



INTRODUCTION

The General Assembly returned to session last week, working quickly to pass legislation to respond to the pandemic. As protests took place in the streets urging the state to re-open, legislators met to consider various policy and spending proposals related to COVID-19. Precautions were taken during session, and the general public was not allowed in the legislative buildings, although more video of the proceedings was available.

The Senate began its work with bipartisan legislation, while the House started from the draft legislation prepared by the House Select Committee on COVID-19 working groups. Once both chambers passed their bills, they moved to conference on House Bill 1043, Pandemic Response Act, which appropriates over \$1.5 billion in relief funding, and Senate Bill 704, Covid-19 Recovery Act, which covers a number of policy changes in unemployment, tax reform, education, health care and government operations. On Saturday, both chambers approved compromised versions of both bills, sending them to the Governor for his signature and he signed them into law on Monday. A detailed summary of relevant provisions from both bills is included below.

Though the telehealth parity language championed by the House Health Care Working Group did not make it into the final bills adopted by the General Assembly, the final legislation did include a number of helpful provisions including temporary limited liability for health care workers; funding for supplies, equipment, and PPE; funding for COVID-19 research; 5% increase in the Medicaid fee-for-service rates; funding to divert individuals in mental health crisis from emergency departments, funding to DHHS to support telehealth; and flexibility to allow first and second examinations for involuntary commitment to be conducted via telehealth.

House and Senate members are expected to return to the Legislature in two weeks to continue work on round two of COVID-19 response legislation.



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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COVID-19 LEGISLATION

HOUSE BILL 1043, Pandemic Response Act, appropriates over \$1.5 billion in relief funding in response to the pandemic. The bill passed the House and Senate on May 2nd and was signed into law by Governor Cooper on May 4th. The bill would allocate:

Economic Recovery

- \$125M for Golden LEAF for small business loan assistance;

PPE, Testing & Tracing

- \$50M for supplies, equipment and PPE, divided among the NC Healthcare Foundation (50%), NC Senior Living Association and NC Health Care Facilities Association in equal amounts (15%), NC Medical Society (10%), and the Division of Emergency Management (25%);
- \$25M to DHHS to expand public and private initiatives for COVID-19 testing, contact tracing, and trends tracking and analysis;
 - Disallows funding for testing contact tracing and trends tracking until DHHS satisfies certain requirements, including diagnostic service reporting, posting of COVID-19 vendors contracted with, and reporting on certain COVID-19 impact data;

COVID-19 Research

- \$100,000 for the General Assembly to reimburse funds to Wake Forest University Health Services for COVID-19 research data for future legislative committees;
- \$15M for the Duke University Human Vaccine Institute;
- \$29M to UNC Chapel Hill to allocate to the NC Policy Collaboratory;
- \$15M to the Brody School of Medicine at ECU;
- \$6M for Campbell University School of Osteopathic Medicine;
- \$20M to Wake Forest University Health Services to expand COVID-19 study;

Hospital Funding

- \$65M to NC Healthcare Foundation for grants to hospitals designated by the Center for Medicare & Medicaid Services as critical access hospitals or non-critical access rural hospitals to offset response care for COVID-19;
- \$15M for grants to hospitals classified as teaching hospitals by the Centers for Medicare & Medicaid Services;
- \$15M for hospitals not eligible for other grants;

DHHS

- authorize DHHS to provide Medicaid coverage for COVID-19 Testing for certain uninsured individuals during the declared nationwide public health emergency period where the federal medical assistance percentage is 100%;
- **require DHHS to provide a 5% increase in the Medicaid Fee-For-Service rates paid to all provider types effective 3/1/20;**
- pause certain requirements pertaining to provider enrollment for Medicaid and Health Choice Programs beginning 3/1/2020;
- \$20M to DHHS for increasing nurses, community health workers, telehealth services, infection control support in nursing and adult care homes and diverting behavioral health emergencies;
- \$6M to DHHS to allocate equally among each of the state's six food banks;

- \$25M to DHHS for State-County Special Assistance-licensed facilities to offset increased costs of serving residents during the COVID-19 emergency;
- \$50M to DHHS for rural and underserved communities. This funding includes enhanced Telehealth services;
- \$5M to the NC Community Health Centers Association for cost of eligible health services provided during the COVID-19 emergency;
- \$20M to DHHS to provide funds to support behavioral health and crisis services to respond to COVID-19. \$12.6 million of this funding will provide support for Intermediate Care Facilities. Funding will also be used to divert individuals experiencing behavioral health emergencies from emergency departments;
- \$1.8M to Old North State Medical Society for rural and African American communities to address COVID-19 disparities;
- \$2.25M to Division of Social Services (DHHS) for serving children in foster care in the amount of \$100 per child per month for April through June 2020;

Education

- \$75M to DPI for school nutrition services provided in response to COVID-19;
- \$12M to DPI for improving Internet connectivity;
- \$35M to DPI for computers or other electronic devices;
- \$4.5M to DPI to establish a shared cybersecurity infrastructure;
- \$10M to DPI for school health support personnel for physical and mental health support services for students in response to COVID-19, including remote services;
- \$70M to DPI for a supplemental summer learning program in response to negative effects of COVID-19;
- \$4.5M to DPI for remote instruction and nondigital remote instruction resources;
- \$15M to DPI for costs of providing Extended School Year Services or future services for exceptional children;
- \$5M to DPI for the Extended Learning and Integrated Student Supports Competitive Grant Program;
- \$25M to Community Colleges;
- \$44.4M to Board of Governors of UNC;
- \$20M for private postsecondary institutions to transition to online education;

State & Local Government

- \$150M for counties ineligible to receive direct funding from the CARES Act;
- \$70M for continuity of operations of State government;
- \$300M for the General Maintenance Reserve in the Highway Fund if federal guidance is revised to allow the use of funds for revenue replacement;
- \$20M for allocation to State agencies negatively impacted by loss of anticipated receipts, if federal guidance is revised to allow the use of funds for revenue replacement;
- \$15M for animal depopulation and disposal;
- \$5M to develop safe travel concepts and strategies and research tools and analysis needed for implementation; and
- \$9M to the Department of Information Technology for funding the remaining portion of all qualifying GREAT program applications.

SENATE BILL 704, Covid-19 Recovery Act, provides a number of policy changes in unemployment, tax reform, education, health care and government operations to address the pandemic. The bill was passed by both the House and Senate on May 2nd and signed into law by Governor Cooper on May 4th. The bill includes the following provisions:

Economic Support

- adjusts tax filings to align with the federal changes and waives interest on certain payments;
- affirms the unemployment changes implemented through executive order;
- makes it easier for a claimant to satisfy one of the required weekly job contacts;
- makes it easier for employers to file attached claims for their employees;

Education

- clarifies or modifies various testing requirements, including EOGs, EOCs, the ACT, assessments for grades K-3, and WorkKeys;
- waives the requirements for calculation and display of school report cards;
- waives identification of new low-performing schools and maintains identifications based on 2018-2019 data;
- repeals the requirement that a new school be selected for the Innovative School District (ISD) based on data from the 2019-2020 school year;
- waives Read to Achieve requirements for third graders, allowing principals to make promotion decisions like for other grades, and cancels summer reading camps;
- requires that incoming fourth graders receive a reading assessment within 10 days of the start of the 2020-2021 school year;
- waives the CPR graduation requirement for students to graduate;
- allows remote instruction to satisfy instructional time requirements and waives attendance requirements beginning March 16, 2020;
- requires public schools to submit remote instruction plans for the 2020-2021 school year to the State Board of Education by July 20, 2020;
- requires school calendars for the 2020-2021 school year to begin August 17 and include 190 days of instruction including 5 remote instruction days;
- provides a 6-month extension for school improvement plans set to expire at the end of the 2019-2020 school year;
- permits annual teacher evaluations from the 2019-2020 school year to be based on observations completed prior to March 13, 2020, and evidence from the 2019-2020 school year;
- waives testing, attendance and calendar requirements for nonpublic schools;
- allows late disbursements from the Opportunity Scholarship Program;
- makes temporary changes to Educator Preparation Programs (EPPs), school administrator prep program requirements and transforming principal prep program requirements;
- provides one-year extensions for teachers, administrators and school professionals to meet licensure requirements set by the State Board, including continuing education requirements;
- prevents UNC institutions from accruing or charging interest to a past due account held by a student between March 13, 2020, and September 15, 2020;

Health

- directs the Division of Public Health (DPH) and the Division of Health Service Regulation (DHSR), in conjunction with Division of Emergency Management to develop a plan for creating and maintaining a strategic state stockpile of personal protective equipment (PPE) and testing supplies;
- amends the Dental Practice Act to give the Board of Dental Examiners the authority to waive requirements during a declared state of emergency;
- allows dentists to administer COVID-19 diagnostic and antibody tests;
- creates a process to allow immunizing pharmacists to administer COVID-19 vaccines if one is approved;

- allows pharmacists to temporarily use the visual inspection of any government-issued photo I.D. or existing records to identify patients picking up prescriptions;
- allows for flexibility under supervision requirements for physician assistants and nurse practitioners;
- charges the North Carolina Area Health Education Center (NC AHEC) with studying the issues that impact health care delivery and the health care workforce during a pandemic;
- provides immunity to volunteer organizations for damages that occur at their facilities unless there was willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the volunteer organization.
- allows licensed hospitals, nursing homes, and clinics to dispense controlled substances at additional business locations, provided they followed a registration process developed by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services;
- requires healthcare providers to report the results of COVID-19 testing performed prior to non-emergency surgery to the Commission for Public Health;
- extends the deadline from June 1, 2020, to October 1, 2021, for most providers and entities to begin submitting demographic and clinical data to the Health Information Exchange Network and make other conforming changes;
- temporarily waives the requirement that all child care providers complete a fingerprint-based criminal history check every three years;
- suspends all annual inspections, regular monitoring requirements, and adopted rules for licensed facilities for persons with disabilities or substance use disorders, adult care homes, hospitals, health care facilities licensed under Article 6 of Chapter 131E, and hospices;
- increases training for facilities with a recent record of noncompliance with rules or CDC guidelines regarding infection control or the proper use of personal protective equipment;
- temporarily allows the first and second examinations related to involuntary commitment to be conducted via telehealth;
- The telehealth parity provision that was in the House version of the bill was NOT included in the final bill, and we understand that issues regarding telehealth will be discussed in an upcoming session;
- urges the Centers for Medicaid and Medicare to provide coverage for health care provided through audio-only communication under the Medicare program in order to reduce barriers and increase access to health care for older adults.

Immunity: The next provision provides immunity for the healthcare system, including hospitals and providers. The purpose of this section is to promote the public health, safety, and welfare of all citizens by broadly protecting the health care facilities and health care providers in this State from liability that may result from treatment of individuals during the COVID-19 public health emergency under conditions resulting from circumstances associated with the COVID-19 public health emergency. The immunity is from economic or non-economic losses for harm to an individual and includes individuals licensed under Chapter 90 of the General Statutes, any emergency medical services personnel, any individual who is employed as a health care facility administrator, executive, supervisor, board member, trustee, or other person in a managerial position or comparable role at a health care facility and an agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services.

- Immunity is provided to any health care facility, health care provider, or entity that has legal responsibility for the acts or omissions of a health care provider shall have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services only if all of the following apply:

- The health care facility, health care provider, or entity is arranging for or providing health care services during the period of the COVID-19 emergency declaration, including, but not limited to, the arrangement or provision of those services pursuant to a COVID-19 emergency rule.
- The arrangement or provision of health care services is impacted, directly or indirectly:
 - By a health care facility, health care provider, or entity's decisions or activities in response to or as a result of the COVID-19 pandemic; or
 - By the decisions or activities, in response to or as a result of the COVID-19 pandemic, of a health care facility or entity where a health care provider provides health care services.
- The health care facility, health care provider, or entity is arranging for or providing health care services in good faith.
- The immunity from any civil liability provided in subsection (a) of this section shall not apply if the harm or damages were caused by an act or omission constituting gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care provider providing health care services; provided that the acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm.

Continuity of Government

Notaries

- allows, until August 1, 2020, a notary to perform acknowledgments and administer oaths and affirmations through the use of video conference technology if the notary and principle are physically present in North Carolina at the time of notarization and provided certain requirements are met;
- extends for 45 days the time a notary applicant granted a commission by the Secretary of State after March 9, 2020, and before August 1, 2020, to appear before a register of deeds and take the general oath of office;
- authorizes a register of deeds to administer the required oath to such appointee using video conference technology;

Legal Provisions

- allows a person to witness a principal sign a document by using video conference technology if the technology allows for direct, real time audio and video interaction between the principal and the witness;
- clarifies that any signature required for the issuance of a search warrant or judicial order issued following a court hearing conducted by remote audio or visual transmission in a civil or criminal case, may be signed by use of an electronic signature until August 1, 2020;
- amends the statutes related to Health Care Powers of Attorney and Advanced Directives for a Natural Death to waive the requirement that the principal's signature be executed in the presence of two qualified witnesses as long as the document is signed by the principal and properly acknowledged before a notary and would apply to those documents executed prior to termination of the State of Emergency;
- allows a sheriff to serve process on a resident of a long-term care facility during a declared state of emergency for public health reasons by leaving a copy of the notice of hearing and petition with the employee of the facility who is in charge;
- allows a settlement agent in a real estate transaction involving a one to four family residential dwelling or a lot restricted to residential use to disburse closing funds from the settlement agent's trust or escrow account prior to recording the deeds, deeds of trust, and

any other required loan documents in the office of the register of deeds upon the written consent of the parties involved;

- authorizes each Register of Deeds to issue a license for marriage via remote audio-video communication provided the register of deeds can positively identify each applicant and extend the validity of the license to 120 days;
- **provides time-limited civil liability immunity to essential businesses for injuries or death resulting from customers or employees contracting COVID-19 at the business;**
- authorizes the Chief Administrative Law Judge to extend the time period for the filing of petitions for contested cases, but only if the Chief Justice of the North Carolina Supreme Court has determined that catastrophic conditions exist;
- allows a chief district court judge, until August 1, 2020, to modify an order of confinement or imprisonment in a local confinement facility if certain conditions exist;
- clarifies that masks may be worn on certain public and private premises to ensure the physical health or safety of the wearer or others, but require the wearer to remove that mask upon the request of a law enforcement officer during a traffic stop or when the officer has reasonable suspicion or probable cause during a criminal investigation.

State Government

- extends for five months the validity of any credential issued by the Division of Motor Vehicles that expires between March 1, 2020, and before August 1, 2020, and waives fines, fees, and penalties associated with failing to renew an extended credential;
- delays the DMV Headquarters move that was required by the General Assembly;
- allows private security guards at state prisons to detain and use necessary force pursuant to those policies to prevent contraband entry and inmate escape;
- permits release of communicable disease health information by DHHS or a local health department to a law enforcement official for certain public health situations;
- authorizes the State Treasurer, with approval of the Board of Trustees for the State Health Plan, to give certain members or employing units the option to defer premium or debt payment when there is a state of disaster or emergency;
- authorizes a State agency to waive any interest due on a past due account receivable;
- provides for the rescheduling of public hearings during temporary rule making;
- makes changes to required local government financial filings and procedures;
- reauthorizes counties and municipalities to issue special obligation bonds and notes;
- authorizes official meetings of public bodies including closed sessions, public hearings, and quasi-judicial hearings to be conducted via remote, simultaneous communication during periods of declarations of emergency and clarifies that counties and cities may meet via simultaneous communication;
- directs State agencies to exercise regulatory flexibility during the Coronavirus emergency to protect the wellbeing of citizens; and
- extends until July 15, 2020, any report required to be submitted after March 10, 2020, but before July 15, 2020, to a joint legislative oversight committee of the General Assembly.

Regulatory Flexibility: Senate Bill 704 authorizes state agencies to exercise regulatory flexibility during the coronavirus emergency in order to protect the economic well-being of North Carolinians and state businesses. It would allow state agencies to (1) delay collection of or modify collection of any fees, fines, or late payments assessed by the agency, (2) delay the renewal dates of permits, licenses, and similar certifications, registrations, and authorizations issued by the agency, and (3) delay or modify any educational or examination requirements implemented by the agency. It would require the state agency to determine that the action is in the public interest due to the impacts of the Coronavirus. The provision would exclude the Division of Employment Security

of the Department of Commerce, the Department of Health and Human Services, the State Board of Education, the Department of Public Instruction, The University of North Carolina, the State Board of Community Colleges, or the State Board of Elections – meaning this flexibility would not be provided to those agencies, but would to all others. It would require agencies to report by October 1, 2020, to specified NCGA committees and commissions and OSBM on its efforts to exercise such regulatory flexibility. It would authorize agencies to adopt emergency rules for implementation, and would retroactively go into effect for March 10, 2020. Aside from the reporting requirement, this would expire on August 1, 2020.

BILLS OF INTEREST

HOUSE BILL 1033, Extra Session/Statewide State of Emergency, would amend the State Constitution, if approved by a majority of qualified voters of the State at a statewide election to be held on the same date as the general election in November of 2020, to require the General Assembly to convene in extra session upon the declaration of a statewide state of emergency by the Governor if the General Assembly has jointly adjourned for more than 15 days and is not scheduled to reconvene regular session within 15 days of the date of the declaration. **Introduced by Representatives Kidwell, Hanig, Pittman, and Carter and referred to the House Rules Committee.**

HOUSE BILL 1042, Increase In-Service Death Benefit/LRS, would increase the death benefit of a person currently serving as a member of the North Carolina General Assembly to \$50,000 after one year of creditable service, and would make technical and conforming changes to the provisions governing the death benefit for retired members of the General Assembly. **Introduced by Representatives Howard, Jackson, Moore, and Carney and referred to the House Judiciary Committee.**

HOUSE RESOLUTION 1044, Amend Rules/State of Emergency, makes various changes to the House Permanent Rules (governing various House procedural issues) due to the public health dangers resulting from the COVID-19 pandemic, including closing the galleries to the public, allowing Members to be seated in designated areas of the gallery instead of on the chamber floor in order to maintain social distancing, and allowing Committees to conduct meetings with members participating remotely when certain requirements are met. **Introduced by Representative Lewis and adopted by the House.**

HOUSE BILL 1054, Automatic Extra Session/State of Emergency, would amend the State Constitution, if approved by a majority of qualified voters of the State at a statewide election to be held on the same date as the general election in November of 2020, to require the Governor to convene the General Assembly in extra session within 14 days of issuing a declaration of a statewide state of emergency, and allow the General Assembly to convene upon legislative call if the Governor does not provide a date to convene in the declaration. **Introduced by Representatives Speciale, Pittman, and Kidwell and referred to the House Rules Committee.**

HOUSE BILL 1059, State of Em./Religious Occupancy Exempts, would:

- establish a process for an issuance of a statewide state of emergency by the Governor, which would include requiring the Governor to submit the proposed declaration to each member of the Council of State, and the Council of State to approve the proposed declaration by majority vote within 24 hours of receipt;
- provide that, notwithstanding any provision of law to the contrary, the Governor may not prohibit any religious organization or entity controlled by religious organizations from

meeting inside a building that is located inside an emergency area and used as a place of worship, but would allow the Governor to request that religious organizations limit the occupancy of buildings that are located inside an emergency area and used as a place of worship to 20% of the maximum capacity allowed by the certificate of occupancy in accordance with the North Carolina State Building Code; and

- provide \$50,000 of the funds received from the Coronavirus Relief Fund split equally to the Department of Revenue, the Department of Transportation, Division of Motor Vehicles, and the State Board of Elections to purchase of supplies and equipment necessary for life safety, health, and sanitation, such as ventilators, touch-free thermometers, gowns, disinfectant, and sanitizing wipes and the purchase of personal protective equipment that meets the federal standards and guidelines from the Centers for Disease Control and Prevention, such as surgical and respiratory masks and gloves.

Introduced by Representatives Kidwell, Setzer, Saine, and K. Hall and referred to the House Judiciary Committee.

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