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HOUSE BILL DRH30073-MGf-44

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

Sponsors: Representatives Dobson, Lambeth, Potts, and Black (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING STATUTES PERTAINING TO THE DEPARTMENT OF HEALTH  
3 AND HUMAN SERVICES TO ENSURE COMPLIANCE WITH FEDERAL LAWS AND  
4 TO MAKE TECHNICAL CHANGES AND OTHER MODIFICATIONS TO STATUTES  
5 PERTAINING TO MEDICAID, SOCIAL SERVICES, VOCATIONAL  
6 REHABILITATION, ASSISTED LIVING, MENTAL HEALTH, DEVELOPMENTAL  
7 DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

8 The General Assembly of North Carolina enacts:

9  
10 **PART I. CLARIFICATIONS TO MEDICAID SUBROGATION STATUTE**

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

12 "**§ 108A-57. Subrogation rights; withholding of information a misdemeanor.**

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

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

30 ...

31 (a2) A medical assistance beneficiary may dispute the presumptions established in  
32 subsection (a1) of this section by applying to the court in which the medical assistance  
33 beneficiary's claim against the third party is pending, or if there is none, then to a court of  
34 competent ~~jurisdiction,~~ jurisdiction in this State, for a determination of the portion of the  
35 beneficiary's gross recovery that represents compensation for the Medicaid claim. An application  
36 under this subsection shall be filed with the court and served on the Department pursuant to the



1 Rules of Civil Procedure no later than 30 days after the date that the settlement agreement is  
 2 executed by all parties and, if required, approved by the court, or in cases in which judgment has  
 3 been entered, no later than 30 days after the date of entry of judgment. The court shall hold an  
 4 evidentiary hearing no sooner than ~~30~~60 days after the date the action was filed. All of the  
 5 following shall apply to the court's determination under this subsection:

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

23 ...  
 24 (c) This section applies to the administration of and claims payments ~~made by the~~  
 25 ~~Department of Health and Human Services~~ under the NC Health Choice Program established  
 26 under Part 8 of this Article.

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

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

33  
 34 **PART II. CHILD SUPPORT ENFORCEMENT PROGRAM COMPLIANCE**

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

36 **"§ 110-139. Location of absent parents.**

37 ...  
 38 (d) Notwithstanding any other provision of law making this information confidential,  
 39 including Chapter 53B of the General Statutes, any utility company, cable television company,  
 40 electronic communications or Internet service provider, or financial institution, including federal,  
 41 State, commercial, or savings banks, savings and loan associations and cooperative banks, federal  
 42 or State chartered credit unions, benefit associations, insurance companies, safe deposit  
 43 companies, money market mutual funds, and investment companies doing business in this State  
 44 or incorporated under the laws of this ~~State~~State, shall provide the Department of Health and  
 45 Human Services with the following information upon certification by the Department that the  
 46 information is needed to locate a parent for the purpose of collecting child support or to establish  
 47 or enforce an order for child support: full name, social security number, address, telephone  
 48 number, account numbers, and other identifying data for any person who maintains an account  
 49 at the utility company, cable television company, electronic communications or Internet service  
 50 provider, or financial institution. A utility company, cable television company, electronic  
 51 communications or Internet service provider, or financial institution that discloses information

1 pursuant to this subsection in good faith reliance upon certification by the Department is not  
2 liable for damages resulting from the disclosure.

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

5 ...."

6  
7 **PART III. FAMILY FIRST PREVENTION SERVICE ACT COMPLIANCE/FOSTER**  
8 **CARE/CHILD-CARE INSTITUTIONS**

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

10 **"§ 122C-80. Criminal history record check required for certain applicants for employment.**

11 ...

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

48 (b1) Sex Offender Registry and Responsible Individuals List Checks. – If the provider  
49 licensed under this Chapter is a child-care institution, as defined by Title IV-E of the Social  
50 Security Act, then the offer of employment by the provider to the applicant to fill a position not  
51 requiring an occupational license is conditioned on a check of the North Carolina Sex Offender

1 Registry and consent to check the North Carolina Responsible Individuals List. If the applicant  
 2 has been a resident of this State for less than five years, then the offer of employment is  
 3 conditioned on consent to check the North Carolina Responsible Individuals List and the abuse  
 4 and neglect registry of any other state where the applicant has resided in the preceding five years.

5 ...."

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

7 "**§ 131D-10.3A. Mandatory criminal checks.**

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

16 ...

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

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

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

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

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

35 "**§ 131D-10.6. Powers and duties of the Department.**

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

38 ...

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

41 ...."

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

43 "**§ 143B-932. Criminal record checks of providers of treatment for or services to children,**  
 44 **the elderly, mental health patients, ~~the or~~ patients who are mentally ill, sick, and**  
 45 **~~the or~~ disabled.**

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

49 ...

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

51 ...

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

17       ...."

#### 18 19 **PART IV. WORKFORCE INNOVATION AND OPPORTUNITY ACT** 20 **COMPLIANCE/VOCATIONAL REHABILITATION**

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

22       "**§ 143-548. Vocational State Rehabilitation Council.**

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

34       ...."

#### 35 36 **PART V. TECHNICAL CHANGES AND OTHER MODIFICATIONS PERTAINING TO** 37 **THE HEALTH AND SAFETY OF ASSISTED LIVING RESIDENTS**

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

39       "**§ 90-288.14. Assisted living administrator certification.**

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

42       (1) Is at least 21 years old.

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

49       (2a) Does not have a substantiated finding of neglect, abuse, misappropriation of  
50 property, diversion of drugs, or fraud listed on the Health Care Personnel  
51 Registry established under G.S. 131E-256.

- 1 (3) Successfully completes the equivalent of two years of coursework at an
- 2 accredited college or university or has a combination of education and
- 3 experience as approved by the Department.
- 4 (4) Successfully completes a Department approved administrator-in-training
- 5 program of at least 120 hours of study in courses relating to assisted living
- 6 residences.
- 7 (5) Successfully completes a written examination administered by the
- 8 Department."
- 9

10 **PART VI. TECHNICAL CHANGES AND OTHER MODIFICATIONS PERTAINING**  
 11 **TO MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE**  
 12 **ABUSE SERVICES**

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

14 **"§ 122C-3. Definitions.**

15 The following definitions apply in this Chapter:

- 16 ...
- 17 (12a) "Developmental disability" means a severe, chronic disability of a person
  - 18 ~~which that meets all of the following criteria:~~
  - 19 a. Is attributable to a mental or physical impairment or combination of
  - 20 mental and physical ~~impairments; impairments.~~
  - 21 b. Is manifested before the person attains age 22, ~~unless the disability is~~
  - 22 ~~caused by a traumatic head injury and is manifested after age 22; 22.~~
  - 23 c. Is likely to continue ~~indefinitely; indefinitely.~~
  - 24 d. Results in substantial functional limitations in three or more of the
  - 25 following areas of major life activity: self-care, receptive and
  - 26 expressive language, capacity for independent living, learning,
  - 27 mobility, self-direction and economic ~~self-sufficiency;~~
  - 28 ~~and self-sufficiency.~~
  - 29 e. Reflects the person's need for a combination and sequence of special
  - 30 interdisciplinary, or generic care, treatment, or other services ~~which~~
  - 31 ~~that are of a lifelong or extended duration and are individually planned~~
  - 32 ~~and coordinated; or when applied to children from birth through age~~
  - 33 ~~four, may be evidenced as a developmental delay.~~
  - 34 f. ~~When applied to children from birth through four years of age, may be~~
  - 35 ~~evidenced as a developmental delay."~~

- 36 ...
- 37 (33a) "Security recordings" means any films, videos, or electronic or other media
  - 38 recordings of a common area in a State facility that are produced for the
  - 39 purpose of maintaining or enhancing the health and safety of clients, residents,
  - 40 staff, or visitors of that State facility. The term does not include recordings of
  - 41 a client's clinical sessions or any other recordings that are part of a client's
  - 42 confidential records or information.

- 43 (33b) "Severe and persistent mental illness" means a mental disorder suffered by
- 44 persons of 18 years of age or older that leads these persons to exhibit
- 45 emotional or behavioral functioning that is so impaired as to interfere
- 46 substantially with their capacity to remain in the community without
- 47 supportive treatment or services of a long term or indefinite duration. This
- 48 disorder is a severe and persistent mental disability, resulting in a long-term
- 49 limitation of functional capacities for the primary activities of daily living,
- 50 such as interpersonal relations, homemaking, self-care, employment, and
- 51 recreation.

1 ...

2 (38a) "Traumatic brain injury" means an insult to the brain from an outside physical  
 3 force that may or may not have produced a diminished or altered state of  
 4 consciousness as long as it meets all of the following criteria:

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

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

12 c. The resulting impairment is either temporary or permanent and causes  
 13 partial or total functional disability, psychosocial disorientation, or a  
 14 combination of these.

15 ...."

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

18 **"§ 122C-56.1. Exceptions; security recordings.**

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

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

23 **"§ 122C-171. State Consumer and Family Advisory Committee.**

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

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

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

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

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

49 (4) ~~Three~~ by the Council of Community Programs, ~~one each of whom shall come~~  
 50 ~~from the three State regions for institutional services (Eastern Region, Central~~

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

9                    ...."

10                    **SECTION 6.3.(b)** Notwithstanding the repeal of G.S. 122C-171(b)(4), current  
11                    members of the State Consumer and Family Advisory Committee who were appointed by the  
12                    Council of Community Programs shall serve out the remainder of their terms. As the current  
13                    terms of these members expire, each of the appointing authorities identified in  
14                    G.S. 122C-171(b)(2), G.S. 122C-171(b)(3) and G.S. 122(b)(5) shall, in the order listed in  
15                    G.S. 122C-171(b), take turns making an additional appointment to achieve conformity with  
16                    G.S. 122C-171(b), as amended by this act.

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

18  
19                    **PART VII. EFFECTIVE DATE**

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