

**2007-2008**

**SENATE  
MENTAL HEALTH &  
YOUTH SERVICES  
COMMITTEE**

**MINUTES**

2007-2008 Biennium

Bill S 90= Kinnaid

Short Title	Date	Latest Action
POST-ADOPTION CONTACTS.	S 07-24-2007	Re-ref Com On Mental Health/ Youth Services

'\$' indicates the bill is an appropriations bill.  
A bold line indicates the bill is an appropriations bill.  
'\*' indicates that the text of the original bill was changed by some action.  
'=' indicates that the original bill is identical to another bill.

Principal Clerk \_\_\_\_\_

Reading Clerk \_\_\_\_\_

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on **Mental Health/Youth Services** will meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Wednesday	July 25, 2007	12:00 Noon	414

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 90	Post-Adoption Contacts.	Senator Kinnaird

Senator Bob Atwater, Co-Chair  
Senator Eleanor Kinnaird, Co-Chair

**MINUTES**  
**SENATE COMMITTEE ON**  
**MENTAL HEALTH/YOUTH SERVICES**

Wednesday, July 25, 2007

The Senate Committee on Mental Health/Youth Services met on Wednesday, July 25, 2007 at 12:00 noon in Room 414 of the Legislative Office Building. Eleven members of the Committee were present. Senator Atwater, Co-Chair, presided.

Senator Atwater called the meeting to order and recognized Senator Kinnaird to explain SB 90, Post-Adoption Contacts. Senator Kinnaird said there was a PCS for SB 90. After the PCS and summary were distributed to the Committee members, Senator Forrester moved for the adoption of the PCS for discussion purposes. Motion carried.

Senator Kinnaird next explained the PCS for SB 90. After her presentation, the following outside persons spoke in favor of the PCS: Brian Lewis, Covenant With North Carolina Children, and Cathy Moore, Assistant Durham County Attorney.

The following outside persons spoke against the PCS: Brinton Wright, North Carolina Bar Association, John Rustin, North Carolina Family Policy Council, and Sharnese Ransome, North Carolina Department of Health and Human Services.

After Senator Doug Berger, Senator Preston, Senator Nesbitt and Senator Jacumin made brief comments about the bill and its history, Senator Atwater adjourned the meeting without taking action on SB 90.

  
\_\_\_\_\_  
Senator Atwater, Co-Chair

  
\_\_\_\_\_  
Carol Resar, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 90\*  
PROPOSED COMMITTEE SUBSTITUTE S90-CSRC-64 [v.2]

7/24/2007 11:52:26 PM

Short Title: Post-Adoption Contacts.

(Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED  
AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO  
ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR  
POST-ADOPTION CONTACT AND COMMUNICATION AS RECOMMENDED  
BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND  
YOUTH AND TO MAKE OTHER CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 48 of the General Statutes is amended by adding a  
new Article to read:

"Article 11.

"Post-Adoption Contacts.

**"§ 48-11-100. Definitions.**

For purposes of this Article, the following definitions apply:

- (1) Birth relative. – The biological parent, grandparent, sibling, or any other member of an adoptee's biological family related to the adoptee by blood or marriage.
- (2) Post-adoption contacts agreement. – A voluntary written agreement that allows specifically described post-adoption contact.
- (3) Post-adoption contacts. – Communication, contact, conveyance of information regarding an adoptee, or limited visitation.

**"§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

(a) A prospective adoptive parent and a birth relative may enter into a post-adoption contacts agreement before or at the time a decree of adoption is granted regarding an adoptee who has been adjudicated abused, neglected or dependent under Article 9 of Chapter 7B of the General Statutes or who has been voluntarily placed in the custody of the department of social services. A biological parent who has not reached 18 years of age shall have legal capacity to enter into a post-adoption contacts

1 agreement and shall be as fully bound by the agreement as if the biological parent had  
2 attained 18 years of age.

3 (b) A post-adoption contacts agreement may include any of the following  
4 provisions:

5 (1) Communication, including the exchange of letters and telephone  
6 contact, between the adoptee and a birth relative.

7 (2) The conveyance of information about the adoptee or the birth relative  
8 by parties to the agreement.

9 (3) Visitation between the adoptee and a birth relative.

10 (c) A post-adoption contacts agreement shall include the following in bold type:

11 (1) The failure of an adoptive parent, birth relative, or the adoptee to  
12 follow the terms of this agreement or modifications to this agreement  
13 shall not be grounds for setting aside a final order of adoption.

14 (2) A disagreement between the parties or litigation brought to enforce,  
15 modify, or terminate this agreement shall not affect any of the  
16 following:

17 a. The validity of the adoption.

18 b. The custodial rights of the adoptive parents.

19 (3) The parties agree, in good faith, to participate in mediation or other  
20 appropriate dispute resolution proceedings to resolve any dispute that  
21 may arise relating to this agreement. Mediation may be waived for  
22 good cause shown.

23 (4) A court will not act on a motion in the cause to modify, enforce, or  
24 terminate this agreement unless the petitioner has participated or  
25 attempted to participate in good faith in mediation or other appropriate  
26 dispute resolution proceedings to resolve any dispute. Mediation may  
27 be waived for good cause shown and is not required if all parties  
28 consent to the motion to modify, enforce or terminate the agreement.

29 (d) A post-adoption contacts agreement is enforceable only if it is approved by a  
30 district court judge and incorporated in a court order signed by a district court judge.  
31 The parties shall file a petition seeking court approval of the post-adoption contacts  
32 agreement as provided for in G.S. 48-11-102.

33 (e) In approving a post-adoption contacts agreement, the court shall make each of  
34 the following findings of fact:

35 (1) The adoptee has been adjudicated abused, neglected or dependent  
36 under Article 9 of Chapter 7B of the General Statutes, has been  
37 voluntarily placed in the custody of the department of social service, or  
38 is placed with a biological sibling.

39 (2) The post-adoption contacts agreement or litigation brought to enforce,  
40 modify, or terminate this agreement shall not affect any of the  
41 following:

42 a. The validity of the adoption.

43 b. The custodial rights of the adoptive parents.

- 1           (3) The parties to the agreement have appeared before the court  
2 personally. The court, for good cause, may waive the requirement that  
3 the parties appear personally.
- 4           (4) Each adoptive parent has knowingly and voluntarily consented to the  
5 granting of post-adoption contact and been informed of the right to  
6 retain counsel prior to giving consent.
- 7           (5) The birth relative has acknowledged in writing that the birth relative  
8 understands that the final order of adoption is irrevocable regardless of  
9 whether the adoptive parent fails to abide by the post-adoption  
10 contacts agreement.
- 11          (6) The adoptive parent has acknowledged in writing that the adoptive  
12 parent understands that the post-adoption contacts agreement, when  
13 approved by the court, grants the birth relative the right to seek  
14 enforcement in court of the post-adoption contacts specified in the  
15 agreement.
- 16          (7) The court has determined that the adoptee's best interests would be  
17 served by approving the post-adoption contacts agreement.
- 18          (f) The court may approve a post-adoption contacts agreement after considering  
19 the following conditions and making findings of fact regarding each condition:
- 20           (1) Whether there is a significant emotional attachment between the  
21 adoptee, and the birth relative to whom the agreement gives  
22 post-adoption contacts or that the adoptee is placed with a biological  
23 sibling to whom post-adoption contacts are being granted and it is in  
24 the adoptee's best interests to be treated similarly to his or her  
25 biological sibling.
- 26           (2) Whether the adoptee, if the adoptee is 12 years of age or older,  
27 consents to the post-adoption contacts agreement.
- 28           (3) Whether the county department of social services or the licensed  
29 child-placing agency that placed the adoptee for adoption, or in the  
30 case of a direct placement adoption, the agency making the report to  
31 the court under G.S. 48-2-501, has reviewed the post-adoption contacts  
32 agreement and either recommended approval of the agreement or  
33 stated in writing its reasons for not recommending approval.
- 34           (4) Whether the adoptee is represented by a court-appointed guardian ad  
35 litem who has reviewed the post-adoption contacts agreement and  
36 either recommended approval of the agreement or stated in writing the  
37 guardian ad litem's reasons for not recommending approval.
- 38          (g) Nothing in this Article establishes custody rights for a birth relative.
- 39          (h) The Administrative Office of the Courts may adopt rules and shall adopt  
40 forms for establishing a civil action under this Article.
- 41          **"§ 48-11-102. Establishment, modification, enforcement, and termination.**
- 42           (a) A party to a post-adoption contacts agreement may file a petition in district  
43 court of the district in which the adoptee resides or is present to establish a  
44 post-adoption contacts agreement. The petition shall contain the name, date of birth,

1 address of the adoptee, the names and addresses of the prospective adoptive parent and  
2 the birth relative entering into the post-adoption contacts agreement. The petition may  
3 contain information on more than one adoptee when the adoptees are biological siblings  
4 and are before the court for the same reason.

5 (b) All records regarding a post-adoption contacts agreement shall be withheld  
6 from public inspection and, except as provided in this subsection, may be examined  
7 only by order of the court. The following persons may examine the record and obtain  
8 copies of written parts of the record without an order of the court:

9 (1) The adoptee.

10 (2) The prospective adoptive parent entering into the post-adoption  
11 contact agreement.

12 (3) The birth relative entering into the post-adoption contact agreement.

13 (c) In response to a motion in the cause filed under this section, the court may  
14 modify a post-adoption contacts agreement if the court finds by a clear, cogent and  
15 convincing evidence either of the following:

16 (1) There has been a substantial change of circumstances and the  
17 modification is necessary to serve the best interests of the adoptee, and  
18 the modification would not enlarge, expand, or increase the amount of  
19 contact permitted by the post-adoption contacts agreement, place new  
20 obligations on the adoptive parent, or undermine the adoptive parent's  
21 authority.

22 (2) The parties to the agreement, including the adoptee, if the adoptee is  
23 12 years of age or older, have agreed to the modification.

24 (d) The court may enforce a post-adoption contacts agreement in a response to a  
25 motion in the cause filed under this section if the court finds by a preponderance of the  
26 evidence that enforcement of the post-adoption contacts agreement is in the best  
27 interests of the adoptee and enforcement would not enlarge, expand, or increase the  
28 amount of contact permitted by the post-adoption contacts agreement, place new  
29 obligations on the adoptive parent, or undermine the adoptive parent's authority.

30 (e) The court may terminate a post-adoption contacts agreement in response to a  
31 motion in the cause filed under this section if the court finds by a preponderance of the  
32 evidence that termination of the post-adoption privileges agreement is in the best  
33 interests of the adoptee or the parties to the agreement, including the adoptee if the  
34 adoptee is 12 years of age or older, have agreed to terminate the agreement.

35 (f) In any motion in the cause filed under this section to modify, enforce, or  
36 terminate a post-adoption contacts agreement, the court may receive documentary  
37 evidence or written reports to support modification, enforcement, or termination of the  
38 agreement. No testimony or evidentiary hearing shall be required unless the court finds  
39 after review of the documentary evidence or written reports that a hearing is necessary  
40 to determine the issues raised in the motion before the court. The court shall not order  
41 further investigation or evaluation by any public or private agency or individual absent a  
42 finding by clear, cogent, and convincing evidence that the best interests of the adoptee  
43 may be protected or advanced only by the inquiry and that the inquiry would not disturb  
44 the stability of the adoptee's home to the detriment of the adoptee. The court shall order



the cost of any services performed by a county department of social services or a licensed child placing agency to be paid by the parties as the court designates.

(g) The court shall not award monetary damages. The court may award attorneys' fees and costs to the prevailing party if the court, in its discretion, determines that it would prevent frivolous or harassing litigation. The court shall use Article 2 of Chapter 5A to enforce the post-adoption contacts agreement.

**"§ 48-11-103. Effect of failure to comply.**

The court shall not set aside a decree of adoption, revoke a written consent to an adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order for failure of a birth relative, an adoptive parent, or an adoptee to comply with any or all of the original terms of or subsequent modifications to the post-adoption privileges agreement."

**SECTION 2.** G.S. 7B-1100 reads as rewritten:

**"§ 7B-1100. Legislative intent; construction of Article.**

(a) The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.

(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Nothing in this Article shall be construed to prevent the court in a proceeding under this Article for termination of parental rights from approving a post-adoption contacts agreement as provided in Article 11 of Chapter 48 of the General Statutes."

**SECTION 3.** G.S. 7B-1110(a) is amended by adding a new subdivision to read:

"...

(5a) Whether or not the prospective adoptive parent and the birth relative, and the adoptee if the adoptee is 12 years of age or older, intend to enter into a post-adoption contacts agreement and the effect of that agreement on the best interests of the child regarding termination of parental rights of the parent. For purposes of this subdivision, the term

1           'birth relative' shall have the same meaning as defined in  
2           G.S. 48-11-100(1)."

3           **SECTION 4.** G.S. 1-301.2(b) reads as rewritten:

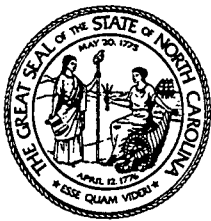
4           "(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when  
5 an issue of fact, an equitable defense, or a request for equitable relief is raised in a  
6 pleading in a special proceeding or in a pleading or written motion in an adoption  
7 proceeding, the clerk shall transfer the proceeding to the appropriate ~~court~~court;  
8 provided that, when an issue of fact, an equitable defense, or a request for equitable  
9 relief is raised in a pleading or written motion in an approval of a post-adoption contacts  
10 agreement under Article 11 of Chapter 48 of the General Statutes, the clerk shall  
11 transfer the proceeding to domestic court, and the court shall ensure that the identity of  
12 the parties to the agreement and the proceeding are confidential. In court, the  
13 proceeding is subject to the provisions in the General Statutes and to the rules that apply  
14 to actions initially filed in that court."

15           **SECTION 5.** There is appropriated from the General Fund to the Division of  
16 Social Services of the Department of Health and Human Services the sum of forty  
17 thousand dollars (\$40,000) for the 2007-2008 fiscal year for the purpose of training for  
18 the implementation of this act. There is appropriated from the General Fund to the  
19 Administrative Office of the Courts the sum of ten thousand dollars (\$10,000) for the  
20 2007-2008 fiscal year for the purpose of training for the implementation of this act.

21           **SECTION 6.** The Administrative Office of the Courts shall compile and  
22 report the all of the following information to the Department of Health and Human  
23 Services on or before January 1, 2011:

- 24           (1) The number of petitions filed to create post-adoption contact  
25 agreements under Article 11 of Chapter 48 of the General Statutes.  
26           (2) The number of motions in the cause filed to modify, to enforce, and to  
27 terminate post-adoption contact agreements.  
28           (3) The number of appeals of termination of parental rights decisions by  
29 year for the previous 10 years.

30           **SECTION 6.** This act is effective December 31, 2009.



## SENATE BILL 90: Post-Adoption Contacts

### BILL ANALYSIS

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<b>Committee:</b>	Senate Mental Health/Youth Services	<b>Date:</b>	July 24, 2007
<b>Introduced by:</b>	Sen. Kinnaird	<b>Summary by:</b>	Shirley Iorio, Ph D
<b>Version:</b>	PCS to First Edition S90-CSRC-64		Legislative Analyst, Kory Goldsmith Committee Counsel

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**SUMMARY:** *The PCS for Senate Bill 90 would authorize adoptive parents and birth relatives to enter into enforceable written agreements providing for contact between the birth relative and the adoptee following an adoption.*

**CURRENT LAW:** Under the current law in North Carolina, adoptive parents and birth relatives may informally agree to post-adoption contact or communication between the adoptee and birth relative following an adoption. However, those agreements are not legally enforceable, and the birth relative would have no recourse if the adoptive parent refused to comply with the terms of the agreement.

**BILL ANALYSIS:** The PCS for Senate Bill 90 would authorize adoptive parents and birth relatives to enter into enforceable agreements providing for contact between a birth relative and the adoptee following an adoption.

**Section 1.** Would create a new Article 11 in Chapter 48 (Adoptions), made up of the following sections:

**Definitions (G.S. 48-11-100)** – This section contains definitions for terms used throughout the article.

- "Birth relative" is any member of an adoptee's biological family related by blood or marriage.
- "Post-adoption contacts agreement" is the voluntary written agreement that sets out allowable contact.
- "Post-adoption contacts" is communication, contact, conveyance of information regarding the adoptee, or limited visitation.

**Agreement; Terms; Conditions (G.S. 48-11-101)** – This section sets out the legal requirements for a valid post-adoption contacts agreement for adoptions where an adoptee who has been adjudicated abused, neglected or dependent, or who has been voluntarily placed in the custody of the department of social services. The agreement is voluntary, but once it is entered into by the adoptive parent and the birth relative, then it is subject to enforcement by the court. The agreement must be approved by a district court judge and incorporated into a court order signed by the judge. All records of a proceeding approving, modifying, enforcing, or terminating an agreement are not public and may be examined only by order of the court or by the parties to the agreement and their attorneys or guardians ad litem.

Agreements MAY contain any of the following provisions:

- Communication of any kind between adoptee and birth relative.
- Conveying information about the adoptee with the birth relative.
- Visitation between adoptee and birth relative.

Agreements SHALL contain the following provisions:

- Failure to comply shall not be grounds for setting aside a final order of adoption.

# Senate Bill 90

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- Disagreement between the parties to the agreement shall not affect the validity of the adoption or custody of the adoptee.
- Parties agree in good faith to mediate any dispute that may arise regarding the agreement. Mediation may be waived for good cause.
- A court will not act on a motion to modify, enforce, or terminate until the petitioner has participated or attempted to participate in mediation. Mediation may be waived for good cause shown and is not required if all parties consent to the motion to modify, enforce or terminate the agreement.

In approving an agreement, the court make each of the following findings of fact:

- The adoptee has been adjudicated abused, neglected or dependent, has been voluntarily placed with the department of social services, or r is placed with a biological sibling.
- The agreement or litigation brought to enforce, modify, or terminate the agreement shall not affect the validity of the adoption or custody of the adoptee.
- Parties have appeared before the court, unless the court waives the requirement for good cause.
- Each adoptive parent consents to the agreement and has been informed of the right to obtain counsel.
- Birth relative acknowledges in writing that he/she understands the order of adoption is irrevocable, even if the adoptive parent fails to comply with the agreement.
- Adoptive parent acknowledges in writing that he/she understands that entering into the agreement gives the birth relative the right to seek enforcement in court.
- The agreement is in the adoptee's best interests.

The court may approve an agreement after considering the following and make findings of fact regarding each:

- Whether there is significant emotional attachment between the adoptee and the birth relative, or that the adoptee is part of a biological sibling to whom post adoption contracts are being granted and the adoptee should be treated similarly.
- Whether the adoptee consents to the agreement if he/she is 12 or older.
- Whether the agency placing the adoptee has recommended the agreement or stated in writing its reasons for not recommending it.
- Whether the adoptee is represented by a guardian ad litem who had recommended the agreement or stated his/her reasons in writing for not recommending it.

**Establishment, Modification, Enforcement, and Termination (G.S. 48-11-102)** – This section authorizes a party to an agreement to file a petition in district court to establish the agreement. In an action under this section, the court may receive documentary evidence and reports, and no hearing is required unless the court finds that one is necessary after reviewing the documentary evidence and reports. No monetary damages may be awarded, but attorneys' fees may be awarded to the prevailing party if the court determines that it would prevent frivolous or harassing litigation. The agreement may be modified, or enforced as follows:

- **Modification** – court may modify the agreement if it finds by a clear, cogent and convincing evidence either:

# Senate Bill 90

Page 3

- There has been a substantial change of circumstances and modification is in the adoptee's best interests, and modification does not enlarge, expand, or increase the amount of contact, place new obligations on the adoptive parent, or undermine the adoptive parent's authority; or
  - Parties to the agreement, including the adoptee if he/she is 12 or older, agree to modification.
- Enforcement – court may enforce the agreement if it finds by a preponderance of the evidence that enforcement is in the adoptee's best interests, and it does not enlarge, expand, or increase the amount of contact, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.
- Termination – court may terminate the agreement if it finds by a preponderance of the evidence either:
  - Termination is in the best interests of the adoptee; or
  - Parties to the agreement, including the adoptee if he/she is 12 or older, agree to termination.
- The court may receive documentary evidence.
- The court may not award monetary damages, but may award attorney fees and costs to the prevailing party.

**Effect of Failure to Comply (G.S. 48-11-103)** – This section makes clear that the court shall not set aside a decree of adoption, revoke a consent to adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order for a failure to comply with an agreement.

Sections 2 through 4. Contain conforming changes to other statutes related to adoption and termination of parental rights.

Section 5. Contains an appropriation of \$40,000 to the Division of Social Services of the Department of Health and Human Services, and \$10,000 to the Administrative Office of the Courts (AOC) for training for the implementation of this act.

Section 6. Requires AOC to compile and report specified information to the Department of Health and Human Services.

**EFFECTIVE DATE:** The PCS would become effective December 31, 2009.

**BACKGROUND:** This bill is a recommendation of the Joint Legislative Study Commission on Children and Youth.

*Wendy Graf Ray, counsel to House Children, Youth and Families, substantially contributed to this summary.*

S0090e1-SMRC-CSRC-64

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 90\*

Short Title: Post-Adoption Contacts.

(Public)

Sponsors: Senators Kinnaird; Allran, Atwater, Bingham, Dorsett, and Weinstein.

Referred to: Judiciary I (Civil).

February 12, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO  
3 ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR  
4 POST-ADOPTION CONTACT AND COMMUNICATION AS RECOMMENDED  
5 BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND  
6 YOUTH AND TO MAKE OTHER CONFORMING STATUTORY CHANGES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 48 of the General Statutes is amended by adding a  
9 new Article to read:

10 "Article 11.

11 "Post-Adoption Contacts.

12 "**§ 48-11-100. Definitions.**

13 For purposes of this Article, the following definitions apply:

- 14 (1) Birth relative. – The biological parent, grandparent, sibling, or any  
15 other member of an adoptee's biological family related to the adoptee  
16 by blood or marriage.
- 17 (2) Post-adoption contacts agreement. – A voluntary written agreement  
18 that allows specifically described post-adoption contact.
- 19 (3) Post-adoption contacts. – Visitation, communication, or any other  
20 contact or conveyance of information regarding an adoptee.

21 "**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

22 (a) A prospective adoptive parent and a birth relative may enter into a  
23 post-adoption contacts agreement before or at the time a decree of adoption is granted.  
24 A biological parent who has not reached 18 years of age shall have legal capacity to  
25 enter into a post-adoption contacts agreement and shall be as fully bound by the  
26 agreement as if the biological parent had attained 18 years of age.

27 (b) A post-adoption contacts agreement may include the following provisions:

- 28 (1) Visitation between the adoptee and a birth relative.

- 1           (2)    Communication, including the exchange of letters and telephone  
2               contact between the adoptee and a birth relative.
- 3           (3)    The sharing of information about the adoptee or the birth relative by  
4               parties to the agreement.
- 5       (c)    A post-adoption contacts agreement shall include the following in bold type:
- 6           (1)    The failure of an adoptive parent, birth relative, or the adoptee to  
7               follow the terms of this agreement or modifications to the agreement  
8               shall not be grounds for setting aside a final order of adoption.
- 9           (2)    A disagreement between the parties or litigation brought to enforce,  
10           modify, or terminate this agreement shall not affect the validity of the  
11           adoption or serve as a basis for orders affecting the custody of the  
12           adoptee.
- 13           (3)    The parties agree, in good faith, to participate in mediation or other  
14           appropriate dispute resolution proceedings to resolve any dispute that  
15           may arise relating to the agreement.
- 16           (4)    A court will not act on a motion to modify, enforce, or terminate this  
17           agreement unless the petitioner has participated or attempted to  
18           participate in good faith in mediation or other appropriate dispute  
19           resolution proceedings to resolve any dispute.
- 20       (d)    A post-adoption contacts agreement is enforceable only if it is approved by a  
21       district court judge and incorporated in a court order signed by a district court judge.
- 22       (e)    In approving a post-adoption contacts agreement, the court shall make each of  
23       the following findings of fact:
- 24           (1)    The parties to the agreement have appeared before the court  
25               personally, unless the court, for good cause, waives the requirement  
26               that the parties appear personally.
- 27           (2)    Each adoptive parent has consented to the granting of post-adoption  
28               contact.
- 29           (3)    The birth relative has acknowledged in writing that the birth relative  
30               understands that the final order of adoption is irrevocable regardless of  
31               whether the adoptive parent fails to abide by the post-adoption  
32               contacts agreement.
- 33           (4)    The adoptive parent has acknowledged in writing that the adoptive  
34               parent understands that the post-adoption contacts agreement, when  
35               approved by the court, grants the birth relative the right to seek  
36               enforcement in court of the post-adoption contacts specified in the  
37               agreement.
- 38           (5)    The court has determined that the adoptee's best interests would be  
39               served by approving the post-adoption contacts agreement.
- 40       (f)    The court may approve a post-adoption contacts agreement after considering  
41       the following conditions and making findings of fact regarding each condition:
- 42           (1)    Whether there is a significant emotional attachment between the  
43               adoptee and the birth relative to whom the agreement gives  
44               post-adoption contacts or that the adoptee is part of a sibling group to

whom post-adoption contacts are being granted and it is in the adoptee's best interests to be treated similarly to his or her siblings.

(2) Whether the adoptee, if the adoptee is 12 years of age or older, consents to the post-adoption contacts agreement.

(3) Whether the county department of social services or the licensed child-placing agency that placed the adoptee for adoption, or in the case of a direct placement adoption, the agency making the report to the court under G.S. 48-2-501, has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing its reasons for not recommending approval.

(4) Whether the adoptee is represented by a court-appointed guardian ad litem who has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing the guardian ad litem's reasons for not recommending approval.

(g) The Administrative Office of the Courts may adopt rules and shall prescribe and supply forms for establishing a civil action pursuant to this section.

(h) The entire record of a proceeding involving approval, modification, enforcement, or termination of a post-adoption contacts agreement under this Article shall not be a matter of public record. The clerk of court shall maintain the record of the proceeding separately from other records and withhold the record from public inspection. The record may be examined only by order of the court, by the parties to the post-adoption contacts agreement, or by their attorneys or guardians ad litem.

**"§ 48-11-102. Modification, enforcement, and termination.**

(a) A party to a post-adoption contacts agreement may file a new civil action in district court for the purpose of modifying, enforcing, or terminating a post-adoption contacts agreement after the party has participated or attempted to participate in good faith in mediation or other appropriate dispute resolution proceedings to resolve any dispute.

(b) In a proceeding under this section, the court may modify a post-adoption contacts agreement if the court finds by a preponderance of the evidence either of the following:

(1) There has been a substantial change of circumstances and the modification is necessary to serve the best interests of the adoptee, and the modification would not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.

(2) The parties to the agreement, including the adoptee, if the adoptee is 12 years of age or older, have agreed to the modification.

(c) The court may enforce a post-adoption contacts agreement in a proceeding under this section if the court finds by clear, cogent, and convincing evidence that enforcement of the post-adoption contacts agreement is in the best interests of the adoptee and enforcement would not enlarge, expand, or increase the amount of contact



1 permitted by the post-adoption contacts agreement, place new obligations on the  
2 adoptive parent, or undermine the adoptive parent's authority.

3 (d) The court may terminate a post-adoption contacts agreement in a proceeding  
4 under this section if the court finds by clear, cogent, and convincing evidence that  
5 termination of the post-adoption privileges agreement is in the best interests of the  
6 adoptee or the parties to the agreement, including the adoptee if the adoptee is 12 years  
7 of age or older, have agreed to terminate the agreement.

8 (e) In any proceeding under this section to modify, enforce, or terminate a  
9 post-adoption contacts agreement, the court may receive documentary evidence or  
10 written reports to support modification, enforcement, or termination of the agreement.  
11 No testimony or evidentiary hearing shall be required unless the court finds after review  
12 of the documentary evidence or written reports that a hearing is necessary to determine  
13 the issues raised in the motion before the court. The court shall not order further  
14 investigation or evaluation by any public or private agency or individual absent a  
15 finding by clear, cogent, and convincing evidence that the best interests of the adoptee  
16 may be protected or advanced only by the inquiry and that the inquiry would not disturb  
17 the stability of the adoptee's home to the detriment of the adoptee.

18 (f) The court shall not award monetary damages. However, the court may award  
19 attorneys' fees and costs to the prevailing party if the court, in its discretion, determines  
20 that it would prevent frivolous or harassing litigation.

21 "§ 48-11-103. Effect of failure to comply.

22 The court shall not set aside a decree of adoption, revoke a written consent to an  
23 adoption, rescind a relinquishment, or modify an order to terminate parental rights or  
24 any other prior court order for failure of a birth relative, an adoptive parent, or an  
25 adoptee to comply with any or all of the original terms of or subsequent modifications  
26 to the post-adoption privileges agreement."

27 SECTION 2. G.S. 48-1-100 reads as rewritten:

28 "§ 48-1-100. Legislative findings and intent; construction of Chapter.

29 (a) The General Assembly finds that it is in the public interest to establish a clear  
30 judicial process for adoptions, to promote the integrity and finality of adoptions, to  
31 encourage prompt, conclusive disposition of adoption proceedings, and to structure  
32 services to adopted children, biological parents, and adoptive parents that will provide  
33 for the needs and protect the interests of all parties to an adoption, particularly adopted  
34 minors.

35 (b) With special regard for the adoption of minors, the General Assembly  
36 declares as a matter of legislative policy that:

37 (1) The primary purpose of this Chapter is to advance the welfare of  
38 minors by (i) protecting minors from unnecessary separation from their  
39 original parents, (ii) facilitating the adoption of minors in need of  
40 adoptive placement by persons who can give them love, care, security,  
41 and support, (iii) protecting minors from placement with adoptive  
42 parents unfit to have responsibility for their care and rearing, and (iv)  
43 assuring the finality of the adoption; and

(2) Secondary purposes of this Chapter are (i) to protect biological parents from ill-advised decisions to relinquish a child or consent to the child's adoption, (ii) to protect adoptive parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing, (iii) to protect the privacy of the parties to the adoption, and (iv) to discourage unlawful trafficking in minors and other unlawful placement activities.

(c) In construing this Chapter, the needs, interests, and rights of minor adoptees are primary. Any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor.

(d) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(e) Nothing in this Chapter shall be construed to prevent an adoptive parent and a birth relative from entering into a post-adoption contacts agreement as provided in Article 11 of this Chapter.

SECTION 3. G.S. 7B-1100 reads as rewritten:

"§ 7B-1100. **Legislative intent; construction of Article.**

(a) The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.

(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Nothing in this Article shall be construed to prevent the court in a proceeding under this Article for termination of parental rights from approving a post-adoption contacts agreement as provided in Article 11 of Chapter 48 of the General Statutes.

SECTION 4. G.S. 7B-1110(a) is amended by adding a new subdivision to read:

"...

(5a) Whether or not the prospective adoptive parent and the birth relative, and the adoptee if the adoptee is 12 years of age or older, intend to enter into a post-adoption contacts agreement and the impact of that

1 agreement on the best interests of the child regarding termination of  
2 parental rights of the parent. For purposes of this subdivision, the term  
3 'birth relative' shall have the same meaning as defined in  
4 G.S. 48-11-100(1)."

5 SECTION 5. G.S. 7B-1112 reads as rewritten:

6 "§ 7B-1112. Effects of termination order.

7 (a) An order terminating the parental rights completely and permanently  
8 terminates all rights and obligations of the parent to the juvenile and of the juvenile to  
9 the parent arising from the parental relationship, except that the juvenile's right of  
10 inheritance from the juvenile's parent shall not terminate until a final order of adoption  
11 is issued. The parent is not thereafter entitled to notice of proceedings to adopt the  
12 juvenile and may not object thereto or otherwise participate therein:

13 (1) If the juvenile had been placed in the custody of or released for  
14 adoption by one parent to a county department of social services or  
15 licensed child-placing agency and is in the custody of the agency at the  
16 time of the filing of the petition or motion, including a petition or  
17 motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon  
18 entry of the order terminating parental rights, acquire all of the rights  
19 for placement of the juvenile as the agency would have acquired had  
20 the parent whose rights are terminated released the juvenile to that  
21 agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48  
22 of the General Statutes, including the right to consent to the adoption  
23 of the juvenile.

24 (2) Except as provided in subdivision (1) above, upon entering an order  
25 terminating the parental rights of one or both parents, the court may  
26 place the juvenile in the custody of the petitioner or movant, or some  
27 other suitable person, or in the custody of the department of social  
28 services or licensed child-placing agency, as may appear to be in the  
29 best interests of the juvenile.

30 (b) Nothing in this section shall be construed to prevent the parent and the  
31 prospective adoptive parent from entering into a post-adoption contacts agreement in  
32 accordance with Article 11 of Chapter 48 of the General Statutes."

33 SECTION 6. G.S. 1-301.2(b) reads as rewritten:

34 "(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when  
35 an issue of fact, an equitable defense, or a request for equitable relief is raised in a  
36 pleading in a special proceeding or in a pleading or written motion in an adoption  
37 proceeding, the clerk shall transfer the proceeding to the appropriate ~~court~~ court;  
38 provided that, when an issue of fact, an equitable defense, or a request for equitable  
39 relief is raised in a pleading or written motion in an approval of a post-adoption contacts  
40 agreement under Article 11 of Chapter 48 of the General Statutes, the clerk shall  
41 transfer the proceeding to domestic court, and the court shall ensure that the identity of  
42 the parties to the agreement and the proceeding are confidential. In court, the  
43 proceeding is subject to the provisions in the General Statutes and to the rules that apply  
44 to actions initially filed in that court."

1

**SECTION 7.** This act is effective when it becomes law.

## **FAQS Post-Adoption Contacts Legislation S90**

### **Features of the Legislation:**

- Totally voluntary between biological parent(s) and prospective adoptive parent
- Must be approved by a judge using a best interests of the child test
- Contact can range from photographs and letters to visitation, including biological parents and/or extended family.
- Enforceable and modifiable by judge unless it would impose additional burden or obligation on the adoptive parent.
- Validity of the adoption is not affected by non-compliance or termination or modification of the agreement.

### ***Why would this legislation be good for children?***

Adoptive children wonder about their biological and historical roots and heritage regardless of their age at adoption. Most DSS children know their families and worry about their parent's safety and well being and miss their extended family members. As children grow developmentally, these issues reoccur in new contexts. Meeting these needs for the children stabilizes adoptions and prevents future disruptions.

### ***Why would this legislation be good for biological parents and family members?***

Parents would not be punished for being unable to care for their children by being permanently cut-off from all contact with their children. Extended family would not be cut off from the children because of their inability to step-in and be full-time parents for the children.

### ***Why would this legislation be good for adoptive parents?***

Adoptive parents would be able to do what is good for their children while at the same time having the protection of the courts to control the contact. The children's wondering about their parents and the mystery surrounding their history can interfere with their bond with their adoptive parents. This legislation can in fact strengthen the bond.

### ***How is this legislation different from the current law?***

The current law allows collateral agreements for ongoing contact in consent or relinquishment situations, but does not provide for enforcement by a judge or agreements after a termination of parental rights. They are, in effect, "Gentlemen's Agreements". This legislation will be in addition to the current law.

### ***If Post-Adoption Contact Agreements are voluntary, why is enforcement necessary?***

1. Circumstances change over time, and what was once voluntary may need adjustment. 2. If the biological parent wants post-adoption contact and is represented by a lawyer, it is unlikely a lawyer would advise the parent to relinquish parental rights without an enforceable agreement. Relinquishing a child is such an agonizing event for a parent that a parent should be protected from agreeing to do so thinking that on-going contact will be allowed, and then have it arbitrarily denied, without recourse. More relinquishments are likely if contact is ensured.

Note: Not all biological parents will want contact. Some wish to be anonymous and can remain so. Agencies can match up biological parents and adoptive parents based on mutual desires regarding contact or no contact.

**Does this legislation create adoptive parents who are “second-class” parents?**

There are many examples of blended families. In a step-parent relationship, an insightful step-parent does not try to replace the parent, and acknowledges child's feeling for the parent but establishes own, authentic relationship with the child. The usual result is a stronger relationship with the step-parent than anticipated. A parent who acknowledges the child's relationship with the step-parent without feeling threatened or accusing the child of disloyalty establishes a better parent-child relationship in the long run. The same is true here.

Removal of the birth family creates a loss the child grieves for. The hurts of the former biological family will be assimilated into the new adoptive family until the child heals through therapy, time, stability, and acceptance. Adoptive families are different, not unequal. The consequences of those differences should not be disproportionately borne by the children.

***What protections are there against protracted litigation?***

Mediation must first be attempted. The AOC is required to develop user-friendly forms for pro se representation. Except for extreme circumstances, hearings are limited to written reports and a review of the agreement and no further investigation or outside agency involvement is allowed unless it does not negatively impact the stability of the adoptive home. Money damages are not allowed.

***What happens if the adoptive parents want to move?***

Adoptive parents can move. The statute will not allow enforcement if enforcement creates an additional obligation on the adoptive parent.

***Is this Legislation constitutional?***

Yes. It is a voluntary agreement that is enforceable. Biological parents enter into visitation agreements that affect their rights as parents due to separation or divorce. This legislation recognizes that adoptive children have more parents than most other children. The quid pro quo is that the litigation around termination of parental rights, appeal and adoption ends and the adoptive parent gets to adopt sooner giving the child permanency quicker and the placement stabilizes. Adoptive parents would not be required to continue contact where the contact is not in the best interests of the child.

***Will biological parents opt for the relative convenience/security of these agreements without adequately working to regain custody of their children?***

These agreements would not be offered until after the court determines that reunification is no longer in the best interests of the child, at the permanency planning stage. Most parents are represented by lawyers and cannot relinquish or enter into these agreements without their counsel being involved.

***Why do children 12 and older consent to the post-adoption contact?***

Current law provides that a 12 year old has to consent to their own adoption. This is one aspect of the adoption. The Statute provides for judicial override of child's consent where appropriate. It is difficult to imagine a situation where the adoptive parent will agree, but the child will not.

***Why is there a delay in the effective date of this legislation?***

Adoption is an emotional issue. It is thought that a delay to provide required training of all the usual parties will ensure a smoother implementation of the law.



April 5, 2007

To Whom It May Concern:

We are two child psychologists from Duke University writing in support of pending legislation to make post-adoption contact a possibility for some North Carolina children, under specified circumstances for the best interest of the child. We examined this legislation from two perspectives—that of researchers in the area of child socioemotional development, child trauma, and parenting and that of psychologists engaged in clinical work with children, their natural families, and their foster and adoptive families.

It must be stated that the proposed legislation is not to be confused with “open adoption;” rather, this legislation is about the fact that for some children and families (both biological and adoptive), there are psychological benefits to an intentional and individually determined plan for contact. Indeed, contact may range from a card and letter on birthdays to periodic visits, all to be determined by the needs and wishes of the child and both families, with adoptive parents having the right to deny contact, if they feel that is in the best interests of their adoptive child.

There are a number of reasons to support this legislation. First, available research suggests that post-adoption contact confers benefits for adopted children, adoptive parents, and biological or natural parents. Second, after an exhaustive review of the available literature, there is no data that suggests emotional or behavioral harm to children with post-adoption contact. Third, from our clinical experiences, there are some children for whom contact and involvement of the natural or biological family has greatly facilitated the child’s well being, the adoptive family’s successes, and improvements in child treatment when there is a history of trauma or other untoward events with the biological family. The notion of post adoptions contact is also consistent with what we know about parent-child relationships (attachment) and the emerging trust and identify for the child. We provide more detail for each of these three points below.

Post-adoption contact appears to confer benefits for adopted children, adoptive parents, and natural or biological parents

- Research suggests that adoptive parents who agree to post-adoption contact continue to be pleased with their decision, a number of years down the road.
- Youth with post-adoption contact appear to be doing *equally as well* as youth without post-adoption contact on standardized assessment measures of behavioral and emotional functioning.
- Post-adoption contact is associated with a more empathic view of the adoptive parents toward the biological parents, which in turn, is more supportive of the child’s understanding of the parents who lost custody of him or her.

- In a study examining frequency of post-adoption contact, it appears that most contact is relatively limited for most families, over time (e.g., a couple phone calls a year, 1 in-person visit, birthday cards.)

Existing research does not indicate that post-adoption contact is harmful to youth

- 18 or more states now have legislation that makes post-adoption contact possible
- DHHS lists making having post-adoption contact as one of their suggestions for improving care and functioning of youth who come into the custody of the state
- The decision to allow post-adoption contact is decided upon by a number of professionals (e.g., court officials, expert witnesses, therapists) and the adoptive parents. Post-adoption contact is not for all youth, and will not be instigated without the express permission or interest of the adoptive parents.
- As in all circumstance, the best interests of the child is primary for making these decisions. The best interest of the child should include successful resolution of prior trauma or neglect when that has occurred; and, in some cases, this is best done with the inclusion of the biological family. This can be determined by the adoptive family and any clinicians involved with the care of the child.

Post-adoption contact, for some families, makes good clinical sense

- A misconception about attachment is that attaching to one individual (e.g., a biological parent), and maintaining contact with them impedes children's ability to bond with or attach to another individual (e.g., an adoptive parent). Research says that this is simply not true. Children can attach to more than one adult, in fact, a successful albeit limited relationship with biological parents can facilitate a solid and trusting bond with the adoptive parents. Secrets can impede the development of a secure attachment with adoptive parents.
- Children often do not understand when relationships are 'cut off' and can perceive that they have been abandoned and done something to cause the biological parent to leave them. This can lead to very damaging assumptions about self worth. On the other hand, some biological families, with guidance, have been able to assure the child that he or she did nothing wrong, that the limitations were the parents themselves. We know that youth experience loss when they can no longer see biological family members once adopted, and this sense of loss exists despite any prior maltreatment. It can be very helpful when they can make meaning of the loss, with the help of adoptive parents and, when feasible, biological parents.
- We know that, at times, adoptive parents enter the relationship with the child with very negative assumptions about the failures of the biological family. This is normal and can motivate good, loving care for the child. On the other hand, the parent speaking negatively about a child's biological parent(s) is never in their best interest. Post adoption contact is one opportunity for the adoptive parent to develop empathy for the biological parent and support the relationship with the child, however limited.

In conclusion, although post-adoption contact is not for all youth, for a number of children we have worked with, involving biological family members has allowed



treatment to move forward. Biological family members can speak to the child's early history and can form a 'bridge' from their current life to their past.

Post adoption contact, outside of the system, is a reality now for many families. This legislation offers the opportunity to form a planful and intentional model for contact when that works for the child and family. We congratulate the committee for this thoughtful legislation that truly makes the adoptive child's best interests the priority.

Please do not hesitate to contact us if we can be of further assistance with this matter.

Sincerely,

*Shannon Dorsey/KOD*  
Shannon Dorsey, Ph.D.  
Assistant Clinical Professor

*KOD O'Donnell*  
Karen O'Donnell, PhD.  
Associate Clinical Professor

# VISITOR REGISTRATION SHEET

Mental Health/Youth Services

July 25, 2007

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BRIAN LEWIS	Covenant with NC's Children
Stephanie Nantz	DOA/Vello
PAUL WADDLE	DHHS/DSS
Jim Y	DHHS
Blansome	DHHS
John Rust	NCFPC
BRINTON WRIGHT	NC Bar Association
DOUG HERON	NC BAR ASSOCIATION
Cathy Moore	Asst. County Atty - Durham
W. W. Warr	SSI
Henry Jones	Attorney Raleigh

**SENATE MENTAL HEALTH/  
YOUTH SERVICES COMMITTEE**

**2008**

**SENATOR BOB ATWATER  
CO-CHAIR**

**SENATOR ELLIE KINNAIRD  
CO-CHAIR**

**STAFF**

**KORY GOLDMSITH  
SHIRLEY IORIO  
SHAWN PARKER  
BEN POPKIN**

**COMMITTEE ASSISTANT**

**CAROL RESAR**

**SENATE MENTAL HEALTH/YOUTH SERVICES COMMITTEE - 2008 SESSION**

<b><u>MEMBER</u></b>	<b><u>LOCATION</u></b>	<b><u>PHONE</u></b>	<b><u>LEGISLATIVE ASST.</u></b>
Atwater, Bob, <b>Co-Chair</b>	312-LOB	5-3036	Carol Resar
Kinnaird, Ellie, <b>Co-Chair</b>	2115-LB	3-3-5804	Kathie Young
Nesbitt, Martin <b>Vice Chair</b>	300B-LOB	5-3001	Jan Lee
Dannelly, Charlie	2010-LB	3-5955	Dee Hodge
Forrester, James	1129-LB	5-3050	Mary Watson Cannon
Jacumin, Jim	1113-LB	5-7823	
Preston, Jean	1121-LB	3-5706	Suzanne Castleberry
Purcell, Bill	625-LOB	3-5953	Lorraine Blake
Shaw, Larry	311-LOB	3-9349	Barbara Lee
Snow, John	2111-LB	3-5875	Becky Butler

North Carolina General Assembly  
Through Senate Committee on  
Mental Health/Youth Services

Date: 08/20/2008  
Time: 11:30  
Page: 001 of 001  
Leg. Day: H-155/S-153

2007-2008 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0090=	Eleanor Kinnaird	POST-ADOPTION CONTACTS.	S	Re-ref Com On Mental Health/ Youth Services	07-24-07	
\$ S1610	Martin L. Nesbit	RECOMMENDATIONS OF MH/ DD/SA OVERSIGHT COMM.	*S	<b>Re-ref Com On Appropriations/ Base Budget</b>	05-15-08	06-05-08

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'\*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

**Senate Mental Health/Youth Services Committee**  
**Wednesday, June 4, 2008, 12:00 Noon**  
**414 LOB**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

SB 1610	Recommendations of MH/DD/SA Oversight Comm.	Senator Nesbitt, Jr.
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**Adjournment**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**MENTAL HEALTH/YOUTH SERVICES COMMITTEE REPORT**

**Senator Bob Atwater, Co-Chair  
Senator Eleanor Kinnaird, Co-Chair**

Thursday, June 05, 2008

Senator ATWATER,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE  
BILL**

S.B.	<b>1610</b>	Recommendations of MH/DD/SA Oversight Comm.
		Draft Number: 55725
		Sequential Referral: Appropriations/Base Budget
		Recommended Referral: None
		Long Title Amended: No

**TOTAL REPORTED: 1**

Committee Clerk Comments:

## SENATE MENTAL HEALTH/YOUTH SERVICES COMMITTEE

Wednesday, June 4, 2008 at 12:00 PM

Room 414, LOB

### MINUTES

The Senate Mental Health/Youth Services Committee met at 12:00 Noon on June 4, 2008, in Room 414 of the LOB. 9 members of the committee were present. Senator Ellie Kinnaird presided.

Senator Atwater opened the meeting by welcoming everyone and introducing the pages and the Sergeants-At-Arms.

Then Senator Kinnaird called on Senator Nesbitt to explain SB 1610, Recommendations of MH/DD/SA Oversight Comm. **Senator Nesbitt moved to adopt the PCS for SB 1610 for purposes of discussion. Motion carried.** Senator Nesbitt then asked Shawn Parker, staff to the Mental Health Oversight Committee, to explain the differences between the original bill and the PCS. Mr. Parker told the Committee that there was a change in Section 2.7 of the bill and Section 2.10 was a new section to the bill.

Next, Mr. Parker explained the PCS section by section. After his explanation of each section, Senator Nesbitt added comments regarding the need for legislation in each section. During the explanation of the PCS, Leza Wainwright, Division Co-Director of Mental Health, Developmental Disabilities and Substance Abuse Services with the Department of Health and Human Resources (DHHS) added comments and answered questions from the Committee.

After Mr. Parker explained Sections 1.7(a) and 1.7(b), **Senator Nesbitt moved to amend the PCS by deleting lines 25-41 on page 2 which deletes those two sections. Motion carried.** Senator Nesbitt then told the Committee that Section 2.2(d) was also in a stand-alone bill that was passed in the Senate Health Care Committee, but this section would remain in the PCS.

Mr. Parker then continued his explanation of the PCS. Andrea Poole, Fiscal Analyst added explanation of Section 2.5(b) regarding the Housing 400 Initiative. Tara Larson, Chief Clinical Operations Officer with the Division of Medical Assistance in DHHS, added comments during Mr. Parker's explanation of Section 3.1.

Since the meeting time had expired, Senator Kinnaird recessed the Committee until 10 minutes after the Senate adjourned.

When Senator Kinnaird reconvened the Committee at 2:40 PM, **Senator Nesbitt moved to amend the PCS on page 5, line 6-11 in Section 2.6. Motion carried. Further, Senator Nesbitt moved to amend the PCS on page 6, lines 27-42 in Section 3.3(a). Motion carried.**



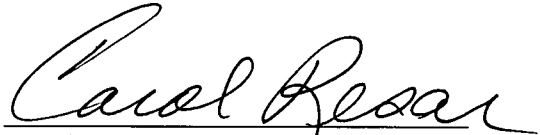
Mr. Parker then finished the explanation of the PCS for SB 1610, with additional comments by Senator Nesbitt and Leza Wainwright with DHHS.

After the explanation, Senator Kinnaird stated that Mr. David Richard with ARC would like to speak on the PCS. Mr. Richard told the Committee that he would like to see the lowest tier in Section 2.7 be raised from \$15,000 to \$20,000. After some discussion, the Committee did not change that amount. Senator Nesbitt told the Committee that the House budget had the lowest tier at \$20,000 and this item would probably be worked out in a Conference Committee. **Senator Nesbitt then moved to engross the three amendments in a new PCS and moved for an unfavorable report to the bill, but favorable as to PCS for SB 1610. Motion carried. The bill has a sequential referral to the Senate Appropriations Committee.**

The meeting adjourned at 3:30 PM.



Senator Bob Atwater, Co-Chair



Carol Resar, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

1

SENATE BILL 1610\*

Short Title: Recommendations of MH/DD/SA Oversight Comm. (Public)

Sponsors: Senators Nesbitt; Allran, Apodaca, Atwater, Berger of Franklin, Brunstetter, Cowell, Dannelly, Dorsett, Forrester, Goss, Graham, Hoyle, Jenkins, Jones, Kinnaird, Malone, Purcell, Queen, Shaw, Snow, and Tillman.

Referred to: Mental Health/Youth Services.

May 15, 2008

A BILL TO BE ENTITLED

AN ACT TO ENACT VARIOUS LAWS TO IMPROVE THE MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.1. Expenditure of Service Dollars.** – For the purpose of mitigating cash-flow problems that many non-single-stream LMEs experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year, the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

**SECTION 1.2.** There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six million dollars (\$6,000,000) for the 2008-2009 fiscal year. These funds shall be used to support LMEs in establishing additional regionally purchased and locally hosted substance abuse programs. Funds appropriated shall be for the purpose of developing and enhancing the American Society of Addiction Medicine (ASAM) continuum of care at the community level. The Department of Health and Human Services shall work with LMEs in establishing these programs.

1           **SECTION 1.3.(a)** There is appropriated from the General Fund to the  
2 Department of Health and Human Services, Division of Mental Health, Developmental  
3 Disabilities, and Substance Abuse Services, the sum of six hundred seventy-five  
4 thousand dollars (\$675,000) for the 2008-2009 fiscal year. These funds shall be used to  
5 contract with an outside vendor for technical assistance to LMEs that are not meeting  
6 the standards necessary for single-stream funding.

7           **SECTION 1.3.(b)** The Department shall encourage the conversion of the  
8 remaining non-single-stream LMEs to single-stream funding as soon as possible. The  
9 Department shall also develop standards for the removal of single-stream designation  
10 for those LMEs that do not continue to comply with the applicable requirements for  
11 single-stream funding.

12           **SECTION 1.4.** The Department of Health and Human Services shall  
13 simplify the current State Integrated Payment and Reporting System (IPRS) to  
14 encourage more providers to serve State-paid clients.

15           **SECTION 1.5.** The Department of Health and Human Services shall create a  
16 reporting system for both single-stream funding and non-unit-cost reimbursement  
17 funding that is readily comprehensible and integrates with payment systems.

18           **SECTION 1.6.** The Department of Health and Human Services shall  
19 determine why there have been under- and over-expenditure of State service dollars by  
20 LMEs and shall take the action necessary to address the problem. In making its  
21 determination, the Department shall consult with LMEs and providers. Not later than  
22 January 1, 2009, the Department shall report to the House of Representatives  
23 Appropriations Subcommittee on Health and Human Services, the Senate  
24 Appropriations Committee on Health and Human Services, the Fiscal Research  
25 Division, and the Joint Legislative Oversight Committee on Mental Health,  
26 Developmental Disabilities, and Substance Abuse Services on actions taken to address  
27 the problem of LME under- and over-expenditure of service dollars.

28           **SECTION 1.7.(a)** There is appropriated from the General Fund to the  
29 General Assembly the sum of one million dollars (\$1,000,000) for the 2008-2009 fiscal  
30 year. These funds shall be used to retain the services of an independent consultant to  
31 perform a services gap analysis of the Mental Health, Developmental Disabilities, and  
32 Substance Abuse Services System. In developing the Request for Proposal (RFP), the  
33 Fiscal Research Division shall require the independent consultant to report on or before  
34 May 1, 2009, its findings and recommendations to the House of Representatives  
35 Appropriations Subcommittee on Health and Human Services, the Senate  
36 Appropriations Committee on Health and Human Services, the Joint Legislative  
37 Oversight Committee on Mental Health, Developmental Disabilities, and Substance  
38 Abuse Services, and the Fiscal Research Division.

39           **SECTION 1.7.(b)** In developing its work plan, the Joint Legislative Program  
40 Evaluation Oversight Committee may include a thorough performance evaluation of the  
41 State's mental health agencies in the Department of Health and Human Services,  
42 Division of Mental Health, Developmental Disabilities, and Substance Abuse Services  
43 and the Division of Medical Assistance. The performance evaluation shall be  
44 completed not later than May 1, 2009.

**SECTION 2.1.(a) State-Operated Services.** – In order to temporarily address high admissions to adult acute unit beds in the State psychiatric hospitals, the Secretary of the Department of Health and Human Services may open and operate on a temporary basis the Central Regional Hospital Wake Unit on the Dorothea Dix Campus and may maintain the Wake Unit on the Dix Campus until beds become available in the system.

**SECTION 2.1.(b)** G.S. 122C-181(a)(1) reads as rewritten:

**"§ 122C-181. Secretary's jurisdiction over State facilities.**

(a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

(1) Psychiatric Hospitals:

a. Cherry Hospital.

a1. (Contingent effective date, see Editor's note) Central Regional Hospital.

b. (Contingent repeal date, see Editor's note) Dorothea Dix Hospital.

c. (Contingent repeal date, see Editor's note) John Umstead Hospital.

d. Broughton Hospital.

e. The Central Regional Hospital Wake Unit on the Dorothea Dix Campus."

This subsection expires upon the earlier of July 1, 2009, or the availability of beds at Central Regional Hospital.

**SECTION 2.1.(c)** There is appropriated from the General Fund to the Department of Health and Human Services the sum of five million two hundred seventy-four thousand dollars (\$5,274,000) for the 2008-2009 fiscal year. These onetime funds shall be used to support the temporary opening and operation of the Central Regional Hospital Wake Unit on the Dorothea Dix Campus.

**SECTION 2.2.(a)** G.S. 130A-383(a) reads as rewritten:

**"§ 130A-383. Medical examiner jurisdiction.**

(a) Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional ~~institution-institution~~, State facilities operated in accordance with Part 5 of Article 4 of Chapter 122C of the General Statutes; or in police custody; occurring pursuant to Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. No person shall disturb the body at the scene of such a death until authorized by the medical examiner unless in the unavailability of the medical examiner it is determined by the appropriate law enforcement agency that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited

1 purposes of this Part, expression of opinion that death has occurred may be made by a  
2 nurse, an emergency medical technician or any other competent person in the absence of  
3 a physician."

4 **SECTION 2.2.(b)** G.S. 122C-31 is amended by adding the following new  
5 subsection to read:

6 "**§ 122C-31. Report required upon death of client.**

7 ...

8 (g) In addition to the reporting requirements specified in subsections (a) through  
9 (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report the  
10 death of any client of the facility, regardless of the manner of death, to the medical  
11 examiner of the county in which the body of the deceased is found."

12 **SECTION 2.2.(c)** There is appropriated from the General Fund to the  
13 Department of Health and Human Services the sum of one hundred fifty-five thousand  
14 two hundred twenty-six dollars (\$155,226) for the 2008-2009 fiscal year. These funds  
15 shall be used for one additional public health nurse consultant position and other costs  
16 associated with the increased investigatory requirements of this section.

17 **SECTION 2.2.(d)** The Commission for Mental Health, Developmental  
18 Disabilities, and Substance Abuse Services shall study the current death reporting  
19 requirements under G.S. 122C-26(5)(c) and assess the need for any additional reporting  
20 requirements or modifications to existing rules or procedures. The Commission shall  
21 report its findings to the Joint Legislative Oversight Committee on Mental Health,  
22 Developmental Disabilities, and Substance Abuse Services not later than November 1,  
23 2008.

24 **SECTION 2.3.** There is appropriated from the General Fund to the  
25 Department of Health and Human Services, Division of Mental Health, Developmental  
26 Disabilities, and Substance Abuse Services, the sum of thirty million dollars  
27 (\$30,000,000) for the 2008-2009 fiscal year. These funds shall be used to expand the  
28 Hospital Utilization Pilot Program statewide in a manner that maintains local control of  
29 funds and bed allocations, with a goal of reducing the use of State psychiatric hospital  
30 beds for those individuals staying two weeks or less.

31 **SECTION 2.4.(a)** There is appropriated from the General Fund to the  
32 Department of Health and Human Services, Division of Mental Health, Developmental  
33 Disabilities, and Substance Abuse Services, the sum of one million one hundred  
34 thirty-four thousand one hundred sixty-eight dollars (\$1,134,168) for the 2008-2009  
35 fiscal year to implement three pilot programs of the Transitional Residential Treatment  
36 Program. One pilot program shall be located in each of the State's three State  
37 psychiatric hospital catchment areas.

38 **SECTION 2.4.(b)** The Department of Health and Human Services, Division  
39 of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall  
40 develop and implement a plan for discharge planning at the local level for all disability  
41 groups. The Department shall implement its plan as soon as possible.

42 **SECTION 2.5.(a)** There is appropriated from the General Fund to the  
43 Housing Trust Fund the sum of ten million dollars (\$10,000,000) for the 2008-2009

1 fiscal year for the Housing 400 Initiative in order to reduce the need for State  
2 psychiatric hospitals in the long term.

3 **SECTION 2.5.(b)** There is appropriated from the General Fund to the  
4 Department of Health and Human Services, Division of Mental Health, Developmental  
5 Disabilities, and Substance Abuse Services, the sum of two million five hundred  
6 thousand dollars (\$2,500,000) for the 2008-2009 fiscal year to continue operating  
7 support for an estimated 500 units of the Housing 400 Initiative in order to reduce the  
8 need for State psychiatric hospitals in the long term. It is the intent of the General  
9 Assembly that these funds shall be appropriated on a recurring basis.

10 **SECTION 2.6.** Not later than October 1, 2008, the Department of Health  
11 and Human Services, Division of Medical Assistance, shall provide for automatic  
12 reenrollment of Medicaid recipients whose Medicaid eligibility had been cancelled  
13 because of admission to the hospital. The purpose of automatic reenrollment is to  
14 ensure that upon release from the hospital the eligible Medicaid recipient will have  
15 uninterrupted access to care and medications under the Medicaid program.

16 **SECTION 2.7.** The Department of Health and Human Services, Division of  
17 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall, within  
18 available resources, implement the tiered CAP-MR/DD waiver program in accordance  
19 with Section 10.49(dd) of S.L. 2007-323. The Department shall implement the program  
20 with four tiers: (i) up to ten thousand dollars (\$10,000); (ii) between ten thousand one  
21 dollars (\$10,001) and twenty-five thousand dollars (\$25,000); (iii) between twenty-five  
22 thousand one dollars (\$25,001) and seventy-five thousand dollars (\$75,000); and (iv)  
23 greater than seventy-five thousand dollars (\$75,000).

24 **SECTION 2.8.** The North Carolina Institute of Medicine shall study and  
25 report on the transition for persons with developmental disabilities from one life setting  
26 to another, including barriers to transition and best practices in successful transitions.  
27 The IOM should conduct this study using funds appropriated for IOM studies in the  
28 2007 Session. The study should encompass at least the following topics: (i) the  
29 transition for adolescents leaving high school, including adolescents in foster care and  
30 those in other settings; (ii) the transition for persons with developmental disabilities who  
31 live with aging parents; and (iii) the transition from the developmental centers to other  
32 settings.

33 **SECTION 2.9.** The Department of Health and Human Services shall review  
34 State-County Special Assistance rates to establish an appropriate rate for special care  
35 units for persons with a mental health disability, including individuals with Traumatic  
36 Brain Injury (TBI), and shall review current rules pertaining to special care units for  
37 persons with a mental health disability to determine if additional standards are  
38 necessary. Effective July 1, 2008, care provided to individuals with Traumatic Brain  
39 Injury shall be paid at the special care unit rate paid for care of persons with a mental  
40 health disability. The Department shall report its findings and recommendations to the  
41 House of Representatives Appropriations Subcommittee on Health and Human  
42 Services, the Senate Appropriations Committee on Health and Human Services, the  
43 Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities,

1 and Substance Abuse Services, and the Fiscal Research Division not later than January  
2 1, 2009.

3       **SECTION 3.1. Community Services.** – In order to ensure accountability for  
4 services provided and funds expended for community services, the Department of  
5 Health and Human Services, Division of Mental Health, Developmental Disabilities,  
6 and Substance Abuse Services, shall develop a tiered rate structure to replace the  
7 blended rate currently used for community support services. Under the new tiered  
8 structure, services that are necessary but do not require the skill, education, or  
9 knowledge of a qualified professional should not be paid at the same rate as services  
10 provided by qualified skilled professionals. The Department shall report on the  
11 development of the structure to the Joint Legislative Oversight Committee (LOC) on  
12 Mental Health, Developmental Disabilities, and Substance Abuse Services not later than  
13 October 1, 2008. The Department shall not implement the tiered rate structure until  
14 after it has consulted with the LOC.

15       **SECTION 3.2.** The Department of Health and Human Services, Division of  
16 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall  
17 develop a service authorization process that separates the assessment function from the  
18 service delivery function at the LME level. In developing the process, the Department  
19 shall consider as an option separate LME assessment centers, the duties of which would  
20 include care coordination. The Department shall report on the development of the  
21 service authorization process to the Joint Legislative Oversight Committee (LOC) on  
22 Mental Health, Developmental Disabilities, and Substance Abuse Services not later than  
23 October 1, 2008. The Department shall not implement the service authorization process  
24 until after it has consulted with the LOC.

25       **SECTION 3.3.(a)** The Department of Health and Human Services shall  
26 conduct a thorough study of the service authorization, utilization review, and utilization  
27 management processes and shall develop a plan to return the service authorization,  
28 utilization review, and utilization management functions to LMEs for all clients. Not  
29 later than February 1, 2009, the Department shall report its findings and  
30 recommendations to the House of Representatives Appropriations Subcommittee on  
31 Health and Human Services, the Senate Appropriations Committee on Health and  
32 Human Services, the Joint Legislative Oversight Committee on Mental Health,  
33 Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research  
34 Division. The Department shall comply with the requirements of S.L. 2007-323, Section  
35 10.49(ee). The Department shall not contract with an outside vendor for service  
36 authorization, utilization review, or utilization management functions, or otherwise  
37 obligate the State for these functions beyond June 30, 2009. The Department shall  
38 require LMEs to include in their service authorization, utilization management, and  
39 utilization review a review of assessments, as well as person centered plans and random  
40 or triggered audits of services and assessments.

41       **SECTION 3.3.(b)** The Department shall require that the licensed  
42 professional that signs a medical order for behavioral health services must indicate on  
43 the order whether the licensed professional (i) has had direct contact with the consumer,

and (ii) has reviewed the consumer's assessment. This requirement shall take effect no later than October 1, 2008.

**SECTION 3.4.(a)** G.S. 122C-151.4 reads as rewritten:

**"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.**

(a) Definitions. – The following definitions apply in this section:

(1) "Appeals Panel" means the State MH/DD/SA Appeals Panel established under this section.

(1a) "Client" means an individual who is admitted to or receiving public services from an area facility. "Client" includes the client's personal representative or designee.

(1b) "Contract" means a contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) "Contractor" means a person who has a contract or who had a contract during the current fiscal year, year, or whose application for endorsement has been denied by an area authority or county program.

(3) "Former contractor" means a person who had a contract during the previous fiscal year.

(b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) Who Can Appeal. – The following persons may appeal to the State MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor who claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the contract;

(2) A contractor or a former contractor who claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract;

(3) A contractor or former contractor who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former contractor;

(4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county program; and

(5) A person who claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the



Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. – All members of the State MH/DD/SA Appeals Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person who appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. – The State MH/DD/SA Appeals Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. The Secretary shall make a final decision in the contested case."

**SECTION 3.4.(b)** The Department of Health and Human Services shall adopt guidelines for LME periodic review and re-endorsement of providers to ensure that only qualified providers are endorsed and that LMEs hold those providers accountable for the Medicaid and State-funded services they provide.

**SECTION 3.5.(a)** Effective October 1, 2008, the catch line of G.S. 108A-79 reads as rewritten:

**"§ 108A-79. Appeals.**~~Appeals of county level decisions.~~"

**SECTION 3.5.(b)** Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

**"§ 108A-79.1. Appeals by Medicaid applicants and recipients.**

(a) An action by the Department to deny, terminate, suspend, or reduce Medicaid eligibility, or to deny, terminate, suspend, or reduce Medicaid services is a "contested case" subject to the provisions of Chapter 150B of the General Statutes, except as provided by this section. At the time of providing the notice required under subsection

(b) of this section, the Department shall file a petition with the Office of Administrative Hearings to determine the Medicaid applicant's or recipient's rights, duties, or privileges.

(b) In addition to the notice requirements of G.S. 150B-23, the Department shall provide within 30 days of its decision written notice to the aggrieved applicant or recipient, or the applicant's or recipient's legal guardian, which notice shall include:

- (1) An explanation of the Department's decision.
- (2) A clear and concise statement of what service is being reduced, terminated, or denied and the basis upon which the decision was made.
- (3) A statement that the Department has filed a petition for administrative review of its decision in the Office of Administrative Hearings, and that the applicant or recipient has 30 days from the date of the Department's decision to decide whether or not to proceed with the hearing.
- (4) A clear explanation of how the hearing will proceed, what is required of the applicant in order to proceed or to decline to proceed, and that the applicant or recipient may be represented by an attorney or other person at the hearing. The notice shall further state that representation by an attorney may be available from Disability Rights of NC legal services, and attorneys working with mediation centers throughout the State.
- (5) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's decision pending a final decision.
- (6) The telephone number of a contact person at the Department to respond in a timely fashion to applicant or recipient questions.
- (7) A brochure supplied by the North Carolina Protection and Advocacy System that explains the rights of applicants and recipients under the State Medical Assistance Program, including the rights to appeal decisions of the Department."

**SECTION 3.6.** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study Medicaid waivers, including 1915(b) and (c) waivers, for all LMEs. In cases where Medicaid waivers are not appropriate for an LME, the Department shall identify and recommend strategies to increase LME flexibility to provide case management, assessment, limit provider networks, or other innovative approach for managing care. Not later than March 1, 2009, the Department shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

**SECTION 3.7.(a)** The Secretary of the Department of Health and Human Services shall develop a detailed plan for General Assembly review on its

1 recommendation to merge, consolidate, or establish regional arrangements or consortia  
2 of LMEs. In developing the plan, the Secretary shall consult with LMEs to obtain input  
3 on the feasibility and effectiveness of potential mergers and the time frame needed to  
4 fully implement the mergers, regional arrangements, or consortia at the local level. The  
5 Secretary shall provide the plan to the House of Representatives Appropriations  
6 Subcommittee on Health and Human Services, the Senate Appropriations Committee on  
7 Health and Human Services, the Joint Legislative Oversight Committee on Mental  
8 Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal  
9 Research Division not later than March 1, 2009.

10 **SECTION 3.7.(b)** The Secretary of the Department of Health and Human  
11 Services shall not take any action prior to January 1, 2010, that would result in the  
12 merger or consolidation of LMEs operating on January 1, 2008, or that would establish  
13 consortia or regional arrangements for the same purpose, except that LMEs that do not  
14 meet the catchment area requirements of G.S. 122C-115 as of January 1, 2008, may  
15 initiate, continue, or implement the LMEs' merger or consolidation plans to overcome  
16 noncompliance with G.S. 122C-115.

17 **SECTION 4. Effective date.** – This act becomes effective July 1, 2008.

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

S

D

**SENATE BILL 1610\***  
**PROPOSED COMMITTEE SUBSTITUTE S1610-PCS55725-SF-28**

Short Title: Recommendations of MH/DD/SA Oversight Comm.

(Public)

Sponsors:

Referred to:

May 15, 2008

A BILL TO BE ENTITLED

AN ACT TO ENACT VARIOUS LAWS TO IMPROVE THE MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES  
SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT  
COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES,  
AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.1. Expenditure of Service Dollars.** – For the purpose of mitigating cash-flow problems that many non-single-stream LMEs experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year, the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

**SECTION 1.2.** There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six million dollars (\$6,000,000) for the 2008-2009 fiscal year. These funds shall be used to support LMEs in establishing additional regionally purchased and locally hosted substance abuse programs. Funds appropriated shall be for the purpose of developing and enhancing the American Society of Addiction Medicine (ASAM) continuum of care at the community level. The Department of Health and Human Services shall work with LMEs in establishing these programs.

**SECTION 1.3.(a)** There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six hundred seventy-five

1 thousand dollars (\$675,000) for the 2008-2009 fiscal year. These funds shall be used to  
2 contract with an outside vendor for technical assistance to LMEs that are not meeting  
3 the standards necessary for single-stream funding.

4 **SECTION 1.3.(b)** The Department shall encourage the conversion of the  
5 remaining non-single-stream LMEs to single-stream funding as soon as possible. The  
6 Department shall also develop standards for the removal of single-stream designation  
7 for those LMEs that do not continue to comply with the applicable requirements for  
8 single-stream funding.

9 **SECTION 1.4.** The Department of Health and Human Services shall  
10 simplify the current State Integrated Payment and Reporting System (IPRS) to  
11 encourage more providers to serve State-paid clients.

12 **SECTION 1.5.** The Department of Health and Human Services shall create a  
13 reporting system for both single-stream funding and non-unit-cost reimbursement  
14 funding that is readily comprehensible and integrates with payment systems.

15 **SECTION 1.6.** The Department of Health and Human Services shall  
16 determine why there have been under- and over-expenditure of State service dollars by  
17 LMEs and shall take the action necessary to address the problem. In making its  
18 determination, the Department shall consult with LMEs and providers. Not later than  
19 January 1, 2009, the Department shall report to the House of Representatives  
20 Appropriations Subcommittee on Health and Human Services, the Senate  
21 Appropriations Committee on Health and Human Services, the Fiscal Research  
22 Division, and the Joint Legislative Oversight Committee on Mental Health,  
23 Developmental Disabilities, and Substance Abuse Services on actions taken to address  
24 the problem of LME under- and over-expenditure of service dollars.

25 **SECTION 2.1.(a) State-Operated Services.** – In order to temporarily  
26 address high admissions to adult acute unit beds in the State psychiatric hospitals, the  
27 Secretary of the Department of Health and Human Services may open and operate on a  
28 temporary basis the Central Regional Hospital Wake Unit on the Dorothea Dix Campus  
29 and may maintain the Wake Unit on the Dix Campus until beds become available in the  
30 system.

31 **SECTION 2.1.(b)** G.S. 122C-181(a)(1) reads as rewritten:  
32 "**§ 122C-181. Secretary's jurisdiction over State facilities.**

33 (a) Except as provided in subsection (b) of this section, the Secretary shall  
34 operate the following facilities:

35 (1) Psychiatric Hospitals:

36 a. Cherry Hospital.

37 a1. Central Regional Hospital.

38 b. Dorothea Dix Hospital.

39 c. John Umstead Hospital.

40 d. Broughton Hospital.

41 e. The Central Regional Hospital Wake Unit on the Dorothea Dix  
42 Campus."

43 This subsection expires upon the earlier of July 1, 2009, or the availability of  
44 beds at Central Regional Hospital.

1           **SECTION 2.1.(c)** There is appropriated from the General Fund to the  
2 Department of Health and Human Services the sum of five million two hundred  
3 seventy-four thousand dollars (\$5,274,000) for the 2008-2009 fiscal year. These  
4 onetime funds shall be used to support the temporary opening and operation of the  
5 Central Regional Hospital Wake Unit on the Dorothea Dix Campus.

6           **SECTION 2.2.(a)** G.S. 130A-383(a) reads as rewritten:

7       **"§ 130A-383. Medical examiner jurisdiction.**

8       (a) Upon the death of any person resulting from violence, poisoning, accident,  
9 suicide or homicide; occurring suddenly when the deceased had been in apparent good  
10 health or when unattended by a physician; occurring in a jail, prison, correctional  
11 ~~institution-institution~~, State facilities operated in accordance with Part 5 of Article 4 of  
12 Chapter 122C of the General Statutes; or in police custody; occurring pursuant to  
13 Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious,  
14 unusual or unnatural circumstance, the medical examiner of the county in which the  
15 body of the deceased is found shall be notified by a physician in attendance, hospital  
16 employee, law-enforcement officer, funeral home employee, emergency medical  
17 technician, relative or by any other person having suspicion of such a death. No person  
18 shall disturb the body at the scene of such a death until authorized by the medical  
19 examiner unless in the unavailability of the medical examiner it is determined by the  
20 appropriate law enforcement agency that the presence of the body at the scene would  
21 risk the integrity of the body or provide a hazard to the safety of others. For the limited  
22 purposes of this Part, expression of opinion that death has occurred may be made by a  
23 nurse, an emergency medical technician or any other competent person in the absence of  
24 a physician."

25           **SECTION 2.2.(b)** G.S. 122C-31 is amended by adding the following new  
26 subsection to read:

27       **"§ 122C-31. Report required upon death of client.**

28       ...

29       (g) In addition to the reporting requirements specified in subsections (a) through  
30 (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report the  
31 death of any client of the facility, regardless of the manner of death, to the medical  
32 examiner of the county in which the body of the deceased is found."

33           **SECTION 2.2.(c)** There is appropriated from the General Fund to the  
34 Department of Health and Human Services the sum of one hundred fifty-five thousand  
35 two hundred twenty-six dollars (\$155,226) for the 2008-2009 fiscal year. These funds  
36 shall be used for one additional public health nurse consultant position and other costs  
37 associated with the increased investigatory requirements of this section.

38           **SECTION 2.2.(d)** The Commission for Mental Health, Developmental  
39 Disabilities, and Substance Abuse Services shall study the current death reporting  
40 requirements under G.S. 122C-26(5)(c) and assess the need for any additional reporting  
41 requirements or modifications to existing rules or procedures. The Commission shall  
42 report its findings to the Joint Legislative Oversight Committee on Mental Health,  
43 Developmental Disabilities, and Substance Abuse Services not later than November 1,  
44 2008.

1           **SECTION 2.3.** There is appropriated from the General Fund to the  
2 Department of Health and Human Services, Division of Mental Health, Developmental  
3 Disabilities, and Substance Abuse Services, the sum of thirty million dollars  
4 (\$30,000,000) for the 2008-2009 fiscal year. These funds shall be used to expand the  
5 Hospital Utilization Pilot Program statewide in a manner that maintains local control of  
6 funds and bed allocations, with a goal of reducing the use of State psychiatric hospital  
7 beds for those individuals staying two weeks or less.

8           **SECTION 2.4.(a)** There is appropriated from the General Fund to the  
9 Department of Health and Human Services, Division of Mental Health, Developmental  
10 Disabilities, and Substance Abuse Services, the sum of one million one hundred  
11 thirty-four thousand one hundred sixty-eight dollars (\$1,134,168) for the 2008-2009  
12 fiscal year to implement three pilot programs of the Transitional Residential Treatment  
13 Program. One pilot program shall be located in each of the State's three State  
14 psychiatric hospital catchment areas.

15           **SECTION 2.4.(b)** The Department of Health and Human Services, Division  
16 of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall  
17 develop and implement a plan for discharge planning at the local level for all disability  
18 groups. The Department shall implement its plan as soon as possible.

19           **SECTION 2.5.(a)** There is appropriated from the General Fund to the  
20 Housing Trust Fund the sum of ten million dollars (\$10,000,000) for the 2008-2009  
21 fiscal year for the Housing 400 Initiative in order to reduce the need for State  
22 psychiatric hospitals in the long term.

23           **SECTION 2.5.(b)** There is appropriated from the General Fund to the  
24 Department of Health and Human Services, Division of Mental Health, Developmental  
25 Disabilities, and Substance Abuse Services, the sum of two million five hundred  
26 thousand dollars (\$2,500,000) for the 2008-2009 fiscal year to continue operating  
27 support for an estimated 500 units of the Housing 400 Initiative in order to reduce the  
28 need for State psychiatric hospitals in the long term. It is the intent of the General  
29 Assembly that these funds shall be appropriated on a recurring basis.

30           **SECTION 2.6.** Not later than October 1, 2008, the Department of Health  
31 and Human Services, Division of Medical Assistance, shall discontinue its policy of  
32 terminating Medicaid eligibility upon a recipient's admission to an Institution for Mental  
33 Disease (IMD) or upon a recipient's being placed in the custody of the judicial system.  
34 The Department shall substitute a policy of suspending eligibility for these individuals.  
35 The purpose of the new policy is to ensure that upon release from the hospital the  
36 eligible Medicaid recipient will have uninterrupted access to care and medications under  
37 the Medicaid program.

38           **SECTION 2.7.** The Department of Health and Human Services, Division of  
39 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall  
40 implement the tiered CAP-MR/DD waiver program in accordance with Section  
41 10.49(dd) of S.L. 2007-323. The Department shall implement the program with four  
42 tiers: (i) up to fifteen thousand dollars (\$15,000); (ii) between fifteen thousand one  
43 dollars (\$15,001) and forty-five thousand dollars (\$45,000); (iii) between forty-five  
44 thousand one dollars (\$45,001) and seventy-five thousand dollars (\$75,000); and (iv)

1 between seventy-five thousand one dollars (\$75,001) and one hundred thousand dollars  
2 (\$100,000). The Department shall review on a case-by-case basis tier funding in excess  
3 of one hundred thousand dollars (\$100,000) and may authorize the excess amount based  
4 on standards adopted by the Department.

5 **SECTION 2.8.** The North Carolina Institute of Medicine shall study and  
6 report on the transition for persons with developmental disabilities from one life setting  
7 to another, including barriers to transition and best practices in successful transitions.  
8 The IOM should conduct this study using funds appropriated for IOM studies in the  
9 2007 Session. The study should encompass at least the following topics: (i) the  
10 transition for adolescents leaving high school, including adolescents in foster care and  
11 those in other settings; (ii) the transition for persons with developmental disabilities who  
12 live with aging parents; and (iii) the transition from the developmental centers to other  
13 settings.

14 **SECTION 2.9.** The Department of Health and Human Services shall review  
15 State-County Special Assistance rates to establish an appropriate rate for special care  
16 units for persons with a mental health disability, including individuals with Traumatic  
17 Brain Injury (TBI), and shall review current rules pertaining to special care units for  
18 persons with a mental health disability to determine if additional standards are  
19 necessary. Effective July 1, 2008, care provided to individuals with Traumatic Brain  
20 Injury shall be paid at the special care unit rate paid for care of persons with a mental  
21 health disability. The Department shall report its findings and recommendations to the  
22 House of Representatives Appropriations Subcommittee on Health and Human  
23 Services, the Senate Appropriations Committee on Health and Human Services, the  
24 Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities,  
25 and Substance Abuse Services, and the Fiscal Research Division not later than January  
26 1, 2009.

27 **SECTION 2.10.** The Department of Health and Human Services shall  
28 ensure that veterans and their families comprise one of the target populations for mental  
29 health, developmental disabilities, and substance abuse services in order that this  
30 population is eligible for existing funding.

31 **SECTION 3.1. Community Services.** – In order to ensure accountability for  
32 services provided and funds expended for community services, the Department of  
33 Health and Human Services, Division of Mental Health, Developmental Disabilities,  
34 and Substance Abuse Services, shall develop a tiered rate structure to replace the  
35 blended rate currently used for community support services. Under the new tiered rate  
36 structure, services that are necessary but do not require the skill, education, or  
37 knowledge of a qualified professional should not be paid at the same rate as services  
38 provided by qualified skilled professionals. The Department shall report on the  
39 development of the structure to the Joint Legislative Oversight Committee (LOC) on  
40 Mental Health, Developmental Disabilities, and Substance Abuse Services not later than  
41 October 1, 2008. The Department shall not implement the tiered rate structure until  
42 after it has consulted with the LOC.

43 **SECTION 3.2.** The Department of Health and Human Services, Division of  
44 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall



1 develop a service authorization process that separates the assessment function from the  
2 service delivery function at the LME level. In developing the process, the Department  
3 shall consider as an option separate LME assessment centers, the duties of which would  
4 include care coordination. The Department shall report on the development of the  
5 service authorization process to the Joint Legislative Oversight Committee (LOC) on  
6 Mental Health, Developmental Disabilities, and Substance Abuse Services not later than  
7 October 1, 2008. The Department shall not implement the service authorization process  
8 until after it has consulted with the LOC.

9 **SECTION 3.3.(a)** The Department of Health and Human Services shall  
10 develop a plan to return the service authorization, utilization review, and utilization  
11 management functions to LMEs for all clients. Not later than February 1, 2009, the  
12 Department shall report on the development of the plan to the House of Representatives  
13 Appropriations Subcommittee on Health and Human Services, the Senate  
14 Appropriations Committee on Health and Human Services, the Joint Legislative  
15 Oversight Committee on Mental Health, Developmental Disabilities, and Substance  
16 Abuse Services, and the Fiscal Research Division. Not later than July 1, 2009,  
17 utilization review, utilization management, and service authorization for publicly  
18 funded mental health, developmental disabilities, and substance abuse services should  
19 be returned to LMEs representing in total at least thirty percent (30%) of the State's  
20 population. The Department shall comply with the requirements of S.L. 2007-323,  
21 Section 10.49(ee). The Department shall not contract with an outside vendor for service  
22 authorization, utilization review, or utilization management functions, or otherwise  
23 obligate the State for these functions beyond September 30, 2009. The Department  
24 shall require LMEs to include in their service authorization, utilization management,  
25 and utilization review a review of assessments, as well as person-centered plans and  
26 random or triggered audits of services and assessments.

27 **SECTION 3.3.(b)** The Department shall require that the licensed  
28 professional that signs a medical order for behavioral health services must indicate on  
29 the order whether the licensed professional (i) has had direct contact with the consumer,  
30 and (ii) has reviewed the consumer's assessment. This requirement shall take effect no  
31 later than October 1, 2008.

32 **SECTION 3.4.(a)** G.S. 122C-151.4 reads as rewritten:

33 **"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.**

34 (a) Definitions. – The following definitions apply in this section:

35 (1) "Appeals Panel" means the State MH/DD/SA Appeals Panel  
36 established under this section. \*

37 (1a) "Client" means an individual who is admitted to or receiving public  
38 services from an area facility. "Client" includes the client's personal  
39 representative or designee.

40 (1b) "Contract" means a contract with an area authority or county program  
41 to provide services, other than personal services, to clients and other  
42 recipients of services.

(2) "Contractor" means a person who has a contract or who had a contract during the current fiscal year, year, or whose application for endorsement has been denied by an area authority or county program.

(3) "Former contractor" means a person who had a contract during the previous fiscal year.

(b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) Who Can Appeal. – The following persons may appeal to the State MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor who claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the contract;

(2) A contractor or a former contractor who claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract;

(3) A contractor or former contractor who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former contractor;

(4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county program; and

(5) A person who claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. – All members of the State MH/DD/SA Appeals Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person who appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. – The State MH/DD/SA Appeals Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. The Secretary shall make a final decision in the contested case."

**SECTION 3.4.(b)** The Department of Health and Human Services shall adopt guidelines for LME periodic review and reendorsement of providers to ensure that only qualified providers are endorsed and that LMEs hold those providers accountable for the Medicaid and State-funded services they provide.

**SECTION 3.5.(a)** Effective October 1, 2008, the catch line of G.S. 108A-79 reads as rewritten:

**"§ 108A-79. Appeals. Appeals of county level decisions."**

**SECTION 3.5.(b)** Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

**"§ 108A-79.1. Appeals by Medicaid applicants and recipients."**

(a) An action by the Department to deny, terminate, suspend, or reduce Medicaid eligibility or to deny, terminate, suspend, or reduce Medicaid services is a "contested case" subject to the provisions of Chapter 150B of the General Statutes, except as provided by this section. At the time of providing the notice required under subsection (b) of this section, the Department shall file a petition with the Office of Administrative Hearings to determine the Medicaid applicant's or recipient's rights, duties, or privileges.

(b) In addition to the notice requirements of G.S. 150B-23, the Department shall provide within 30 days of its decision written notice to the aggrieved applicant or recipient, or the applicant's or recipient's legal guardian, which notice shall include:

(1) An explanation of the Department's decision.

(2) A clear and concise statement of what service is being reduced, terminated, or denied and the basis upon which the decision was made.

(3) A statement that the Department has filed a petition for administrative review of its decision in the Office of Administrative Hearings, and that the applicant or recipient has 30 days from the date of the

Department's decision to decide whether or not to proceed with the hearing.

(4) A clear explanation of how the hearing will proceed, what is required of the applicant in order to proceed or to decline to proceed, and that the applicant or recipient may be represented by an attorney or other person at the hearing. The notice shall further state that representation by an attorney may be available from Disability Rights of NC legal services and attorneys working with mediation centers throughout the State.

(5) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's decision pending a final decision.

(6) The telephone number of a contact person at the Department to respond in a timely fashion to applicant or recipient questions.

(7) A brochure supplied by the North Carolina Protection and Advocacy System that explains the rights of applicants and recipients under the State Medical Assistance Program, including the rights to appeal decisions of the Department."

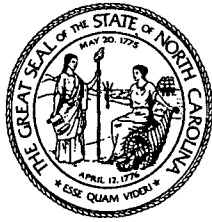
**SECTION 3.6.** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study Medicaid waivers, including 1915(b) and (c) waivers, for all LMEs. In cases where Medicaid waivers are not appropriate for an LME, the Department shall identify and recommend strategies to increase LME flexibility to provide case management, assessment, limit provider networks, or other innovative approach for managing care. Not later than March 1, 2009, the Department shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

**SECTION 3.7.(a)** The Secretary of the Department of Health and Human Services shall develop a detailed plan for General Assembly review on its recommendation to merge, consolidate, or establish regional arrangements or consortia of LMEs. In developing the plan, the Secretary shall consult with LMEs to obtain input on the feasibility and effectiveness of potential mergers and the time frame needed to fully implement the mergers, regional arrangements, or consortia at the local level. The Secretary shall provide the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division not later than March 1, 2009.

**SECTION 3.7.(b)** The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish

1 consortia or regional arrangements for the same purpose, except that LMEs that do not  
2 meet the catchment area requirements of G.S. 122C-115 as of January 1, 2008, may  
3 initiate, continue, or implement the LMEs' merger or consolidation plans to overcome  
4 noncompliance with G.S. 122C-115.

5 **SECTION 4. Effective date.** – This act becomes effective July 1, 2008.



# SENATE BILL 1610: Recommendations of MH/DD/SA Oversight Comm

## BILL ANALYSIS

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<b>Committee:</b>	Senate Ref to Mental Health/Youth Services. If fav, re-ref to Appropriations/Base Budget	<b>Date:</b>	June 4, 2008
<b>Introduced by:</b>	Sen. Nesbitt	<b>Summary by:</b>	Shirley Iorio, Ph D Legislative Analyst
<b>Version:</b>	PCS to the First Edition S1610-CSSF-28[v.1]		

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**SUMMARY:** *Senate Bill 1610 would implement the recommendations of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by enacting various laws affecting the Department of Health and Human Services (DHHS) to improve the Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SA) System.*

*Senate Bill 1610 has a serial referral to Appropriations.*

*The act would become effective July 1, 2008.*

*The Proposed Committee Substitute (PCS) to Senate Bill 1610 would make the following changes:*

- *Changes Section 2.7 by increasing the dollar amounts in the tiered CAP-MR/DD waiver program:*

FROM	TO
Up to \$10,000	Up to \$15,000
Between \$10,001 and \$25,000	Between \$15,001 and \$45,000
Between \$25,001 and \$75,000	Between \$45,001 and \$75,000
Greater than \$75,000	Between \$75,001 and \$100,000

- *Also adds language that would direct DHHS to review, on a case-by-case basis, tier funding in excess of \$100,000 and allow DHHS to authorize the excess amount based on standards adopted by DHHS.*
- *Removes the phrase "within available resources".*
- *Adds Section 2.10. DHHS would be directed to ensure that veterans and their families are included as one of the target populations for mental health, developmental disabilities, and substance abuse services so that they are eligible for existing funding.*

### **Section 1. Expenditure of Service Dollars**

**1.1.** Many non-single-stream Local Management Entities (LMEs) experience cash-flow problems at the beginning of each fiscal year. To alleviate that situation, DHHS, Division of MH/DD/SA, would be required to adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. DHHS would be required to distribute at the beginning of the fiscal year not less than one-twelfth of the LME's continuation allocation and subtract this amount from the LME's total reimbursements for the fiscal year.

**1.2. Appropriation.** Six million dollars (\$6,000,000) for the 2008-2009 fiscal year would be appropriated to DHHS, Division of MH/DD/SA, to support LMEs in establishing additional regionally purchased and locally hosted substance abuse programs. The funds must be used to develop and enhance the American

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Society of Addictive Medicine (ASAM) continuum of care at the community level. The Department would be required to work with LMEs to establish these programs.

**1.3. Appropriation.** Six hundred seventy-five thousand dollars (\$675,000) for the 2008-2009 fiscal year would be appropriated to DHHS, Division of MH/DD/SA, to contract with an outside vendor for technical assistance to LMEs that are not currently meeting the standards necessary for single-stream funding.

DHHS must encourage the conversion of the remaining non-single-stream LMEs to single-stream funding, and must develop standards for the removal of the single-stream designation for those LMEs that do not continue to meet the single-stream standards.

**1.4.** DHHS would be required to simplify the current State Integrated Payment and Reporting System (IPRS) to encourage more providers to serve State-paid clients.

**1.5.** DHHS would be required to create an easily understandable reporting system for both single-stream funding and non-unit-style reimbursement funding that integrates with payment systems.

**1.6.** DHHS would be directed to consult with LMEs and providers to determine the reasons for the LME under- and over-expenditure of State service dollars and to take the actions necessary to address the problem. DHHS would report to various committees at the General Assembly by January 9, 2009 on actions taken.

**1.7. Appropriation.** One million dollars (\$1,000,000) for the 2008-2009 fiscal year would be appropriated from the General Fund to the General Assembly to retain the services of an independent consultant to perform a service gap analysis of the MH/DD/SA Services System. The consultant must report any findings and recommendations by May 1, 2009.

In addition, the Joint Legislative Program Evaluation Oversight Committee would have the option to include in its work plan a thorough performance evaluation of the State's mental health agencies in DHHS, Division MH/DD/SA, and the Division of Medical Assistance. The performance evaluation would have to be completed by May 1, 2009.

## **Section 2. State-Operated Services**

**2.1.** The Secretary of DHHS would be authorized (i) to open and operate on a temporary basis the Central Regional Hospital Wake Unit on the Dorothea Dix Campus to address the high admissions to adult acute unit beds in the State psychiatric hospitals, and (ii) to maintain the Wake Unit on the Dix Campus until beds become available in the system. This authority would expire upon the earlier of July 1, 2009 or the availability of beds at Central Region Hospital.

**Appropriation.** A onetime appropriation of five million two hundred seventy-four thousand dollars (\$5,274,000) for the 2008-2009 fiscal year would be used to support this temporary opening and operation of the Central Regional Hospital Wake Unit on the Dorothea Dix Campus.

**2.2.** G.S. 130A-383(a) would be amended to include State facilities under G.S. 122C, Article 4, Part 5 (includes psychiatric hospitals, developmental centers, alcohol and drug treatment centers, neuron-medical treatment centers, and residential programs for children) among those requiring notice to the county medical examiner upon the death of any person resulting from specified acts or circumstances.

Every State facility would be required to report the death of any client of the facility, regardless of the manner of death, to the medical examiner of the county in which the body of the deceased is found.

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Appropriation. One hundred fifty-five thousand two hundred twenty-six dollars (\$155,226) for the 2008-2009 fiscal year would be appropriated to DHHS for one additional public health nurse consultant position and for other costs associated with the increased investigatory requirements.

Additionally, the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services would be directed to study the current death reporting requirements in G.S. 122C-26(5)(c) and assess the need for any additional reporting requirements or modifications to existing rules and procedures. This report would be due by November 1, 2008.

2.3. Appropriation. Thirty million dollars (\$30,000,000) would be appropriated for the 2008-2009 fiscal year to DHHS, Division of MH/DD/SA, to expand the Hospital Utilization Pilot program statewide. This expansion must be done in a manner that maintains local control of funds and bed allocations, with a goal of reducing the use of the State psychiatric hospital beds for those individuals staying two weeks or less.

2.4. Appropriation. One million one hundred thirty-four thousand one hundred sixty-eight dollars (\$1,134,168) would be appropriated for the 2008-2009 fiscal year to DHHS, Division of MH/DD/SA, to implement three pilot programs of the Transitional Residential Treatment Program. One pilot would be located in each of the State's three State psychiatric hospital catchment areas.

Also, DHHS, Division of MH/DD/SA, must develop and implement as soon as possible a plan for discharge planning at the local level for all disability groups.

2.5. Appropriation. Ten million dollars (\$10,000,000) would be appropriated for the 2008-2009 fiscal year to the Housing Trust Fund for the Housing 400 Initiative to reduce the need for State psychiatric hospitals in the long term.

Appropriation. Two million five hundred thousand dollars (\$2,500,000) would be appropriated for the 2008-2009 fiscal year to DHHS, Division of MH/DD/SA, to continue operating support for an estimated 500 units of the Housing 400 Initiative to reduce the need for State psychiatric hospitals in the long term. The bill states that it is the General Assembly's intent that these funds be recurring.

2.6. DHHS, Division of Medical Assistance, would be required to provide, by October 1, 2008, for automatic reenrollment of Medicaid recipients whose Medicaid eligibility had been cancelled because of admission to the hospital to ensure that, upon release from the hospital, the eligible Medicaid recipient will have uninterrupted access to care and medications under the Medicaid program.

2.7. DHHS, Division of MH/DD/SA, would be directed to implement a four-tiered CAP-MR/DD waiver program in accordance with previous Session Law regarding additional home and community-based waivers for persons with developmental disabilities.

2.8. The Institute of Medicine (IOM) would be directed to study and report on the transition for persons with developmental disabilities from one life setting to another, including barriers to transition and best practices in successful transitions. The IOM should conduct the study using funds appropriated for IOM studies in the 2007 Session.

2.9. DHHS would be required to review (i) State-County Special Assistance rates to establish an appropriate rate for special care units for persons with a mental health disability, including individuals with Traumatic Brain Injury (TBI), and (ii) current rules pertaining to special care units for persons with a mental health disability to determine if additional standards are necessary. DHHS must report its findings and recommendations by January 1, 2009.

Effective July 1, 2008, care provided to individuals with TBI would be required to be paid at the special care unit rate paid for care of persons with a mental health disability.



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**2.10.** DHHS would be directed to ensure that veterans and their families are included as one of the target populations for mental health, developmental disabilities, and substance abuse services so that they are eligible for existing funding.

## **Section 3. Community Services**

**3.1.** DHHS would be required to ensure accountability for services provided and funds expended for community services by developing a tiered rate structure to replace the blended rate currently used for community support services. Under the new tiered structure, services that are necessary but do not require the skill, education, or knowledge of a qualified professional would not be paid at the same rate as services provided by qualified skilled professionals.

DHHS must report on the development of the structure by October 1, 2008, and shall not implement the tiered structure until after it has consulted with the Joint Legislative Oversight Committee (LOC) on Mental Health, Developmental Disabilities, and Substance Abuse Services.

**3.2.** DHHS, Division of MH/DD/SA, would be directed to develop a service authorization process that separates the assessment function from the service delivery function at the LME level.

DHHS must report on the development of the service authorization process by October 1, 2008, and shall not implement the service authorization process until after it has consulted with the LOC.

**3.3.** DHHS would be required to study the service authorization, utilization review, and utilization management processes, develop a plan to return the service authorization, utilization review, and utilization management functions to LMEs for all clients, and report its findings and recommendations by February 1, 2009.

DHHS would be prohibited from contracting with an outside vendor for service authorization, utilization review, and utilization management functions beyond June 30, 2009. LMEs would be required to include in their service authorization, utilization review, and utilization management a review of assessments, as well as person centered plans and random or triggered audits of services and assessments.

DHHS must require that the licensed professional that signs a medical order for behavioral health services must indicate on the order whether the licensed professional (i) has had direct contact with the consumer and (ii) has reviewed the consumer's assessment. This requirement would become effective no later than October 1, 2008.

**3.4.** The definition of "contractor" in G.S. 122C-151.4 which governs appeals to the State MH/DD/SA Appeals Panel would be amended to include a person whose application for endorsement has been denied by an area authority or county program.

The State law also would be amended to allow the Secretary of DHHS to waive a contractor's need to first appeal for the State MH/DD/SA Appeals Panel, allowing the contractor to appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program.

DHHS would be required to adopt guidelines for LME periodic review and re-endorsement of providers to ensure that only qualified providers are endorsed and held accountable for Medicaid and State-funded services they provide.

**3.5.** Effective October 1, 2008, a new G.S. 108A-79.1 (Appeals by Medicaid applicants and recipients) would be enacted to provide exceptions to the provisions for an appeal by a Medicaid applicant or recipient of a "contested case" under G.S. Chapter 150B (Administrative Procedure Act) regarding a

# Senate Bill 1610

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DHHS action to deny, terminate, suspend, or reduce Medicaid services. The exceptions would include guidelines regarding notice to the aggrieved applicant or recipient in addition to the notice requirements of G.S. 150B-23, and delineate the information that DHHS must include in that notice. There would be a requirement that the notice include a statement that representation by an attorney in contested cases may be available from Disability Rights of NC legal services and attorneys working with mediation centers throughout the State.

**3.6.** DHHS, Division of MH/DD/SA, would be directed to study Medicaid waivers for all LMEs, to identify and recommend strategies to increase LME flexibility where Medicaid waivers are not appropriate, and to report its findings and recommendations no later than March 1, 2009.

**3.7.** The Secretary of DHHS would be required to develop a detailed plan for General Assembly review on its recommendation to merge, consolidate, or establish regional arrangements or consortia of LMEs. The plan would be due by March 1, 2009.

The Secretary would be prohibited from taking any actions that would result in the merger or consolidation of LMEs operating on January 1, 2008, prior to January 1, 2010.

**EFFECTIVE DATE:** The act would become effective July 1, 2008.

**BACKGROUND:** During the mid to late-1990's, North Carolina's public system for delivering services to those with mental illness, developmental disabilities, and substance abuse addictions faced significant challenges. Several local agencies were in imminent danger of financial collapse and the State-run psychiatric hospitals were threatened with the loss of federal funding due to inadequate staffing and record keeping violations. During this same period, the United States Supreme Court held that States have an obligation to provide community-based treatment for persons with mental disabilities when: (1) State medical professionals determine community placement is appropriate; (2) placement would be less restrictive and is not opposed by the patient; and (3) community placement can be reasonably accommodated, given resources available to the State and the needs of others with mental disabilities. In response to these challenges the General Assembly commissioned a series of studies and created the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) to make recommendations as to what should be done.

In 2001, the General Assembly passed legislation<sup>1</sup> which made significant policy changes addressing issues of State and local governance and increased accountability. It emphasized consumer-driven community-based services. It required that State and local governments provide certain core services to all individuals and also required the development of enhanced services that targeted persons with the most severe disabilities. It also shifted the role of local public mental health agencies from that of direct service providers to one of managing and coordinating services delivered by private providers.

In light of the issues that have emerged regarding the implementation and administration of MH/DD/SA system reform, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services proposes the changes contained in Senate Bill 1610.

*S1610e1-SMSF-CSSF-v.1*

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<sup>1</sup> HB 381 - An Act to Phase in the Implementation of Mental Health System Reform at the State and Local Level (S.L. 2001-437).

# VISITOR REGISTRATION SHEET

Mental Health/Youth Services

June 4, 2008

Name of Committee

Date

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Andrew Nanton MD	NC Med Society, NC Psychiatric Association, Child & Adolescent Psych Association
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