

CREATION OF OFFICE OF PROGRAM EVALUATION REPORTING AND ACCOUNTABILITY WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SECTION 12A.3.(a) Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31A. Office of Program Evaluation Reporting and Accountability.

"§ 143B-216.52. Department of Health and Human Services; Office of Program Evaluation Reporting and Accountability.

The Office of Program Evaluation Reporting and Accountability (OPERA) is hereby established within the Department of Health and Human Services. Employees of the OPERA shall be subject to the North Carolina Human Resources Act only as provided in G.S. 126-5(c1)(31).

"§ 143B-216.53. Appointment, qualifications, and removal of OPERA Director.

(a) The Secretary of Health and Human Services shall appoint a Director of OPERA, who shall perform the duties of the position independently. The Director shall report directly to the Secretary and shall not report to any other deputy, division director, or staff member of the Department.

(b) The Director must have a minimum of 10 years of experience in program evaluation equivalent to the duties of the office, including at least three years of experience at the management level.

(c) The Director may only be removed by the Secretary of Health and Human Services effective 30 days after written notification to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the State Auditor, and the Director of the Fiscal Research Division of the Legislative Services Office. The notification must itemize the causes and particulars justifying the Director's removal.

"§ 143B-216.54. Duties of the Office of Program Evaluation Reporting and Accountability.

The Office of Program Evaluation Reporting and Accountability has the following duties:

- (1) To assess the evidentiary basis of all Department programs as recommended by Evidence-Based Policymaking: A Guide for Effective Government, a project of the Results First Initiative of the Pew Charitable Trusts and the John D. and Katherine T. MacArthur Foundation.
- (2) To identify and evaluate any Department program when directed by the General Assembly, the Secretary, or as deemed necessary by the Director.
- (3) To develop an Internet Web site containing an inventory of departmental programs consisting of the program name and a link to a program profile. For each program, the profile must contain, at a minimum, all of the following:
 - a. Legal authority for the program.
 - b. Program performance for the past five fiscal years and year to date for the current fiscal year.
 1. Outcome. – The verifiable quantitative effects or results attributable to the program compared to a performance standard.
 2. Output. – The verifiable number of units of services or activities compared to a standard.
 3. Efficiency. – The verifiable total direct and indirect cost per output and per outcome compared to a standard.
 4. Performance standard. – A quantitative indicator based upon best practices, generally recognized standards, or comparisons with relevant programs in other states or regions for gauging achievement of efficiency, output, and outcomes.
 5. Benchmarks. – A broad societal indicator used for gauging ultimate outcomes of the program, such as U.S. Census data.
 - c. Funding by source for the current and previous five fiscal years.
 - d. Listing of filled and vacant employee positions as specified by the Office of State Budget and Management.
 - e. Listing of contracts during the previous fiscal year and of the current fiscal year to date with individuals and firms and the actual and authorized cost, funding source, and purposes of those contracts.

- f. Categorization by evidence of effectiveness as determined by the Office.
- g. Potential return on investment of each program.
- h. Findings and recommendations from internal and external State or federal audits, Office program assessments, and program evaluations.
- (4) To assure that the Office Internet Web site allows users to list all of the following:
 - a. Programs that exceeded, met, or did not meet performance standards for efficiency, outputs, and outcomes for the immediate preceding fiscal year.
 - b. Programs by category of evidence of effectiveness.
 - c. Programs by potential return on investment.
 - d. Programs listed in a manner determined useful by the Office.
- (5) To cooperate with and respond promptly to requests for program-level data and information from the Office of State Budget and Management, the Fiscal Research and Program Evaluation Divisions of the Legislative Services Office, and the State Auditor.

"§ 143B-216.55. Powers of the Office of Program Evaluation Reporting and Accountability.

The Office of Program Evaluation Reporting and Accountability is authorized, primarily for the purpose of assessing accurate return on investment, to do all of the following:

- (1) Have unfettered access to any data or record maintained by the Department and to assure its confidentiality when required by State or federal law.
- (2) Interview any Department employee or independent contractor without others present.
- (3) Conduct announced or unannounced inspections of departmental-owned or departmental-leased facilities."

SECTION 12A.3.(b) G.S. 126-5(c1) is amended by adding a new subdivision to read:

"§ 126-5. Employees subject to Chapter; exemptions.

...
(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- ...
(31) Employees of the Office of Program Evaluation Reporting and Accountability of the Department of Health and Human Services."

[Source: Section 12A.3 of S.L. 2015-241]

STUDY DESIGN AND IMPLEMENTATION OF CONTRACTING SPECIALIST AND CERTIFICATION PROGRAM

SECTION 12A.13. The Joint Legislative Oversight Committee on Health and Human Services shall study and make recommendations regarding the design of a contracting specialist training and certification program for management level personnel within the Department of Health and Human Services (DHHS) similar to the Certified Local Government Purchasing Officer program and local purchasing and contracts program of the University of North Carolina School of Government.

[Source: Section 12A.13 of S.L. 2015-241]

SINGLE STREAM FUNDING FOR MH/DD/SAS COMMUNITY SERVICES

SECTION 12F.2.(a) For the purpose of mitigating cash flow problems that many LME/MCOs experience at the beginning of each fiscal year relative to single stream funding, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than one-twelfth of each LME/MCO's continuation allocation at the beginning of the fiscal year and subtract the amount of that distribution from the LME/MCO's total reimbursements for the fiscal year.

SECTION 12F.2.(b) The DMH/DD/SAS is directed to reduce its allocation for single stream funding by one hundred ten million eight hundred eight thousand seven hundred fifty-two dollars (\$110,808,752) in nonrecurring funds for the 2015-2016 fiscal year and by one hundred fifty-two million eight hundred fifty thousand one hundred thirty-three dollars (\$152,850,133) in nonrecurring funds for the 2016-2017 fiscal year. The DMH/DD/SAS is directed to allocate this reduction among the LME/MCOs based on the individual LME/MCO's percentage of the total cash on hand of all of the LME/MCOs in the State. Cash on hand means the sum of the "Total Cash and Investments" plus the "Short-Term Investments" reported on Schedule "A" of the financial reporting package submitted by the LME/MCOs to the Division of Medical Assistance (DMA) on June 30, 2015. The individual LME/MCO's percentage of the total cash on hand equals the individual LME/MCO's cash on hand divided by the aggregate amount of cash on hand of all of the LME/MCOs in the State. During each year of the 2015-2017 fiscal biennium, each LME/MCO shall provide at least the same level of services paid for by single stream funding during the 2014-2015 fiscal year across the LME/MCO's catchment area. This requirement shall not be construed to require LME/MCOs to authorize or maintain the same level of services for any specific individual whose services were paid for with single-stream funding. Further, this requirement shall not be construed to create a private right of action for any person or entity against the State of North Carolina or the Department of Health and Human Services or any of its divisions, agents, or contractors, and shall not be used as authority in any contested case brought pursuant to Chapters 108C or 108D of the General Statutes.

SECTION 12F.2.(c) The Department shall modify the monthly reporting package submitted by the LME/MCOs to the Department to include revenues and expenditures for the State funding sources for single stream, intellectual and developmental disability, and substance abuse services on Schedule D2. Additionally, the Department shall modify appropriate schedules in the LME/MCO monthly reporting package to include unduplicated recipients and encounters in the same level of detail included in each D schedule for each source of funding for the reporting for the current and previous year's month and year-to-date periods. The Department shall submit these reports to the Joint Legislative Oversight Committee on Health and Human Services by the third Monday of each month beginning in October 2015.

SECTION 12F.2.(d) If, on or after June 1, 2016, the Office of State Budget and Management (OSBM) certifies a Medicaid budget surplus in funds 1310 and 1311 and sufficient cash in Budget Code 14445 to meet total obligations for fiscal year 2015-2016, then the DMA may transfer to the DMH/DD/SAS funds not to exceed the amount of the certified surplus or thirty million dollars (\$30,000,000), whichever is less, to offset the reduction in single stream funding required by this section. If, on or after June 1, 2017, the OSBM certifies a Medicaid budget surplus in funds 1310 and 1311 and sufficient cash in Budget Code 14445 to meet total obligations for fiscal year 2016-2017, then the DMA may transfer to the DMH/DD/SAS funds not to exceed the amount of the certified surplus or thirty million dollars (\$30,000,000), whichever is less, to offset the reduction in single stream funding required by this section. The DMH/DD/SAS shall allocate funds transferred pursuant to this subsection among the LME/MCOs based on the individual LME/MCO's percentage of the total cash on hand of all the LME/MCOs in the State, calculated in accordance with subsection (b) of this section. These funds shall be allocated as prescribed by June 30 of each State fiscal year.

SECTION 12F.2.(e) The Department of Health and Human Services shall develop a maintenance of effort (MOE) spending requirement for all mental health and substance abuse services which must be maintained using non-federal, State appropriations on an annual basis in order to meet MOE requirements for federal block grant awards. LME/MCOs shall ensure the MOE spending requirement is met using State appropriations.

§ 131E-176. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- ...
- (25) "State Medical Facilities Plan" means the plan prepared by the Department of Health and Human Services and the North Carolina State Health Coordinating Council, and approved by the Governor. In preparing the Plan, the Department and the State Health Coordinating Council shall maintain a mailing list of persons who have requested notice of public hearings regarding the Plan. Not less than 15 days prior to a scheduled public hearing, the Department shall notify persons on its mailing list of the date, time, and location of the hearing. The Department shall hold at least one public hearing prior to the adoption of the proposed Plan and at least six public hearings after the adoption of the proposed Plan by the State Health Coordinating Council. The Council shall accept oral and written comments from the public concerning the Plan.
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[Source: N.C.G.S. Section 131E-176]

§ 131E-177. Department of Health and Human Services is designated State Health Planning and Development Agency; powers and duties.

The Department of Health and Human Services is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to exercise the following powers and duties:

- ...
- (4) Develop policy, criteria, and standards for health service facilities planning; shall conduct statewide registration and inventories of and make determinations of need for health service facilities, health services as specified in G.S. 131E-176(16)f., and equipment as specified in G.S. 131E-176(16)f1., which shall include consideration of adequate geographic location of equipment and services; and develop a State Medical Facilities Plan;
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[Source: N.C.G.S. Section 131E-177]

§ 108A-29.1. Drug screening and testing for Work First Program applicants and recipients.

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement. Dependent children under the age of 18 are exempt from the requirements of this section. The Department shall require the following:

- (1) That for two-parent households, both parents comply with the requirements of this section.
- (2) That any teen parent who is emancipated pursuant to Article 35 of Chapter 7B of the General Statutes complies with the requirements of this section.
- (3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.
- (4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.
- (5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.
- (6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

(b) An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) or (b2) of this section.

(b1) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if the individual can document either the successful completion of or the current satisfactory participation in a substance abuse treatment program offered by a provider under subsection (e) of this section and licensed by the Department. The applicant or recipient who reapplies for Work First Program assistance after successful completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program provided under this subsection shall be the responsibility of the individual being tested and receiving treatment. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(b2) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine determines a substance abuse program is not appropriate for the individual and that individual has passed a subsequent drug test. The cost of any drug testing provided under this subsection shall be the responsibility of the individual being

tested. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(c) The children of any applicant or current recipient shall remain eligible for benefits, and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.

(d) The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section. The Social Services Commission shall adopt rules pertaining to the successful completion of, or the satisfactory participation in, a substance abuse treatment program under subsection (b1) of this section, including rules regarding timely reporting of completion of or participation in the substance abuse treatment programs.

(e) Area mental health authorities organized pursuant to Article 4 of Chapter 122C of the General Statutes shall be responsible for administering the provisions of this section.

(f) Repealed by Session Laws 2013-417, s. 4, as amended by Session Laws 2014-115, s. 66 (c), effective March 1, 2015.

(g) For the purposes of this section, reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:

- (1) A criminal record check conducted under G.S. 114-19.34 that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.
 - (2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.
 - (3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.
 - (4) Other screening methods, as determined by the Social Services Commission under subsection (d) of this section.
- (h) Child only cases shall be exempt from the requirements of this section.

[Source: N.C.G.S. Section 108A-29.1, as amended by Section 4 of S.L. 2013-247]

"SECTION 6. The Department of Health and Human Services shall report to the General Assembly no later than the first of each calendar quarter beginning April 1, 2014, and ending December 1, 2015, on the implementation of Section 4 of this act. The reports shall include a detailed timeline for implementation. Additionally, any changes to the timeline shall be included in the report with specific reasons for the timeline adjustment."

[Source: Section 6 of S.L. 2013-417, as amended by Section 66(b) of S.L. 2014-115]

FUNDS FOR OVERSIGHT AND ADMINISTRATION OF STATEWIDE HEALTH INFORMATION EXCHANGE NETWORK

SECTION 12A.5.(a) It is the intent of the General Assembly to do all of the following with respect to health information exchange:

- (1) Establish a successor HIE Network to which (i) all Medicaid providers shall be connected by February 1, 2018, and (ii) all other entities that receive State funds for the provision of health services, including local management entities/managed care organizations, shall be connected by June 1, 2018.
- (2) Establish (i) a State-controlled Health Information Exchange Authority to oversee and administer the successor HIE Network and (ii) a Health Information Exchange Advisory Board to provide consultation to the Authority on matters pertaining to administration and operation of the HIE Network and on statewide health information exchange, generally.
- (3) Have the successor HIE Network gradually become and remain one hundred percent (100%) receipt-supported by establishing reasonable participation fees and by drawing down available matching funds whenever possible.

SECTION 12A.5.(b) In order to achieve the objectives described in subsection (a) of this section, funds appropriated in this act to the Department of Health and Human Services, Division of Central Management and Support, for the 2015-2016 fiscal year and for the 2016-2017 fiscal year to continue efforts toward the implementation of a statewide health information exchange network shall be transferred to the Department of Information Technology. By 30 days after the effective date of this section, the Secretary of the Department of Health and Human Services and the State Chief Information Officer (State CIO) shall enter into a written memorandum of understanding pursuant to which the State CIO will have sole authority to direct the expenditure of these funds until (i) the North Carolina Health Information Exchange Authority (Authority) is established and the State CIO has appointed an Authority Director and (ii) the North Carolina Health Information Exchange Advisory Board (Advisory Board) is established with members appointed pursuant to Article 29B of Chapter 90 of the General Statutes, as enacted by subsection (d) of this section. The State CIO shall use these transferred funds to accomplish the following:

- (1) Beginning immediately upon receipt of the transferred funds, facilitate the following:
 - a. Establishment, administration, and ongoing support of the successor HIE Network described in subsection (a) of this section. Not later than 30 days after receipt of the transferred funds and notwithstanding any State laws pertaining to contracting procedures or contract review and approval requirements, the State CIO shall negotiate and enter into or amend a contract for services with an effective date no later than 30 days from receipt of the transferred funds. The contract for services shall include provisions to accomplish all of the following:
 1. The State's transition from the HIE Network established under Article 29A of Chapter 90 of the General Statutes to the successor HIE Network described in subsection (a) of this section.
 2. Establishment, oversight, administration, and ongoing support for the successor HIE Network described in subsection (a) of this section.
 3. Initial steps toward implementation of an HIE analytics data warehouse to be used solely for the purposes set forth in G.S. 90-414(a), as enacted by subsection (d) of this section.
 - b. Termination or assignment to the Authority by February 29, 2016, of any contracts pertaining to the HIE Network established under Article 29A of Chapter 90 of the General Statutes (i) between the State and the NC HIE and (ii) between the NC HIE and any third parties.
 - c. Pursuant to G.S. 143B-426.38A, as recodified by Section 7A.2(c) of this act, utilization of existing public-private partnerships and existing data and analytics contracts to do all of the following:

1. Ensure the provision of services necessary to accomplish the State's transition from the HIE Network established under Article 29A of Chapter 90 of the General Statutes to the successor HIE Network described in subsection (a) of this section.
 2. Provide for the integration of health information exchange clinical data, including the implementation of a health information exchange analytics data warehouse, to be used solely for the purposes set forth in G.S. 90-414(a), as enacted by subsection (d) of this section.
 3. Provide health information exchange stakeholders with access to specific health information exchange analytics in a manner that allows stakeholders to leverage historical and prescriptive data for the purpose of reducing healthcare costs and improving quality and access to care.
- (2) Fund the monthly operational expenses incurred or encumbered by the NC HIE from July 1, 2015, until February 29, 2016. Notwithstanding any other provision of law to the contrary, the total amount of monthly operating expenses paid for with these funds shall not exceed one hundred seventy-seven thousand dollars (\$177,000) per month or a total of one million four hundred sixteen thousand dollars (\$1,416,000) for the eight-month period commencing July 1, 2015, and ending February 29, 2016. The State CIO shall terminate payments for these monthly operational expenses upon the earlier of February 29, 2016, or upon the termination or assignment to the Authority of all contracts pertaining to the HIE Network established under Article 29A of Chapter 90 of the General Statutes (i) between the State and the NC HIE and (ii) between the NC HIE and any third parties.

The State CIO is encouraged to explore all available opportunities for the State to receive federal grant funds and federal matching funds for health information exchange.

SECTION 12A.5.(c) Once the Authority Director has been hired and the Advisory Board has been established with members appointed pursuant to Article 29B of Chapter 90 of the General Statutes, as enacted by subsection (d) of this section, the Authority shall use these funds to do the following:

- (1) Fund the operational expenses of the Authority and the Advisory Board.
- (2) Establish, oversee, administer, and provide ongoing support of a successor HIE Network to the HIE Network established under Article 29A of Chapter 90 of the General Statutes.
- (3) Enter into any contracts necessary for the establishment, administration, and operation of the successor HIE Network.
- (4) Facilitate the termination or assignment to the Authority by February 29, 2016, of any contracts pertaining to the HIE Network established under Article 29A of Chapter 90 of the General Statutes (i) between the State and the NC HIE and (ii) between the NC HIE and any third parties.
- (5) Fund the monthly operational expenses incurred or encumbered by the NC HIE from July 1, 2015, until February 29, 2016. Notwithstanding any other provision of law to the contrary, the total amount of monthly operating expenses paid for with these funds shall not exceed one hundred seventy-seven thousand dollars (\$177,000) per month or a total of one million four hundred sixteen thousand dollars (\$1,416,000) for the eight-month period commencing July 1, 2015, and ending February 29, 2016. The Authority shall terminate payments for these monthly operational expenses upon the earlier of February 29, 2016, or upon the termination or assignment to the Authority of all contracts pertaining to the HIE Network established under Article 29A of Chapter 90 of the General Statutes (i) between the State and the NC HIE and (ii) between the NC HIE and any third parties.

The Authority is encouraged to explore all available opportunities for the State to receive federal grant funds and federal matching funds for health information exchange.

SECTION 12A.5.(d) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 29B.

"Statewide Health Information Exchange Act.

"§ 90-414.1. Title.

This act shall be known and may be cited as the "Statewide Health Information Exchange Act."

"§ 90-414.2. Purpose.

This Article is intended to improve the quality of health care delivery within this State by facilitating and regulating the use of a voluntary, statewide health information exchange network for the secure electronic transmission of individually identifiable health information among health care providers, health plans, and health care clearinghouses in a manner that is consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and Security Rule, 45 C.F.R. §§ 160, 164.

"§ 90-414.3. Definitions.

The following definitions apply in this Article:

- (1) Business associate. – As defined in 45 C.F.R. § 160.103.
- (2) Business associate contract. – The documentation required by 45 C.F.R. § 164.502(e)(2) that meets the applicable requirements of 45 C.F.R. § 164.504(e).
- (3) Covered entity. – Any entity described in 45 C.F.R. § 160.103 or any other facility or practitioner licensed by the State to provide health care services.
- (4) Department. – North Carolina Department of Health and Human Services.
- (5) Disclose or disclosure. – The release, transfer, provision of access to, or divulging in any other manner an individual's protected health information through the HIE Network.
- (6) Emergency medical condition. – A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (i) placing an individual's health in serious jeopardy, (ii) serious impairment to an individual's bodily functions, or (iii) serious dysfunction of any bodily organ or part of an individual.
- (7) GDAC. – The North Carolina Government Data Analytics Center.
- (8) HIE Network. – The voluntary, statewide health information exchange network overseen and administered by the Authority.
- (9) HIPAA. – The Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, and any federal regulations adopted to implement these sections, as amended."
- (10) Individual. – As defined in 45 C.F.R. § 160.103.
- (11) North Carolina Health Information Exchange Advisory Board or Advisory Board. – The Advisory Board established under G.S. 90-414.8.
- (12) North Carolina Health Information Exchange Authority or Authority. – The entity established pursuant to G.S. 90-414.7.
- (13) Opt out. – An individual's affirmative decision communicated in writing to disallow his or her protected health information maintained by the Authority from being disclosed to other covered entities or other persons or entities through the HIE Network.
- (14) Protected health information. – As defined in 45 C.F.R. § 160.103.
- (15) Public health purposes. – The public health activities and purposes described in 45 C.F.R. § 164.512(b).
- (16) Qualified organization. – An entity with which the Authority has contracted for the sole purpose of facilitating the exchange of data with or through the HIE Network.
- (17) Research purposes. – Research purposes referenced in and subject to the standards described in 45 C.F.R. § 164.512(i).
- (18) State CIO. – The State Chief Information Officer.

"§ 90-414.4. Required participation in HIE Network for some providers.

(a) The General Assembly makes the following findings:

- (1) That controlling escalating health care costs of the Medicaid program and other State-funded health services is of significant importance to the State, its taxpayers, its Medicaid recipients, and other recipients of State-funded health services.

- (2) That the State needs timely access to certain demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in order to assess performance, improve health care outcomes, pinpoint medical expense trends, identify beneficiary health risks, and evaluate how the State is spending money on Medicaid and other State-funded health services.
- (3) That making demographic and clinical information available to the State by secure electronic means as set forth in subsection (b) of this section will, with respect to Medicaid and other State-funded health care programs, improve care coordination within and across health systems, increase care quality for such beneficiaries, enable more effective population health management, reduce duplication of medical services, augment syndromic surveillance, allow more accurate measurement of care services and outcomes, increase strategic knowledge about the health of the population, and facilitate health care cost containment.

(b) Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2 and as a condition of receiving State funds, including Medicaid funds, the following entities shall submit at least twice daily, through the HIE network, demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds, solely for the purposes set forth in subsection (a) of this section:

- (1) Each hospital, as defined in G.S. 131E-76(3), that has an electronic health record system.
- (2) Each Medicaid provider.
- (3) Each provider that receives State funds for the provision of health services.
- (4) Each local management entity/managed care organization, as defined in G.S. 122C-3.

The daily submissions required under this subsection shall be by connection to the HIE Network periodic asynchronous secure structured file transfer or any other secure electronic means commonly used in the industry and consistent with document exchange and data submission standards established by the Office of the National Coordinator for Information Technology within the U.S. Department of Health and Human Services.

"§ 90-414.5. State agency and legislative access to HIE Network data.

(a) The Authority shall provide the Department and the State Health Plan for Teachers and State Employees secure, real-time access to data and information disclosed through the HIE Network, solely for the purposes set forth in subsection (a) of this section and in G.S. 90-414.2. The Authority shall limit access granted to the State Health Plan for Teachers and State Employees pursuant to this section to data and information disclosed through the HIE Network that pertains to services (i) rendered to teachers and State employees and (ii) paid for by the State Health Plan.

(b) At the written request of the Director of the Fiscal Research, Bill Drafting, Research, or Program Evaluation Division of the General Assembly for an aggregate analysis of the data and information disclosed through the HIE Network, the Authority shall provide the professional staff of these Divisions with such aggregated analysis responsive to the Director's request. Prior to providing the Director or General Assembly's staff with any aggregate data or information submitted through the HIE Network or with any analysis of this aggregate data or information, the Authority shall redact any personal identifying information in a manner consistent with the standards specified for de-identification of health information under the HIPAA Privacy Rule, 45 C.F.R. § 164.514, as amended.

"§ 90-414.6. State ownership of HIE Network data.

Any data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries submitted through and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article shall be and will remain the sole property of the State. Any data or product derived from the aggregated, de-identified data submitted to and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article, shall be and will remain the sole property of the State. The Authority shall not allow data it receives pursuant to G.S. 90-414.4 or any other provision of this Article to be used or disclosed by or to any person or entity for commercial purposes or for any other purpose other than those set forth in G.S. 90-414.4(a) or G.S. 90-414.2.

"§ 90-414.7. North Carolina Health Information Exchange Authority.

(a) Creation. – There is hereby established the North Carolina Health Information Exchange Authority to oversee and administer the HIE Network in accordance with this Article. The Authority shall be located within the Department of Information Technology and shall be under the supervision, direction, and control of the State CIO. The State CIO shall employ an Authority Director and may delegate to the Authority Director all powers and duties associated with the daily operation of the Authority, its staff, and the performance of the powers and duties set forth in subsection (b) of this section. In making this delegation, however, the State CIO maintains the responsibility for the performance of these powers and duties.

(b) Powers and Duties. – The Authority has the following powers and duties:

- (1) Oversee and administer the HIE Network in a manner that ensures all of the following:
 - a. Compliance with this Article.
 - b. Compliance with HIPAA and any rules adopted under HIPAA, including the Privacy Rule and Security Rule.
 - c. Compliance with the terms of any participation agreement, business associate agreement, or other agreement the Authority or qualified organization or other person or entity enters into with a covered entity participating in submission of data through or accessing the HIE Network.
 - d. Notice to the patient by the healthcare provider or other person or entity about the HIE Network, including information and education about the right of individuals on a continuing basis to opt out or rescind a decision to opt out.
 - e. Opportunity for all individuals whose data has been submitted to the HIE Network to exercise on a continuing basis the right to opt out or rescind a decision to opt out.
 - f. Nondiscriminatory treatment by covered entities of individuals who exercise the right to opt out.
 - g. Facilitation of HIE Network interoperability with electronic health record systems of all covered entities listed in G.S. 90-414.4(b).
 - h. Minimization of the amount of data required to be submitted under G.S. 90-414(b) and any use or disclosure of such data to what is determined by the Authority to be required in order to advance the purposes set forth in G.S. 90-414.2 and G.S. 90-414(a).
- (2) In consultation with the Advisory Board, set guiding principles for the development, implementation, and operation of the HIE Network.
- (3) Employ staff necessary to carry out the provisions of this Article and determine the compensation, duties, and other terms and conditions of employment of hired staff.
- (4) Enter into contracts pertaining to the oversight and administration of the HIE Network, including contracts of a consulting or advisory nature. G.S. 143-64.20 does not apply to this subdivision.
- (5) Establish fees for participation in the HIE Network and report the established fees to the General Assembly, with an explanation of the fee determination process.
- (6) Following consultation with the Advisory Board, develop, approve, and enter into, directly or through qualified organizations acting under the authority of the Authority, written participation agreements with persons or entities that participate in or are granted access or user rights to the HIE Network. The participation agreements shall set forth terms and conditions governing participation in, access to, or use of the HIE Network not less than those set forth in agreements already governing covered entities' participation in the federal eHealth Exchange. The agreement shall also require compliance with policies developed by the Authority pursuant to this Article or pursuant to applicable laws of the state of residence for entities located outside of North Carolina.
- (7) Receive, access, add, and remove data submitted through and stored by the HIE Network in accordance with this Article.

- (8) Following consultation with the Advisory Board, enter into, directly or through qualified organizations acting under the authority of the Authority, a HIPAA compliant business associate agreement with each of the persons or entities participating in or granted access or user rights to the HIE Network.
- (9) Following consultation with the Advisory Board, grant user rights to the HIE Network to business associates of covered entities participating in the HIE Network (i) at the request of the covered entities and (ii) at the discretion of and subject to contractual, policy, and other requirements of the Authority upon consideration of and consistent with the business associates' legitimate need for utilizing the HIE Network and privacy and security concerns.
- (10) Facilitate and promote use of the HIE Network by covered entities.
- (11) Actively monitor compliance with this Article by the Department, covered entities, and any other persons or entities participating in or granted access or user rights to the HIE Network or any data submitted through or stored by the HIE Network.
- (12) Collaborate with the State CIO to ensure that resources available through the GDAC are properly leveraged, assigned, or deployed to support the work of the Authority. The duty to collaborate under this subdivision includes collaboration on data hosting and development, implementation, operation, and maintenance of the HIE Network.
- (13) Initiate or direct expansion of existing public-private partnerships within the GDAC as necessary to meet the requirements, duties, and obligations of the Authority. Notwithstanding any other provision of law and subject to the availability of funds, the State CIO, at the request of the Authority, shall assist and facilitate expansion of existing contracts related to the HIE Network, provided that such request is made in writing by the Authority to the State CIO with reference to specific requirements set forth in this Article.
- (14) In consultation with the Advisory Board, develop a strategic plan for achieving statewide participation in the HIE Network by all hospitals and health care providers licensed in this State.
- (15) In consultation with the Advisory Board, define the following with respect to operation of the HIE Network:
 - a. Business policy.
 - b. Protocols for data integrity, data sharing, data security, HIPAA compliance, and business intelligence as defined in G.S. 143B-426.38A. To the extent permitted by HIPAA, protocols for data sharing shall allow for the disclosure of data for academic research.
 - c. Qualitative and quantitative performance measures.
 - d. An operational budget and assumptions.
- (16) Annually report to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Information Technology on the following:
 - a. The operation of the HIE Network.
 - b. Any efforts or progress in expanding participation in the HIE Network.
 - c. Health care trends based on information disclosed through the HIE Network.
- (17) Ensure that the HIE Network interfaces with the federal level HIE, the eHealth Exchange.

"§ 90-414.8. North Carolina Health Information Exchange Advisory Board.

(a) Creation and Membership. – There is hereby established the North Carolina Health Information Exchange Advisory Board within the Department of Information Technology. The Advisory Board shall consist of the following 11 members:

- (1) The following four members appointed by the President Pro Tempore of the Senate:
 - a. A licensed physician in good standing and actively practicing in this State.
 - b. A patient representative.
 - c. An individual with technical expertise in health data analytics.
 - d. A representative of a behavioral health provider.

- (2) The following four members appointed by the Speaker of the House of Representatives:
- a. A representative of a critical access hospital.
 - b. A representative of a federally qualified health center.
 - c. An individual with technical expertise in health information technology.
 - d. A representative of a health system or integrated delivery network.
- (3) The following three ex officio, nonvoting members:
- a. The State Chief Information Officer or a designee.
 - b. The Director of GDAC or a designee.
 - c. The Secretary of Health and Human Services, or a designee.
- (b) Chairperson. – A chairperson shall be elected from among the members. The chairperson shall organize and direct the work of the Advisory Board.
- (c) Administrative Support. – The Department of Information Technology shall provide necessary clerical and administrative support to the Advisory Board.
- (d) Meetings. – The Advisory Board shall meet at least quarterly and at the call of the chairperson. A majority of the Advisory Board constitutes a quorum for the transaction of business.
- (e) Terms. – In order to stagger terms, in making initial appointments, the President Pro Tempore of the Senate shall designate two of the members appointed under subdivision (1) of subsection (a) of this section to serve for a one-year period from the date of appointment and, the Speaker of the House of Representatives shall designate two members appointed under subdivision (2) of subsection (a) of this section to serve for a one-year period from the date of appointment. The remaining voting members shall serve two-year periods. Future appointees who are voting members shall serve terms of two years, with staggered terms based on this subsection. Voting members may serve up to two consecutive terms, not including the abbreviated two-year terms that establish staggered terms or terms of less than two years that result from the filling of a vacancy. Ex officio, nonvoting members are not subject to these term limits. A vacancy other than by expiration of a term shall be filled by the appointing authority.
- (f) Expenses. – Members of the Advisory Board who are State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Advisory Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Advisory Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.
- (g) Duties. – The Advisory Board shall provide consultation to the Authority with respect to the advancement, administration, and operation of the HIE Network and on matters pertaining to health information technology and exchange, generally. In carrying out its responsibilities, the Advisory Board may form committees of the Advisory Board to examine particular issues related to the advancement, administration, or operation of the HIE Network.

"§ 90-414.9. Participation by covered entities.

- (a) Each covered entity that participates in the HIE Network shall enter into a HIPAA compliant business associate agreement described in G.S. 90-414.5(b)(8) and a written participation agreement described in G.S. 90-414.5(b)(6) with the Authority or qualified organization prior to submitting data through or in the HIE Network.
- (b) Each covered entity that participates in the HIE Network may authorize its business associates on behalf of the covered entity to submit data through, or access data stored in, the HIE Network in accordance with this Article and at the discretion of the Authority, as provided in G.S. 90-414.5(b)(8).
- (c) Notwithstanding any State law or regulation to the contrary, each covered entity that participates in the HIE Network may disclose an individual's protected health information through the HIE Network to other covered entities for any purpose permitted by HIPAA, unless the individual has exercised the right to opt out."

§ 90-414.10. Continuing right to opt out; effect of opt out.

- (a) Each individual has the right on a continuing basis to opt out or rescind a decision to opt out.
- (b) The Authority or its designee shall enforce an individual's decision to opt out or rescind an opt out prospectively from the date the Authority or its designee receives notice of the individual's decision to opt out or rescind an opt out in the manner prescribed by the Authority.

An individual's decision to opt out or rescind an opt out does not affect any disclosures made by the Authority or covered entities through the HIE Network prior to receipt by the Authority or its designee of the individual's notice to opt out or rescind an opt out.

(c) A covered entity shall not deny treatment, coverage, or benefits to an individual because of the individual's decision to opt out. However, nothing in this Article is intended to restrict a health care provider from otherwise appropriately terminating a relationship with an individual in accordance with applicable law and professional ethical standards.

(d) Except as otherwise permitted in G.S. 90-414.9(a)(3), the protected health information of an individual who has exercised the right to opt out may not be made accessible or disclosed to covered entities or any other person or entity through the HIE Network for any purpose.

(e) The protected health information of an individual who has exercised the right to opt out may be disclosed through the HIE Network in order to facilitate the provision of emergency medical treatment to the individual if all of the following criteria are met:

(1) The reasonably apparent circumstances indicate to the treating health care provider that (i) the individual has an emergency medical condition, (ii) a meaningful discussion with the individual about whether to rescind a previous decision to opt out is impractical due to the nature of the individual's emergency medical condition, and (iii) information available through the HIE Network could assist in the diagnosis or treatment of the individual's emergency medical condition.

(2) The disclosure through the HIE Network is limited to the covered entities providing diagnosis and treatment of the individual's emergency medical condition.

(3) The circumstances and extent of the disclosure through the HIE Network is recorded electronically in a manner that permits the NC HIE or its designee to periodically audit compliance with this subsection.

"§ 90-414.11. Construction and applicability.

(a) Nothing in this Article shall be construed to do any of the following:

(1) Impair any rights conferred upon an individual under HIPAA, including all of the following rights related to an individual's protected health information:

- a. The right to receive a notice of privacy practices.
- b. The right to request restriction of use and disclosure.
- c. The right of access to inspect and obtain copies.
- d. The right to request amendment.
- e. The right to request confidential forms of communication.
- f. The right to receive an accounting of disclosures.

(2) Authorize the disclosure of protected health information through the HIE Network to the extent that the disclosure is restricted by federal laws or regulations, including the federal drug and alcohol confidentiality regulations set forth in 42 C.F.R. Part 2.

(3) Restrict the disclosure of protected health information through the HIE Network for public health purposes or research purposes, so long as disclosure is permitted by both HIPAA and State law.

(4) Prohibit the Authority or any covered entity participating in the HIE Network from maintaining in the Authority's or qualified organization's computer system a copy of the protected health information of an individual who has exercised the right to opt out, as long as the Authority or the qualified organization does not access, use, or disclose the individual's protected health information for any purpose other than for necessary system maintenance or as required by federal or State law.

(b) This Article applies only to disclosures of protected health information made through the HIE Network, including disclosures made within qualified organizations. It does not apply to the use or disclosure of protected health information in any context outside of the HIE Network, including the redisclosure of protected health information obtained through the HIE Network.

"§ 90-414.12. Penalties and remedies; immunity for covered entities and business associates for good faith participation.

(a) Except as provided in subsection (b) of this section, a covered entity that discloses protected health information in violation of this Article is subject to the following:

- (1) Any civil penalty or criminal penalty, or both, that may be imposed on the covered entity pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act, P.L. 111-5, Div. A, Title XIII, section 13001, as amended, and any regulations adopted under the HITECH Act.
- (2) Any civil remedy under the HITECH Act or any regulations adopted under the HITECH Act that is available to the Attorney General or to an individual who has been harmed by a violation of this Article, including damages, penalties, attorneys' fees, and costs.
- (3) Disciplinary action by the respective licensing board or regulatory agency with jurisdiction over the covered entity.
- (4) Any penalty authorized under Article 2A of Chapter 75 of the General Statutes if the violation of this Article is also a violation of Article 2A of Chapter 75 of the General Statutes.
- (5) Any other civil or administrative remedy available to a plaintiff by State or federal law or equity.

(b) To the extent permitted under or consistent with federal law, a covered entity or its business associate that in good faith submits data through, accesses, uses, discloses, or relies upon data submitted through the HIE Network shall not be subject to criminal prosecution or civil liability for damages caused by such submission, access, use, disclosure, or reliance."

SECTION 12A.5.(e) G.S. 126-5(c1) is amended by adding a new subdivision to read:

"§ 126-5. Employees subject to Chapter; exemptions.

...
(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...
(32) Employees of the North Carolina Health Information Exchange Authority."

SECTION 12A.5.(f) Article 29A of Chapter 90 of the General Statutes is repealed.

SECTION 12A.5.(f1) Notwithstanding any provision of this section, covered entities that are required to submit demographic and clinical information through the successor HIE Network described in subsection (a) of this section pursuant to G.S. 90-414.4(b), as enacted by subsection (d) of this section, shall not be required to submit such demographic and clinical information through the successor HIE Network until the Authority establishes a date for covered entities to begin submitting demographic and clinical information through the HIE Network or by other secure electronic means, as provided in G.S. 90-414.4(b), as enacted by subsection (d) of this section.

SECTION 12A.5.(g) Except as provided in subsection (f1) of this section, subsections (d) and (e) of this section become effective October 1, 2015. Subsection (f) of this section becomes effective on the date the State Chief Information Officer notifies the Revisor of Statutes that all contracts pertaining to the HIE Network established under Article 29A of Chapter 90 of the General Statutes (i) between the State and the NC HIE, as defined in G.S. 90-413.3, and (ii) between the NC HIE and any third parties have been terminated or assigned to the North Carolina Health Information Exchange Authority established under Article 29B of Chapter 90 of the General Statutes, as enacted by subsection (d) of this section. The remainder of this section becomes effective July 1, 2015.

[Source: Section 12A.5 of S.L. 2015-241, as amended by Section 86.5 of S.L. 2015-264]