

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 168  
Judiciary Committee Substitute Adopted 3/20/19  
Judiciary Committee Substitute Adopted 4/3/19  
Fourth Edition Engrossed 4/10/19  
House Committee Substitute Favorable 6/24/20  
Sixth Edition Engrossed 6/24/20

Short Title: DHHS & Other Revisions.

(Public)

Sponsors:

Referred to:

February 28, 2019

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 AND ADDING A PSYCHIATRIC PHYSICIAN PRIVILEGE EXCEPTION TO CRIMES  
5 AGAINST JUVENILES REPORTING REQUIREMENTS.

6 The General Assembly of North Carolina enacts:

7  
8 **PART I. TECHNICAL, CONFORMING, AND OTHER CHANGES RELATED TO THE**  
9 **DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND**  
10 **SUBSTANCE ABUSE SERVICES**

11  
12 **ALIGNMENT OF DEVELOPMENTAL DISABILITY DEFINITION WITH FEDERAL**  
13 **LAW**

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

15 "(12a) Developmental disability. – A severe, chronic disability of a person that  
16 satisfies all of the following:

17 a. Is attributable to ~~one or more impairments~~ a mental or physical  
18 impairment or combination of mental and physical impairments.

19 ...."  
20

21 **ALLOW CO-PAYMENT SCHEDULE FOR BEHAVIORAL HEALTH,**  
22 **INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, AND SUBSTANCE USE**  
23 **DISORDER SERVICES**

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

25 "(34) Adopt ~~rules for the implementation of~~ a co-payment ~~graduated~~ schedule to for  
26 behavioral health services, intellectual and developmental disabilities  
27 services, and substance use disorder services based on the Medicaid  
28 co-payments for such services, which shall be used by LMEs and by  
29 contractual provider agencies under G.S. 122C-146. The co-payment  
30 graduated schedule shall be developed to adopted under this subdivision shall  
31 require a co-payment for services identified by the Secretary. Families whose



1 family income is three hundred percent (300%) or greater of the federal  
2 poverty level are eligible for services with the applicable co-payment."  
3

4 **CONFORMING CHANGE TO PROCEDURE FOR APPEALING DECISIONS ON**  
5 **LICENSURE WAIVER REQUESTS**

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

7 "(f) Upon written application and in accordance with rules of the Commission, the  
8 Secretary may for good cause waive any of the rules implementing this Article, provided those  
9 rules do not affect the health, safety, or welfare of the individuals within the licensable facility.  
10 Decisions made pursuant to this subsection may be appealed ~~to the Commission for a hearing in~~  
11 ~~accordance with~~ by filing a contested case under Article 3 of Chapter 150B of the General  
12 Statutes."  
13

14 **TECHNICAL CORRECTION TO LIST OF PERSONS DHHS SECRETARY MAY**  
15 **CERTIFY TO PERFORM FIRST EXAMINATIONS FOR INVOLUNTARY**  
16 **COMMITMENT**

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

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

25 (1) The Secretary has received a request:

- 26 a. To certify a licensed clinical social worker, a master's or higher level  
27 degree nurse practitioner, a licensed ~~professional counsellor, clinical~~  
28 mental health counselor or a physician's assistant to conduct the first  
29 examinations described in G.S. 122C-263(c) and G.S. 122C-283(c).  
30 b. To certify a master's level licensed clinical addictions specialist to  
31 conduct the first examination described in G.S. 122C-283(c).  
32

33 ...

34 (5) In no event shall the certification of a licensed clinical social worker, master's  
35 or higher level degree nurse practitioner, licensed ~~professional counsellor,~~  
36 clinical mental health counselor, physician assistant, or master's level certified  
37 clinical addictions specialist under this section be construed as authorization  
38 to expand the scope of practice of the licensed clinical social worker, the  
39 master's level nurse practitioner, licensed ~~professional counsellor, clinical~~  
40 mental health counselor, physician assistant, or the master's level certified  
41 clinical addictions specialist.  
42

43 ...."

44 **CORRECTION TO EXPANDED USE OF TELEHEALTH TO CONDUCT FIRST AND**  
45 **SECOND INVOLUNTARY COMMITMENT EXAMINATIONS DURING THE**  
46 **COVID-19 EMERGENCY**

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

48 "**SECTION 3F.1.(b)** Notwithstanding any provision of Chapter 122C of the General  
49 Statutes or any other provision of law to the contrary, the first examination of a respondent  
50 required by G.S. 122C-263(a) to determine whether the respondent will be involuntarily  
51 committed due to mental illness or required by G.S. 122C-283(a) to determine whether the  
52 respondent will be involuntarily committed due to substance use disorder may be conducted

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

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

## 10 11 **ESTABLISHMENT OF WORK GROUP TO MODERNIZE THE BRAIN INJURY** 12 **ADVISORY COUNCIL**

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

25 **SECTION 1.6.(b)** 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 ~~(e)~~  
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. PSYCHIATRIC PRIVILEGE EXEMPTION**

6 **SECTION 3.(a)** G.S. 14-318.6(h) reads as rewritten:

7 "(h) Nothing in this section shall be construed as to require a person with a privilege under  
8 G.S. 8-53.3, 8-53.7, 8-53.8, or ~~8-53.12~~ or 8-53.12, with attorney-client ~~privilege~~ privilege, or a  
9 psychiatrist licensed under Article 1 of Chapter 90 of the General Statutes to report pursuant to  
10 this section if that privilege would prevent them from doing so."

11 **SECTION 3.(b)** This section is effective when it becomes law.  
12

13 **PART IV. EFFECTIVE DATE**

14 **SECTION 4.1.** Except as otherwise provided, this act becomes effective October 1,  
15 2020.