

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 250

Short Title: Department of Health & Human Svcs. Revisions.-AB (Public)

Sponsors: Representatives Dobson, Lambeth, Potts, and Black (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Health, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

March 4, 2019

A BILL TO BE ENTITLED

AN ACT AMENDING STATUTES PERTAINING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ENSURE COMPLIANCE WITH FEDERAL LAWS AND TO MAKE TECHNICAL CHANGES AND OTHER MODIFICATIONS TO STATUTES PERTAINING TO MEDICAID, SOCIAL SERVICES, VOCATIONAL REHABILITATION, ASSISTED LIVING, MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

**PART I. CLARIFICATIONS TO MEDICAID SUBROGATION STATUTE**

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

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

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

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

...

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



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

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

25 ...

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

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

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

## 35 **PART II. CHILD SUPPORT ENFORCEMENT PROGRAM COMPLIANCE**

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

#### 37 **"§ 110-139. Location of absent parents.**

38 ...

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

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

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

7 ...."

### 9 **PART III. FAMILY FIRST PREVENTION SERVICE ACT COMPLIANCE/FOSTER** 10 **CARE/CHILD-CARE INSTITUTIONS**

11 **SECTION 3.1.** G.S. 122C-80 reads as rewritten:

12 **"§ 122C-80. Criminal history record check required for certain applicants for employment.**

13 ...

14 (b) Requirement. – An offer of employment by a provider licensed under this Chapter to  
15 an applicant to fill a position that does not require the applicant to have an occupational license  
16 is conditioned on consent to a State and national criminal history record check of the applicant.  
17 If the applicant has been a resident of this State for less than five years, then the offer of  
18 employment is conditioned on consent to a State and national criminal history record check of  
19 the applicant. If the provider licensed under this Chapter is a child-care institution, as defined by  
20 Title IV-E of the Social Security Act, then the offer of employment is conditioned on consent to  
21 a State and national criminal history record check of the applicant. The national criminal history  
22 record check shall include a check of the applicant's fingerprints. If the applicant has been a  
23 resident of this State for five years or more, then the offer is conditioned on consent to a State  
24 criminal history record check of the applicant. A provider shall not employ an applicant who  
25 refuses to consent to a criminal history record check required by this section. Except as otherwise  
26 provided in this subsection, within five business days of making the conditional offer of  
27 employment, a provider shall submit a request to the ~~Department of Public Safety~~ North Carolina  
28 State Bureau of Investigation under G.S. 143B-939 to conduct a criminal history record check  
29 required by this section or shall submit a request to a private entity to conduct a State criminal  
30 history record check required by this section. ~~Notwithstanding G.S. 143B-939, the Department~~  
31 ~~of Public Safety~~ The North Carolina State Bureau of Investigation shall return the results of the  
32 State and national criminal history record checks for employment positions not covered by Public  
33 Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit.  
34 ~~Within five business days of receipt of the national criminal history of the person, the Department~~  
35 ~~of Health and Human Services, Criminal Records Check Unit, shall notify the provider as to~~  
36 ~~whether the information received may affect the employability of the applicant. In no case shall~~  
37 ~~the results of the national criminal history record check be shared with~~ to the provider. Providers  
38 shall make available upon request verification that a criminal history check has been completed  
39 on any staff covered by this section. A county that has adopted an appropriate local ordinance  
40 and has access to the ~~Department of Public Safety~~ North Carolina State Bureau of Investigation's  
41 Criminal Information System data bank may conduct on behalf of a provider a State criminal  
42 history record name check required by this section without the provider having to submit a  
43 request to the ~~Department of Justice~~ North Carolina State Bureau of Investigation. In such a  
44 case, the county shall commence with the State criminal history record name check required by  
45 this section within five business days of the conditional offer of employment by the provider. All  
46 criminal history information received by the provider is confidential and may not be disclosed,  
47 except to the applicant as provided in subsection (c) of this section. For purposes of this  
48 subsection, the term "private entity" means a business regularly engaged in conducting criminal  
49 history record checks utilizing public records obtained from a State agency.

50 (b1) Sex Offender Registry and Responsible Individuals List Checks. – If the provider  
51 licensed under this Chapter is a child-care institution, as defined by Title IV-E of the Social

1 Security Act, then the offer of employment by the provider to the applicant to fill a position not  
2 requiring an occupational license is conditioned on a check of the North Carolina Sex Offender  
3 Registry and consent to check the North Carolina Responsible Individuals List. If the applicant  
4 has been a resident of this State for less than five years, then the offer of employment is  
5 conditioned on consent to check the North Carolina Responsible Individuals List and the abuse  
6 and neglect registry of any other state where the applicant has resided in the preceding five years.  
7 ...."

8 **SECTION 3.2.** G.S. 131D-10.3A reads as rewritten:

9 **"§ 131D-10.3A. Mandatory criminal checks.**

10 (a) Effective January 1, 1996, in order to ensure the safety and well-being of any child  
11 placed for foster care in a home, the Department shall ensure that the criminal histories of all  
12 foster parents, individuals applying for licensure as foster parents, and individuals 18 years of  
13 age or older who reside in a family foster home, are checked and, based on the criminal history  
14 check, a determination is made as to whether the foster parents, and other individuals required to  
15 be checked, are fit for a foster child to reside with them in the home. The Department shall ensure  
16 that, as of the effective date of this Article, all individuals required to be checked pursuant to this  
17 subsection are checked for county, ~~state,~~ State, and federal criminal histories.

18 ...

19 (i) The Department of Public Safety shall perform the State and national criminal history  
20 checks on individuals required by this section and shall charge the Department a reasonable fee  
21 only for conducting the checks of the national criminal history records authorized by subsection  
22 (a) of this section. The Division of Social Services, Department of Health and Human Services,  
23 shall bear the costs of implementing subsection (a) of this section.

24 (j) All child-care institutions, as defined by Title IV-E of the Social Security Act, shall  
25 request a criminal history pursuant to G.S. 143B-932(d) and conduct a check of the North  
26 Carolina Sex Offender Registry and the North Carolina Responsible Individuals List on any  
27 individual prior to the individual working in the child-care institution. The results of the criminal  
28 history check shall be kept confidential, except that the child-care institution shall share the  
29 results of the criminal history check with the Department.

30 (k) Child-care institutions, as defined by Title IV-E of the Social Security Act, shall  
31 prohibit an individual from working in the child-care institution if the individual has a criminal  
32 history, as defined under G.S. 131D-10.2(6a).

33 (l) The Department may take action against a child-care institution's license, including  
34 denial, revocation, suspension, or placement on provisional status, for violation of subsection (k)  
35 of this section."

36 **SECTION 3.3.** G.S. 131D-10.6(7) reads as rewritten:

37 **"§ 131D-10.6. Powers and duties of the Department.**

38 In addition to other powers and duties prescribed by law, the Department shall exercise the  
39 following powers and duties:

40 ...

41 (7) Grant, deny, suspend or revoke a license or a provisional license, in  
42 accordance with this Article and Commission rules.

43 ...."

44 **SECTION 3.4.** G.S. 143B-932 reads as rewritten:

45 **"§ 143B-932. Criminal record checks of providers of treatment for or services to children,**  
46 **~~the elderly, mental health patients, the or patients who are mentally ill, sick, and~~**  
47 **~~the or disabled.~~**

48 (a) Authority. – The Department of Public Safety may provide to any of the following  
49 entities a criminal record check of an individual who is employed by that entity, has applied for  
50 employment with that entity, or has volunteered to provide direct care on behalf of that entity:

51 ...

1           (8)     Any child-care institution, as defined by Title IV-E of the Social Security Act.

2           ...

3           (c1)   Child-Care Institutions. – Upon request, the Department of Public Safety shall  
4 provide any child-care institution, as defined under Title IV-E of the Social Security Act, with  
5 the criminal history, as defined in G.S. 131D-10.2(6a), from the State and National Repositories  
6 of Criminal Histories for any person working or seeking employment with the child-care  
7 institution. The child-care institution shall provide to the Department of Public Safety, along with  
8 the request, the fingerprints of the individual to be checked, any additional information required  
9 by the Department of Public Safety, and a form consenting to the check of the criminal record  
10 and to the use of fingerprints and other identifying information required by the State or National  
11 Repositories signed by the individual to be checked. The fingerprints of the individual to be  
12 checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal  
13 history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the  
14 Federal Bureau of Investigation for a national criminal history record check. The child-care  
15 institution shall keep all information received pursuant to this section confidential, except that  
16 the child-care institution shall share any information requested by the Department of Health and  
17 Human Services. The information that the Department of Health and Human Services obtains  
18 pursuant to this section is not a public record and shall be kept confidential.

19           ...."

#### 20

### 21 **PART IV. WORKFORCE INNOVATION AND OPPORTUNITY ACT**

### 22 **COMPLIANCE/VOCATIONAL REHABILITATION**

23           **SECTION 4.1.** G.S. 143-548 reads as rewritten:

24           "**§ 143-548. Vocational State Rehabilitation Council.**

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

36           ...."

#### 37

### 38 **PART V. TECHNICAL CHANGES AND OTHER MODIFICATIONS PERTAINING TO**

### 39 **THE HEALTH AND SAFETY OF ASSISTED LIVING RESIDENTS**

40           **SECTION 5.1.** G.S. 90-288.14 reads as rewritten:

41           "**§ 90-288.14. Assisted living administrator certification.**

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

44           (1)   Is at least 21 years old.

45           (2)   Provides a satisfactory criminal background report from the State Repository  
46 of Criminal Histories, which shall be provided by the State Bureau of  
47 Investigation upon its receiving fingerprints from the applicant. If the  
48 applicant has been a resident of this State for less than five years, the applicant  
49 shall provide a satisfactory criminal background report from both the State  
50 and National Repositories of Criminal Histories.

- 1           (2a) Does not have a substantiated finding of neglect, abuse, misappropriation of  
 2 property, diversion of drugs, or fraud listed on the Health Care Personnel  
 3 Registry established under G.S. 131E-256.  
 4           (3) Successfully completes the equivalent of two years of coursework at an  
 5 accredited college or university or has a combination of education and  
 6 experience as approved by the Department.  
 7           (4) Successfully completes a Department approved administrator-in-training  
 8 program of at least 120 hours of study in courses relating to assisted living  
 9 residences.  
 10          (5) Successfully completes a written examination administered by the  
 11 Department."  
 12

13 **PART VI. TECHNICAL CHANGES AND OTHER MODIFICATIONS PERTAINING**  
 14 **TO MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE**  
 15 **ABUSE SERVICES**

16           **SECTION 6.1.** G.S. 122C-3 reads as rewritten:

17 **"§ 122C-3. Definitions.**

18           The following definitions apply in this Chapter:

- 19           ...
- 20           (12a) "Developmental disability" means a severe, chronic disability of a person  
 21 ~~which~~that meets all of the following criteria:  
 22           a. Is attributable to a mental or physical impairment or combination of  
 23 mental and physical ~~impairments; impairments.~~  
 24           b. Is manifested before the person attains age 22, ~~unless the disability is~~  
 25 ~~caused by a traumatic head injury and is manifested after age 22;~~22.  
 26           c. Is likely to continue ~~indefinitely; indefinitely.~~  
 27           d. Results in substantial functional limitations in three or more of the  
 28 following areas of major life activity: self-care, receptive and  
 29 expressive language, capacity for independent living, learning,  
 30 mobility, self-direction and economic ~~self-sufficiency;~~  
 31 ~~and self-sufficiency.~~  
 32           e. Reflects the person's need for a combination and sequence of special  
 33 interdisciplinary, or generic care, treatment, or other services ~~which~~  
 34 that are of a lifelong or extended duration and are individually planned  
 35 and coordinated; or when applied to children from birth through age  
 36 four, may be evidenced as a developmental delay.  
 37           f. ~~When applied to children from birth through four years of age, may be~~  
 38 ~~evidenced as a developmental delay."~~  
 39           ...
- 40           (33a) "Security recordings" means any films, videos, or electronic or other media  
 41 recordings of a common area in a State facility that are produced for the  
 42 purpose of maintaining or enhancing the health and safety of clients, residents,  
 43 staff, or visitors of that State facility. The term does not include recordings of  
 44 a client's clinical sessions or any other recordings that are part of a client's  
 45 confidential records or information.
- 46           (33b) "Severe and persistent mental illness" means a mental disorder suffered by  
 47 persons of 18 years of age or older that leads these persons to exhibit  
 48 emotional or behavioral functioning that is so impaired as to interfere  
 49 substantially with their capacity to remain in the community without  
 50 supportive treatment or services of a long term or indefinite duration. This  
 51 disorder is a severe and persistent mental disability, resulting in a long-term

1 limitation of functional capacities for the primary activities of daily living,  
 2 such as interpersonal relations, homemaking, self-care, employment, and  
 3 recreation.

4 ...

5 (38a) "Traumatic brain injury" means an insult to the brain from an outside physical  
 6 force that may or may not have produced a diminished or altered state of  
 7 consciousness as long as it meets all of the following criteria:

8 a. Is an open or closed head injury resulting in an impairment of  
 9 cognitive ability, physical functions, or both.

10 b. The resulting impairment occurs in one or more of the following areas:  
 11 cognition; language; memory; attention; reasoning; abstract thinking;  
 12 judgment; problem solving; sensory, perceptual, and motor abilities;  
 13 psychosocial behavior; physical function; information process; or  
 14 speech.

15 c. The resulting impairment is either temporary or permanent and causes  
 16 partial or total functional disability, psychosocial disorientation, or a  
 17 combination of these.

18 ...."

19 **SECTION 6.2.** Article 3 of Chapter 122C of the General Statutes is amended by  
 20 adding a new section to read:

21 **"§ 122C-56.1. Exceptions; security recordings.**

22 A State facility is not required to disclose its security recordings to a client or to the client's  
 23 next of kin or legally responsible person unless disclosure is required under federal law or  
 24 compelled by a court of competent jurisdiction."

25 **SECTION 6.3.(a)** G.S. 122C-171 reads as rewritten:

26 **"§ 122C-171. State Consumer and Family Advisory Committee.**

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

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

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

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

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

- 1           (4)    ~~Three by the Council of Community Programs, one each of whom shall come~~
- 2                   ~~from the three State regions for institutional services (Eastern Region, Central~~
- 3                   ~~Region, and Western Region). The terms of the appointees shall be staggered~~
- 4                   ~~so that the term of one appointee expires every year.~~
- 5           (5)    ~~Three~~Four by the North Carolina Association of County Commissioners, ~~one~~
- 6                   ~~each of whom shall come~~selected from the three State regions for institutional
- 7                   services ~~(Eastern~~as follows: two from the Eastern Region, one from the
- 8                   Central Region, and one from the Western Region~~)-Region~~. The terms of the
- 9                   appointees shall be staggered so that the term of one appointee expires every
- 10                  year.

11        ...."

12           **SECTION 6.3.(b)** Notwithstanding the repeal of G.S. 122C-171(b)(4), current

13 members of the State Consumer and Family Advisory Committee who were appointed by the

14 Council of Community Programs shall serve out the remainder of their terms. As the current

15 terms of these members expire, each of the appointing authorities identified in

16 G.S. 122C-171(b)(2), G.S. 122C-171(b)(3) and G.S. 122(b)(5) shall, in the order listed in

17 G.S. 122C-171(b), take turns making an additional appointment to achieve conformity with

18 G.S. 122C-171(b), as amended by this act.

19           **SECTION 6.4.** Article 32 of Chapter 90 of the General Statutes is repealed.

20

21 **PART VII. EFFECTIVE DATE**

22           **SECTION 7.1.** Except as otherwise provided, this act is effective when it becomes

23 law.