

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND NC HEALTH CHOICE

REPORT TO THE 2016 SESSION of the 2015 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL 2016

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TABLE OF CONTENTS

TRANSMITTAL LETTER.....	5
COMMITTEE PROCEEDINGS.....	7
FINDING AND RECOMMENDATIONS	10
APPENDICES	
<u>APPENDIX A</u>	
MEMBERSHIP OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND NC HEALTH CHOICE.....	15
<u>APPENDIX B</u>	
COMMITTEE CHARGE/STATUTORY AUTHORITY.....	16
<u>APPENDIX C</u>	
LEGISLATIVE PROPOSALS.....	17

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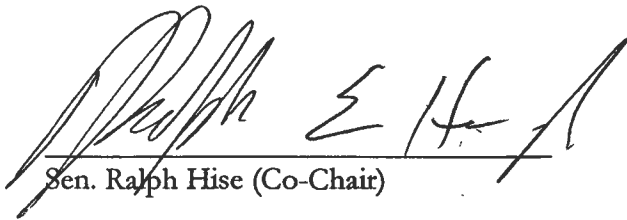
TRANSMITTAL LETTER

April 12, 2016

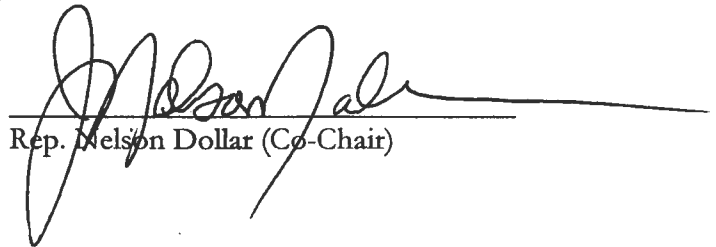
[\[Back to Top\]](#)

TO THE MEMBERS OF THE 2016 REGULAR SESSION
OF THE 2015 GENERAL ASSEMBLY

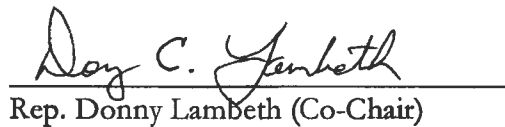
The **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND NC HEALTH CHOICE** respectfully submits the following report to the 2016 Regular Session of the 2015 General Assembly.



Sen. Ralph Hise (Co-Chair)



Rep. Nelson Dollar (Co-Chair)



Rep. Donny Lambeth (Co-Chair)

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COMMITTEE PROCEEDINGS

[\[Back to Top\]](#)

The Joint Legislative Oversight Committee on Medicaid and NC Health Choice met four (4) times between January 2016 and April 2016. This section of the report provides a brief overview of topics and presenters for each meeting and identifies DHHS action items from each meeting. Detailed minutes and handouts from each meeting are available in the Legislative Library. Agendas and handouts for each meeting are available at the following link:

<http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=284&sFolderName=\2015-16 Interim>

Summary of Committee Proceedings and DHHS Action Items

January 12, 2016

- **Welcome & Opening Remarks**
Senator Ralph Hise, Presiding Co-Chair

- **Committee Charge and Review Session Law 2015-245, An Act to Transform and Reorganize North Carolina's Medicaid and Health Choice Programs (HB 372)**
Jennifer Hillman, Committee Staff, Research Division

- **Remarks from DHHS Secretary**
Rick Brajer, Secretary, Department of Health & Human Services (DHHS)

- **Medicaid and NC Health Choice Enrollment**
Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS

DHHS ACTION ITEMS:

- Report the impact of the ACA open enrollment period on Medicaid and NC Health Choice enrollment during FY 2015-16
 - Provide additional analysis of unexplained fluctuations in eligibility categories, including the aged category, and family planning
 - Provide additional data on the number of cases affected by the auto-extension process
-
- **Medicaid and NC Health Choice Budget Forecast**
Trey Suttan, Finance Director, Division of Medical Assistance, DHHS

DHHS ACTION ITEMS:

- Proactively monitor the presented key budget risks and keep the Medicaid Oversight Committee apprised of their status

- **Staffing Status of Division of Health Benefits**
Dee Jones, Director of Operations, Division of Health Benefits, DHHS
DHHS ACTION ITEMS:
 - Explain the differences in recruitment, dismissal, and benefits, including retirement, for DHB employees who are exempt from the State Human Resources Act, compared to DMA employees who are subject to the State Human Resources Act, and as compared to DHB staff who are contractors.

- **Division of Health Benefits, Work Plan for S.L. 2015-245**
Dee Jones, Director of Operations, Division of Health Benefits, DHHS
DHHS ACTION ITEMS:
 - Develop a work plan that addresses at least the following components:
 - Adequacy of current contracts to address the Division of Health Benefits' needs

- Directions to legislative staff – none.

February 9, 2016

- **Welcome & Opening Remarks**
Representative Lambeth, Presiding Co-Chair

- **Remarks from DHHS Secretary**
Rick Brajer, Secretary, Department of Health & Human Services (DHHS)

- **Medicaid and NC Health Choice Enrollment**
Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS
DHHS ACTION ITEMS:
 - Quantify the fiscal impact of the ACA open enrollment period on Medicaid and NC Health Choice enrollment during FY 2015-16.
 - Quantify the fiscal impact of beneficiaries whose eligibility was auto-extended but who were ultimately determined to be ineligible.

- **Medicaid and NC Health Choice Budget Forecast**
Trey Suttan, Finance Director, Division of Medical Assistance, DHHS
Joe Cooper, Chief Information Officer, Information Technology Division, DHHS
DHHS ACTION ITEMS:
 - Provide comparison of claims submitted to claims paid and identify trends/backlog. Expand the explanation and definition of the drivers of the variances identified, with examples.
 - Provide information of where Medicaid is projected to end the year relative to the budget. Specifically address the availability of surplus

available for reducing the LME/MCO reduction consistent with the special provisions.

- Provide data on the fiscal impact of drugs for the treatment of Hepatitis C and antivirals and how the Department plans to accommodate in the rebase or forecast

- **Staffing Status of Division of Health Benefits**

Dee Jones, Director of Operations, Division of Health Benefits, DHHS

- **Division of Health Benefits, Work Plan for S.L. 2015-245**

Dee Jones, Director of Operations, Division of Health Benefits, DHHS

DHHS ACTION ITEMS:

- Provide proposal to clarify issues related to administrative matching for DHB employees including meeting CMS requirements for "merit-based" employees and resolving authority conflicts.
- Address need for legal review and assistance with DHB contracting, especially related to the DHB exemption from following other State contracting requirements and the exemption from using the Attorney General's Office as legal counsel. This item need not be addressed during the March meeting, but should be addressed in future presentations to HHS Appropriations Committee or Medicaid Oversight.

- Directions to legislative staff – none.

March 1, 2016

- **Welcome & Opening Remarks**

Representative Dollar, Presiding Co-Chair

- **Remarks from DHHS Secretary**

Rick Brajer, Secretary, Department of Health & Human Services (DHHS)

- **Medicaid and NC Health Choice Enrollment**

Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS

- **Medicaid and NC Health Choice Budget Forecast**

Trey Suttan, Finance Director, Division of Medical Assistance, DHHS

- **Review of March 1, 2016, DHHS Report to Committee, Including Waiver Application**

Dr. Warren Newton, Senior Medical Advisor, DHHS

Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS

Trey Suttan, Finance Director, Division of Medical Assistance, DHHS

Dee Jones, Chief Operating Officer, Division of Health Benefits, DHHS

DHHS ACTION ITEMS:

- Provide updated status on the decision whether to add an uncompensated care pool as well as decisions about how supplemental payments will be treated under the new Medicaid delivery system. The specific supplemental payments to be addressed include:
 - MRI Enhanced Payments
 - DSH Payments
 - Hospital GAP Plan, including both Upper Payment Limits (UPL) and Equity Payments
 - Graduate Medical Education (GME) Payments
 - Cost Settlement Payments

- **Review of March 1, 2016, DHHS and Department of Insurance (DOI) Report on the Applicability of Chapter 58 to Medicaid Reform and Solvency Recommendations**
Ben Popkin, Legislative Council, Department of Insurance
Jeffrey Trendel, Deputy Commissioner, Alternative Markets Divisions, DOI

- Directions to legislative staff – work with staff of DHHS and DOI regarding requested legislation.

April 12, 2016

- **Welcome & Opening Remarks**
Senator Hise, Presiding Co-Chair

- **Remarks from DHHS Secretary**
Rick Brajer, Secretary, Department of Health & Human Services (DHHS)

- **State Auditor's DHHS Statewide Federal Compliance Audit Report Findings for Medicaid and Health Choice**
Beth Wood, State Auditor, Office of the State Auditor

DHHS Response

Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS

- **Medicaid and NC Health Choice Enrollment**
Dave Richard, Deputy Secretary, Division of Medical Assistance, DHHS

- **Medicaid and NC Health Choice Budget Forecast**
Trey Suttan, Finance Director, Division of Medical Assistance, DHHS

- **Division of Health Benefits, Work Plan for S.L. 2015-245**
Dee Jones, Director of Operations, Division of Health Benefits, DHHS

- **Program Evaluation Division Report: *Timeliness of Medicaid Eligibility Determinations Declined Due to Challenges Imposed by NC FAST and Affordable Care Act Implementation***
Carol Shaw, Principal Program Evaluator, Program Evaluation Division, NCGA
- **Presentation of Committee Report and Proposed Legislation**
Jennifer Hillman, Committee Staff, Legislative Analysis Division, NCGA

FINDINGS AND RECOMMENDATIONS

[\[Back to Top\]](#)

FINDING 1: IN ORDER TO SUPPORT THE CONTINUED PLANNING FOR AND IMPLEMENTATION OF THE MEDICAID TRANSFORMATION PLAN ENACTED BY THE GENERAL ASSEMBLY, FURTHER LEGISLATION IS NEEDED.

S.L. 2015-245 provided the legislative framework for the transformation of North Carolina's Medicaid program to provide budget predictability for the taxpayers of the State while ensuring quality care to those in need. S.L. 2015-245 created the new Division of Health Benefits (DHB) within the Department of Health and Human Services (DHHS) to plan for and implement for transformation established by the General Assembly. As required by S.L. 2015-245, DHHS, through the DHB, submitted a report to the Joint Legislative Oversight Committee on Medicaid and Health Choice that described proposed statutory changes necessary to implement the Medicaid transformation plan. The report contained the following requests that would require statutory or legislative changes:

- **Exclude medically needy beneficiaries from PHP enrollment.** *Affects S.L. 2015-245, Section 4(5).*
- **Exclude beneficiaries who are eligible only for emergency services from PHP enrollment.** *Affects S.L. 2015-245, Section 4(5).*
- **Exclude members of federally recognized tribes from mandatory PHP enrollment.** *Affects S.L. 2015-245, Section 4(5).*
- **Exclude individuals who are presumptively eligible for Medicaid from PHP delivery system.** *Affects S.L. 2015-245, Section 4(5).*
- **Exclude months when a beneficiary is retroactively eligible for Medicaid from PHP delivery system.** *Affects S.L. 2015-245, Section 4(4).*
- **Exclude coverage for refugees from PHP delivery system.** *Affects S.L. 2015-245, Section 4(5).*
- **Exclude Program for All-Inclusive Care for the Elderly (PACE) services from PHP delivery system.** *Affects S.L. 2015-245, Section 4(4).*
- **Exclude services provided by local education agencies (LEAs) from PHP delivery system.** *Affects S.L. 2015-245, Section 4(4).*
- **Exclude services provided by Child Developmental Services Agencies (CDSAs) from PHP delivery system.** *Affects S.L. 2015-245, Section 4(4).*
- **Permit Indian health care providers (IHCPs) to choose whether or not to participate in a PHP's provider network and allow IHCPs to continue to be**

reimbursed on a fee-for-service basis for services they provide as a non-participating provider. *Affects S.L. 2015-245, Section 4(4).*

- **Allow up to 12 regional contracts with provider-led entities (PLEs). *Affects S.L. 2015-245, Section 4(6)b.***
- **Clarify that until DHB is in place – through a SPA – DHHS is the entity named to take certain actions, including submission of the 1115 waiver. *Affects S.L. 2015-245, Section 3(3).***
- **Amend the cooling off period in established in G.S. 143B-139.6C to meet legislative intent and the needs of the Medicaid program. *Affects G.S. 143B-139.6C.***
- **Clarify at least 21 provisions in Chapters 108A and 108C to reflect the system changes made by S.L. 2015-245. *Affects G.S. 108A-55, G.S. 108A-57, G.S. 108A-59, G.S. 108A-64.1, G.S. 108A-65, G.S. 108A-68, G.S. 108A-70, G.S. 108A-70.5, G.S. 108A-70.9A, G.S. 108A-70.9B, G.S. 108A-70.9C, G.S. 108A-70.11, G.S. 108A-70.12, G.S. 108A-70.18, G.S. 108A-70.21, G.S. 108A-70.27, G.S. 108A-70.29, G.S. 108C-2, G.S. 108C-3, G.S. 108C-4, and G.S. 108C-14.***
- **Exempt PHP from compliance with Chapter 58 generally. *Affects S.L. 2015-245, Section 4(6a).***

Additionally, S.L. 2015-245 required the Department of Insurance (DOI) to report to the Joint Legislative Oversight Committee on Medicaid and NC Health Choice by March 1, 2016 recommended solvency requirements to apply to Prepaid Health Plans, including proposed statutory changes necessary to implement the recommendations. DOI's report contained proposed draft legislation.

RECOMMENDATION 1: IN ORDER TO SUPPORT THE CONTINUED PLANNING FOR AND IMPLEMENTATION OF THE MEDICAID TRANSFORMATION PLAN ENACTED BY THE GENERAL ASSEMBLY, FURTHER LEGISLATION IS NEEDED.

The Joint Legislative Oversight Committee on Medicaid and NC Health Choice recommends that during the 2016 Session the General Assembly consider the legislative changes proposed in DHHS's March 1, 2016 report to this Committee and further requested as a special provision in the 2016 Governor's Budget.

The Committee further recommends that during the 2016 Session the General Assembly consider the legislation [2016-MRfz-11] proposed by DOI in its March 1, 2016 report to the Committee and specifically consider revising the draft to resolve inconsistencies with S.L. 2015-245 and to resolve other issues related to implementation of the DOI proposed language.

FINDING 2: ADDITIONAL DETAILS OF THE MEDICAID TRANSFORMATION PLAN REMAIN TO BE DETERMINED, REQUIRING FURTHER LEGISLATIVE OVERSIGHT.

At its March 1, 2016 meeting, the Joint Legislative Oversight Committee on Medicaid and NC Health Choice heard the report from DHHS on its progress planning for the implementation of the Medicaid transformation framework enacted by the General Assembly in S.L. 2015-245. DHHS's report described the major components of the plan for transformation, contained many details to further explain the plan, and included a draft of the 1115 waiver that DHHS must submit to the Centers for Medicare and Medicaid Services (CMS) by June 1, 2016. The report showed much progress in the planning for the transformed Medicaid program to date and outlined key events that will continue to shape DHHS's plan and the waiver, including public hearings prior to submission of the waiver as well as negotiations with CMS after submission of the waiver. The plan presented in the report also raised specific questions related to the plan. As planning efforts continue and key events occur, ongoing legislative oversight is needed to ensure that the General Assembly stays informed about developments during the planning process in sufficient detail to be able to address potential needs as they arise.

RECOMMENDATION 2: ADDITIONAL DETAILS OF THE MEDICAID TRANSFORMATION PLAN REMAIN TO BE DETERMINED, REQUIRING FURTHER LEGISLATIVE OVERSIGHT.

The Joint Legislative Oversight Committee on Medicaid and NC Health Choice recommends that the General Assembly support the enactment of legislation [2016-MRz-12] requiring DHHS to submit a report by October 1, 2016 to the Joint Legislative Oversight Committee for Medicaid and Health Choice and the Fiscal Research Division containing the following items:

- (1) The status of the 1115 waiver submission to the Centers for Medicare and Medicaid Services (CMS), as well as any other submissions to CMS related to the transition of Medicaid and Health Choice from fee for service to capitation. The report shall specifically address the timeliness of the submission or submissions to CMS, responses received from CMS, and strategies necessary to ensure approval of a waiver for Medicaid transformation.
- (2) A detailed Work Plan for the implementation of the transformation of Medicaid and Health Choice programs. The Work Plan shall provide sufficient detail to allow the Joint Legislative Oversight Committee for Medicaid and Health Choice to monitor progress and identify challenges and impediments to the implementation of the transformation of Medicaid and Health Choice programs. The detailed Work Plan shall identify key milestones, tasks, and events necessary to the transition of the programs. For each milestone, task, and event, the Work Plan shall specify the expected completion dates and identify the individual who is assigned responsibility for accomplishing or ensuring the accomplishment of the milestone, task, or event.
- (3) A sufficiently detailed description of any developments or changes during the planning process to enable the General Assembly to address any barriers to successful implementation of the Medicaid and NC Health Choice transformation.

COMMITTEE MEMBERSHIP

[\[Back to Top\]](#)

2015-2016

Senate Members	House Members
Sen. Ralph Hise, Co-Chair	Rep. Nelson Dollar, Co-Chair
Sen. Ben Clark	Rep. Donny Lambeth, Co-Chair
Sen. Fletcher L. Hartsell, Jr.	Rep. Chris Malone, Vice-Chair
Sen. Joyce Krawiec	Rep. Hugh Blackwell
Sen. Floyd B. McKissick, Jr.	Rep. Edward Hanes, Jr.
Sen. Louis Pate	Rep. Verla Insko
Sen. Tommy Tucker	Rep. Bert Jones
Sen. Angela Bryant, Advisory	Rep. Gregory Murphy, Advisory
	Rep. Gary Pendleton, Advisory

Committee Clerks	
Susan Fanning	Candace Slate
	Pan Briles

Committee Staff	
Fiscal Research Division:	
Susan Jacobs	Steve Owen
Legislative Drafting Division:	
Amy Jo Johnson	Joyce Jones
Legislative Analysis Division:	
Jennifer Hillman	Sara Kamprath
Theresa Matula	Kelly Tornow

COMMITTEE CHARGE/STATUTORY AUTHORITY

[\[Back to Top\]](#)

The Joint Legislative Oversight Committee on Medicaid and NC Health Choice (Medicaid Oversight Committee) was created as part of the 2015 Medicaid Transformation bill, S.L. 2015-245, in a new Article 23B of Chapter 120 of the General Statutes. The purpose of the Medicaid Oversight Committee is to examine the budgeting, financing, administrative, and operational issues related to the Medicaid and NC Health Choice programs. Draft legislation recommended by this Committee will be eligible for introduction during the short session.

LEGISLATIVE PROPOSALS

[\[Back to Top\]](#)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-MRfz-11 [v.9] (03/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Prepaid Health Plans Licensing by DOI.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PREPAID HEALTH PLANS TO OBTAIN A LICENSE FROM THE DEPARTMENT OF INSURANCE AND TO ENSURE SOLVENCY OF ALL PREPAID HEALTH PLAN PROVIDERS UNDER THE MEDICAID PROGRAM, AS PROVIDED BY THE DEPARTMENT OF INSURANCE AND AS RECOMMENDED BY THE JOINT OVERSIGHT COMMITTEE ON MEDICAID AND NC HEALTH CHOICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new article to read:

"Article 93

"Prepaid Health Plan Licensing

"§ 58-93-1. Short title.

This Article may be cited as the Prepaid Health Plan Licensing Act.

"§ 58-93-5. Definitions.

The following definitions apply in this Article:

- (1) Enrollee. – An individual who is covered by and receives Medicaid health care services through a Prepaid Health Plan.
- (2) Health care services. – Services provided by a Prepaid Health Plan under a capitated contract with the North Carolina Division of Health and Human Services through the Division of Health Benefits.
- (3) Insolvent or Insolvency. – A circumstance that occurs when a Prepaid Health Plan has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.
- (3) Person. – As defined in G.S. 58-1-5(9).
- (4) Prepaid Health Plan or PHP. – A person that has entered into a capitated contract with the North Carolina Department of Health and Human Services through the Division of Health Benefits to deliver Medicaid or NC Health Choice health care services.
- (5) Working Capital. – The excess of current assets over current liabilities. The only borrowed funds that may be included in working capital must

1 be funds that are repayable only from net earned income and must be
2 repayable only with the advance permission of the Commissioner.

3 **"§ 58-93-10. Licensing.**

4
5 (a) Notwithstanding any law of this State to the contrary, only those persons
6 authorized by the Department of Health and Human Services, through the Division of
7 Health Benefits, may apply to the Commissioner for a license to operate a PHP in
8 compliance with this Article.

9 (b) Any person that is already a licensed health organization in this State under
10 this Chapter shall not be subject to this Article provided that the solvency requirements
11 for such organization are equal to or greater than the requirements of this Article.

12 (c) Each license application shall be verified by an officer or authorized
13 representative of the applicant, shall be in a form prescribed by the Commissioner, and
14 shall be set forth or be accompanied by all of the following:

15 (1) A copy of the organizational documents, if any, of the applicant, such
16 as the articles of incorporation, articles of association, partnership
17 agreement, trust agreement, or other applicable documents, and all
18 amendments.

19 (2) A copy of the bylaws, rules and regulations, or similar documents, if
20 any, regulating the conduct of the internal affairs of the applicant.

21 (3) A list of the names, addresses, official positions, and biographical
22 affidavit of the persons who are to be responsible for the conduct of
23 the affairs of the applicant, including all members of the board of
24 directors, board of trustees, executive committee, or other governing
25 board or committee, the principal officers in the case of a corporation,
26 or the partners or members in the case of a partnership or association.
27 This list shall be accompanied by a completed release of information
28 for each of these individuals on forms acceptable to the Commissioner.

29 (4) A disclosure identifying all affiliates, including a description of any
30 management, service, or cost sharing arrangements.

31 (5) The name and address of the registered agent.

32 (6) A detailed plan of operation.

33 (7) The names and addresses of the applicant's qualified actuary and
34 external auditors.

35 (8) Financial statements showing the applicant's assets, liabilities, and
36 sources of financial support. If the applicant's financial affairs are
37 audited by independent certified public accountants, a copy of the
38 applicant's most recent regular certified financial statement shall
39 satisfy this requirement unless the Commissioner directs that
40 additional or more recent financial information is required for the
41 proper administration of this Article.

42 (9) A financial feasibility study that includes (i) detailed enrollment
43 projections, (ii) a projection of balance sheets, (iii) cash flow
44 statements that show any capital expenditures, purchases and sales of
45 investments, and deposits with the State, (iv) anticipated income and
46 anticipated expense statements covering the start of operations through

1 the period in which the PHP is anticipated to have had net income for
2 at least one year, and (v) a statement as to the sources of working
3 capital as well as any other sources of funding.

4 (10) If not domiciled in this State, a power of attorney duly executed by the
5 applicant appointing the Commissioner, the Commissioner's
6 successors in office, and duly authorized deputies as the true and
7 lawful attorney of the applicant in and for this State upon whom all
8 lawful process in any legal action or proceeding against the PHP on a
9 cause of action arising in this State may be served.

10 (11) A description of the procedures to be implemented to meet the
11 protection against insolvency requirements of G.S. 58-93-110.

12 (12) Other information as the Commissioner may require in order to make
13 the determinations required in G.S. 58-93-20.

14 (d) A PHP shall file a notice describing any significant modification of the
15 operation set out in the information required by subsection (b) of this section. This
16 notice shall be filed with the Commissioner prior to the modification. If the
17 Commissioner does not disapprove within 90 days after the filing, the modification shall
18 be deemed to be approved. Every PHP shall file with the Commissioner all subsequent
19 changes in the information or forms that are required by this Article to be filed with the
20 Commissioner.

21 **"§ 58-93-15. Commissioner use of consultants and other professionals.**

22 (a) The Commissioner may contract with consultants and other professionals to
23 expedite and complete the application process, examinations, and other regulatory
24 activities required under this Article. Costs of contracts entered into under this section
25 shall be reimbursed by the applicant or licensee.

26 (b) Contracts under this section for financial, legal, examination, and other
27 services shall not be subject to any of the following:

28 (1) G.S. 114-2.3.

29 (2) G.S. 147-17.

30 (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes and any
31 rules and procedures adopted under those Articles concerning
32 procurement, contracting, and contract review.

33 **"§ 58-93-20. Issuance and continuation of license.**

34 (a) Before issuing or continuing any PHP license, the Commissioner of Insurance
35 may make any examination as the Commissioner deems expedient. The Commissioner
36 of Insurance shall issue a license upon the payment of the application fee prescribed in
37 G.S. 58-93-160 and upon being satisfied on all of the following points:

38 (1) The applicant, other than acquiring a license under this Article, has
39 been approved by the North Carolina Department of Health and
40 Human Services, through the Division of Health Benefits, to enter into
41 a capitated contract for the delivery of Medicaid and NC Health
42 Choice services.

43 (2) The applicant has a minimum capital and surplus equal to or greater
44 than that required by G.S. 58-93-110(b).

45 (3) The amounts provided as working capital are repayable only out of
46 earned income in excess of amounts paid and payable for operating

1 expenses and expenses of providing services and such reserve as the
2 Department of Insurance deems adequate.

3 (4) The amount of money actually available for working capital is
4 sufficient to carry all acquisition costs and operating expenses for a
5 reasonable period of time from the date of the issuance of the license
6 and that the PHP is financially responsible and may reasonably be
7 expected to meet its obligations to enrollees and prospective enrollees.
8 Such working capital shall initially be a minimum of one million five
9 hundred thousand dollars (\$1,500,000) or a higher amount as the
10 Commissioner shall determine to be adequate.

11 (5) The person or persons who will manage the PHP have adequate
12 expertise, experience, and character.

13 (b) A license shall be denied only after compliance with the requirements of
14 G.S. 58-93-155.

15 **"§ 58-93-25. Deposits.**

16 (a) The Commissioner shall require a minimum deposit of five hundred thousand
17 dollars (\$500,000) or such higher amount as the Commissioner determines to be
18 necessary for the protection of enrollees.

19 (b) All deposits required by this section shall be administered in accordance with
20 the provisions of Article 5 of this Chapter.

21 **"§ 58-93-30. Management and exclusive agreements; custodial agreements.**

22 (a) No PHP shall enter into an exclusive management or custodial agreement
23 unless the agreement is first filed with the Commissioner and approved under this
24 section within (i) 45 days after filing or (ii) a reasonable extended period as specified by
25 notice from the Commissioner given within a 45 day period after filing.

26 (b) The Commissioner shall disapprove an agreement submitted under subsection
27 (a) of this section if the Commissioner determines that the agreement does any of the
28 following:

- 29 (1) Subjects the PHP to excessive charges.
30 (2) Extends for an unreasonable period of time.
31 (3) Does not contain fair and adequate standards of performance.
32 (4) Enables persons under the contract to manage the PHP who are not
33 sufficiently trustworthy, competent, experienced, and free from
34 conflict of interest to manage the PHP with due regard for the interests
35 of its enrollees, creditors, or the public.
36 (5) Contains provisions that impair the interests of the PHP's enrollees,
37 creditors, or the public.

38 **"§ 58-93-45. Fiduciary responsibilities.**

39 Any director, officer, or partner of a PHP who receives, collects, disburses, or
40 invests funds in connection with the activities of the PHP shall be responsible for those
41 funds in a fiduciary relationship to the enrollees.

42 **"§ 58-93-55. Statements filed with Commissioner.**

43 Every PHP subject to this article is subject to G.S. 58-2-165.

44 **"§ 58-93-60. Investments.**

45 (a) With the exception of investments made in accordance with subsection (b),
46 the funds of a PHP shall be invested or maintained only in securities, other investments,

1 or other assets permitted by the laws of this State for the investment of assets
2 constituting the legal reserves of life insurance companies or such other securities or
3 investments as the Commissioner may permit.

4 (b) A PHP may, with the Commissioner's prior approval, do any of the following:

5 (1) Invest its funds to purchase, lease, construct, renovate, operate, or
6 maintain hospitals, medical facilities, or both, and their ancillary
7 equipment, and such property as may reasonably be required for its
8 principal office or for other purposes as may be necessary in the
9 transaction of the business of the PHP.

10 (2) Make loans to a medical group under contract with the PHP in
11 furtherance of the PHP's program or the making of loans to a
12 corporation or corporations under the PHP's control for the purpose of
13 acquiring or constructing medical facilities and hospitals, or in
14 furtherance of a program providing health care services to enrollees.

15 (c) The Commissioner shall not allow any investment if the Commissioner
16 determines the investment would substantially and adversely affect the financial
17 soundness of the PHP and endanger its ability to meet its obligations.

18 **"§ 58-93-100. Examinations.**

19 The Commissioner may make an examination of the affairs of any PHP as often as
20 the Commissioner determines it to be necessary for the protection of the interests of the
21 people of this State but not less frequently than once every five years. Examinations
22 shall otherwise be conducted under G.S. 58-2-131 through G.S. 58-2-134.

23 **"§ 58-93-105. Hazardous financial condition.**

24 (a) Whenever the financial condition of any PHP indicates a condition such that
25 the continued operation of the PHP might be hazardous to its enrollees, creditors, or the
26 general public, the Commissioner may order the PHP to take action as may be
27 reasonably necessary to rectify the existing condition, including one or more of the
28 following steps:

29 (1) Reduce the total amount of present and potential liability for benefits
30 by reinsurance.

31 (2) Reduce the volume of new business being accepted.

32 (3) Reduce the expenses by specified methods.

33 (4) Suspend or limit the writing of new business for a specified period of
34 time.

35 (5) Require an increase to the PHP's capital and surplus by contribution.

36 (b) The Commissioner may consider any or all of the standards in
37 G.S. 58-30-60(b) when determining whether the continued operation of a PHP is
38 hazardous to its enrollees, creditors, or the general public.

39 (c) The remedies under subsection (a) are in addition to, and not in lieu of, the
40 remedies and measures available to the Commissioner under the provisions of Article
41 30 of this Chapter.

42 (d) The Commissioner shall notify the Division of Health Benefits of the North
43 Carolina Department of Health and Human Services prior to taking any action against a
44 PHP under this section.

45 **"§ 58-93-110. Protection against insolvency.**

1 (a) The Commissioner shall require deposits in accordance with the provisions of
2 G.S. 58-93-25.

3 (b) Each PHP shall maintain a minimum capital and surplus equal to the greater
4 of one million dollars (\$1,000,000) or the amount required pursuant to the risk-based
5 capital provisions of Article 12 of this Chapter.

6 (c) Every PHP shall have and maintain at all times an adequate plan for
7 protection against insolvency acceptable to the Commissioner. In determining the
8 adequacy of such a plan, the Commissioner may consider all of the following:

9 (1) A reinsurance agreement preapproved by the Commissioner covering
10 excess loss, stop loss, or catastrophes. The agreement must provide
11 that the Commissioner will be notified no less than 60 days prior to
12 cancellation or reduction of coverage.

13 (2) Any other arrangements offering protection against insolvency that the
14 Commissioner may require.

15 **"§ 58-93-120. Continuation of benefits.**

16 (a) The Commissioner shall require that each PHP have a plan for handling
17 insolvency. The plan must allow for continuation of benefits for the duration of the
18 contract period for which premiums have been paid and continuation of benefits to
19 enrollees who are confined in an inpatient facility until discharge or expiration of
20 benefits. In considering the plan, the Commissioner may require any of the following:

21 (1) Insurance to cover the expenses to be paid for benefits after an
22 insolvency.

23 (2) Provisions in provider contracts that obligate the provider to provide
24 services for the duration of the period after the PHP's insolvency for
25 which premium payment has been made and until the enrollees'
26 discharge from inpatient facilities.

27 (3) Insolvency reserves.

28 (4) Letters of credit acceptable to the Commissioner.

29 (5) Any other arrangements to assure that benefits are continued as
30 specified in this section.

31 **"§ 58-93-135. Incurred but not reported claims.**

32 (a) Every PHP shall, when determining liability, include an amount estimated in
33 the aggregate to provide for (i) any unearned premium, (ii) the payment of all claims for
34 health care expenditures that have been incurred, whether reported or unreported, that
35 are unpaid and for which the PHP is or may be liable, and (iii) the expense of
36 adjustment or settlement of these claims.

37 (b) Liabilities shall be computed in accordance with rules adopted by the
38 Commissioner for HMOs upon reasonable consideration of the ascertained experience
39 and character of the PHP.

40 **"§ 58-93-140. Suspension or revocation of license.**

41 (a) The Commissioner may suspend or revoke a PHP license if the
42 Commissioner finds that the PHP meets any of the following:

43 (1) Is operating significantly in contravention of its organizational
44 document, or in a manner contrary to that described in and reasonably
45 inferred from any other information submitted under G.S. 58-93-10,

1 unless amendments to such submissions have been filed with and
2 approved by the Commissioner.

3 (2) Is no longer financially responsible and may reasonably be expected to
4 be unable to meet its obligations to enrollees or prospective enrollees.

5 (3) Is operating in a manner that would be hazardous to its enrollees.

6 (4) Knowingly or repeatedly fails or refuses to comply with any law or
7 rule applicable to the PHP or with any order issued by the
8 Commissioner after notice and opportunity for a hearing.

9 (5) Has knowingly published or made to the Department or to the public
10 any false statement or report.

11 (b) A license shall be suspended or revoked only after compliance with
12 G.S. 58-93-155.

13 (c) When a PHP license is suspended, the PHP shall not, during the suspension,
14 enroll any additional enrollees except newborn children or other newly acquired
15 dependents of existing enrollees, and shall not engage in any advertising or solicitation.

16 (d) When a PHP license is revoked, the PHP shall proceed, immediately
17 following the effective date of the order of revocation, to wind up its affairs, and shall
18 conduct no further business except as may be essential to the orderly conclusion of the
19 affairs of the PHP. The PHP shall engage in no advertising or solicitation. The
20 Commissioner may, by written order, permit such further operation of the PHP as the
21 Commissioner may find to be in the best interest of enrollees and the State of North
22 Carolina.

23 (e) The Commissioner shall notify the Division of Health Benefits of the North
24 Carolina Department of Health and Human Services prior to taking any action against a
25 PHP under this section.

26 **"§ 58-93-145. Rehabilitation or liquidation of PHP.**

27 Any rehabilitation or liquidation of a PHP shall be deemed to be the rehabilitation or
28 liquidation of an insurance company and shall be conducted under the supervision of the
29 Commissioner pursuant to Article 30 of this Chapter. The Commissioner may apply for
30 an order directing the Commissioner to rehabilitate or liquidate a PHP upon one or more
31 grounds set out in Article 30 of this Chapter or when it is the opinion of the
32 Commissioner that the continued operation of the PHP would be hazardous either to the
33 enrollees or to the people of this State. Priority shall be given to the North Carolina
34 Department of Health and Human Services over all other claims in G.S. 58-30-220
35 except for claims in G.S. 58-30-220(1).

36 **"§ 58-93-150. Regulations.**

37 The Commissioner may adopt rules to carry out the provisions of this Article. Rules
38 shall be subject to review in accordance with G.S. 58-93-155.

39 **"§ 58-93-155. Administrative procedures.**

40 (a) When the Commissioner has cause to believe that grounds for the denial of an
41 application for a license exist, or that grounds for the suspension or revocation of a
42 license exist, notification shall be given to the PHP in writing. This notice shall
43 specifically state the grounds for denial, suspension, or revocation and shall set a date
44 for a hearing on the matter at least 30 days after notice is given.

45 (b) After such hearing, or upon the failure of the PHP to appear at such hearing,
46 the Commissioner shall take action as is deemed advisable and issue written findings

1 which shall be mailed to the PHP. The action of the Commissioner shall be subject to
2 review by the Superior Court of Wake County. The court may, in disposing of the issue
3 before it, modify, affirm, or reverse the order of the Commissioner in whole or in part.

4 (c) The provisions of Chapter 150B of the General Statutes of this State shall
5 apply to proceedings under this section to the extent that they are not in conflict with
6 subsections (a) and (b).

7 **"§ 58-93-160. Fees.**

8 Every PHP subject to this Article shall pay to the Commissioner a fee for filing an
9 application for a license and an annual license continuation fee for each license. The
10 license shall continue in full force and effect, subject to timely payment of the annual
11 license continuation fee in accordance with G.S. 58-6-7 and subject to any other
12 applicable provisions of the insurance laws of this State.

13 **"§ 58-93-165. Penalties and enforcement.**

14 (a) The Commissioner may, in addition to or in lieu of suspending or revoking a
15 license under G.S. 58-93-140, proceed under G.S. 58-2-70, provided that the PHP has
16 reasonable time to remedy the defect in its operations that gave rise to the procedure
17 under G.S. 58-2-70.

18 (b) Violation of this Article or any other provision of this Chapter that expressly
19 applies to PHPs is a Class 1 misdemeanor.

20 (c) If the Commissioner shall for any reason have cause to believe that any
21 violation of this Article or any other provision of this Chapter that expressly applies to
22 PHPs has occurred or is threatened, the Commissioner may give notice to the PHP and
23 to the representatives or other persons who appear to be involved in such suspected
24 violation to arrange a conference with the alleged violators or their authorized
25 representatives for the purpose of attempting to ascertain the facts relating to the
26 suspected violation, and, in the event it appears that any violation has occurred or is
27 threatened, to arrive at an adequate and effective means of correcting or preventing the
28 violation.

29 Proceedings under this subsection shall not be governed by any formal procedural
30 requirements, and may be conducted in such manner as the Commissioner may deem
31 appropriate under the circumstances.

32 (d) The Commissioner may issue an order directing a PHP or a representative of
33 a PHP to cease and desist from engaging in any act or practice in violation of the
34 provisions of this Article or any other provision of this Chapter that expressly applies to
35 PHPs.

36 Within 30 days after service of the cease and desist order, the respondent may
37 request a hearing on the question of whether acts or practices have occurred that are in
38 violation of this Article or any other provision of this Chapter that expressly applies to
39 PHPs. The hearing shall be conducted under Article 3A of Chapter 150B of the General
40 Statutes, and judicial review shall be available as provided by Article 4 of Chapter 150B
41 of the General Statutes.

42 (e) In the case of any violation of the provisions of this Article or any other
43 provision of this Chapter that expressly applies to PHPs, if the Commissioner elects not
44 to issue a cease and desist order, or in the event of noncompliance with a cease and
45 desist order issued under subsection (d) of this section, the Commissioner may institute

1 a proceeding to obtain injunctive relief, or seeking other appropriate relief, in the
2 Superior Court of Wake County.

3 **"§ 58-93-175. Filings and reports as public documents.**

4 All applications, filings, and reports required under this Article shall be treated as
5 public documents.

6 **"§ 58-93-185. Severability.**

7 If any provision of this act or its application is held invalid, the invalidity does not affect
8 other provisions or applications of this act that can be given effect without the invalid
9 provisions or application, and to this end the provisions of this act are severable."

10 **SECTION 2.** This act is effective when it becomes law.
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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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BILL DRAFT 2015-MRz-12 [v.6] (03/09)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
04/06/2016 03:24:31 PM**

Short Title: Medicaid Transformation Reporting. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FURTHER REPORTING FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES RELATED TO TRANSFORMATION OF THE MEDICAID AND NC HEALTH CHOICE PROGRAMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON MEDICAID AND NC HEALTH CHOICE.

The General Assembly of North Carolina enacts:

SECTION 1. No later than October 1, 2016, the Department of Health and Human Services shall submit a report to the Joint Legislative Oversight Committee for Medicaid and NC Health Choice and the Fiscal Research Division containing the following items:

- (1) The status of the 1115 waiver submission to the Centers for Medicare and Medicaid Services (CMS), as well as any other submissions to CMS related to the transition of Medicaid and Health Choice from fee for service to capitation. The report shall specifically address the timeliness of the submission or submissions to CMS, responses received from CMS, and strategies necessary to ensure approval of a waiver for Medicaid transformation.
- (2) A detailed Work Plan for the implementation of the transformation of Medicaid and Health Choice programs. The Work Plan shall provide sufficient detail to allow the Joint Legislative Oversight Committee for Medicaid and Health Choice to monitor progress and identify challenges and impediments to the implementation of the transformation of Medicaid and Health Choice programs. The detailed Work Plan shall identify key milestones, tasks, and events necessary to the transition of the programs. For each milestone, task, and event, the Work Plan shall specify the expected completion dates and identify the individual who is assigned responsibility for accomplishing or ensuring the accomplishment of the milestone, task, or event.

1 (3) A sufficiently detailed description of any developments or changes
2 during the planning process to enable the General Assembly to address
3 any barriers to successful implementation of the Medicaid and NC
4 Health Choice transformation.

5 **SECTION 2.** This act is effective when it becomes law.
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