

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-TRza-5* [v.1] (11/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Medicaid Reorganization (JLPEOC).

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE AN INDEPENDENT BOARD TO GOVERN THE MEDICAID AND HEALTH CHOICE PROGRAMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Transfer DMA. – The Division of Medical Assistance (DMA) of the Department of Health and Human Services (DHHS) is hereby transferred to the Health Benefits Authority, which is created under Section 2 of this act. DMA's statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the Health Benefits Authority. All of DMA's prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and adoption of rules, policies rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the Board of the Health Benefits Authority. Additionally, any powers, duties, and functions performed by or in the name of DHHS for the Medicaid or Health Choice programs, including but not limited to rule making, regulation, licensing, and adoption of rules, policies rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the Board of the Health Benefits Authority.

SECTION 2. New Governing Entity. – Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part:

"Part 36. Health Benefits Authority.

"§ 143B-216.80. Creation and organization.

There is hereby established the Health Benefits Authority (Authority) of the Department of Health and Human Services (Department) to operate the Medicaid and Health Choice programs. The Authority shall do the following:

- (1) Exercise its statutory powers independently of the Department. The Authority shall not be subject to the supervision, direction, or control of the Department.
- (2) Be governed by a Board, which shall be responsible for ensuring quality health outcomes to eligible recipients at a predictable cost to the taxpayers of this State.
- (3) Function as the designated single state agency for the administration of the Medicaid and Health Choice programs.



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1 (4) Reform the Medicaid and Health Choice programs to a new health care
2 system that will, within three years if feasible, achieve all of the following
3 features:

4 a. Shared financial risk.

5 b. Defined, measureable goals for health outcomes, quality of care,
6 patient satisfaction, and cost.

7 c. Accountability for coordinated care, positive health outcomes, and
8 controlling costs.

9 d. Regional access to care.

10 e. Administrative efficiencies.

11 **"§ 143B-216.85. Board of the Health Benefits Authority.**

12 (a) The Board of the Health Benefits Authority shall consist of the following:

13 (1) Three members appointed by the Governor.

14 (2) Two members appointed by the General Assembly, on the recommendation
15 of the President Pro Tempore of the Senate.

16 (3) Two members appointed by the General Assembly, on the recommendation
17 of the Speaker of the House of Representatives.

18 (4) The Secretary of Health and Human Services, who shall serve as an ex
19 officio nonvoting member of the Board.

20 (b) Each appointed member of the board shall have expertise from at least one of the
21 following areas:

22 (1) The administration of large health delivery systems.

23 (2) Health insurance.

24 (3) Health actuarial science.

25 (4) Health economics.

26 (5) Health law and policy.

27 In making appointments to the Board under this section, each appointing authority shall consult
28 with the other appointing authorities to ensure adequate representation from all of the areas of
29 expertise listed in this subsection.

30 (c) The following individuals may not serve on the Board:

31 (1) An individual who receives or has received payments during the six months
32 prior to serving on the Board for providing health care or services to
33 enrollees of the North Carolina Medicaid or Health Choice programs.

34 (2) An individual who is or has been during the six months prior to serving on
35 the Board a registered lobbyist for a provider, or association of providers,
36 receiving payments from the North Carolina Medicaid or Health Choice
37 programs, or an employee of such a lobbyist.

38 As used in this subsection, the term "provider" includes any parent, subsidiary, or affiliated
39 legal entity, and the term "provider" has the same meaning as defined under G.S. 108C-2. The
40 "six month prior" prohibitions provided in this section shall not apply to the initial
41 appointments.

42 (d) Board appointees shall serve for a term, but an appointee may be removed by his or
43 her appointing authority for any of the grounds set forth in G.S. 143B-13(b), (c), or (d).
44 Appointing authorities shall fill any vacancies that arise to complete the term of the vacating
45 board member.

46 (e) In making the initial appointments, the appointing authorities shall, in order to
47 stagger terms, designate one person appointed under subdivision (1), one person appointed
48 under subdivision (2), and one person appointed subdivision (3) of subsection (a) of this section
49 to serve until July 1, 2017. The remaining four appointees shall serve until July 1, 2019. Future
50 appointees shall serve terms of four years, with staggered terms based on this section. Board
51 members may serve up to two consecutive terms, not including the abbreviated two-year terms

1 that establish staggered terms or terms of less than two years that result from the filing of a
2 vacancy.

3 (f) The Board shall elect a chair from among the voting members of the Board.

4 (g) The Board shall meet at least monthly until July 1, 2017, and at least quarterly
5 thereafter. The Board may also meet at the call of the chair or at the request of a majority of the
6 voting Board members. A majority of the voting Board members constitutes a quorum for
7 conducting business.

8 (h) Board members shall serve as fiduciaries for the Medicaid and Health Choice
9 programs and are subject to the duty of care, the duty of loyalty, and the duty of obedience as
10 established under nonprofit corporate law. These duties are in addition to any other
11 requirements placed on the Board members as public servants under Chapter 138A of the
12 General Statutes.

13 (i) Board members are State officers and not State employees.

14 (j) The voting members of the Board shall be compensated. The compensation for
15 Board members established under G.S. 143B-216.90(3) shall be comparable to compensation
16 paid to the members of boards of corporations managing large hospital systems or operating
17 large health insurance plans, but shall not exceed the highest compensation paid to a member of
18 the Council of State. Compensation shall be in an amount sufficient to obtain quality
19 professionals with experience managing large businesses, insurance programs, and health
20 systems. When adjusting members' compensation, the Board shall provide a justification to the
21 Office of State Human Resources based upon a survey of comparable large hospital systems
22 and health insurance plans.

23 **"§ 143B-216.90. Powers and duties of the Board of the Health Benefits Authority.**

24 (a) The Board of the Health Benefits Authority shall have the following powers and
25 duties:

26 (1) Administer and operate the Medicaid and Health Choice programs. None of
27 the powers and duties enumerated in the other subdivisions of this
28 subsection shall be construed to limit the broad grant of authority to
29 administer and operate the Medicaid and Health Choice programs.

30 (2) Employ the Medicaid Director, who shall be responsible for the daily
31 operation of the Authority, and other staff, including legal staff. In hiring
32 staff, the Board may offer employment contracts for a term.

33 (3) Set compensation for the employees, including performance-based bonuses
34 based on meeting budget or other targets, and for the Board of the Authority.

35 (4) Procure office space for the Authority, including, if the Board so chooses,
36 office space that is co-located with employees of the Department of Health
37 and Human Services.

38 (5) Enter into contracts for the administration of the Medicaid and Health
39 Choice programs, as well as manage such contracts, including contracts of a
40 consulting or advisory nature. The Authority may contract with any
41 governmental agency, person, association, or corporation to accomplish its
42 duties and responsibilities. The Authority is encouraged, but not required, to
43 contract with the Department of Health and Human Services when possible.

44 (6) Employ or contract for independent internal auditing staff that report directly
45 to the Board rather than to the Medicaid Director. Notwithstanding
46 subsection (b) of this section, this function may not be delegated.

47 (7) Pursuant to G.S. 108A-1, supervise the county departments of social services
48 in their administration of eligibility determinations. Pursuant to subdivision
49 (5) of this section, the Board may contract with the Department of Health
50 and Human Services or any other appropriate party to perform this task or a
51 portion of this task.

- 1 (8) Define and approve the following for the Authority and the programs
2 managed by the Authority:
3 a. Business policy.
4 b. Strategic plans, including desired health outcomes for the covered
5 populations, which shall do the following:
6 i. Be developed at a frequency of no less than every five years
7 with the input of stakeholders.
8 ii. Identify key opportunities and challenges facing the
9 organization.
10 iii. Identify the Authority's strengths and weaknesses to address
11 these opportunities and challenges.
12 iv. Identify key goals for the Authority for this time period,
13 consistent with the reform goals in G.S. 143B-216.80(4).
14 v. Identify output and outcome performance measures to
15 quantify the Authority's progress toward these goals.
16 vi. Identify strategies to reach these goals.
17 vii. Be used as a guide for units within the Authority to establish
18 unit-specific operational plans at the same frequency.
19 c. Performance management system, including quantitative indicators
20 for goals and objectives, which shall do the following:
21 i. Be developed and implemented within the first year of the
22 creation of the Authority, and updated no less than annually
23 thereafter with available data.
24 ii. Establish quantitative performance measures focusing on the
25 quality and efficiency of service delivery and administration,
26 using a nationally recognized quality improvement effort
27 allowing comparison of North Carolina to other states as
28 those developed by, but not limited to, the U.S. Medicaid
29 Quality Measurement Program and the Baldrige Quality
30 Program.
31 iii. Establish measurable objectives for each goal identified in the
32 strategic plan, and performance updated annually.
33 iv. Establish, for each objective, benchmark activities, including
34 an estimated date of completion, the area for which efforts are
35 attempting a change, a quantitative indicator of success for
36 the area, and quarterly milestones allowing Authority
37 managers and employees to monitor progress throughout the
38 year.
39 v. Establish mechanisms for obtaining data necessary for the
40 collection and public distribution of performance information.
41 d. Program and policy changes.
42 e. Operational budget and assumptions.
43 (9) Establish and adjust all program components, except for eligibility, of the
44 Medicaid and Health Choice programs within the appropriated and allocated
45 budget.
46 (10) Adopt rules related to the Medicaid and Health Choice programs.
47 (11) Serve as trustees of the Medicaid Reserve Account established under
48 G.S. 143B-216.105.
49 (12) Develop midyear budget correction plans and strategies and then take
50 midyear budget corrective actions necessary to keep the Medicaid and
51 Health Choice programs within budget.

- 1 (13) Approve or disapprove and oversee all expenditures to be charged to or
2 allocated to the Medicaid and Health Choice programs by other divisions of
3 the Department of Health and Human Services or by other State departments
4 or agencies.
- 5 (14) Develop and present to the General Assembly and the Office of State Budget
6 and Management by January 1 of each year, beginning in 2016, the
7 following information for the Medicaid and Health Choice programs:
- 8 a. A detailed four-year forecast of expected changes to enrollment
9 growth and enrollment mix.
- 10 b. What program changes will be made by the Authority in order to stay
11 within the existing budget for the programs based on the next fiscal
12 year's forecasted enrollment growth and enrollment mix.
- 13 c. The cost to maintain the current level of services based on the next
14 fiscal year's forecasted enrollment growth and enrollment mix.
- 15 (15) Secure and pay for the services of the State Auditor's Office to conduct
16 annual audits of the financial accounts of the Authority.
- 17 (16) Publish the Annual Medicaid Report, which shall contain, at a minimum, the
18 following:
- 19 a. Details on the Authority's performance over the prior four years on
20 the following:
- 21 i. The identified quantitative measures from its strategic plan
22 and performance management system.
- 23 ii. A comparison of the identified quantitative measures from its
24 strategic plan and performance management system and other
25 states participating in the quality improvement effort.
- 26 b. Annual audited financial statements.
- 27 (17) Publish in an electronic format, and update on at least a monthly basis, at
28 least the following information about the Medicaid and Health Choice
29 programs:
- 30 a. Enrollment by program aid category by county.
- 31 b. Per member per month spending by category of service.
- 32 c. Spending and receipts by fund along with a detailed variance
33 analysis.
- 34 d. A comparison of the above figures to the amounts forecasted and
35 budgeted for the corresponding time period.
- 36 (b) The Board may delegate any of its powers and duties to the Medicaid Director and
37 other staff of the Authority. In delegating powers or duties, however, the Board maintains the
38 responsibility for the performance of those powers or duties.
- 39 (c) The General Assembly retains the authority to determine the eligibility categories
40 and income thresholds for the Medicaid and Health Choice programs.
- 41 **"§ 143B-216.95. Variations from certain State laws.**
- 42 Although generally subject to the laws of this State, the following exemptions, limitations,
43 and modifications apply to the Health Benefits Authority, notwithstanding any other provision
44 of law:
- 45 (1) Any employee position within the Authority created on or after October 1,
46 2015, or that becomes vacant on or after October 1, 2015, shall not be
47 subject to portions of the State Personnel Act, as provided in
48 G.S. 126-5(c13). After July 1, 2017, however, the Board of the Authority
49 may designate employee positions as subject to the State Personnel Act,
50 provided that the positions so designated do not meet the definition of
51 "exempt position" under G.S. 126-5(b).

- 1 (2) The Authority may have its own legislative liaison, who shall be in addition
2 to any that the Department of Health and Human Services is allowed under
3 law.
- 4 (3) The Authority may choose to retain legal counsel other than the Attorney
5 General.
- 6 (4) The Authority's employment contracts offered pursuant to
7 G.S. 143B-216.90(2) are not subject to review and approval by the Office of
8 State Human Resources. The Authority's employment of supplementary staff
9 for temporary work is not subject to review and approval by the Office of
10 State Human Resources.
- 11 (5) If the Authority establishes alternative procedures for the review and
12 approval of contracts, then the Authority is exempt from State contract
13 review and approval requirements, but may still choose to utilize the State
14 contract review and approval procedures for particular contracts.
- 15 (6) The Authority shall submit its budget proposal to be included in the
16 Governor's Recommended State Budget directly to the Office of State
17 Budget and Management, rather than submitting it through the Office of
18 Central Management and Support at the Department of Health and Human
19 Services.
- 20 (7) The Secretary of Health and Human Services may not transfer funds into or
21 out of the budget of, or any funds controlled by the Health Benefits
22 Authority without the approval of the Board of the Authority.
- 23 (8) The Board of the Authority may move into a closed session for any of the
24 reasons listed in G.S. 143-318.11, as well as for discussions on the
25 following:
- 26 a. Rates, contract amounts, or any other amounts to be paid to any
27 entity, including the amount of any transfers to a division of the
28 Department of Health and Human Services or to any other State
29 agency or division.
- 30 b. Audits and investigations.
- 31 c. Development of the annual budget forecast report for the General
32 Assembly, as required by G.S. 143B-216.90(a)(14).
- 33 d. Development of a strategic plan.
- 34 e. Any report to be submitted to the General Assembly.
- 35 (9) Documents created for or developed during a closed session of the Board for
36 one of the reasons specifically listed in the sub-subdivisions of subdivision
37 (8) of this subsection, as well as any minutes from such a closed session of
38 the Board, that would otherwise become public record by operation of
39 Chapter 132 of the General Statutes, shall not become public record until the
40 item under discussion has been made public through the publishing of the
41 relevant rate or amount, findings from an audit or investigation, the annual
42 budget forecast report, the strategic plan, or a report to the General
43 Assembly."
- 44 **§ 143B-216.100. Cooling off period for certain Health Benefits Authority employees.**
- 45 (a) Neither a Health Benefits Authority employee who, in the six months immediately
46 preceding termination of State employment, participated personally and substantially in the
47 award or management of a State contract with an entity, nor an immediate family member of
48 such a Health Benefits Authority shall either prior to or within a period of six months
49 immediately after termination of employment, knowingly accept employment with, commence
50 employment with, or receive compensation for services from, such a contracting entity.

1 (b) Neither a Health Benefits Authority executive officer nor an immediate family
2 member of such an executive officer shall either prior to or within a period of six months
3 immediately after termination of employment, knowingly accept employment with, commence
4 employment with, or receive compensation for services from, an entity that contracts with the
5 Health Benefits Authority.

6 (c) Any person who violates this section, or solicits or conspires with a person to
7 violate this section, shall be guilty of a Class 3 misdemeanor and shall be fined in an amount no
8 less than one thousand dollars (\$1,000), nor more than five thousand dollars (\$5,000)."

9 (d) As used in this section, (i) the term "contract" does not include provider enrollment
10 agreements, (ii) the term "entity" includes any parent, subsidiary, or affiliated legal entity, and
11 (iii) the term "immediate family member" means a spouse, child, sibling, parent, grandparent,
12 or grandchild, or the spouse of an immediate family member, and includes stepparents,
13 stepchildren, stepsiblings, and adoptive relationships."

14 **"§ 143B-216.105. Medicaid Reserve Account.**

15 (a) The Medicaid Reserve Account is established as a nonreverting reserve in the
16 General Fund. The purpose of the Medicaid Reserve Account is to provide for unexpected
17 budgetary shortfalls within the Medicaid and Health Choice programs that result from program
18 expenditures in excess of the amount appropriated for the Medicaid and Health Choice
19 programs by the General Assembly and which continue to exist after the Health Benefits
20 Authority makes its best efforts to control costs through midyear budget corrections under
21 G.S. 143B-216.90(a)(12).

22 (b) The Medicaid Reserve Account shall have the following minimum and maximum
23 target balances:

24 (1) Minimum target. – Nine percent (9%) of a given fiscal year's General Fund
25 appropriations for claims expenditures for both the Medicaid and Health
26 Choice programs.

27 (2) Maximum target. – Twenty-five percent (25%) of a given fiscal year's
28 General Fund appropriations for claims expenditures for both the Medicaid
29 and Health Choice programs.

30 (c) Notwithstanding G.S. 143C-1-2(b), any funds appropriated to the Health Benefits
31 Authority for the Medicaid or Health Choice programs and that remain unencumbered at the
32 end of a fiscal year shall, rather than revert to the General Fund, be credited to the Medicaid
33 Reserve Account. Any funds to be deposited in the Medicaid Reserve Account that would
34 cause the fund balance to exceed the maximum target balance for the Medicaid Reserve
35 Account shall instead be credited to the General Fund.

36 (d) The Medicaid Reserve Account may be accessed by the Health Benefits Authority
37 to manage budgetary shortfalls in the Medicaid and Health Choice programs only after all of
38 the following occur:

39 (1) The Board of the Health Benefits Authority certifies that there is a projected
40 Medicaid shortfall in the current fiscal year.

41 (2) The Health Benefits Authority has already made midyear budget corrections
42 under G.S. 143B-216.90(a)(12), but those midyear budget corrections have
43 not achieved the projected budget savings.

44 (3) The Health Benefits Authority reports to the Joint Legislative Commission
45 on Governmental Operations on its intent to access the Medicaid Reserve
46 Account. The report shall include a detailed analysis of receipts, payments,
47 claims, and transfers, including an identification of and explanation of the
48 recurring and nonrecurring components of the shortfall.

49 Medicaid Reserve Account funds may be accessed in accordance with this subsection even if it
50 results in the fund balance falling below the minimum target balance for the Medicaid Reserve
51 Account."

1 **SECTION 3.** Board Start-up. – (a) Notwithstanding the date provided in this act
2 for when the Board begins to govern the Medicaid and Health Choice programs, the Board of
3 the Health Benefits Authority may meet prior to October 1, 2015, in order to plan. The Board
4 may begin meeting as soon as a majority of the appointments have been made, upon the call of
5 a majority of members appointed as of that time. Prior to October 1, 2015, Board meetings
6 shall be staffed by the Division of Medical Assistance.

7 **SECTION 3.(b)** As provided in G.S. 143B-216.85(j), as enacted by Section 2 of
8 this act, compensation for the members of the Board of the Health Benefits Authority shall be
9 "comparable to compensation paid to the members of boards of corporations managing large
10 hospital systems or operating large health insurance plans." Initial compensation for members
11 of the Board (i) shall be set by the Office of State Human Resources based on a survey of
12 compensation paid to the members of comparable boards of corporations managing large
13 hospital systems or operating large health insurance plans and based on G.S. 143B-216.85(j)
14 and (ii) shall be in an amount sufficient to obtain quality professionals with experience
15 managing large businesses, insurance programs, and health systems. The Office of State
16 Human Resources shall complete the survey and set the compensation for the Board members
17 no later than October 1, 2015. An appointed Board member shall begin receiving compensation
18 when the Board begins meeting. It is the intent of the General Assembly to appropriate
19 recurring funds for Board compensation within the Current Operations and Capital
20 Improvements Appropriations Act of 2015.

21 **SECTION 3.(c)** This section is effective when this act becomes law.

22 **SECTION 4.** Continuation of Existing Administrative Arrangements. –
23 Notwithstanding its authority granted in subdivisions (4), (5), (7), (13) of G.S. 143B-216.90(a),
24 as enacted by Section 2 of this act, the Health Benefits Authority shall continue to utilize
25 existing administrative arrangements and Medicaid cost allocations between the Division of
26 Medical Assistance and the Department of Health and Human Services, as well as between the
27 Division and other State departments and agencies, through June 30, 2016. The Authority has
28 full authority to negotiate changes to those administrative arrangements and Medicaid and
29 Health Choice cost allocations as authorized under G.S. 143B-216.90(a) to begin on or after
30 July 1, 2016.

31 **SECTION 5.** Report on Cost Allocation. – (a) No later than August 1, 2015, and in
32 order to aid the Board of the Health Benefits Authority created by this act, the Department of
33 Health and Human Services shall report on the allocation of Medicaid costs to Divisions
34 outside of the Division of Medical Assistance as well as to other State departments or agencies.
35 The Department shall submit its report to the members of the Board of the Health Benefits
36 Authority and to the Joint Legislative Oversight Committee on Health and Human Services.

37 **SECTION 5.(b)** This section is effective when this act becomes law.

38 **SECTION 6.** Single State Agency SPAs. – (a) The Department of Health and
39 Human Services (DHHS) shall submit the appropriate State Plan Amendments (SPAs) to
40 change the single state agency designations for the Medicaid and Health Choice programs to be
41 the Health Benefits Authority rather than DHHS. DHHS shall also submit any appropriate
42 SPAs to make appropriate conforming changes the State Plans to update the name of the single
43 state agency.

44 **SECTION 6.(b)** The SPAs required by this section shall have effective dates of
45 October 1, 2015. Notwithstanding G.S. 108A-54.1A(e), DHHS does not have to submit the
46 SPAs required by this section 90 days in advance of October 1, 2015, but shall submit the SPAs
47 as soon as possible after the effective date of this section and no later than September 1, 2015.

48 **SECTION 6.(c)** This section is effective when this act becomes law.

49 **SECTION 7.** Transfer of Rules, Contracts, Legal Actions. – (a) Consistent with
50 Section 1 of this act, all rules and policies exempted from rule-making related to the Medicaid
51 and Health Choice programs transfer to the Health Benefits Authority.

1 **SECTION 7.(b)** Consistent with Section 1 of this act, any existing contracts with
2 the Division of Medical Assistance that were entered into prior to the effective date of this
3 section transfer to the Health Benefits Authority. If an existing contract entered into prior to the
4 effective date of this section is solely for the benefit of the Division of Medical Assistance, the
5 Medicaid program, or the Health Choice program, but is in the name of the Department of
6 Health and Human Services, then the contract also transfers to the Health Benefits Authority. If
7 an existing contract that was entered into prior to the effective date of this section (i) is in the
8 name of the Department of Health and Human Services, (ii) is for the benefit of the Division of
9 Medical Assistance, the Medicaid program, or the Health Choice program, and (iii) also
10 benefits other portions of the Department, then the Health Benefits Authority and the
11 Department shall enter into memorandums of understanding (MOUs) or other appropriate
12 agreements to define the two entities' roles and responsibilities under the contract. The
13 Department of Health and Human Services may not enter into any new contracts, or renew or
14 extend any contracts that existed prior to the effective date of this section, related to the
15 Medicaid or Health Choice programs without the express prior approval of the Board of the
16 Health Benefits Authority.

17 **SECTION 7.(c)** Consistent with Section 1 of this act, for any legal action involving
18 the Medicaid or Health Choice programs in which the Division of Medical Assistance or the
19 Department of Health and Human Services is named as a party, the Health Benefits Authority
20 may be joined as a party by reason of transfer of interest upon motion of any party pursuant to
21 Rule 25(d) of the North Carolina Rules of Civil Procedure. This subsection shall not be
22 construed to limit any other opportunities for joinder or intervention that are otherwise allowed
23 under the North Carolina Rules of Civil Procedure or elsewhere under law.

24 **SECTION 8.** Legislative Oversight of Medicaid. – (a) Chapter 120 of the General
25 Statutes is amended by adding the following new Article:

26 "Article 23B.

27 "Joint Legislative Oversight Committee on the Health Benefits Authority.

28 "**§ 120-209.** Creation and membership of Joint Legislative Oversight Committee on the
29 Health Benefits Authority.

30 (a) The Joint Legislative Oversight Committee on the Health Benefits Authority is
31 established. The Committee consists of 14 members as follows:

32 (1) Seven members of the Senate appointed by the President Pro Tempore of the
33 Senate, at least two of whom are members of the minority party.

34 (2) Seven members of the House of Representatives appointed by the Speaker of
35 the House of Representatives, at least two of whom are members of the
36 minority party.

37 (b) Terms on the Committee are for two years and begin on the convening of the
38 General Assembly in each odd-numbered year. Members may complete a term of service on
39 the Committee even if they do not seek reelection or are not reelected to the General Assembly,
40 but resignation or removal from service in the General Assembly constitutes resignation or
41 removal from service on the Committee.

42 (c) A member continues to serve until a successor is appointed. A vacancy shall be
43 filled within 30 days by the officer who made the original appointment.

44 "**§ 120-209.1.** Purpose and powers of Committee.

45 (a) The Joint Legislative Oversight Committee on the Health Benefits Authority shall
46 examine budgeting, financing, administrative, and operational issues related to the Medicaid
47 and Health Choice programs and to the Health Benefits Authority of the Department of Health
48 and Human Services.

49 (b) The Committee may make interim reports to the General Assembly on matters for
50 which it may report to a regular session of the General Assembly. A report to the General

1 Assembly may contain any legislation needed to implement a recommendation of the
2 Committee.

3 **"§ 120-209.2. Organization of Committee.**

4 (a) The President Pro Tempore of the Senate and the Speaker of the House of
5 Representatives shall each designate a cochair of the Joint Legislative Oversight Committee on
6 the Health Benefits Authority. The Committee shall meet upon the joint call of the cochairs and
7 may meet while the General Assembly is in regular session.

8 (b) A quorum of the Committee is eight members. No action may be taken except by a
9 majority vote at a meeting at which a quorum is present. While in the discharge of its official
10 duties, the Committee has the powers of a joint committee under G.S. 120-19 and
11 G.S. 120-19.1 through G.S. 120-19.4.

12 (c) Members of the Committee receive subsistence and travel expenses, as provided in
13 G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance
14 with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services
15 Officer, shall assign professional staff to assist the Committee in its work. Upon the direction
16 of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate
17 and of the House of Representatives shall assign clerical staff to the Committee. The expenses
18 for clerical employees shall be borne by the Committee.

19 (d) The Committee cochairs may establish subcommittees for the purpose of examining
20 issues relating to its Committee charge.

21 **"§ 120-209.3. Additional powers.**

22 The Joint Legislative Oversight Committee on the Health Benefits Authority, while in
23 discharge of official duties, shall have access to any paper or document, and may compel the
24 attendance of any State official or employee before the Committee or secure any evidence
25 under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the
26 proceedings of the Committee as if it were a joint committee of the General Assembly.

27 **"§ 120-209.4. Reports to Committee.**

28 Whenever the Health Benefits Authority is required by law to report to the General
29 Assembly or to any of its permanent, study, or oversight committees or subcommittees on
30 matters affecting the Department, the Department shall transmit a copy of the report to the
31 cochairs of the Joint Legislative Oversight Committee on the Health Benefits Authority."

32 **SECTION 8.(b)** G.S. 120-208.1(a)(2)b. is repealed

33 **SECTION 9.** Recodification; Technical and Conforming Changes. – (a) The
34 Revisor of Statutes shall recodify existing law related to Medicaid and Health Choice,
35 including Parts 6, 6A, 7, and 8 of Article 2, Article 5, and Article 7 of Chapter 108A of the
36 General Statutes, as well as Chapters 108C and 108D of the General Statutes, into a new
37 Chapter 108E of the General Statutes to be entitled "Medicaid and Health Choice Health
38 Benefit Programs" and to have the following structure:

- 39 Article 1. Administration of the Medicaid and Health Choice Programs
40 Part 1. Establishment of the Medicaid Program
41 Part 2. Establishment of the Health Choice Program
42 Part 3. Administration by County Departments of Social Services
43 Article 2. Medicaid and Health Choice Eligibility
44 Part 1. In General
45 Part 2. Eligibility for Medicaid
46 Part 3. Eligibility for Health Choice
47 Article 3. Medicaid and Health Choice Benefits and Cost-Sharing
48 Part 1. In General
49 Part 2. Medicaid Benefits and Cost-Sharing
50 Part 3. Health Choice Benefits and Cost-Sharing
51 Article 4. Medicaid and Health Choice Provider Requirements

- 1 Part 1. Provider Enrollment
- 2 Part 2. Provider Reimbursement and Recovery
- 3 Part 3. Hospital Assessment Act
- 4 Part 4. Other
- 5 Article 5. Third Party Liability
 - 6 Part 1. In General
 - 7 Part 2. Subrogation
 - 8 Part 3. Insurance
 - 9 Part 4. Estate Recovery
- 10 Article 6. Fraud and Criminal Activity
- 11 Article 7. Appeals
 - 12 Part 1. Eligibility Appeals for Medicaid and Health Choice
 - 13 Part 2. Benefit Appeals for Medicaid
 - 14 Subpart 1. Generally
 - 15 Subpart 2. Medicaid Managed Care for Behavioral Health Services
 - 16 Appeals
 - 17 Part 3. Benefit Reviews for Health Choice
 - 18 Part 4. Provider Appeals

19 When recodifying, the Revisor is authorized to change all references to the North Carolina
 20 Department of Health and Human Services or to the Division of Medical Assistance to instead
 21 be references to the Health Benefits Authority. The Revisor may separate subsections of
 22 existing statutory sections into new sections and, when necessary to organize relevant law into
 23 its proper place in the above structure, may rearrange sentences that currently appear within
 24 subsections. The Revisor may modify statutory citations throughout the General Statutes, as
 25 appropriate, and may modify any references to statutory divisions, such as "Chapter," "Article,"
 26 "Part," "section," or "subsection." Within Articles 4 and 5 of Chapter 108A of the General
 27 Statutes, the Revisor of Statutes shall append to each reference to the North Carolina
 28 Department of Health and Human Services or to the Secretary of the Department the language
 29 "and, with respect to Medicaid and Health Choice, the Health Benefits Authority". The Revisor
 30 shall consult with the Department of Health and Human Services and the new Health Benefits
 31 Authority on this recodification.

32 **SECTION 9.(b)** G.S. 108A-1 reads as rewritten:

33 **§ 108A-1. Creation.**

34 Every county shall have a board of social services or a consolidated human services board
 35 created pursuant to G.S. 153A-77(b) which shall establish county policies for the programs
 36 established by this Chapter in conformity with the rules and regulations of the Social Services
 37 Commission and under the supervision of the Department of Health and Human Services.
 38 Provided, however, county policies for the program of medical assistance shall be established
 39 in conformity with the rules and regulations of the [Health Benefits Authority of the](#) Department
 40 of Health and Human Services.

41 **SECTION 9.(c)** G.S. 108A-54.1A reads as rewritten:

42 **"§ 108A-54.1A. Amendments to Medicaid State Plan and Medicaid Waivers.**

43 (a) ~~No provision in the Medicaid State Plan or in a Medicaid Waiver may expand or~~
 44 ~~otherwise alter the scope or purpose of the Medicaid program from that authorized by law~~
 45 ~~enacted by the General Assembly. For purposes of this section, the term "amendments to the~~
 46 ~~State Plan" includes State Plan amendments, Waivers, and Waiver amendments. The Authority~~
 47 ~~is expressly authorized and required to take any and all necessary action to amend the state plan~~
 48 ~~and waivers in order to keep the program within the certified budget.~~

49 (b) ~~The Department may submit amendments to the State Plan only as required under~~
 50 ~~any of the following circumstances:~~

- 1 (1) ~~A law enacted by the General Assembly directs the Department to submit an~~
2 ~~amendment to the State Plan.~~
- 3 (2) ~~A law enacted by the General Assembly makes a change to the Medicaid~~
4 ~~Program that requires approval by the federal government.~~
- 5 (3) ~~A change in federal law, including regulatory law, or a change in the~~
6 ~~interpretation of federal law by the federal government requires an~~
7 ~~amendment to the State Plan.~~
- 8 (4) ~~A change made by the Department to the Medicaid Program requires an~~
9 ~~amendment to the State Plan, if the change was within the authority granted~~
10 ~~to the Department by State law.~~
- 11 (5) ~~An amendment to the State Plan is required in response to an order of a court~~
12 ~~of competent jurisdiction.~~
- 13 (6) ~~An amendment to the State Plan is required to ensure continued federal~~
14 ~~financial participation.~~
- 15 (e) ~~Amendments to the State Plan submitted to the federal government for approval~~
16 ~~shall contain only those changes that are allowed by the authority for submitting an amendment~~
17 ~~to the State Plan in subsection (b) of this section.~~
- 18 (d) No fewer than 10 days prior to submitting an amendment to the State Plan to the
19 federal government, the Department shall post the amendment on its Web site and notify the
20 members of the Joint Legislative Oversight Committee on the Health Benefits Authority and
21 the Fiscal Research Division that the amendment has been posted. This requirement shall not
22 apply to draft or proposed amendments submitted to the federal government for comments but
23 not submitted for approval. ~~The amendment shall remain posted on the Department's Web site~~
24 ~~at least until the plan has been approved, rejected, or withdrawn. If the authority for submitting~~
25 ~~the amendment to the State Plan is pursuant to subdivision (3), (4), (5), or (6) of subsection (b)~~
26 ~~of this section, then, prior to submitting an amendment to the federal government, the~~
27 ~~Department shall submit to the General Assembly members receiving notice under this~~
28 ~~subsection and to the Fiscal Research Division an explanation of the amendment, the need for~~
29 ~~the amendment, and the federal time limits required for implementation of the amendment.~~
- 30 (e) ~~The Department shall submit an amendment to the State Plan to the federal~~
31 ~~government by a date sufficient to provide the federal government adequate time to review and~~
32 ~~approve the amendment so the amendment may be effective by the date required by the~~
33 ~~directing authority in subsection (b) of this section. Additionally, if a change is made to the~~
34 ~~Medicaid program by the General Assembly and that change requires an amendment to the~~
35 ~~State Plan, then the amendment shall be submitted at least 90 days prior to the effective date of~~
36 ~~the change as provided in the legislation.~~
- 37 (f) Any public notice required under 42 C.F.R. 447.205 shall, in addition to any other
38 posting requirements under federal law, be posted on the Department's Web site. Upon posting
39 such a public notice, the Department shall notify the members of the Joint Legislative
40 Oversight Committee on the Health Benefits Authority and the Fiscal Research Division that
41 the public notice has been posted. Public notices shall remain posted on the Department's Web
42 site."

43 **SECTION 9.(d)** Part 1 of Article 2 of Chapter 108E of the General Statutes,
44 created by the recodification process described in subsection (a) of this section, shall include
45 the following two new sections:

46 "**§ 108E-2-1. General Assembly sets eligibility categories.**

47 Eligibility categories and income thresholds are set by the General Assembly, and the
48 Authority shall not alter the eligibility categories and income thresholds from those authorized
49 by the General Assembly. The Authority is expressly authorized to adopt temporary and
50 permanent rules regarding eligibility requirements and determinations, to the extent that they
51 do not conflict with parameters set by the General Assembly.

1 **"§ 108E-2-2. Counties determine eligibility.**

2 Counties determine eligibility in accordance with Chapter 108A."

3 **SECTION 9.(e)** G.S. 126-5 is amended by adding a new subsection to read:

4 **"§ 126-5. Employees subject to Chapter; exemptions.**

5 ...

6 (c13) Except as to G.S. 126-13, 126-14, 126-14.1, 126-14.2, and the provisions of Articles
7 6, 7, 14, 15, and 16 of this Chapter, the provisions of this Chapter shall not apply to employees
8 of the Health Benefits Authority in positions created or vacated after October 1, 2015, except
9 for employees designated by the Board as subject to this Chapter under G.S. 143B-216.95(1)."

10 **SECTION 9.(f)** G.S. 143B-138.1(a)(3) is repealed.

11 **SECTION 9.(g)** G.S. 143B-153 reads as rewritten:

12 **"§ 143B-153. Social Services Commission – creation, powers and duties.**

13 There is hereby created the Social Services Commission of the Department of Health and
14 Human Services with the power and duty to adopt rules and regulations to be followed in the
15 conduct of the State's social service programs with the power and duty to adopt, amend, and
16 rescind rules and regulations under and not inconsistent with the laws of the State necessary to
17 carry out the provisions and purposes of this Article. Provided, however, the Health Benefits
18 Authority of the Department of Health and Human Services shall have the power and duty to
19 adopt rules and regulations to be followed in the conduct of the State's medical assistance
20 program.

21"

22 **SECTION 9.(h)** G.S. 150B-1 reads as rewritten:

23 **"§ 150B-1. Policy and scope.**

24 ...

25 (d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the
26 following:

27 ...

28 (9) The Health Benefits Authority of the Department of Health and Human
29 Services in adopting new or amending existing medical coverage policies for
30 the State Medicaid and NC Health Choice programs pursuant to
31 G.S. 108A-54.2.

32 ...

33 (20) The Health Benefits Authority of the Department of Health and Human
34 Services in implementing, operating, or overseeing new 1915(b)/(c)
35 Medicaid Waiver programs or amendments to existing 1915(b)/(c) Medicaid
36 Waiver programs.

37 ...

38 (22) The Health Benefits Authority of the Department of Health and Human
39 Services with respect to the content of State Plans, State Plan Amendments,
40 and Waivers approved by the Centers for Medicare and Medicaid Services
41 (CMS) for the North Carolina Medicaid Program and the NC Health Choice
42 program.

43 ...

44 (e) Exemptions From Contested Case Provisions. – The contested case provisions of
45 this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter.
46 The contested case provisions of this Chapter do not apply to the following:

47 ...

48 (17) The Health Benefits Authority of the Department of Health and Human
49 Services with respect to the review of North Carolina Health Choice
50 Program determinations regarding delay, denial, reduction, suspension, or

1 termination of health services, in whole or in part, including a determination
2 about the type or level of services.
3 "
4 **SECTION 10.** Except as otherwise specified, this act becomes effective October 1,
5 2015.

DRAFT