning collaboratives that foster peer-to-peer sharing of best practices. DHHS  
10 shall use the Oregon Health Authority's Transformation Center as a design model and shall  
11 consider at least the following features:

- 12 (1) Learning collaboratives, peer-to-peer networks.
- 13 (2) Clinical standards and supports.
- 14 (3) Innovator agents.
- 15 (4) Council of Clinical Innovators.
- 16 (5) Community and stakeholder engagement.
- 17 (6) Conferences and workshops.
- 18 (7) Technical assistance.
- 19 (8) Infrastructure support."

20 **SECTION 2.(e)** Section 9 of S.L. 2015-245 reads as rewritten:

21 **"SECTION 9.** Maintain Funding Mechanisms. – In developing the waivers and State Plan  
22 amendments necessary to implement this act, ~~the Department of Health and Human Services,~~  
23 ~~through the Division of Health Benefits created in Section 10 of this act,~~ DHHS shall work with  
24 the Centers for Medicare & Medicaid Services (CMS) to attempt to preserve existing levels of  
25 funding generated from Medicaid-specific funding streams, such as assessments, to the extent that  
26 the levels of funding may be preserved. If such Medicaid-specific funding cannot be maintained as  
27 currently implemented, then ~~the Division of Health Benefits~~ DHHS shall advise the Joint  
28 Legislative Oversight Committee on Medicaid and NC Health Choice, created in Section 15 of  
29 this act, of any modifications necessary to maintain as much revenue as possible within the  
30 context of Medicaid transformation. If such Medicaid-specific funding streams cannot be  
31 preserved through the transformation process or if revenue would decrease, it is the intent of the  
32 General Assembly to modify such funding streams so that any supplemental payments to  
33 providers are more closely aligned to improving health outcomes and achieving overall Medicaid  
34 goals."

35 **SECTION 2.(e1)** S.L. 2015-245 is amended by adding a new section to read:

36 **"SECTION 9A.** Eligibility for Parents of Children in Foster Care. – DHHS is authorized to  
37 seek approval from CMS through the 1115 waiver required by subdivision (1) of Section 5 of this  
38 act to allow parents to retain Medicaid eligibility while their child is being served temporarily by  
39 the foster care program. It is the intent of the General Assembly to expand Medicaid eligibility to  
40 cover this population upon implementation of the 1115 waiver, if CMS approves this coverage in  
41 the waiver."

42 **SECTION 2.(f)** Section 10 of S.L. 2015-245 reads as rewritten:

43 **"SECTION 10.** Creation of the Division of Health Benefits. – The Division of Health  
44 Benefits is established as a new division of the Department of Health and Human Services. ~~The~~  
45 ~~Department of Health and Human Services, through the Division of Health Benefits, shall be~~  
46 ~~responsible for implementing Medicaid transformation required by this act and shall administer~~  
47 ~~and operate all functions, powers, duties, obligations, and services related to the transformed~~  
48 ~~Medicaid and NC Health Choice programs.~~ The Division of Medical Assistance shall continue to  
49 operate the current Medicaid and NC Health Choice programs until the Division of Medical  
50 Assistance is eliminated. Upon the elimination of the Division of Medical Assistance, all  
51 functions, powers, duties, obligations, and services vested in the Division of Medical Assistance of

1 the Department of Health and Human Services are vested in the Division of Health Benefits. The  
2 Department of Health and Human Services shall remain the Medicaid single State ~~agency~~agency  
3 and shall be responsible for implementing Medicaid transformation required by this act and shall  
4 administer and operate all functions, powers, duties, obligations, and services related to the  
5 transformed Medicaid and NC Health Choice programs. Prior to the effective date of  
6 G.S. 143B-216.85, the Secretary of DHHS may appoint a Director of the Division of Health  
7 Benefits."

8 **SECTION 2.(g)** G.S. 143B-216.80 reads as rewritten:

9 **"§ 143B-216.80. Division of Health Benefits – creation and organization.**

10 (a) There is hereby established the Division of Health Benefits of the Department of  
11 Health and Human Services. The Director shall be the head of the Division of Health Benefits.  
12 Upon the elimination of the Division of Medical Assistance, the Division of Health Benefits shall  
13 be vested with all functions, powers, duties, obligations, and services previously vested in the  
14 Division of Medical Assistance. The Department of Health and Human Services, through the  
15 Division of Health Benefits, Services shall have the powers and duties described in  
16 G.S. 108A-54(e). The Director shall be the head of the Division of Health  
17 Benefits.G.S. 108A-54(e) in addition to the powers and duties already vested in the Department.

18 (b) Although generally subject to the laws of this State, the following exemptions,  
19 limitations, and modifications apply to the Division of Health Benefits of the Department of  
20 Health and Human Services, notwithstanding any other provision of law:

- 21 (1) Employees of the Division of Health Benefits shall not be subject to the North  
22 Carolina Human Resources Act, except as provided in G.S. 126-5(c1)(31).
- 23 (2) The Secretary may retain private legal counsel and is not subject to  
24 G.S. 114-2.3 or G.S. 147-17(a) through (c).
- 25 (3) The Division of Health Benefits' employment contracts offered pursuant to  
26 G.S. 108A-54(e)(2) are not subject to review and approval by the Office of  
27 State Human Resources.
- 28 (4) If the Secretary establishes alternative procedures for the review and approval  
29 of contracts, then the Division of Health Benefits is exempt from State contract  
30 review and approval requirements but still may choose to utilize the State  
31 contract review and approval procedures for particular contracts."

32 **SECTION 2.(h)** G.S. 108A-54 reads as rewritten:

33 **"§ 108A-54. Authorization of Medical Assistance Program; administration.**

34 ...

35 (e) The Department of Health and Human Services shall continue to administer and  
36 operate the Medicaid and NC Health Choice programs through the Division of Medical Assistance  
37 until the Division of Medical Assistance is eliminated at which time all functions, powers, duties,  
38 obligations, and services vested in the Division of Medical Assistance are vested in the Division of  
39 Health Benefits. Prior to and following the exchange of powers and duties from the Division of  
40 Medical Assistance to the Division of Health Benefits, and in addition to the powers and duties  
41 already vested in the Secretary of the Department of Health and Human Services, the Secretary of  
42 the Department of Health and Human Services, through the Division of Health Benefits, Services  
43 shall have the following powers and duties:

- 44 (1) Administer and operate the Medicaid and NC Health Choice programs,  
45 provided that the total expenditures, net of agency receipts, do not exceed the  
46 authorized budget for ~~each program~~the Medicaid program and NC Health  
47 Choice program. None of the powers and duties enumerated in the other  
48 subdivisions of this subsection shall be construed to limit the broad grant of  
49 authority to administer and operate the Medicaid and NC Health Choice  
50 programs.

- 1 (2) Employ clerical and professional staff of the Division of Health Benefits,  
2 including consultants and legal counsel, necessary to carry out the powers and  
3 duties of the division. In hiring staff for the Division of Health Benefits, the  
4 Secretary may offer employment contracts for a term and set compensation for  
5 the employees, which may include performance-based bonuses based on  
6 meeting budget or other targets.
- 7 (3) Notwithstanding G.S. 143-64.20, enter into contracts for the administration of  
8 the Medicaid and NC Health Choice programs, as well as manage such  
9 contracts, including contracts of a consulting or advisory nature.
- 10 (4) Establish and adjust all program components, except for eligibility categories  
11 and income thresholds, of the Medicaid and NC Health Choice programs within  
12 the appropriated and allocated budget.
- 13 (5) Adopt rules related to the Medicaid and NC Health Choice programs.
- 14 (6) Develop midyear budget correction plans and strategies and then take midyear  
15 budget corrective actions necessary to keep the Medicaid and NC Health  
16 Choice programs within budget.
- 17 (7) Approve or disapprove and oversee all expenditures to be charged to or  
18 allocated to the Medicaid and NC Health Choice programs by other State  
19 departments or agencies.
- 20 (8) Develop and present to the Joint Legislative Oversight Committee on Medicaid  
21 and NC Health Choice and the Office of State Budget and Management by  
22 January 1 of each year, beginning in 2017, the following information for the  
23 Medicaid and NC Health Choice programs:
- 24 a. A detailed four-year forecast of expected changes to enrollment growth  
25 and enrollment mix.
- 26 b. What program changes will be made by the Department in order to stay  
27 within the existing budget for the programs based on the next fiscal  
28 year's forecasted enrollment growth and enrollment mix.
- 29 c. The cost to maintain the current level of services based on the next  
30 fiscal year's forecasted enrollment growth and enrollment mix.
- 31 (9) Publish on its Web site and update on at least a monthly basis, at a minimum,  
32 the following information about the Medicaid and NC Health Choice programs:
- 33 a. Enrollment by program aid category by county.
- 34 b. Per member per month spending by category of service.
- 35 c. Spending and receipts by fund along with a detailed variance analysis.
- 36 d. A comparison of the above figures to the amounts forecasted and  
37 budgeted for the corresponding time period.
- 38 (f) The General Assembly shall determine the eligibility categories and income thresholds  
39 for the Medicaid and NC Health Choice programs. The Department of Health and Human  
40 ~~Services, through the Division of Health Benefits, Services~~ is expressly authorized to adopt  
41 temporary and permanent rules regarding eligibility requirements and determinations, to the extent  
42 that they do not conflict with the parameters set by the General Assembly.
- 43 ~~(g) Although generally subject to the laws of this State, the following exemptions,  
44 limitations, and modifications apply to the Division of Health Benefits of the Department of  
45 Health and Human Services, notwithstanding any other provision of law:~~
- 46 ~~(1) Employees of the Division of Health Benefits shall not be subject to the North  
47 Carolina Human Resources Act, except as provided in G.S. 126-5(e1)(31).~~
- 48 ~~(2) The Secretary may retain private legal counsel and is not subject to G.S.  
49 114-2.3 or G.S. 147-17(a) through (e).~~

1           (3)    ~~The Division of Health Benefits' employment contracts offered pursuant to G.S.~~  
2           ~~108A-54(e)(2) are not subject to review and approval by the Office of State~~  
3           ~~Human Resources.~~

4           (4)    ~~If the Secretary establishes alternative procedures for the review and approval~~  
5           ~~of contracts, then the Division of Health Benefits is exempt from State contract~~  
6           ~~review and approval requirements but may still choose to utilize the State~~  
7           ~~contract review and approval procedures for particular contracts."~~

8           **SECTION 2.(i)** G.S. 143B-139.6C reads as rewritten:

9           **"§ 143B-139.6C. Cooling-off period for certain Department employees.**

10          (a)    Ineligible Vendors. – The Secretary of the Department of Health and Human Services  
11          shall not contract for goods or services with a vendor that employs or contracts with a person who  
12          is a former employee of the Department and uses that person in the administration of a contract  
13          with the Department.

14          (b)    Vendor Certification. – The Secretary shall require each vendor submitting a bid or  
15          contract to certify that the vendor will not use a former employee of the Department in the  
16          administration of a contract with the Department in violation of the provisions of subsection (a) of  
17          this section.

18          (c)    A violation of the provisions of this section shall void the contract.

19          (d)    Definitions. – As used in this section, the following terms mean:

20               (1)    Administration of a contract. – ~~Oversight~~ The former employee's duties and  
21               responsibilities for the vendor include oversight of the performance of a  
22               contract, or authority to make decisions regarding a contract, including  
23               interpretation of a contract, or participation in the development of specifications  
24               or terms of a contract or in the preparation contract, or award of a contract.

25               (2)    Former employee of the Department. – A person who, for any period within the  
26               preceding six months, was employed as an employee or contract employee of  
27               the Department of Health and Human Services, ~~and in the six months~~  
28               ~~immediately preceding termination of State employment, participated~~  
29               ~~personally in either the award or management of a Department contract with the~~  
30               ~~vendor, or made regulatory or licensing decisions that directly applied to the~~  
31               ~~vendor.~~ Services and personally participated in any of the following:

32                   a.    The award of a contract to the vendor.

33                   b.    An audit, decision, investigation, or other action affecting the vendor.

34                   c.    Regulatory or licensing decisions that applied to the vendor."

35           **SECTION 3.** This act is effective when it becomes law.