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HOUSE BILL 250
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Short Title: Department of Health & Human Svcs. Revisions.-AB

(Public)

Sponsors:

Referred to:

March 4, 2019

A BILL TO BE ENTITLED

AN ACT AMENDING STATUTES PERTAINING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ENSURE COMPLIANCE WITH FEDERAL LAWS AND TO MAKE TECHNICAL CHANGES AND OTHER MODIFICATIONS TO STATUTES PERTAINING TO MEDICAID, CHILD SUPPORT, VOCATIONAL REHABILITATION, ASSISTED LIVING, THE STATE CONSUMER AND FAMILY ADVISORY COMMITTEE, EMPLOYEE ASSISTANCE PROFESSIONALS, ADOPTIONS, AND CHILD ABUSE AND NEGLECT.

The General Assembly of North Carolina enacts:

PART I. CLARIFICATIONS TO MEDICAID SUBROGATION STATUTE

SECTION 1.1.(a) G.S. 108A-57 reads as rewritten:

"§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

(a) As used in this section, the term "beneficiary" means (i) the beneficiary of medical assistance, including a minor beneficiary; (ii) the medical assistance beneficiary's parent, legal guardian, or personal representative; (iii) the medical assistance beneficiary's heirs; and (iv) the administrator or executor of the medical assistance beneficiary's estate.

Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State shall be subrogated to all rights of recovery, contractual or otherwise, of ~~the a~~ beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. ~~A personal injury or wrongful death~~ Any claim brought by a medical assistance beneficiary against a third party shall include a claim for all medical assistance payments for health care items or services furnished to the medical assistance beneficiary as a result of the injury, injury or action, hereinafter referred to as the "Medicaid claim." Any personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party that does not state the Medicaid claim shall be deemed to include the Medicaid claim. If the beneficiary has claims against more than one third party related to the same injury, then any amount received in payment of the Medicaid claim related to that injury shall reduce the total balance of the Medicaid claim applicable to subsequent recoveries related to that injury.

...

(a2) A medical assistance beneficiary may dispute the presumptions established in subsection (a1) of this section by applying to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent ~~jurisdiction, jurisdiction in this State,~~ for a determination of the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim. An application



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1 under this subsection shall be filed with the court and served on the Department pursuant to the
 2 Rules of Civil Procedure no later than 30 days after the date that the settlement agreement is
 3 executed by all parties and, if required, approved by the court, or in cases in which judgment has
 4 been entered, no later than 30 days after the date of entry of judgment. The court shall hold an
 5 evidentiary hearing no sooner than ~~30-60~~ days after the date the action was filed. All of the
 6 following shall apply to the court's determination under this subsection:

- 7 (1) The medical assistance beneficiary has the burden of proving by clear and
 8 convincing evidence that the portion of the beneficiary's gross recovery that
 9 represents compensation for the Medicaid claim is less than the portion
 10 presumed under subsection (a1) of this section.
 11 (2) The presumption arising under subsection (a1) of this section is not rebutted
 12 solely by the fact that the medical assistance beneficiary was not able to
 13 recover the full amount of all claims.
 14 (3) If the beneficiary meets its burden of rebutting the presumption arising under
 15 subsection (a1) of this section, then the court shall determine the portion of
 16 the recovery that represents compensation for the Medicaid claim and shall
 17 order the beneficiary to pay the amount so determined to the Department in
 18 accordance with subsection (a5) of this section. In making this determination,
 19 the court may consider any factors that it deems just and reasonable.
 20 (4) If the beneficiary fails to rebut the presumption arising under subsection (a1)
 21 of this section, then the court shall order the beneficiary to pay the amount
 22 presumed pursuant to subsection (a1) of this section to the Department in
 23 accordance with subsection (a5) of this section.

24 ...

25 (c) This section applies to the administration of and claims payments ~~made by the~~
 26 ~~Department of Health and Human Services~~ under the NC Health Choice Program established
 27 under Part 8 of this Article.

28 (d) As required to ensure compliance with this section, the Department may apply to the
 29 court in which the medical assistance beneficiary's claim against the third party is pending, or if
 30 there is none, then to a court of competent jurisdiction in this State for enforcement of this
 31 section."

32 **SECTION 1.1.(b)** This section is effective when it becomes law and applies to
 33 claims brought by medical assistance beneficiaries against third parties on or after that date.

34 **PART II. CHILD SUPPORT ENFORCEMENT PROGRAM COMPLIANCE**

35 **SECTION 2.1.** G.S. 110-139 reads as rewritten:

36 "**§ 110-139. Location of absent parents.**

37 ...

38 (d) Notwithstanding any other provision of law making this information confidential,
 39 including Chapter 53B of the General Statutes, any utility company, cable television company,
 40 electronic communications or Internet service provider, or financial institution, including federal,
 41 State, commercial, or savings banks, savings and loan associations and cooperative banks, federal
 42 or State chartered credit unions, benefit associations, insurance companies, safe deposit
 43 companies, money market mutual funds, and investment companies doing business in this State
 44 or incorporated under the laws of this ~~State~~ State, shall provide the Department of Health and
 45 Human Services with the following information upon certification by the Department that the
 46 information is needed to locate a parent for the purpose of collecting child support or to establish
 47 or enforce an order for child support: full name, social security number, address, telephone
 48 number, account numbers, and other identifying data for any person who maintains an account
 49 at the utility company, cable television company, electronic communications or Internet service
 50 provider, or financial institution. A utility company, cable television company, electronic
 51

1 communications or Internet service provider, or financial institution that discloses information
2 pursuant to this subsection in good faith reliance upon certification by the Department is not
3 liable for damages resulting from the disclosure.

4 (e) ~~Subsection (d) of this section shall not apply to telecommunication utilities or~~
5 ~~providers of electronic communication service to the general public.~~

6"
7

8 **PART III. WORKFORCE INNOVATION AND OPPORTUNITY ACT** 9 **COMPLIANCE/VOCATIONAL REHABILITATION**

10 **SECTION 3.1.** G.S. 143-548 reads as rewritten:

11 "**§ 143-548. Vocational State Rehabilitation Council.**

12 (a) There is established the Vocational State Rehabilitation Council ~~within (Council) in~~
13 support of the activities of the Division of Vocational Rehabilitation Services to be composed of
14 not more than 18 appointed members. Appointed members shall be voting members except where
15 prohibited by federal law or regulations. The Director of the Division of Vocational
16 Rehabilitation Services and one vocational rehabilitation counselor who is an employee of the
17 Division shall serve ex officio as nonvoting members. The President Pro Tempore of the Senate
18 shall appoint six members, the Speaker of the House of Representatives shall appoint six
19 members, and the Governor shall appoint five or six members. The appointing authorities shall
20 appoint members of the Council after soliciting recommendations from representatives of
21 organizations representing a broad range of individuals with disabilities. Terms of appointment
22 shall be as specified in subsection (d1) of this section. Appointments shall be made as follows:

23"
24

25 **PART IV. TECHNICAL CHANGES AND OTHER MODIFICATIONS PERTAINING** 26 **TO THE HEALTH AND SAFETY OF ASSISTED LIVING RESIDENTS**

27 **SECTION 4.1.** G.S. 90-288.14 reads as rewritten:

28 "**§ 90-288.14. Assisted living administrator certification.**

29 ~~An applicant shall be certified by the~~ The Department shall certify as an assisted living
30 administrator ~~if the any applicant who~~ meets all of the following qualifications:

- 31 (1) Is at least 21 years old.
- 32 (2) Provides a satisfactory criminal background report from the State Repository
33 of Criminal Histories, which shall be provided by the State Bureau of
34 Investigation upon its receiving fingerprints from the applicant. If the
35 applicant has been a resident of this State for less than five years, the applicant
36 shall provide a satisfactory criminal background report from both the State
37 and National Repositories of Criminal Histories.
- 38 (2a) Does not have a substantiated finding of neglect, abuse, misappropriation of
39 property, diversion of drugs, or fraud listed on the Health Care Personnel
40 Registry established under G.S. 131E-256.
- 41 (3) Successfully completes the equivalent of two years of coursework at an
42 accredited college or university or has a combination of education and
43 experience as approved by the Department.
- 44 (4) Successfully completes a Department approved administrator-in-training
45 program of at least 120 hours of study in courses relating to assisted living
46 residences.
- 47 (5) Successfully completes a written examination administered by the
48 Department."
49

50 **PART V. MODIFICATION TO THE STATE CONSUMER AND FAMILY ADVISORY** 51 **COMMITTEE APPOINTMENTS**

1 **SECTION 5.1.(a)** G.S. 122C-171 reads as rewritten:

2 "**§ 122C-171. State Consumer and Family Advisory Committee.**

3 (a) There is established the State Consumer and Family Advisory Committee (State
4 CFAC). The State CFAC shall be ~~shall be~~ a self-governing and self-directed organization that
5 advises the Department and the General Assembly on the planning and management of the State's
6 public mental health, developmental disabilities, and substance abuse services system.

7 (b) The State CFAC shall be composed of 21 members. The members shall be composed
8 exclusively of adult consumers of mental health, developmental disabilities, and substance abuse
9 services; and family members of consumers of mental health, developmental disabilities, and
10 substance abuse services. The terms of members shall be three years, and no member may serve
11 more than two consecutive terms. Vacancies shall be filled by the appointing authority. The
12 members shall be appointed as follows:

13 (1) Nine by the Secretary. The Secretary's appointments shall reflect each of the
14 disability groups. The terms shall be staggered so that terms of three of the
15 appointees expire each year.

16 (2) ~~Three~~ Four by the President Pro Tempore of the Senate, ~~one each of whom~~
17 ~~shall come selected~~ from the three State regions for institutional services
18 ~~(Eastern as follows: one from the Eastern Region, one from the Central~~
19 ~~Region, and two from the Western Region).~~ Region. The terms of the
20 appointees shall be staggered so that the term of one appointee expires every
21 year.

22 (3) ~~Three~~ Four by the Speaker of the House of Representatives, ~~one each of whom~~
23 ~~shall come from selected~~ from the three State regions for institutional services
24 ~~(Eastern as follows: one from the Eastern Region, two from the Central~~
25 ~~Region, and one from the Western Region).~~ Region. The terms of the
26 appointees shall be staggered so that the term of one appointee expires every
27 year.

28 (4) ~~Three by the Council of Community Programs, one each of whom shall come~~
29 ~~from the three State regions for institutional services (Eastern Region, Central~~
30 ~~Region, and Western Region). The terms of the appointees shall be staggered~~
31 ~~so that the term of one appointee expires every year.~~

32 (5) ~~Three~~ Four by the North Carolina Association of County Commissioners, ~~one~~
33 ~~each of whom shall come selected~~ from the three State regions for institutional
34 services ~~(Eastern as follows: two from the Eastern Region, one from the~~
35 ~~Central Region, and one from the Western Region).~~ Region. The terms of the
36 appointees shall be staggered so that the term of one appointee expires every
37 year.

38 "

39 **SECTION 5.1.(b)** Notwithstanding the repeal of G.S. 122C-171(b)(4) pursuant to
40 subsection (a) of this section, current members of the State Consumer and Family Advisory
41 Committee who were appointed by the Council of Community Programs shall serve out the
42 remainder of their terms. As the current terms of these members expire, each of the appointing
43 authorities identified in G.S. 122C-171(b)(2), 122C-171(b)(3), and 122(b)(5) shall, in the order
44 listed in G.S. 122C-171(b), take turns making an additional appointment to achieve conformity
45 with G.S. 122C-171(b), as amended by this act.

46
47 **PART VI. REPEAL EMPLOYEE ASSISTANCE PROFESSIONALS ARTICLE**

48 **SECTION 6.1.** Article 32 of Chapter 90 of the General Statutes is repealed.

49
50 **PART VII. MULTI-ETHNIC PLACEMENT ACT COMPLIANCE/ADOPTION**
51 **PREPLACEMENT ASSESSMENT MODIFICATIONS**

1 **SECTION 7.1.** G.S. 48-3-303 reads as rewritten:

2 "**§ 48-3-303. Content and timing of preplacement assessment.**

3 (a) A preplacement assessment shall be completed within 90 days after a request has been
4 accepted.

5 (b) The preplacement assessment must be based on at least one personal interview with
6 each individual being assessed in the individual's residence and any report received pursuant to
7 subsection (c) of this section.

8 (c) The preplacement assessment shall, after a reasonable investigation, report on the
9 following about the individual being assessed:

10 (1) ~~Age and date of birth, nationality, Nationality,~~ race, or ethnicity, and any
11 religious preference;

12 (2) Marital and family status and history, including the presence of any children
13 born to or adopted by the individual and any other children in the household;

14 (3) ~~Physical~~ Date of birth and physical and mental health, including any addiction
15 to alcohol or drugs;

16 (4) Educational and employment history and any special skills;

17 (5) Property and income, and current financial information provided by the
18 individual;

19 (6) Reason for wanting to adopt;

20 (7) Any previous request for an assessment or involvement in an adoptive
21 placement and the outcome of the assessment or placement;

22 (8) Whether the individual has ever been a respondent in a domestic violence
23 proceeding or a proceeding concerning a minor who was allegedly abused,
24 dependent, neglected, abandoned, or delinquent, and the outcome of the
25 proceeding;

26 (9) Whether the individual has ever been convicted of a crime other than a minor
27 traffic violation;

28 (10) Whether the individual has located a parent interested in placing a child with
29 the individual for adoption and a brief, nonidentifying description of the
30 parent and the child; and

31 (11) Any other fact or circumstance that may be relevant to a determination of the
32 individual's suitability to be an adoptive parent, including the quality of the
33 environment in the home and the functioning of any children in the household.

34 (12) The agency preparing the preplacement assessment may redact from the
35 preplacement assessment provided to a placing parent or guardian detailed
36 information reflecting the prospective adoptive parent's income and financial
37 account balances and social security numbers, and detailed information about
38 the prospective adoptive parent's extended family members, including
39 surnames, names of employers, names of schools attended, social security
40 numbers, telephone numbers and addresses, and other similarly detailed
41 information about extended family members obtained under subsections (b)
42 and (c) of this section.

43 (13) The most recent amended or updated preplacement assessment that meets the
44 requirements of this section and G.S. 48-3-301(a), including subsequent
45 amendments or partial updates completed as of the time of delivery, shall
46 constitute the preplacement assessment for the purpose of meeting any
47 requirement of this Chapter that a copy of the preplacement assessment be
48 delivered to a court or a placing parent, guardian, or agency.

49 When any of the above is not reasonably available, the preplacement assessment shall state
50 why it is unavailable.

1 (d) The agency shall conduct an investigation for any criminal record as permitted by
2 law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or
3 placement responsibility of a county department of social services, a county department of social
4 services shall have the prospective adoptive parent's criminal history and the criminal histories
5 of all individuals 18 years of age or older who reside in the prospective adoptive home
6 investigated pursuant to G.S. 48-3-309, and in accordance with G.S. 48-3-309(b), make a
7 determination as to the prospective adoptive parent's fitness to have responsibility for the safety
8 and well-being of children and as to whether other individuals required to be checked are fit for
9 an adoptive child to reside with them in the home.

10 (e) In the preplacement assessment, the agency shall review the information obtained
11 pursuant to subsections (b), ~~(c)~~, ~~(c)(2) through (c)(13)~~, and (d) of this section and evaluate the
12 individual's strengths and ~~weaknesses~~ needs to be an adoptive parent. The agency shall then
13 determine whether the individual is suitable to be an adoptive parent.

14 (f) If the agency determines that the individual is suitable to be an adoptive parent, the
15 preplacement assessment shall include specific factors which support that determination.

16 (g) If the agency determines that the individual is not suitable to be an adoptive parent,
17 the preplacement assessment shall state the specific concerns which support that determination.
18 A specific concern is one that reasonably indicates that placement of any minor, or a particular
19 minor, in the home of the individual would pose a significant risk of harm to the well-being of
20 the minor.

21 (h) In addition to the information and finding required by subsections (c) through (g) of
22 this section, the preplacement assessment must contain a list of the sources of information on
23 which it is based.

24 (i) The Social Services Commission shall have authority to establish by rule additional
25 standards for preplacement assessments."
26

27 **PART VIII. CHILD ABUSE PREVENTION AND TREATMENT ACT** 28 **COMPLIANCE/EXPAND IMMUNITY FOR COOPERATING IN CHILD ABUSE AND** 29 **NEGLECT REPORTS AND ASSESSMENTS**

30 **SECTION 8.1.(a)** G.S. 7B-309 reads as rewritten:

31 **"§ 7B-309. Immunity of persons reporting and cooperating in an assessment.**

32 Anyone who makes a report pursuant to this ~~Article~~, Article; cooperates with the county
33 department of social services in a protective services ~~assessment~~, assessment; testifies in any
34 judicial proceeding resulting from a protective services report or ~~assessment~~, assessment;
35 provides information or assistance, including medical evaluations or consultation in connection
36 with a report, investigation, or legal intervention pursuant to a good-faith report of child abuse
37 or neglect; or otherwise participates in the program authorized by this ~~Article~~, Article; is immune
38 from any civil or criminal liability that might otherwise be incurred or imposed for that action
39 provided that the person was acting in good faith. In any proceeding involving liability, good
40 faith is presumed."

41 **SECTION 8.1.(b)** This section becomes effective July 1, 2019.
42

43 **PART IX. EFFECTIVE DATE**

44 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes
45 law.