



INTRODUCTION

What a week! The news from Raleigh came so fast and furious it was hard to keep up. Two of the Governor's cabinet Secretaries were replaced, three major issues that have been holding up negotiations on the budget were removed from that process and saw movement as separate bills, the House approved a nearly \$3 billion bond package, and a Constitutional amendment to control future state spending was proposed.

Embattled DHHS Secretary Aldona Wos announced her resignation last week after nearly three years on the job, just as the House and Senate seem to be moving closer to a deal on Medicaid reform. Her replacement will be former ProNerve CEO Rick Brajer, a newcomer to public service who begins his tenure at a crucial time. He takes over not only during the debate on Medicaid reform but as the Senate is considering a proposal to move the Division of Medical Assistance (Medicaid) from DHHS and create a separate cabinet-level department to oversee the program. The day after Wos' resignation, Gov. McCrory announced interim Secretary and former Durham Mayor Nick Tennyson will become the permanent head of the Department of Transportation, replacing former Sec. Tony Tata who resigned last week. Tennyson got the nod over several sitting members of the General Assembly who had expressed interest.

At a press conference on Tuesday, Senate President Pro Tem Phil Berger announced that his chamber would remove the most controversial policy issues that were included in their version of the state budget – Medicaid reform, sales tax redistribution, and economic development – from the budget negotiations so they could be debated separately. He also suggested that the House cut \$500 million from their spending proposal, which represents a compromise as the chambers were \$800 million apart in their respective versions of the budget passed earlier this year. The Senate then moved bills on each of those policy issues through committees last week, with each proposal having been modified to be closer to the House position. Whether the compromises made by the Senate were enough to represent a real breakthrough in negotiations remains to be seen, as House Speaker Moore mentioned “the next few months of session” during a floor debate and House Finance Chairman Bill Brawley telling reporters “we can't compromise on sales tax redistribution” at any level.” So, despite signs of movement, the rising hope of a deal on the horizon was dashed. Most players at the legislature were surprised by the high level of action this week, and the longest session in recent years may still be many weeks away from adjourning.



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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BILLS OF INTEREST

HOUSE BILL 943, Connect NC Bond Act of 2015, would authorize the issuance of almost \$2.86 billion in general obligation bonds, if approved by voters in an election to be held in November 2015. The bonds would be used to fund capital improvements and new facilities for the State, including the construction and furnishing of new facilities; renovation and rehabilitation of existing facilities; the construction and renovation of highways, roads, bridges, and related road infrastructure for the University of North Carolina System, the North Carolina Community College System, the public schools in the State, cultural resources and State Parks, water and sewer systems, the State's National Guard, the Department of Public Safety, the Administrative Office of the Courts, the Department of Agriculture and Consumer Services, and the Department of Transportation. The bill states that the General Assembly's intent is that this funding would: (1) enhance other economic development efforts of the State; and (2) attract new and assist existing industry, business, technology, and tourism for the benefit of the State and its citizens. The bill includes provisions regarding the use and issuance of the bonds, specific projects to be funded, reporting and tracking guidelines, and conditions under which the General Assembly may increase or decrease the allocation of the proceeds of the public improvement bonds and notes. **Introduced by the House Rules Committee and referred to the House Finance Committee. After further amendments in the House Finance Committee and on the House floor, including amending the date of the election from November 2015 to "at the time of the election in 2016 when voters of this State are given an opportunity to express their preference for the person to be the presidential candidate of their political party," the bill was approved by the House and has been sent to the Senate for consideration.**

BILL UPDATES

HOUSE BILL 371, Terror Claims/Damages/Liability for Support, was amended on the Senate floor to:

- increase the amount of damages that a person whose property or person is injured by a terrorist may recover to three times the actual damages sustained or \$50,000 (was, \$10,000), whichever is greater; and clarify that a suit, action, or proceeding against a terrorist for damages must be brought within five years from the date of the injury;
- exempt from the prohibition against carrying a concealed weapon a member of the North Carolina National Guard who has been designated in writing by the Adjutant General, has a valid concealed handgun permit, and is acting in the discharge of his or her official duties, as long as s/he does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in his/her body; and
- allow the Chairman of the Rules Review Commission, upon approval of a majority of the Commission, to retain private counsel if the Commission is sued by another State entity, and authorize the private counsel to be paid with available State funds to defend the litigation either independently or in cooperation with the Department of Justice.

The bill as amended was approved by the Senate. The House agreed to the changes made by the Senate, and the bill will next be sent to the Governor for his signature.

HOUSE BILL 372, Medicaid Transformation/HIE/Primary Care/Funds. The provisions of this bill were mostly removed in the Senate Health Care Committee and replaced with a new bill to transform and reorganize North Carolina's Medicaid and NC Health Choice Programs, provide funds for the oversight and administration of the Statewide Health Information Exchange

Network, increase Medicaid rates to primary care physicians, and discontinue Medicaid primary care case management. **These amendments were made in an attempt to bridge the gap between the House and Senate versions of Medicaid Reform.** As amended, the bill would do the following:

MEDICAID TRANSFORMATION AND REORGANIZATION

- state the intent of the General Assembly is to transform the State's current Medicaid program to a program that provides budget predictability for taxpayers while ensuring quality care to those in need;
- design the new Medicaid program to ensure the following goals: (1) budget predictability through shared risk and accountability; (2) balanced quality, patient satisfaction, and financial measures; (3) efficient and cost-effective administrative systems and structures; and (4) a sustainable delivery system;
- require the transformed Medicaid program to be organized according to the following principles and parameters:
 - **the Department of Medicaid (DOM) will have full budget and regulatory authority to manage the State's Medicaid and NC Health Choice programs, except the General Assembly will determine eligibility categories and income thresholds;**
 - among its initial tasks, the DOM will:
 - determine the structural and financial qualifications required for Medicaid managed care organizations (MCOs), which is defined to include both commercial insurers and provider-led entities (PLEs). **A PLE is defined as any of the following: a provider; an entity with the primary purpose of owning or operating one or more providers; or a business entity in which providers hold a controlling ownership interest. The majority of the members of a PLE's governing board shall be composed of providers as defined in G.S. 108C-2 or entities composed of providers;** and
 - designate at least five and no more than eight regions within the State, which would be composed of whole, contiguous counties, and every county in the State would be assigned to a region;
 - require the DOM to enter into contractual relationships with commercial insurers and PLEs for the delivery of all Medicaid health care items and services. All contracts would be the result of a request for proposals (RFP) issued by the DOM and the submission of competitive bids by commercial insurers and PLEs;
 - the number and nature of the contracts required would be as follows:
 - three contracts between the DOM and any combination of individual commercial insurers and individual PLEs, and each of these contracts would provide statewide coverage for all Medicaid health care items and services (statewide contracts); and
 - up to 12 contracts between the DOM and individual PLEs for coverage of specified regions (regional contracts). Regional contracts would be in addition to the three statewide contracts, and would provide coverage throughout the entire region for all Medicaid health care items and services. A PLE could bid on more than one region, and the DOM would have full discretion to enter into one, two, or no regional contracts in any region; and

- **allow, as a result of the contracts entered into by the DOM, a recipient to have at least three, but no more than five enrollment choices for the provision of all Medicaid health care items and services**, and require the DOM to provide for annual open enrollment periods and determine the process for assigning recipients who do not select a commercial insurer or PLE during the enrollment period;
- establish a timeline for Medicaid transformation as follows:
 - when the bill becomes law – create the Department of Medicaid; and create the Joint Legislative Oversight Committee on Medicaid (LOC on Medicaid) to oversee the Medicaid and NC Health Choice programs;
 - December 1, 2015 – require DHHS to establish the Medicaid stabilization team;
 - January 1, 2016 – designate the DOM as the single State agency for the administration of Medicaid and NC Health Choice; and require DHHS and the DOM to enter into agreements necessary for the DOM to supervise the DHHS's administration of the Medicaid and NC Health Choice programs;
 - May 1, 2016 – require the DOM to submit requests for waivers and State Plan amendments to the Centers for Medicare and Medicaid Services (CMS) necessary to implement Medicaid transformation; and report recommended statutory changes to the North Carolina General Statutes to the LOC on Medicaid;
- include components of the required initial RFPs, responsive bids to the initial RFPs, and the initial contracts;
- require, beginning February 1, 2016, and then monthly until January 1, 2019, the DOM to report to the LOC on Medicaid and the Fiscal Research Division on the State's progress toward completing Medicaid transformation;
- require the DOM to work with the Centers for Medicare and Medicaid Services (CMS) to attempt to preserve existing levels of funding generated from Medicaid-specific funding streams, such as assessments, to the extent that the levels of funding may be preserved. If such Medicaid-specific funding cannot be maintained as currently implemented, then the DOM would advise the LOC on Medicaid of any modifications necessary to maintain as much revenue as possible within the context of Medicaid transformation. If such Medicaid-specific funding streams cannot be preserved through the transformation process or if revenue would decrease, it is the intent of the General Assembly to modify such funding streams so that any supplemental payments to providers are more closely aligned to improving health outcomes and achieving overall Medicaid goals;
- require DHHS, Division of Medical Assistance, to cooperate with the DOM during Medicaid transformation to ensure a smooth transition of the Medicaid and NC Health Choice programs and to perform specified functions;
- establish the Department of Medicaid (DOM) to administer and operate the Medicaid and NC Health Choice programs;
- provide that the DOM would be headed by Secretary of the Department of Medicaid, who would be appointed by the Governor subject to confirmation by the General Assembly by joint resolution, and subject to removal by the Governor;
- outline the powers and duties of the Secretary, which would include:
 - administering and operating the Medicaid and NC Health Choice programs;
 - appointing all employees, including consultants and legal counsel, necessary to carry out the powers and duties of the office;
 - entering into and managing contracts for the administration of the Medicaid and NC Health Choice programs;
 - employing or contracting for independent internal auditing staff;

- supervising county departments of social services in their administration of eligibility determinations;
- defining and implementing the following for the Medicaid and Health Choice programs and any other programs administered by the DOM:
 - business policy;
 - strategic plans, including desired health outcomes for the covered populations, which would do the following:
 - be developed at a frequency of no less than every five years with the input of stakeholders;
 - identify key opportunities and challenges facing the organization;
 - identify the DOM's strengths and weaknesses to address these opportunities and challenges;
 - identify key goals for the DOM for this time period, consistent with the reform goals identified by the General Assembly;
 - identify output and outcome performance measures to quantify the DOM's progress toward these goals;
 - identify strategies to reach these goals; and
 - be used as a guide for units within the DOM to establish unit-specific operational plans at the same frequency;
 - performance management system, including quantitative indicators for goals and objectives, which would do the following:
 - be developed and implemented within the first year of the creation of the DOM and updated no less than annually thereafter with available data;
 - establish quantitative performance measures focusing on the quality and efficiency of service delivery and administration, using a nationally recognized quality improvement effort allowing comparison of North Carolina to other states as those developed by, but not limited to, the federal Medicaid Quality Measurement Program and the Baldrige Quality Program;
 - establish measurable objectives for each goal identified in the strategic plan, and performance updated annually;
 - establish, for each objective, benchmark activities, including an estimated date of completion, the area for which efforts are attempting a change, a quantitative indicator of success for the area, and quarterly milestones allowing DOM managers and employees to monitor progress throughout the year; and
 - establish mechanisms for obtaining data necessary for the collection and public distribution of performance information;
 - program and policy changes;
 - operational budget and assumptions.
- establishing and adjusting all program components, except for eligibility, of the Medicaid and NC Health Choice programs within the appropriated and allocated budget;
- adopting rules related to the Medicaid and NC Health Choice programs;
- developing midyear budget correction plans and strategies and then take midyear budget corrective actions necessary to keep the Medicaid and NC Health Choice programs within budget;

- approving or disapproving and overseeing all expenditures to be charged to or allocated to the Medicaid and NC Health Choice programs by other State departments or agencies;
- developing and presenting to the Joint Legislative Oversight Committee on Medicaid and the Office of State Budget and Management by January 1 of each year, beginning in 2017, the following information for the Medicaid and NC Health Choice programs:
 - a detailed 4-year forecast of expected changes to enrollment growth and enrollment mix;
 - what program changes will be made by the DOM in order to stay within the existing budget for the programs based on the next fiscal year's forecasted enrollment growth and enrollment mix;
 - the cost to maintain the current level of services based on the next fiscal year's forecasted enrollment growth and enrollment mix.
- securing and paying for the services of the State Auditor's Office to conduct annual audits of the financial accounts of the Department.
- publishing the Annual Medicaid Report, which would contain, at a minimum, details on the DOM's performance over the prior four years and annual audited financial statements;
- publishing in an electronic format, and updating on at least a monthly basis, at least the following information about the Medicaid and NC Health Choice programs:
 - enrollment by program aid category by county;
 - per member per month spending by category of service;
 - spending and receipts by fund along with a detailed variance analysis; and
 - a comparison of the above figures to the amounts forecasted and budgeted for the corresponding time period.
- clarify that the General Assembly retains the authority to determine eligibility categories and income thresholds for the Medicaid and NC Health Choice programs; however, the DOM would be expressly authorized to adopt temporary and permanent rules regarding eligibility requirements and determinations, to the extent that they do not conflict with parameters set by the General Assembly;
- include variations from certain State laws, including: (1) exempting DOM employees from the North Carolina Human Resources Act; (2) allowing the Secretary to retain private legal counsel; (3) providing that employment contracts offered pursuant to G.S. 143B-1405(a)(2) are not subject to review and approval by the Office of State Human Resources; and (4) providing that, if the Secretary establishes alternative procedures for the review and approval of contracts, then the DOM is exempt from State contract review and approval requirements but may still choose to utilize the State contract review and approval procedures for particular contracts;
- require a cooling-off period for certain Department employees;
- establish the Medicaid Reserve Account as a non-reverting reserve in the General Fund to provide for unexpected budgetary shortfalls within the Medicaid and NC Health Choice programs that result from program expenditures in excess of the amount appropriated for the Medicaid and NC Health Choice programs by the General Assembly and which continue to exist after the Health Benefits Authority makes its best efforts to control costs through midyear budget corrections;

- require the Medicaid Reserve Account to have 5% minimum and 12% maximum target balances of a given fiscal year's General Fund appropriations for capitation payments for both the Medicaid and NC Health Choice programs;
- allow the Secretary to disburse Medicaid Reserve Account funds to manage budgetary shortfalls in the Medicaid and NC Health Choice programs only after the Secretary: (1) certifies that there is a projected Medicaid shortfall in the current fiscal year; (2) has already made the required midyear budget corrections, but those midyear budget corrections have not achieved the projected budget savings; and (3) reports to the Joint Legislative Commission on Governmental Operations on its intent to disburse Medicaid Reserve Account funds, including a detailed analysis of receipts, payments, claims, and transfers, including an identification of and explanation of the recurring and nonrecurring components of the shortfall;
- direct the Commissioner of Insurance, in consultation with the Secretary of the DOM, to establish solvency requirements for MCOs and PLEs that contract with the DOM, and make recommendations, including any statutory changes, to the Joint Legislative Oversight Committee on Medicaid by May 1, 2016;
- establish a 14-member Joint Legislative Oversight Committee on Medicaid to examine budgeting, financing, administrative, and operational issues related to the Medicaid and NC Health Choice programs and to the Department of Medicaid;
- provide that the Department of Medicaid is expressly authorized and required to take any and all necessary action to amend the State Plan and waivers in order to keep the program within the certified budget;
- change certain references from the Department of Health and Human Services to the Department of Medicaid;
- provide \$5 million in each of the next two years to the Department of Health and Human Services, Division of Medical Assistance, to accomplish the Medicaid transformation as required. These funds would provide a State match for an estimated \$5 million in federal funds beginning in the 2015-16 fiscal year, and upon request of the Department of Medicaid, but no later than January 1, 2016, DHHS would transfer these funds to the Department of Medicaid to be used for Medicaid transformation;

FUNDS FOR OVERSIGHT AND ADMINISTRATION OF STATEWIDE HEALTH INFORMATION EXCHANGE NETWORK

- declare the intent of the General Assembly to do all of the following with respect to health information exchange:
 - establish a successor HIE Network to which (1) all Medicaid providers shall be connected by October 1, 2017, and (2) all other entities that receive State funds for the provision of health services shall be connected by January 1, 2018;
 - establish (1) a State-controlled Health Information Exchange Authority to oversee and administer the successor HIE Network and (2) a Health Information Exchange Advisory Board to provide consultation to the Authority on matters pertaining to administration and operation of the HIE Network and on statewide health information exchange, generally;
 - have the successor HIE Network gradually become and remain 100% receipt-supported by establishing reasonable **participation fees** approved by the General Assembly and by drawing down available matching funds whenever possible;
- provide \$8 million in each of the next two years to the Department of Health and Human Services, Division of Central Management and Support, and then transferred to the Office

of Information Technology Services to continue efforts toward the implementation of a statewide health information exchange network;

- enact the Statewide Health Information Exchange Act to improve the quality of health care delivery within this State by facilitating and regulating the use of a voluntary, statewide health information exchange network for the secure electronic transmission of individually identifiable health information among health care providers, health plans, and health care clearinghouses in a manner that is consistent with HIPAA;
- require, as a condition of receiving State funds, including Medicaid funds, the following entities to connect to the HIE Network and submit individual patient demographic and clinical data on services paid for with State funds, including Medicaid funds: (1) hospitals that have an electronic health record system; (2) Medicaid providers; and (3) providers that receive State funds for the provision of health services;
- provide that any data disclosed through the HIE Network and any data or product derived from the data disclosed to the HIE Network, including a consolidation or analysis of the data, is and will remain the sole property of the State. The Authority could not allow proprietary information it receives to be used by any person or entity for commercial purposes;
- establish the North Carolina Health Information Exchange Authority to oversee and administer the HIE Network, and set out the powers and duties of the Authority;
- establish the North Carolina Health Information Exchange Advisory Board to provide consultation to the Authority with respect to the advancement, administration, and operation of the HIE Network and on matters pertaining to health information exchange;
- provide that each covered entity that elects to participate in the HIE Network: (1) must enter into a business associate contract and a written participation agreement with the Authority or qualified organization prior to disclosing or accessing any protected health information through the HIE Network; (2) may authorize its business associates to disclose or access protected health information on behalf of the covered entity through the HIE Network; and (3) notwithstanding any State law or regulation to the contrary, may disclose an individual's protected health information through the HIE Network (a) to other covered entities for any purpose permitted by HIPAA, unless the individual has exercised the right to opt out, and (b) **in order to facilitate the provision of emergency medical treatment to the individual**;
- provide that a health care provider who relies in good faith upon any information provided through the Authority or through a qualified organization in the health care provider's treatment of a patient will not incur criminal or civil liability for damages caused by the inaccurate or incomplete nature of this information;
- provide that each individual has the right on a continuing basis to opt out or rescind a decision to opt out, and prohibit a covered entity from denying treatment or benefits to an individual because of the individual's decision to opt out. However, this Article would not restrict a treating physician from otherwise appropriately terminating a relationship with a patient in accordance with applicable law and professional ethical standards;
- **provide that the protected health information of an individual who has exercised the right to opt out may not be disclosed to covered entities through the HIE Network for any purpose; however, this information could be disclosed in order to facilitate the provision of emergency medical treatment to the individual if all of the following criteria are met:**
 - **the reasonably apparent circumstances indicate to the treating health care provider that (1) the individual has an emergency medical condition, (2) a meaningful discussion with the individual about whether to rescind a**

- previous decision to opt out is impractical due to the nature of the individual's emergency medical condition, and (3) information available through the HIE Network could assist in the diagnosis or treatment of the individual's emergency medical condition;
 - the disclosure through the HIE Network is limited to the covered entities providing diagnosis and treatment of the individual's emergency medical condition; and
 - the circumstances and extent of the disclosure through the HIE Network is recorded electronically in a manner that permits the Authority or its designee to periodically audit compliance;
- provide that a covered entity that discloses protected health information in violation of this Article is subject to the following:
 - any civil penalty or criminal penalty, or both, that may be imposed on the covered entity pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act;
 - any civil remedy under the HITECH Act or any regulations adopted under the HITECH Act that is available to the Attorney General or to an individual who has been harmed by a violation of this Article, including damages, penalties, attorneys' fees, and costs;
 - disciplinary action by the respective licensing board or regulatory agency with jurisdiction over the covered entity;
 - any penalty authorized under Article 2A of Chapter 75 of the General Statutes if the violation of this Article is also a violation of Article 2A of Chapter 75 of the General Statutes; and
 - any other civil or administrative remedy available to a plaintiff by State or federal law or equity;

INCREASE RATES TO PRIMARY CARE PHYSICIANS AND DISCONTINUE PRIMARY CARE CASE MANAGEMENT

- **discontinue the current Medicaid and Health Choice primary care case management (PCCM) program effective May 1, 2016, and prohibit the Department of Health and Human Services from renewing or extending the contract for PCCM services with North Carolina Community Care Networks, Inc. (NCCCN), beyond April 30, 2016;**
- direct DHHS to take all actions necessary to discontinue the current Medicaid and Health Choice PCCM program as implemented by NCCCN, and as soon as reasonably possible, but no later than February 1, 2016, to submit to the Centers for Medicare and Medicaid Services (CMS) a Medicaid State plan amendment eliminating the PCCM program. If CMS has not approved the State plan amendment by May 1, 2016, DHHS must still discontinue all payments related to the PCCM program beginning May 1, 2016, unless and until CMS denies the State plan amendment;
- provide that, effective May 1, 2016, the rates paid to primary care physicians will be 100% of Medicare rates. For purposes of this section, the term primary care physicians would refer to those physicians for whom the Affordable Care Act required payment at 100% of the Medicare rate until January 1, 2015, and all OB/GYN physicians;
- state the General Assembly's finding that the discontinuation of the PCCM program and the NCCCN contract as required will save a recurring sum of \$10,825,000 in fiscal year 2015-16 and \$64,950,000 in fiscal year 2016-17;

- make, as a result of these savings, the following appropriations to the Department of Health and Human Services, Division of Medical Assistance:
 - \$8.43 million this year and \$50.6 million next year to pay for the required increased Medicaid rates; and
 - \$2.16 million this year and \$12.95 million next year to directly fund local health departments' continued services related to the Care Coordination for Children (CC4C) program, which was previously funded through the contract with NCCCN.

The bill as amended was approved by the Senate Health Care Committee, and will next be considered by the Senate Appropriations Committee.

HOUSE BILL 792, Privacy/Protection From Revenge Postings, was heard on the Senate floor to amend the bill to make all offenses a Class H felony for those over 18 when the offense is committed, a Class 1 misdemeanor for the first offense committed by those under 18 and a Class H felony for all subsequent offenses by those under 18. A separate amendment was run to clarify that, “unless the conduct is prohibited by another law providing greater punishment, any person located in a private place who shall willfully expose the private parts of his or her person with the knowing intent to be seen by a person in a public place shall be guilty of a Class 2 misdemeanor.” This was done in response to a case in Charlotte of a man who regularly stands in his home’s doorway naked, with no specific state statute prohibiting the conduct. **The bill was approved by the Senate and will next be considered by the House to review the changes made by the Senate.**

SENATE BILL 607, Taxpayer Bill of Rights. The provisions of this bill were removed in the Senate Finance Committee and replaced with a new bill that has been called the **Taxpayers Bill of Rights**. The bill would **amend the State Constitution**, if approved by voters in an election to be held on March 15, 2016, to:

- reduce the maximum State income tax rate allowable from 10% to 5% (our current tax rate is 5.75% and would be required to be reduced);
- establish an Emergency Savings Reserve Fund in the State Treasury; and
- limit the annual percentage increase in State fiscal year spending to inflation growth plus the growth in State population in the prior fiscal year.

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

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