

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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Short Title: Health and Safety Regulatory Reform.

(Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR VARIOUS ADMINISTRATIVE REFORMS OF THE HEALTH AND SAFETY LAWS, BY UPDATING OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, BY STUDYING HEALTH AND SAFETY MATTERS OF CONCERN OF NORTH CAROLINA CITIZENS, AND BY MAKING VARIOUS OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

**AUTISM HEALTH INSURANCE COVERAGE**

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

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

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

- (1) Applied behavior analysis. – The design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.
- (2) Autism spectrum disorder. – Any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the most recent edition of the International Statistical Classification of Diseases and Related Health Problems.
- (3) Behavioral health treatment. – Counseling and treatment programs, including applied behavior analysis, that are both of the following:
  - a. Necessary to (i) increase appropriate or adaptive behaviors, (ii) decrease maladaptive behaviors, or (iii) develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual.
  - b. Provided or supervised by (i) a Board Certified Behavior Analyst or (ii) a licensed psychologist or licensed psychological associate, so long as the services performed are commensurate with the psychologist's training and experience.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45  
46 **BEHAVIOR ANALYST LICENSURE**

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

49 "Article 43.

50 "Behavior Analyst Licensure.

51 **"§ 90-726.1. Declaration of purpose.**

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

**"§ 90-726.2. Definitions.**

The following definitions apply in this Article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35           The Board shall have the following powers and duties:

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

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

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

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

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

44                   (6)     Discipline persons licensed under this Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36           (2)    Payment of the renewal fee.

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

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

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

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

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

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

49    **"§ 90-726.10. Reciprocity.**

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

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

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

4 (1) Proof of ethical compliance.

5 (2) Proof of current licensure.

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

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

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

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

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

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

18 **"§ 90-726.12. Fees.**

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

21 (1) Application fee for licensure \$250.00

22 (2) License renewal \$200.00

23 (3) Late renewal fee \$50.00

24 (4) Reciprocal license application \$250.00

25 (5) Temporary license application \$100.00

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

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

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

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

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

43 (2) The date of the crime.

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

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

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

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

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

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

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

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

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

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

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

20 **"§ 90-726.15. Injunction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 24 **PHARMACY BENEFITS MANAGEMENT REGULATION**

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

27 "Article 56A.

28 "Pharmacy Benefits Management.

### 29 **"§ 58-56A-1. Definitions.**

30 The following definitions apply in this Article:

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

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

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

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

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

44 a. Retail pharmacy network management.

45 b. Pharmacy discount card management.

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

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

50 e. Rebate contracting and administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 10 **LIMITED FOOD SERVICES AT LODGING FACILITIES**

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

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

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

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

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

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

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

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

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

#### 34 **YOUTH SKIN CANCER PREVENTION**

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

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

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

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

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

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

**NURSING HOME ADMINISTRATOR ACT REVISION**

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

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

**REPORT ON SEEK**

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

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

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

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

**REPORT ON MULTIPLICATIVE AUDITING AND MONITORING OF CERTAIN SERVICE PROVIDERS**

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

**END SUNSET FOR FACILITIES THAT USE ALTERNATIVE ELECTRONIC MONITORING SYSTEMS**

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

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

1 program shall be implemented at a facility currently authorized to waive the requirement set  
2 forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the  
3 Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services  
4 setting minimum overnight staffing requirements. The waiver shall remain in ~~effect until~~  
5 ~~December 31, 2015; effect~~, however, the Division reserves the right to rescind the waiver if, at  
6 the time of the facility's license renewal, there are outstanding deficiencies that have remained  
7 uncorrected upon follow-up survey, that are related to electronic supervision."  
8

## 9 STATE MEDICAID RECREDENTIALING PERIOD

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

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

14 "(e) The Department of Health and Human Services, Division of Medical Assistance,  
15 shall charge an application fee of one hundred dollars (\$100.00), and the amount federally  
16 required, to each provider enrolling in the Medicaid Program for the first time. The fee shall be  
17 charged to all providers at recREDENTIALING every ~~three-five~~ years."  
18

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

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

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

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

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

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

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

49 **SECTION 12.(e)** Section 12.(b) of this section expires on the date that rules  
50 adopted pursuant to Section 12.(c) of this act become effective.  
51

**ANIMAL EUTHANASIA REQUIREMENTS**

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

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

...

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

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

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

**SECTION 14.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

**SECTION 15.** Except as otherwise provided, this act is effective when it becomes law.