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HOUSE BILL 399
Committee Substitute Favorable 4/3/13
Committee Substitute #2 Favorable 4/24/13
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Senate Health Care Committee Substitute Adopted 5/29/13
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Short Title: Amend Laws Pertaining to DHHS.-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES REQUESTED BY THE DEPARTMENT OF HEALTH
3 AND HUMAN SERVICES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT,
4 AND DEPENDENCY; MEDICAID; PUBLIC HEALTH; AND MENTAL HEALTH,
5 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. CHANGES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND**
9 **DEPENDENCY**

10 **SECTION 1.** G.S. 7B-507 reads as rewritten:

11 **"§ 7B-507. Reasonable efforts.**

12 (a) An order placing or continuing the placement of a juvenile in the custody or
13 placement responsibility of a county department of social services, whether an order for
14 continued nonsecure custody, a dispositional order, or a review order:

- 15 (1) Shall contain a finding that the juvenile's continuation in or return to the
16 juvenile's own home would be contrary to the juvenile's best interest;
17 (2) Shall contain specific findings as to whether a county department of social
18 services has made reasonable efforts to either prevent the need for placement
19 or eliminate the need for placement of the juvenile, unless the court has
20 previously determined under subsection (b) of this section that such efforts
21 are not required or shall cease;
22 (3) Shall contain findings as to whether a county department of social services
23 should continue to make reasonable efforts to prevent or eliminate the need
24 for placement of the juvenile, unless the court has previously determined or
25 determines under subsection (b) of this section that such efforts are not
26 required or shall cease;
27 (4) Shall specify that the juvenile's placement and care are the responsibility of
28 the county department of social services and that the department is to
29 provide or arrange for the foster care or other placement of the juvenile.



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1 After considering the department's recommendations, the court may order a
2 specific placement the court finds to be in the juvenile's best interest; and

- 3 (5) May provide for services or other efforts aimed at returning the juvenile to a
4 safe home or at achieving another permanent plan for the juvenile.

5 A finding that reasonable efforts have not been made by a county department of social services
6 shall not preclude the entry of an order authorizing the juvenile's placement when the court
7 finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the
8 need for the juvenile's placement were precluded by an immediate threat of harm to the
9 juvenile, the court may find that the placement of the juvenile in the absence of such efforts
10 was reasonable.

11 (b) In any order placing a juvenile in the custody or placement responsibility of a
12 county department of social services, whether an order for continued nonsecure custody, a
13 dispositional order, or a review order, the court may direct that reasonable efforts to eliminate
14 the need for placement of the juvenile shall not be required or shall cease if the court makes
15 written findings of fact that:

- 16 (1) Such efforts clearly would be futile or would be inconsistent with the
17 juvenile's health, safety, and need for a safe, permanent home within a
18 reasonable period of time;
- 19 (2) A court of competent jurisdiction has determined that the parent has
20 subjected the child to aggravated circumstances as defined in G.S. 7B-101;
- 21 (3) A court of competent jurisdiction has terminated involuntarily the parental
22 rights of the parent to another child of the parent; or
- 23 (4) A court of competent jurisdiction has determined that: the parent has
24 committed murder or voluntary manslaughter of another child of the parent;
25 has aided, abetted, attempted, conspired, or solicited to commit murder or
26 voluntary manslaughter of the child or another child of the parent; ~~or~~ has
27 committed a felony assault resulting in serious bodily injury to the child or
28 another child of the ~~parent~~ parent; has committed sexual abuse against the
29 child or another child of the parent; or has been required to register as a sex
30 offender on any government-administered registry.

31 (c) When the court determines that reunification efforts are not required or shall cease,
32 the court shall order a plan for permanence as soon as possible, after providing each party with
33 a reasonable opportunity to prepare and present evidence. If the court's determination to cease
34 reunification efforts is made in a hearing that was duly and timely noticed as a permanency
35 planning hearing, then the court may immediately proceed to consider all of the criteria
36 contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to
37 achieve a safe, permanent home within a reasonable period of time. If the court's decision to
38 cease reunification efforts arises in any other hearing, the court shall schedule a subsequent
39 hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any
40 hearing at which the court orders that reunification efforts shall cease, the affected parent,
41 guardian, or custodian may give notice to preserve the right to appeal that order in accordance
42 with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof
43 as to any evidence that party sought to offer in opposition to cessation of reunification that the
44 court refused to admit.

45 (d) In determining reasonable efforts to be made with respect to a juvenile and in
46 making such reasonable efforts, the juvenile's health and safety shall be the paramount concern.
47 Reasonable efforts to preserve or reunify families may be made concurrently with efforts to
48 plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the
49 juvenile in another permanent arrangement."
50

51 PART II. CHANGES TO LAWS PERTAINING TO MEDICAID

1 **SECTION 2.** G.S. 108A-70.5(b)(2) reads as rewritten:

2 "(2) Estate. – All the real and personal property considered assets of the estate
3 available for the discharge of debt pursuant to G.S. 28A-15-1. The
4 Department has all rights available to estate creditors, including the right to
5 qualify as personal representative or collector of an estate. For individuals
6 who have received benefits under a qualified long-term care partnership
7 policy as described in G.S. 108A-70.4, "estate" also includes any other real
8 and personal property and other assets in which the individual had any legal
9 title or interest at the time of death (to the extent of such interest), including
10 assets conveyed to a survivor, heir, or assign of the deceased individual
11 through joint tenancy, tenancy in common, survivorship, life estate, living
12 trust, or other arrangement."

13 **SECTION 3.** G.S. 28A-14-1(b) reads as rewritten:

14 "(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal
15 representative and collector shall personally deliver or send by first class mail to the last known
16 address a copy of the notice required by subsection (a) of this section to all persons, firms, and
17 corporations having unsatisfied claims against the decedent who are actually known or can be
18 reasonably ascertained by the personal representative or collector within 75 days after the
19 granting of ~~letters~~ letters and, if at the time of the decedent's death the decedent was receiving
20 medical assistance as defined by G.S. 108A-70.5(b)(1), to the Department of Health and
21 Human Services, Division of Medical Assistance. Provided, however, no notice shall be
22 required to be delivered or mailed with respect to any claim that is recognized as a valid claim
23 by the personal representative or collector."

24 **SECTION 4.** G.S. 28A-19-6(a) reads as rewritten:

25 "(a) After payment of costs and expenses of administration, the claims against the estate
26 of a decedent must be paid in the following order:

27 First class. Claims which by law have a specific lien on property to an amount not
28 exceeding the value of such property.

29 Second class. Funeral expenses to the extent of three thousand five hundred dollars
30 (\$3,500). This limitation shall not include burial place or gravestone. The preferential limitation
31 herein granted shall be construed to be only a limit with respect to preference of payment and
32 shall not be construed to be a limitation on reasonable funeral expenses which may be incurred;
33 nor shall the preferential limitation of payment in the amount of three thousand five hundred
34 dollars (\$3,500) be diminished by any Veterans Administration, social security or other federal
35 governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

36 Third class. Costs associated with gravestones and reasonable costs for the purchase of a
37 suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred
38 dollars (\$1,500). The preferential limitation herein granted shall be construed to be only a limit
39 with respect to preference of payment and shall not be construed to be a limitation on
40 reasonable gravestone or burial place expenses which may be incurred; nor shall the
41 preferential limitation of payment in the amount of one thousand five hundred dollars (\$1,500)
42 be diminished by any Veterans Administration, social security or other federal governmental
43 benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

44 Fourth class. All dues, taxes, and other claims with preference under the laws of the United
45 States.

46 Fifth class. All dues, taxes, and other claims with preference under the laws of the State of
47 North Carolina and its subdivisions.

48 Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and
49 in force, to the extent to which they are a lien on the property of the decedent at the decedent's
50 death. The Department of Health and Human Services is a sixth-class creditor for purposes of
51 determining the order of claims against the estate; provided, however, that judgments in favor

1 of other sixth-class creditors docketed and in force before the Department seeks recovery for
 2 medical assistance shall be paid prior to recovery by the Department.

3 Seventh class. Wages due to any employee employed by the decedent, which claim for
 4 wages shall not extend to a period of more than 12 months next preceding the death; or if such
 5 employee was employed for the year current at the decease, then from the time of such
 6 employment; for medical services within the 12 months preceding the decease; for drugs and
 7 all other medical supplies necessary for the treatment of such decedent during the last illness of
 8 such decedent, said period of last illness not to exceed 12 months.

9 Eighth class. A claim for equitable distribution.

10 Ninth class. All other claims."

11 **SECTION 5.** Article 8A of Chapter 36C of the General Statutes is amended by
 12 adding a new section to read as follows:

13 **"§ 36C-8-818. Notice of deceased Medicaid beneficiaries.**

14 If a trust was established by a person who at the time of that person's death was receiving
 15 medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time
 16 of that person's death, then any trustee of that trust who knows of the medical assistance within
 17 90 days of the person's death shall provide notice of that person's death to the Department of
 18 Health and Human Services, Division of Medical Assistance, within 90 days of the person's
 19 death. This section does not apply to trustees of preneed funeral trusts established or created
 20 pursuant to Article 13D of Chapter 90 of the General Statutes."

21 **SECTION 6.** G.S. 108C-3 reads as rewritten:

22 **"§ 108C-3. Medicaid and Health Choice provider screening.**

23 ...

24 (c) Limited Categorical Risk Provider Types. – The following provider types are hereby
 25 designated as "limited" categorical risk:

26 ...

27 (12) Physician or nonphysician practitioners (including nurse practitioners,
 28 CRNAs, physician assistants, physician extenders, occupational therapists,
 29 speech/language pathologists, chiropractors, and audiologists), optometrists,
 30 dentists and orthodontists, and medical groups or clinics.

31 ...

32 (15) Hearing aid dealers.

33 (16) Portable X-ray suppliers.

34 (17) Religious nonmedical health care institutions.

35 (18) Registered dietitians.

36 (19) Clearinghouses, billing agents, and alternate payees.

37 (20) Local health departments.

38 ...

39 (e) Moderate Categorical Risk Provider Types. – The following provider types are
 40 hereby designated as "moderate" categorical risk:

41 ...

42 (3) Critical Access Behavioral Health Agencies.

43 ~~(4) Dentists and orthodontists.~~

44 (5) Hospice organizations.

45 ...

46 (13) Revalidating agencies providing private duty nursing, home health, personal
 47 care services or in-home care services, or home infusion.

48 (14) Nonemergency medical transportation.

49"

50
 51 **PART III. CHANGES TO LAWS PERTAINING TO PUBLIC HEALTH**

1 **SECTION 7.** G.S. 130A-22(b3) reads as rewritten:

2 "(b3) The Secretary may impose an administrative penalty on a person who violates
3 Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this
4 Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed
5 ~~one five thousand dollars (\$1,000)~~(\$5,000) for each day the violation continues for Article 19A
6 of this Chapter. The penalty shall not exceed ~~seven hundred fifty five thousand~~ dollars
7 (~~\$750.00~~)(~~\$5,000~~) for each day the violation continues for Article 19B of this Chapter. The
8 penalty authorized by this section does not apply to a person who is not required to be certified
9 under Article 19A or 19B."

10 **SECTION 8.** G.S. 130A-101(b) reads as rewritten:

11 "(b) When a birth occurs in a hospital or other medical facility, the person in charge of
12 the facility shall obtain the personal data, prepare the certificate, secure the signatures required
13 by the certificate and file it with the local registrar within ~~five~~10 days after the birth. The
14 physician or other person in attendance shall provide the medical information required by the
15 certificate."

16 **SECTION 9.** G.S. 130A-209(a) reads as rewritten:

17 "**§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

18 (a) ~~All~~By no later than October 1, 2014, all health care facilities and health care
19 providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors
20 shall submit by electronic transmission a report to the central cancer registry each diagnosis of
21 cancer or benign brain or central nervous system tumors in any person who is screened,
22 diagnosed, or treated by the facility or provider. The electronic transmission of these reports
23 shall be in a format prescribed by the United States Department of Health and Human Services,
24 Centers for Disease Control and Prevention, National Program of Cancer Registries. The
25 reports shall be made within six months ~~of~~after diagnosis. Diagnostic, demographic and other
26 information as prescribed by the rules of the Commission shall be included in the report."
27

28 **PART IV. CHANGES TO LAWS PERTAINING TO MENTAL HEALTH, 29 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES**

30 **SECTION 10.** Section 3.(b) of S.L. 2012-151 reads as rewritten:

31 "**SECTION 3.(b)** ~~All~~Except as provided in this subsection, all area boards shall meet the
32 requirements of G.S. 122C-118.1, as amended by subsection (a) of this ~~section,section and~~
33 Sections 6 and 7 of S.L. 2013-85, no later than October 1, 2013. The requirements of
34 G.S. 122C-118.1 do not apply when both of the following criteria are met:

- 35 (1) An area authority receives approval from the Secretary to realign or merge
36 with another area authority. In this circumstance, the new area board
37 associated with the surviving area authority is not obligated to meet the
38 requirements of G.S. 122C-118.1 until 30 days after the effective date of the
39 realignment or merger, or until April 1, 2014, whichever is sooner.
40 (2) A different area authority involved in the same realignment or merger
41 approved by the Secretary pursuant to subdivision (1) of this subsection (i)
42 receives approval on or before October 1, 2013, from the Secretary to
43 dissolve pursuant to G.S. 122C-115.3(b) and initiates plans for the
44 dissolution or (ii) receives a directive on or before October 1, 2013, from the
45 Secretary to dissolve pursuant to G.S. 122C-124.2."

46 **SECTION 11.** G.S. 122C-115(a), as amended by Section 4(a) of S.L. 2013-85,
47 reads as rewritten:

48 "(a) A county shall provide mental health, developmental disabilities, and substance
49 abuse services in accordance with rules, policies, and guidelines adopted pursuant to statewide
50 restructuring of the management responsibilities for the delivery of services for individuals
51 with mental illness, intellectual or other developmental disabilities, and substance abuse

1 disorders under a 1915(b)/(c) Medicaid Waiver through an area authority. Beginning July 1,
2 2012, the catchment area of an area authority shall contain a minimum population of at least
3 300,000. Beginning July 1, 2013, the catchment area of an area authority shall contain a
4 minimum population of at least 500,000. To the extent this section conflicts with
5 ~~G.S. 153A-77(a)~~G.S. 153A-77 or G.S. 122C-115.1, the provisions of this section control."
6

7 **PART V. EFFECTIVE DATE**

8 **SECTION 12.** Section 10 of this act is effective when this act becomes law.
9 Section 11 of this act becomes effective January 1, 2014. The remainder of this act becomes
10 effective October 1, 2013.