GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1214

Short Title: Department of Health and Human Svcs Revisions.-AB

Sponsors: Representative Dobson.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

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

May 27, 2020

A BILL TO BE ENTITLED

AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER MODIFICATIONS TO
LAWS PERTAINING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES;
MODIFYING THE STATE HUMAN RESOURCES ACT TO GIVE THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES AND CERTAIN OTHER STATE AGENCIES
GREATER FLEXIBILITY WITH RESPECT TO EMPLOYEE CLASSIFICATION AND
SALARY ADMINISTRATION; AND APPROPRIATING FUNDS TO THE COUNCIL
ON DEVELOPMENTAL DISABILITIES.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL, CONFORMING, AND OTHER CHANGES RELATED TO THE
DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND
SUBSTANCE ABUSE SERVICES

ALIGNMENT OF DEVELOPMENTAL DISABILITY DEFINITION WITH FEDERAL
LAW

SECTION 1.1. G.S. 122C-3(12a) reads as rewritten:

"(12a) Developmental disability. – A severe, chronic disability of a person that
satisfies all of the following:

a. Is attributable to one or more impairments—a mental or physical
   impairment or combination of mental and physical impairments.
   ...."

ELIMINATION OF RULE-MAKING PROCESS TO IMPLEMENT A CO-PAYMENT
SCHEDULE FOR BEHAVIORAL HEALTH, INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES, AND SUBSTANCE USE DISORDER SERVICES

SECTION 1.2. G.S. 122C-112.1(a)(34) reads as rewritten:

"(34) Adopt rules for the implementation of a co-payment graduated schedule for
behavioral health services, intellectual and developmental disabilities
services, and substance use disorder services based on the Medicaid
coopayments for such services, which shall be used by LMEs and by
contractual provider agencies under G.S. 122C-146. The co-payment
graduated schedule shall be developed and adopted under this subdivision shall
require a co-payment for services identified by the Secretary. Families whose
family income is three hundred percent (300%) or
greater of the federal poverty level are eligible for services with the applicable co-payment."

CONFORMING CHANGE TO PROCEDURE FOR APPEALING DECISIONS ON LICENSURE WAIVER REQUESTS

SECTION 1.3. G.S. 122C-23(f) reads as rewritten:
"(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with by filing a contested case under Article 3 of Chapter 150B of the General Statutes."

TECHNICAL CORRECTION TO LIST OF PERSONS DHHS SECRETARY MAY CERTIFY TO PERFORM FIRST EXAMINATIONS FOR INvoluntary COMMITMENT

SECTION 1.4. G.S. 122C-263.1(a) reads as rewritten:
"(a) Physicians and eligible psychologists are qualified to perform the commitment examinations required under G.S. 122C-263(c) and G.S. 122C-283(c). The Secretary of Health and Human Services may individually certify to perform the first commitment examinations required by G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 other health, mental health, and substance abuse professionals whose scope of practice includes diagnosing and documenting psychiatric or substance use disorders and conducting mental status examinations to determine capacity to give informed consent to treatment as follows:

(1) The Secretary has received a request:
   a. To certify a licensed clinical social worker, a master's or higher level degree nurse practitioner, a licensed professional counsellor, clinical mental health counselor or a physician's assistant to conduct the first examinations described in G.S. 122C-263(c) and G.S. 122C-283(c).
   b. To certify a master's level licensed clinical addictions specialist to conduct the first examination described in G.S. 122C-283(c).

…

(5) In no event shall the certification of a licensed clinical social worker, master's or higher level degree nurse practitioner, licensed professional counsellor, clinical mental health counselor, physician assistant, or master's level certified clinical addictions specialist under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the master's level nurse practitioner, licensed professional counsellor, clinical mental health counselor, physician assistant, or the master's level certified clinical addictions specialist.

…"

CORRECTION TO EXPANDED USE OF TELEHEALTH TO CONDUCT FIRST AND SECOND INVOLUNTARY COMMITMENT EXAMINATIONS DURING THE COVID-19 EMERGENCY

SECTION 1.5.(a) Section 3F.1(b) of S.L. 2020-3 reads as rewritten:
"SECTION 3F.1.(b) Notwithstanding any provision of Chapter 122C of the General Statutes or any other provision of law to the contrary, the first examination of a respondent required by G.S. 122C-263(a) to determine whether the respondent will be involuntarily committed due to mental illness or required by G.S. 122C-283(a) to determine whether the respondent will be involuntarily committed due to substance use disorder may be conducted
either in the physical face-to-face presence of the commitment examiner or utilizing telehealth equipment and procedures. A commitment examiner who examines a respondent by means of telehealth must be satisfied to a reasonable medical certainty that the determinations made in accordance with G.S. 122C-283(d) would not be different if the examination had been conducted in the physical presence of the commitment examiner. A commitment examiner who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in the physical presence of a person authorized to perform examinations under G.S. 122C-283."

SECTION 1.5.(b) This section is effective when it becomes law.

ESTABLISHMENT OF WORK GROUP TO MODERNIZE THE BRAIN INJURY ADVISORY COUNCIL

SECTION 1.6.(a) The Secretary of the Department of Health and Human Services shall convene a work group to evaluate and make recommendations about updating the purpose, composition, powers, and duties of the Brain Injury Advisory Council created by G.S. 143B-216.65, taking into consideration recommendations by the federal Administration for Community Living. The work group shall consist of personnel from within the Department of Health and Human Services with expertise in traumatic and other acquired brain injuries, current members of the Brain Injury Advisory Council, and representatives from various public and private stakeholder groups with expertise in traumatic and other acquired brain injuries. By March 1, 2021, the Department shall report on the work group's findings and recommendations, including any recommended legislative changes to G.S. 143B-216.65 and G.S. 143B-216.66, to the Joint Legislative Oversight Committee on Health and Human Services.

SECTION 1.6.(b) This section is effective when it becomes law.

DHHS FLEXIBILITY TO ADJUST SINGLE STREAM FUNDING ALLOCATIONS FOR LME/MCOS

SECTION 1.7.(a) G.S. 122C-112.1(b) is amended by adding a new subdivision to read:

"(4a) Beginning with the 2020-2021 fiscal year, the Secretary may adjust the base budget allocations relative to single stream funding for local management entities/managed care organizations (LME/MCOs), including the amount of any recurring or nonrecurring reductions approved by an act of the General Assembly; provided, however, that the Secretary shall submit a detailed explanation for any such adjustment along with supporting documentation to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division within 10 business days after making such adjustment."

SECTION 1.7.(b) This section becomes effective July 1, 2020.

LME/MCO UTILIZATION OF STANDARDIZED OUT-OF-NETWORK AGREEMENTS FOR BEHAVIORAL HEALTH OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY SERVICES

SECTION 1.8.(a) Effective until coverage under tailored plans described under G.S. 108D-60 begins, the Department of Health and Human Services shall ensure that local management entities/managed care organizations (LME/MCOs) utilize out-of-network agreements between a single provider of behavioral health or intellectual and developmental disability (IDD) services and the LME/MCO to ensure access to care in accordance with 42 C.F.R. § 438.206(b)(4). These out-of-network agreements shall contain standardized elements developed in consultation with all LME/MCOs, reduce administrative burden on providers of behavioral health and IDD services, and comply with all requirements of State and federal laws.
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SECTION 1.8.(b) LME/MCOs shall use an out-of-network agreement when an enrollee who is a foster child or independent foster care adolescent, as defined in 42 U.S.C. § 1396d(w)(1), is receiving services from a provider that does not have a comprehensive provider contract with the LME/MCO. LME/MCOs may not restrict the number of out-of-network agreements in place with any behavioral health or IDD services provider serving this population.

SECTION 1.8.(c) LME/MCOs shall use an out-of-network agreement in lieu of a comprehensive provider contract when all of the following conditions are met:

1. The services requested are medically necessary and cannot be provided by a provider in the LME/MCO's closed provider network.
2. The behavioral health or IDD services provider's site of service delivery is located outside of the geographical catchment area of the LME/MCO, and either (i) the LME/MCO is not accepting applications for membership into its closed provider network or (ii) the provider does not wish to apply for membership in the LME/MCO's closed provider network.
3. The behavioral health or IDD services provider is not excluded from participation in the Medicaid program, the NC Health Choice program, or any other State or federal health care program.
4. The behavioral health or IDD provider is serving no more than two enrollees of the LME/MCO.

SECTION 1.8.(d) Nothing in this section shall be construed to limit the number of out-of-network agreements that an LME/MCO may have in place with a behavioral health or IDD services provider, including inpatient hospitalization services.

SECTION 1.8.(e) Any provider enrolled in the North Carolina Medicaid program that provides services pursuant to an out-of-network agreement shall be considered a network provider for purposes of Chapter 108D of the General Statutes only as it relates to enrollee grievances and appeals for those services.

SECTION 1.8.(f) This section is effective when it becomes law.

PART II. TECHNICAL, CONFORMING, AND OTHER CHANGES RELATED TO THE DIVISION OF PUBLIC HEALTH

TECHNICAL CORRECTION TO STATUTE GOVERNING TRANSITIONAL PERMITS FOR FOOD ESTABLISHMENTS

SECTION 2.1. G.S. 130A-248(c) reads as rewritten:
"(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for the same establishment, any previously issued permit for an establishment in that location becomes void. This subsection does not prohibit issuing more than one owner or lessee a permit for the same location if (i) more than one establishment is operated in the same physical location and (ii) each establishment satisfies all of the rules and requirements of subsection (a) of this section. For purposes of this subsection, "transitional permit" shall mean a permit issued upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health."

REGULATION OF TEMPORARY DISPLAY SPAS

SECTION 2.2. G.S. 130A-280 reads as rewritten:
"§ 130A-280. Scope."
This Article provides for the regulation of public swimming pools in the State as they may affect the public health and safety. As used in this Article, the term "public swimming pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic club, or other membership facility pools and spas, spas operating for display at temporary events, and artificial swimming lagoons. As used in this Article, an "artificial swimming lagoon" means any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health. This Article does not apply to a private pool serving a single family dwelling and used only by the residents of the dwelling and their guests. This Article also does not apply to therapeutic pools used in physical therapy programs operated by medical facilities licensed by the Department or operated by a licensed physical therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."

AUTHORIZATION TO APPOINT RETIRED PHYSICIANS, NURSES, PARAMEDICS, CERTIFIED MEDICOLEGAL DEATH INVESTIGATORS, AND PATHOLOGIST ASSISTANTS AS MEDICAL EXAMINERS

SECTION 2.3. G.S. 130A-382(a) reads as rewritten:
"(a) The Chief Medical Examiner shall appoint two or more county medical examiners for each county for a three-year term. In appointing medical examiners for each county, the Chief Medical Examiner shall give preference to physicians licensed to practice medicine in this State but may also appoint licensed retired physicians previously licensed to practice in this State; physician assistants, nurse practitioners, nurses, or nurses licensed to practice in this State; emergency medical technician paramedics credentialed under G.S. 131E-159; medicolegal death investigators certified by the American Board of Medicolegal Death Investigators; pathologists' assistants; and dentists licensed to practice in this State. A medical examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so."

ALLOW CHIEF MEDICAL EXAMINER TO APPOINT EMERGENCY MEDICAL EXAMINERS DURING STATES OF EMERGENCY

SECTION 2.4. G.S. 130A-382 is amended by adding a new subsection to read:
"(a1) During a state of emergency declared by the Governor or by a resolution of the General Assembly as provided in G.S. 166A-19.20, or by the governing body of a county or municipality as provided in G.S. 166A-19.22, the Chief Medical Examiner is authorized to appoint temporary county medical examiners to serve for the duration of the declared state of emergency. For purposes of this section, "temporary county medical examiner" means an individual who has been determined by the Chief Medical Examiner to have the appropriate training, education, and experience to serve as a county medical examiner during a declared state of emergency."

ESTABLISHMENT OF CONFIDENTIALITY FOR CERTAIN DEATH INVESTIGATION INFORMATION

SECTION 2.5. Article 16 of Chapter 130A of the General Statutes is amended by adding a new section to read:
"§ 130A-386.5. Confidentiality of certain death investigation information and records received by the Office of the Chief Medical Examiner.
All information and records provided by a city, county, or other public entity to the Office of the Chief Medical Examiner, or its agents, concerning a death investigation shall retain the same
degree of confidentiality it had while in the possession of the city, county, or other public entity.

Such information and records shall not become public records, as defined under Chapters 121 and 132 of the General Statutes, when provided to the Office of the Chief Medical Examiner, or its agents, unless the information and records otherwise constituted public records while in the possession of the city, county, or other public entity."

PART III. MODIFICATIONS TO THE STATE HUMAN RESOURCES ACT TO GIVE GREATER FLEXIBILITY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND CERTAIN OTHER STATE AGENCIES WITH RESPECT TO EMPLOYEE CLASSIFICATION AND SALARY ADMINISTRATION

SECTION 3.1.(a) G.S. 126-5 is amended by adding a new subsection to read:

"(c16) Notwithstanding G.S. 126-4(1), G.S. 126-4(2), or any other provision of law to the contrary, the Council of State agencies, the Office of State Controller, the Department of Health and Human Services, the Community College System Office, and The University of North Carolina have sole authority and discretion to take the following actions concerning classification and salary administration of their respective personnel:

(1) Classify new positions or reclassify vacant positions within the classification system adopted by the State Human Resources Commission or as otherwise prescribed by law.

(2) Make hiring decisions based on the flexibility provided under this section.

(3) Determine the appropriate salary for their respective employees, provided that funding is available within the budgeted salary appropriated to the agency and the salary remains within the minimum and maximum of the salary range associated with the position classification or as otherwise provided by law.

The human resources director for each State agency shall ensure that each new hire employed pursuant to the classification and salary administration flexibility granted by this section meets the minimum qualifications for the position. The Office of State Human Resources shall provide assistance to agencies upon request."

SECTION 3.1.(b) This section becomes effective July 1, 2020.

PART IV. APPROPRIATIONS

SECTION 4.1.(a) There is appropriated from the General Fund to the Department of Health and Human Services the sum of seventeen thousand six hundred ninety-six dollars ($17,696) in nonrecurring funds to support the activities and expenditures of the Council on Developmental Disabilities in the performance of their functions and duties under G.S. 143B-177.

SECTION 4.1.(b) This section becomes effective July 1, 2020.

PART V. EFFECTIVE DATE

SECTION 5.1. Except as otherwise provided, this act becomes effective October 1, 2020.