

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

**H.B. 1214**  
**May 26, 2020**  
**HOUSE PRINCIPAL CLERK**

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**HOUSE BILL DRH10827-MGa-165B**

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

Sponsors: Representative Dobson.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER MODIFICATIONS TO  
3 LAWS PERTAINING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES;  
4 MODIFYING THE STATE HUMAN RESOURCES ACT TO GIVE THE DEPARTMENT  
5 OF HEALTH AND HUMAN SERVICES AND CERTAIN OTHER STATE AGENCIES  
6 GREATER FLEXIBILITY WITH RESPECT TO EMPLOYEE CLASSIFICATION AND  
7 SALARY ADMINISTRATION; AND APPROPRIATING FUNDS TO THE COUNCIL  
8 ON DEVELOPMENTAL DISABILITIES.

9 The General Assembly of North Carolina enacts:

10  
11 **PART I. TECHNICAL, CONFORMING, AND OTHER CHANGES RELATED TO THE**  
12 **DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND**  
13 **SUBSTANCE ABUSE SERVICES**

14  
15 **ALIGNMENT OF DEVELOPMENTAL DISABILITY DEFINITION WITH FEDERAL**  
16 **LAW**

17 **SECTION 1.1.** G.S. 122C-3(12a) reads as rewritten:

18 "(12a) Developmental disability. – A severe, chronic disability of a person that  
19 satisfies all of the following:

- 20 a. Is attributable to ~~one or more impairments~~ a mental or physical  
21 impairment or combination of mental and physical impairments.

22 ...."

23  
24 **ELIMINATION OF RULE-MAKING PROCESS TO IMPLEMENT A CO-PAYMENT**  
25 **SCHEDULE FOR BEHAVIORAL HEALTH, INTELLECTUAL AND**  
26 **DEVELOPMENTAL DISABILITIES, AND SUBSTANCE USE DISORDER SERVICES**

27 **SECTION 1.2.** G.S. 122C-112.1(a)(34) reads as rewritten:

28 "(34) Adopt ~~rules for the implementation of~~ a co-payment ~~graduated schedule to for~~  
29 behavioral health services, intellectual and developmental disabilities  
30 services, and substance use disorder services based on the Medicaid  
31 co-payments for such services, which shall be used by LMEs and by  
32 contractual provider agencies under G.S. 122C-146. The co-payment  
33 graduated schedule shall be developed to adopted under this subdivision shall  
34 require a co-payment for services identified by the Secretary. Families whose  
35 family income is three hundred percent (300%) or greater of the federal  
36 poverty level are eligible for services with the applicable co-payment."



1  
2 **CONFORMING CHANGE TO PROCEDURE FOR APPEALING DECISIONS ON**  
3 **LICENSURE WAIVER REQUESTS**

4 **SECTION 1.3.** G.S. 122C-23(f) reads as rewritten:

5 "(f) Upon written application and in accordance with rules of the Commission, the  
6 Secretary may for good cause waive any of the rules implementing this Article, provided those  
7 rules do not affect the health, safety, or welfare of the individuals within the licensable facility.  
8 Decisions made pursuant to this subsection may be appealed ~~to the Commission for a hearing in~~  
9 accordance with by filing a contested case under Article 3 of Chapter 150B of the General  
10 Statutes."

11  
12 **TECHNICAL CORRECTION TO LIST OF PERSONS DHHS SECRETARY MAY**  
13 **CERTIFY TO PERFORM FIRST EXAMINATIONS FOR INVOLUNTARY**  
14 **COMMITMENT**

15 **SECTION 1.4.** G.S. 122C-263.1(a) reads as rewritten:

16 "(a) Physicians and eligible psychologists are qualified to perform the commitment  
17 examinations required under G.S. 122C-263(c) and G.S. 122C-283(c). The Secretary of Health  
18 and Human Services may individually certify to perform the first commitment examinations  
19 required by G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283  
20 other health, mental health, and substance abuse professionals whose scope of practice includes  
21 diagnosing and documenting psychiatric or substance use disorders and conducting mental status  
22 examinations to determine capacity to give informed consent to treatment as follows:

23 (1) The Secretary has received a request:

- 24 a. To certify a licensed clinical social worker, a master's or higher level  
25 degree nurse practitioner, a licensed ~~professional counsellor, clinical~~  
26 mental health counselor or a physician's assistant to conduct the first  
27 examinations described in G.S. 122C-263(c) and G.S. 122C-283(c).  
28 b. To certify a master's level licensed clinical addictions specialist to  
29 conduct the first examination described in G.S. 122C-283(c).

30 ...

31 (5) In no event shall the certification of a licensed clinical social worker, master's  
32 or higher level degree nurse practitioner, licensed ~~professional counsellor,~~  
33 clinical mental health counselor, physician assistant, or master's level certified  
34 clinical addictions specialist under this section be construed as authorization  
35 to expand the scope of practice of the licensed clinical social worker, the  
36 master's level nurse practitioner, licensed ~~professional counsellor, clinical~~  
37 mental health counselor, physician assistant, or the master's level certified  
38 clinical addictions specialist.

39 ...."

40  
41 **CORRECTION TO EXPANDED USE OF TELEHEALTH TO CONDUCT FIRST AND**  
42 **SECOND INVOLUNTARY COMMITMENT EXAMINATIONS DURING THE**  
43 **COVID-19 EMERGENCY**

44 **SECTION 1.5.(a)** Section 3F.1(b) of S.L. 2020-3 reads as rewritten:

45 **"SECTION 3F.1.(b)** Notwithstanding any provision of Chapter 122C of the General  
46 Statutes or any other provision of law to the contrary, the first examination of a respondent  
47 required by G.S. 122C-263(a) to determine whether the respondent will be involuntarily  
48 committed due to mental illness or required by G.S. 122C-283(a) to determine whether the  
49 respondent will be involuntarily committed due to substance use disorder may be conducted  
50 either in the physical face-to-face presence of the commitment examiner or utilizing telehealth  
51 equipment and procedures. A commitment examiner who examines a respondent by means of

1 telehealth must be satisfied to a reasonable medical certainty that the determinations made in  
2 accordance with G.S. 122C-283(d) would not be different if the examination had been conducted  
3 in the physical presence of the commitment examiner. A commitment examiner who is not so  
4 satisfied must note that the examination was not satisfactorily accomplished, and the respondent  
5 must be taken for a face-to-face examination in the physical presence of a person authorized to  
6 perform examinations under G.S. 122C-283."

7 **SECTION 1.5.(b)** This section is effective when it becomes law.

## 8 9 **ESTABLISHMENT OF WORK GROUP TO MODERNIZE THE BRAIN INJURY** 10 **ADVISORY COUNCIL**

11 **SECTION 1.6.(a)** The Secretary of the Department of Health and Human Services  
12 shall convene a work group to evaluate and make recommendations about updating the purpose,  
13 composition, powers, and duties of the Brain Injury Advisory Council created by  
14 G.S. 143B-216.65, taking into consideration recommendations by the federal Administration for  
15 Community Living. The work group shall consist of personnel from within the Department of  
16 Health and Human Services with expertise in traumatic and other acquired brain injuries, current  
17 members of the Brain Injury Advisory Council, and representatives from various public and  
18 private stakeholder groups with expertise in traumatic and other acquired brain injuries. By  
19 March 1, 2021, the Department shall report on the work group's findings and recommendations,  
20 including any recommended legislative changes to G.S. 143B-216.65 and G.S. 143B-216.66, to  
21 the Joint Legislative Oversight Committee on Health and Human Services.

22 **SECTION 1.6.(b)** This section is effective when it becomes law.

## 23 24 **DHHS FLEXIBILITY TO ADJUST SINGLE STREAM FUNDING ALLOCATIONS** 25 **FOR LME/MCOS**

26 **SECTION 1.7.(a)** G.S. 122C-112.1(b) is amended by adding a new subdivision to  
27 read:

28 "(4a) Beginning with the 2020-2021 fiscal year, the Secretary may adjust the base  
29 budget allocations relative to single stream funding for local management  
30 entities/managed care organizations (LME/MCOs), including the amount of  
31 any recurring or nonrecurring reductions approved by an act of the General  
32 Assembly; provided, however, that the Secretary shall submit a detailed  
33 explanation for any such adjustment along with supporting documentation to  
34 the Joint Legislative Oversight Committee on Health and Human Services and  
35 the Fiscal Research Division within 10 business days after making such  
36 adjustment."

37 **SECTION 1.7.(b)** This section becomes effective July 1, 2020.

## 38 39 **LME/MCO UTILIZATION OF STANDARDIZED OUT-OF-NETWORK** 40 **AGREEMENTS FOR BEHAVIORAL HEALTH OR INTELLECTUAL AND** 41 **DEVELOPMENTAL DISABILITY SERVICES**

42 **SECTION 1.8.(a)** Effective until coverage under tailored plans described under  
43 G.S. 108D-60 begins, the Department of Health and Human Services shall ensure that local  
44 management entities/managed care organizations (LME/MCOs) utilize out-of-network  
45 agreements between a single provider of behavioral health or intellectual and developmental  
46 disability (IDD) services and the LME/MCO to ensure access to care in accordance with  
47 C.F.R. § 438.206(b)(4). These out-of-network agreements shall contain standardized elements  
48 developed in consultation with all LME/MCOs, reduce administrative burden on providers of  
49 behavioral health and IDD services, and comply with all requirements of State and federal laws.

50 **SECTION 1.8.(b)** LME/MCOs shall use an out-of-network agreement when an  
51 enrollee who is a foster child or independent foster care adolescent, as defined in 42 U.S.C. §

1 1396d(w)(1), is receiving services from a provider that does not have a comprehensive provider  
2 contract with the LME/MCO. LME/MCOs may not restrict the number of out-of-network  
3 agreements in place with any behavioral health or IDD services provider serving this population.

4 **SECTION 1.8.(c)** LME/MCOs shall use an out-of-network agreement in lieu of a  
5 comprehensive provider contract when all of the following conditions are met:

- 6 (1) The services requested are medically necessary and cannot be provided by a  
7 provider in the LME/MCO's closed provider network.
- 8 (2) The behavioral health or IDD services provider's site of service delivery is  
9 located outside of the geographical catchment area of the LME/MCO, and  
10 either (i) the LME/MCO is not accepting applications for membership into its  
11 closed provider network or (ii) the provider does not wish to apply for  
12 membership in the LME/MCO's closed provider network.
- 13 (3) The behavioral health or IDD services provider is not excluded from  
14 participation in the Medicaid program, the NC Health Choice program, or any  
15 other State or federal health care program.
- 16 (4) The behavioral health or IDD provider is serving no more than two enrollees  
17 of the LME/MCO.

18 **SECTION 1.8.(d)** Nothing in this section shall be construed to limit the number of  
19 out-of-network agreements that an LME/MCO may have in place with a behavioral health or  
20 IDD services provider, including inpatient hospitalization services.

21 **SECTION 1.8.(e)** Any provider enrolled in the North Carolina Medicaid program  
22 that provides services pursuant to an out-of-network agreement shall be considered a network  
23 provider for purposes of Chapter 108D of the General Statutes only as it relates to enrollee  
24 grievances and appeals for those services.

25 **SECTION 1.8.(f)** This section is effective when it becomes law.

## 26 27 **PART II. TECHNICAL, CONFORMING, AND OTHER CHANGES RELATED TO THE** 28 **DIVISION OF PUBLIC HEALTH**

### 29 30 **TECHNICAL CORRECTION TO STATUTE GOVERNING TRANSITIONAL** 31 **PERMITS FOR FOOD ESTABLISHMENTS**

32 **SECTION 2.1.** G.S. 130A-248(c) reads as rewritten:

33 "(c) If ownership of an establishment is transferred or the establishment is leased, the new  
34 owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a  
35 transitional permit. A transitional permit may be issued upon the transfer of ownership or lease  
36 of an establishment to allow the correction of construction and equipment problems that do not  
37 represent an immediate threat to the public health. Upon issuance of a new permit or a transitional  
38 permit for the same establishment, any previously issued permit for an establishment in that  
39 location becomes void. This subsection does not prohibit issuing more than one owner or lessee  
40 a permit for the same location if (i) more than one establishment is operated in the same physical  
41 location and (ii) each establishment satisfies all of the rules and requirements of subsection ~~(g)~~  
42 (a) of this section. For purposes of this subsection, "transitional permit" ~~shall mean~~ means  
43 a permit issued upon the transfer of ownership or lease of an existing food establishment to allow  
44 the correction of construction and equipment problems that do not represent an immediate threat  
45 to the public health."  
46

### 47 **REGULATION OF TEMPORARY DISPLAY SPAS**

48 **SECTION 2.2.** G.S. 130A-280 reads as rewritten:

49 **"§ 130A-280. Scope.**

50 This Article provides for the regulation of public swimming pools in the State as they may  
51 affect the public health and safety. As used in this Article, the term "public swimming pool"

1 means any structure, chamber, or tank containing an artificial body of water used by the public  
2 for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances,  
3 and equipment used in connection with the body of water, regardless of whether a fee is charged  
4 for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic  
5 club, or other membership facility pools and spas, spas operating for display at temporary events,  
6 and artificial swimming lagoons. As used in this Article, an "artificial swimming lagoon" means  
7 any body of water used for recreational purposes with more than 20,000 square feet of surface  
8 area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the  
9 swimming zone that is protective of the public health. This Article does not apply to a private  
10 pool serving a single family dwelling and used only by the residents of the dwelling and their  
11 guests. This Article also does not apply to therapeutic pools used in physical therapy programs  
12 operated by medical facilities licensed by the Department or operated by a licensed physical  
13 therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."  
14

### 15 **AUTHORIZATION TO APPOINT RETIRED PHYSICIANS, NURSES, PARAMEDICS,** 16 **CERTIFIED MEDICOLEGAL DEATH INVESTIGATORS, AND PATHOLOGIST** 17 **ASSISTANTS AS MEDICAL EXAMINERS**

18 **SECTION 2.3.** G.S. 130A-382(a) reads as rewritten:

19 "(a) The Chief Medical Examiner shall appoint two or more county medical examiners for  
20 each county for a three-year term. In appointing medical examiners for each county, the Chief  
21 Medical Examiner shall give preference to physicians licensed to practice medicine in this State  
22 but may also appoint ~~licensed-retired physicians previously licensed to practice in this State;~~  
23 physician assistants, nurse practitioners, nurses, or nurses licensed to practice in this State;  
24 emergency medical technician paramedics, paramedics credentialed under G.S. 131E-159;  
25 medicolegal death investigators certified by the American Board of Medicolegal Death  
26 Investigators; pathologists' assistants; and dentists licensed to practice in this State. A medical  
27 examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction  
28 in any case or appoint another medical examiner to do so."  
29

### 30 **ALLOW CHIEF MEDICAL EXAMINER TO APPOINT EMERGENCY MEDICAL** 31 **EXAMINERS DURING STATES OF EMERGENCY**

32 **SECTION 2.4.** G.S. 130A-382 is amended by adding a new subsection to read:

33 "(a1) During a state of emergency declared by the Governor or by a resolution of the  
34 General Assembly as provided in G.S. 166A-19.20, or by the governing body of a county or  
35 municipality as provided in G.S. 166A-19.22, the Chief Medical Examiner is authorized to  
36 appoint temporary county medical examiners to serve for the duration of the declared state of  
37 emergency. For purposes of this section, "temporary county medical examiner" means an  
38 individual who has been determined by the Chief Medical Examiner to have the appropriate  
39 training, education, and experience to serve as a county medical examiner during a declared state  
40 of emergency."  
41

### 42 **ESTABLISHMENT OF CONFIDENTIALITY FOR CERTAIN DEATH** 43 **INVESTIGATION INFORMATION**

44 **SECTION 2.5.** Article 16 of Chapter 130A of the General Statutes is amended by  
45 adding a new section to read:

46 **§ 130A-386.5. Confidentiality of certain death investigation information and records**  
47 **received by the Office of the Chief Medical Examiner.**

48 All information and records provided by a city, county, or other public entity to the Office of  
49 the Chief Medical Examiner, or its agents, concerning a death investigation shall retain the same  
50 degree of confidentiality it had while in the possession of the city, county, or other public entity.  
51 Such information and records shall not become public records, as defined under Chapters 121

1 and 132 of the General Statutes, when provided to the Office of the Chief Medical Examiner, or  
2 its agents, unless the information and records otherwise constituted public records while in the  
3 possession of the city, county, or other public entity."  
4

5 **PART III. MODIFICATIONS TO THE STATE HUMAN RESOURCES ACT TO GIVE**  
6 **GREATER FLEXIBILITY TO THE DEPARTMENT OF HEALTH AND HUMAN**  
7 **SERVICES AND CERTAIN OTHER STATE AGENCIES WITH RESPECT TO**  
8 **EMPLOYEE CLASSIFICATION AND SALARY ADMINISTRATION**

9 **SECTION 3.1.(a)** G.S. 126-5 is amended by adding a new subsection to read:

10 "(c16) Notwithstanding G.S. 126-4(1), G.S. 126-4(2), or any other provision of law to the  
11 contrary, the Council of State agencies, the Office of State Controller, the Department of Health  
12 and Human Services, the Community College System Office, and The University of North  
13 Carolina have sole authority and discretion to take the following actions concerning classification  
14 and salary administration of their respective personnel:

- 15 (1) Classify new positions or reclassify vacant positions within the classification  
16 system adopted by the State Human Resources Commission or as otherwise  
17 prescribed by law.  
18 (2) Make hiring decisions based on the flexibility provided under this section.  
19 (3) Determine the appropriate salary for their respective employees, provided that  
20 funding is available within the budgeted salary appropriated to the agency and  
21 the salary remains within the minimum and maximum of the salary range  
22 associated with the position classification or as otherwise provided by law.

23 The human resources director for each State agency shall ensure that each new hire employed  
24 pursuant to the classification and salary administration flexibility granted by this section meets  
25 the minimum qualifications for the position. The Office of State Human Resources shall provide  
26 assistance to agencies upon request."

27 **SECTION 3.1.(b)** This section becomes effective July 1, 2020.  
28

29 **PART IV. APPROPRIATIONS**

30 **SECTION 4.1.(a)** There is appropriated from the General Fund to the Department  
31 of Health and Human Services the sum of seventeen thousand six hundred ninety-six dollars  
32 (\$17,696) in nonrecurring funds to support the activities and expenditures of the Council on  
33 Developmental Disabilities in the performance of their functions and duties under  
34 G.S. 143B-177.

35 **SECTION 4.1.(b)** This section becomes effective July 1, 2020.  
36

37 **PART V. EFFECTIVE DATE**

38 **SECTION 5.1.** Except as otherwise provided, this act becomes effective October 1,  
39 2020.