



## INTRODUCTION

There was plenty of talk about the budget last week at the General Assembly, but a bit less action. Since Governor Cooper vetoed the budget, he and the Republican leadership in the General Assembly have not appeared to come closer to a compromise. Cooper held a press conference to announce his version of a compromise, which legislative leaders said was actually a move away from common ground. A vote to override the veto hung over the General Assembly all last week, but never materialized, which is surely a sign that they do not have the votes. Three weeks into the new fiscal year and we seem no closer to resolving the stalemate.

Medicaid expansion continues to be a major sticking point. A House committee passed a version of expansion with work requirements and premiums, but the Senate continues to assert the votes are not there for expansion in their chamber.

At the end of last week, the House passed a stop gap budget that mainly addresses needed changes to draw down federal money for programs and to keep up long-standing commitments that require new funding. House Bill 111, the Supplemental Appropriations Act, would:

- cover enrollment increases at public schools;
- expand the eligibility of veterans and dependents of veterans for in-state tuition;
- provide additional funding for Medicaid transformation efforts and NC FAST;
- fund the Suicide Prevention Hotline;
- set LME/MCO transfer amounts to DHHS;
- expand eligibility for Florence relief to farmers who were impacted by excessive rain and flooding from May 15, 2018, through December 31, 2018;
- fund Raise the Age implementation;
- provide funding for the Western Carolina University Steam Plant project;
- provide funding for IT upgrades for tax systems;
- transfer funds from the Highway Trust Fund to the N.C. Department of Transportation; and
- continue employer contributions to the retirement systems at the same as the recurring portion of the rates in effect as of June 30.



## NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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The Senate then proceeded to approve their own version of a stop gap budget that was entirely different and focused on providing direction for spending of block grants from the Federal government. It is a bad sign for the session wrapping up when the House and Senate cannot even agree on a stop gap budget proposal. Providing a glimpse into the future of a protracted budget battle, Senate Rules Chairman Bill Rabon filed an adjournment resolution that would end the current session on Monday, July 22, with a reconvened session to begin at noon on Tuesday, Aug. 27.

## **BILLS OF INTEREST**

HOUSE BILL 961, Ensuring Authorization of Federal Funds, is the Senate’s version of a stop-gap budget bill. The Senate took an existing bill (related to funding for technical education in the hospitality industry) and re-wrote it in the Senate Committee on Appropriations/Base Budget. The bill would allocate various federal block grants, including the TANF Block Grant, the Social Services Block Grant, the Low-Income Energy Assistance Block Grant, the Child Care and Development Fund Block Grant, the Mental Health Services Block Grant, the Substance Abuse and Prevention Block Grant, the Maternal and Child Health Block Grant, the Community Services Block Grant and the Preventive Health Services Block Grant. This version differs a great deal from the House’s temporary funding bill, House Bill 111, which took the approach of funding various priorities, including public school enrollment growth, Raise the Age implementation and NC FAST progress. Both bills include funding for the suicide prevention hotline. **The bill as amended was approved by the Senate Appropriations Committee and will next be considered by the Senate Rules Committee.**

SENATE JOINT RESOLUTION 688, Adjourn 2019 Session to Date Certain, would provide that when the Senate and House of Representatives adjourn on Monday, July 22, 2019, they stand adjourned to reconvene on Tuesday, August 27, 2019, at noon. The bill would limit matters that may be considered at that time to matters authorized pursuant to the 2019 Senate Permanent Rules and the 2019 House Permanent Rules. **Introduced by Senator Rabon and referred to the Senate Rules Committee.**

## **BILL UPDATES**

HOUSE BILL 126, Amend Certificate of Need Laws, was heard in the Senate Health Care Committee and a committee substitute was adopted. The new version removed all the previous provisions and would now:

- change definitions related to Certificate of Need, effective January 1, 2020, including:
  - “diagnostic center” redefined to mean specified facilities in which the total cost of all the medical diagnostic equipment utilized by the facility which costs \$10,000 or more exceeds \$1.5 million (was, \$500,000);
  - “new institutional health services” redefined to include the obligation of any person of a capital expenditure exceeding \$4 million (was, \$2 million) to develop or expand a health service or a health service facility or which relates to the provision of health service;
  - “major medical equipment” redefined to mean a single unit or system of use to provide medical and other health services which costs more than \$2 million (was, \$750,000); and
  - provide that beginning September 30, 2022, and annually thereafter, the cost thresholds set forth are to be adjusted using the Medical Care Index component of the CPI.

- exempt from certificate of need review the replacement, renovation, or relocation of services or facilities that already have a certificate of need;
- set that a certificate of need for the construction of a health service facility expires if the holder of the certificate fails to initiate construction of the project authorized by the certificate of need within (1) four years, for projects that cost over \$50 million or (2) two years, for projects that cost \$50 million or less;
- establish that a certificate of need that has not been used at any point in the immediately previous 12 months will expire;
- change the exemptions related to certificate of need, effective 18 months after the bill becomes law:
  - exempt psychiatric facilities and chemical dependency treatment facilities from certificate of need review;
  - exempt from certificate of need review the establishment of a home health agency by a licensed continuing care retirement community;
  - exempt from certificate of need review the conversion of a single specialty ambulatory surgical facility to a multi-specialty ambulatory surgical facility;
  - eliminate the conditions set forth to qualify for the exemption for the certificate of need review for any conversion of existing acute care beds to psychiatric beds, now providing for a blanket exemption; and
  - exempt from certificate of need review the development, acquisition, construction, expansion, or replacement of a health service facility or health service that obtained certificate of need approval prior to October 1, 2019, as a psychiatric facility or a chemical dependency treatment facility.
- change the requirements related to hospitals receiving funds from the Dorothea Dix Hospital Property Fund to now require each selected hospital to reserve at least 25%, rather than 50%, of the constructed or converted beds for purchase by DHHS under the State-administered, three-way contract, and referrals by local management entities/managed care organizations for individuals who are indigent or Medicaid recipients (effective 18 months after the bill becomes law); and
- effective three years after the bill becomes law, exempt from certificate of need review the development, acquisition, construction, expansion, or replacement of a kidney dialysis treatment facility that obtained certificate of need approval before October 1, 2019, if it is located in a county with a population greater than 300,000.

**The bill as amended was approved by the Senate Health and Rules Committees and will next be considered by the Full Senate.**

HOUSE BILL 655, NC Health Care for Working Families, was heard in the House Health Committee, after months of sitting idle, and a new version of a “North Carolina Medicaid Expansion” was approved. The bill would:

- set that the legislation would not go into effect until a budget is passed;
- establish that, if legislation to ensure that the State and county share of costs not covered by federal funds, participant contributions, or increased gross premiums tax revenue will be funded through a new hospital assessment, the program must not be implemented
- clarify that if the Centers for Medicare and Medicaid approves a program that does not substantially comply with the program designed by this legislation, the program must not be implemented;
- require the Department of Health and Human Services (DHHS) to design the NC Health Care for Working Families program to provide Medicaid coverage to residents of the state who (1) meet all federal Medicaid citizenship and immigration requirements; (2) are not eligible for Medicaid under the currently established North Carolina eligibility criteria; (3)

have a modified adjusted gross income that does not exceed 133% of the federal poverty level; (4) are not entitled to or enrolled in Medicare Part A or Part B benefits; and (5) are between the ages of 19 and 64;

- require program participants to pay an annual premium that is set at 2% of the participant's household income;
- require DHHS to establish employment activities for program participants that adhere to federal guidance and are aligned with the work requirements of the Supplemental Nutrition Assistance Program as much as possible, with six categories of individuals exempted from the mandatory employee activities;
- establish the North Carolina Rural Access to Healthcare Grant Fund to provide grants to qualified applicants for any of 10 eligible activities, including health care provider recruitment to rural areas, expansion of telehealth into rural areas, infant mortality reduction efforts, and expansion of mental health services into rural areas; and
- set funding for the Fund for \$25 million for 2020-21, \$30 million for 2021-22, and \$50 million for 2022-23 and every fiscal year thereafter.

**The bill as amended was approved on a bipartisan vote of 25-6 and was placed on the House calendar and has been there for almost two weeks, waiting to be heard by the Full House.**

HOUSE BILL 989, Required Components/Medicaid Transformation, was heard in the House Health Committee, where a committee substitute was approved. The new provisions in the bill would:

- appropriate \$33,758,136 in recurring funds from the General Fund to the Department of Health and Human Services (DHHS), Division of Health Benefits, for the 2019-20 fiscal year for the Medicaid and NC Health Choice programs rebase;
- appropriate \$28,617,655 in recurring funds from the General Fund to the Division of Health Benefits for the 2019-20 fiscal year for transitioning to Medicaid managed care;
- transfer \$193 million for the 2019-20 fiscal year from funds available in the Medicaid Transformation Reserve in the General Fund to the Medicaid Transformation Fund and authorize the transfer of funds from the Medicaid Transformation Fund to the Division of Health Benefits for payment of claims related to services billed under the fee-for-service payment model for recipients being, or who have been, transitioned to managed care (known as "claims run out");
- authorize \$27,280,947 in nonrecurring funds to be transferred from the Medicaid Transformation Fund to the Division of Health Benefits for the 2019-20 fiscal year to provide the State share for nonrecurring qualifying needs, as defined, directly related to Medicaid transformation;
- adjust the base and supplemental assessment percentage rates to be used for the taxable year October 1, 2019, through September 30, 2020, now providing for a base assessment rate of 1.77% (was, 3%) and a supplemental assessment rate of 2.26%;
- transfer funds from the Medicaid Contingency Reserve to the Division of Health Benefits only upon request by the Division as needed to cover any shortfall of receipts from the supplemental or base assessments, and only if two conditions are met: (1) OSBM has certified that there will be a shortfall and (2) OSBM has certified that the amount requested does not exceed the shortfall in receipts certified.;
- direct DHHS to establish a new fund code, Hospital Assessment Fund, to be used to support a decrease in the supplemental assessment or base assessment rates corresponding with the amount in the Fund;
- applicable for the 2019-20 fiscal year only, provide for the transfer of over-realized receipts from the supplemental and base assessments, based on the amount anticipated in the Governor's proposed base budget for the Division of Health Benefits for the fiscal year, as

follows: \$45 million transferred to the Hospital Assessment Fund, or if the total amount of over-realized receipts is less than \$45 million, then the full amount to the Hospital Assessment Fund; and the remainder, after the \$45 million transfer, if appropriate, to the Medicaid Transformation Reserve;

- repeal Section 12H.13(e) of SL 2013-360, which reduced the percentage of allowable costs for hospitals payments from 80% to 70%, and Section 12H.13A of SL 2014-100, which sets the settlement for outpatient Medicaid services performed by UNC Hospitals and Vidant Medical Center at 70% of costs;
- eliminate the parts of the bill that originally directed DHHS to create the Medicare Rate Supplemental and Directed Payment Program and the Professional Assessment;
- establish the Medicaid Contingency Reserve to be used for budget shortfalls in Medicaid or NC Health Choice programs;
- establish the Hospital Uncompensated Care Fund as a non-reverting special fund in DHHS, consisting of the federal disproportionate share adjustment receipts arising from certified public expenditures; and
- authorize DHHS to use funds from the Fund to (1) make payments to institutions for mental diseases, as defined by federal law and (2) make payments to eligible hospitals to reimburse inpatient services uncompensated care costs or outpatient services uncompensated care costs, or both.

**The bill as amended was approved by the House Health Committee and will next be considered by the House Finance Committee.**

SENATE BILL 574, Gaming Commission. A variety of amendments were made to this bill on the House floor, including:

- clarifying that the members of the NC Lottery Commission will operate as the NC Gaming Commission until appointments have been made to the NC Gaming Commission;
- modifying ALE agents' primary responsibilities and subject matter jurisdiction; and
- specifying that ALE agents have full power and authority as peace officers to execute criminal process, respond to and take enforcement action for any crime of violence or breach of peace, and additional duties directed by the Governor or the Secretary of the Department of Public Safety when necessary for security at a public event, or protection of persons or property due to a disaster or state of emergency.

**The bill as amended was approved by the full House and will next be considered by the Senate.**

SENATE BILL 620, Electric Standup Scooters, was amended in the Senate Transportation Committee to remove the new proposed statutes regulating Electric Standup Scooters. The bill would instead direct the Legislative Research Commission (LRC) to study the regulation of electric standup scooters in the State, including any proposed legislative changes needed to more effectively regulate the operation of scooters and the operation of scooter share businesses in the State, and would report its findings, together with any proposed legislation, to the 2020 Regular Session of the 2019 General Assembly upon its convening. **The bill as amended was approved by the Senate Transportation Committee and will next be considered by the Senate Commerce and Insurance Committee.**

SENATE BILL 683, Combat Absentee Ballot Fraud, was amended on the Senate floor to:

- require county board of elections to create a list of applications made for absentee ballots received by the county board, require county boards to update the list daily from the date the county board begins to mail application and ballots through the date of canvass, and make the list public record;

- retain the requirement for a qualified voter eligible to vote by absentee ballot, or that voter's near relative or verifiable legal guardian to complete a request form for an absentee ballot application and absentee ballots, with receipt by the county board required no later than 5:00 p.m. on the Tuesday before the election (previously, required a written, signed request rather than a completed request form);
- maintain the current law that establishes that a completed written request form for absentee ballots is only valid on a form created by the State Board of Elections and signed by the requesting voter or the voter's near relative or verifiable legal guardian, but would restrict the availability of the form to the State Board's offices and county board of elections offices (no longer allowing the State Board to make the form available online or allowing county boards to reproduce the form);
- maintain current law which allows for a voter to request a State Board-created form to request absentee ballots either in person or by writing to the county board and add to the information the request form must contain to include: (1) a clear indicator of the calendar year in which the election(s) generating the request are to be held; (2) the name of any individual or group that assisted with the voter obtaining or completing the written request form; and (3) a unique identifier, applicable only to the voter completing that written request form;
- restrict delivery of the completed request form to the county board by the voter or that voter's near relative or verifiable legal guardian only, and provide that a request not delivered by those authorized persons invalid;
- amend the minimum criteria for the State Board's implementing rules concerning forms of identification that must be included with completed written requests for absentee ballots to include (1) acceptable photocopies of forms of readable identification as described by state law (was, acceptable forms of readable identification substantially similar to those required under state law), and (2) a process for a voter without acceptable photocopies of forms of readable identification to complete an alternative affidavit that includes inability to attach a physical copy of the voter's ID with the written request as a reasonable impediment to compliance with the requirement;
- require the State Board's absentee ballot request form to include a unique identifier for voters, effective January 1, 2019, and applicable to requests for absentee ballots on or after that date;
- remove the requirement for the State Board to prepare and disseminate a voter instruction sheet regarding the process to request a mail-in absentee ballot by December 1, 2019, and instead, would require the State Board to report by May 1, 2020, as to its plans to implement the unique identifier requirement on request forms and any necessary statutory changes;
- amend GS 163A-1307, concerning the requirements for container-return envelopes for absentee ballots, to require the State Board to prohibit the display of the voter's party affiliation on the outside of the container-return envelope;
- increase from a Class 2 misdemeanor to a Class 1 misdemeanor the new offenses of selling or attempting to sell completed written requests for absentee ballots, and compensating or accepting compensation based on the number of returned written requests for absentee ballots;
- make it a Class G felony to steal, release, or possess the official register of absentee requests for mail-in absentee ballots prior to the opening of the voting place for a purpose other than the conduct of business at the county board of elections; and
- remove the proposed changes to GS 163A-1303 concerning uniform hours at one-stop sites, and instead amend the statute to change the weekday hours for one-stop sites from 7:00 a.m. to 7:00 p.m., to 8:00 a.m. to 8:00 p.m.

**The bill as amended was approved by the Senate and will next be considered by the House Rules Committee.**

## **LEGISLATION ENACTED**

HOUSE BILL 474, Death by Distribution. This legislation creates two new criminal offenses:

- death by distribution of certain controlled substances, a Class C felony; when all of the following requirements are met: (1) the person unlawfully sells at least one certain controlled substance; (2) the ingestion of the certain controlled substance or substances causes the death of the user; (3) the commission of the offense was the proximate cause of the victim's death; and (4) the person did not act with malice; and
- aggravated death by distribution of certain controlled substances, a Class B2 felony, when a person satisfies the elements of Death by Distribution, and the person has a previous conviction for one of a list of certain controlled substance violations, within 7 years of the date of offense.

At the request of the health care community a provision was included that exempted a valid prescription for a controlled substance dispensed to an individual by a practitioner or pharmacist in the usual course of practice. **Effective: December 1, 2019, and applies to offenses committed on or after that date.**

HOUSE BILL 934, Right to Try Adult Stem Cell Treatments. This legislation: (1) authorizes access to and use of certain investigational adult stem cell treatments for patients with certain severe chronic diseases or terminal illnesses; (2) regulates the possession, use, and transfer of adult stem cells; (3) makes it a Class A1 misdemeanor to knowingly offer to buy, offer to sell, acquire, receive, sell, or otherwise transfer any adult stem cells for valuable consideration for use in an investigational adult stem cell treatment; and (4) prohibits a licensing board from revoking, failing to renew, suspending, or taking any other disciplinary action against a licensed physician based solely on the physician's recommendation that an eligible patient have access to an investigational adult stem cell treatment, or the physician's administration of an investigational adult stem cell treatment to the eligible patient, provided that the recommendation made or the care provided is consistent with the applicable standard of care and requirements of the statute. **Effective: December 1, 2019, and applies to acts committed on or after that date.**

SENATE BILL 529, Fees/Returned Checks. This legislation increases from \$25 to \$35 the maximum processing fee a person who accepts a check in payment for goods or services may charge and collect for returned checks. **Effective: October 1, 2019, and applies to checks dated on or after that date.**

SENATE BILL 686, Appointments Bill 2019, appoints persons to various public offices and commissions based upon the recommendation of the President Pro Tem of the Senate and the Speaker of the House. **Effective: July 16, 2019, unless otherwise provided.**

- Stacey Gonyer of Guilford County is appointed to the 911 Board for a term expiring on December 31, 2022, to fill the unexpired term of Heather Campbell. Earl W. Struble of Wake County is appointed to the 911 Board for a term expiring on December 31, 2020, to fill the unexpired term of Niraj G. Patel. Gregory S. Coltrain of Beaufort County is appointed to the 911 Board for a term expiring on December 31, 2020, to fill the unexpired term of Eric S. Cramer.
- The Honorable Jim Perry of Lenoir County, The Honorable Jim Burgin of Harnett County, The Honorable Vickie Sawyer of Iredell County, Helen Brann of Person County,

Christopher Dobbins of Gaston County, Heather Breedlove of Wake County, Shonda Corbett of Wake County, and Dr. David Huang of Orange County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2023. The Honorable Sherry E. Butler of Catawba County, Ashley M. Honeycutt of Wake County, Wanda Moore of New Hanover County, Ryan S. Swanson of Wake County, Joseph E. Propst, Jr., of Wake County, The Honorable Frank Iler of Brunswick County, The Honorable Larry Yarborough of Granville County, and The Honorable Becky Carney of Mecklenburg County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2021.

- Effective January 1, 2020, Amanda Mixon of Wake County, Dianne Layden of Perquimans County, Lisa McCanna of Cabarrus County, and Chuck Heald of Durham County are appointed to the License to Give Trust Fund Commission for terms expiring on December 31, 2021.
- Effective October 1, 2019, Christine Fernandini of Harnett County, Carol G. Senick of Davidson County, Rose Randall of Moore County, Dr. Ryan Lamb of Orange County, and John L. Dickerhoff of Cumberland County are appointed to the North Carolina Brain Injury Advisory Council for terms expiring on September 30, 2023.
- Effective January 1, 2020, James Gussler, Jr., of Caswell County, Matthew Peeler of Perquimans County, and Andrew T. Baird of Wake County are appointed to the North Carolina Emergency Medical Services Advisory Council for terms expiring on December 31, 2023.
- Effective January 1, 2020, Perrin Jones of Pitt County, David Sousa of Wake County, and Lyndsay Jensen of Mitchell County are appointed to the North Carolina Institute of Medicine, Board of Directors for terms expiring on December 31, 2023. Effective January 1, 2020, Dr. Lawrence R. Nycum of Forsyth County, Dr. Costa Andreou of Gaston County, and James A. "Adam" Sholar of Wake County are appointed to the North Carolina Institute of Medicine Board of Directors for terms expiring on January 1, 2023.

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