



INTRODUCTION

When the 2014 “short” session of the North Carolina General Assembly adjourned on August 20th, it was after several days marked by the same conflict and contentiousness that had defined the entire legislative year. While the session lasted only slightly more than three months, the near-universal consensus among legislators, lobbyists, staff and press was that it had lasted entirely too long. In the waning days a measure important to the Senate was tied to a key objective of the Governor and then defeated on the House floor, priorities of House leadership were left stranded by the Senate, and a technical fix that could help school districts save Teaching Assistant positions became yet another casualty of the friction between the chambers. When a previously agreed-to special session on Medicaid reform was scrapped, several months lay ahead in which the battles, resentments and rivalries of the session could subside, if not resolve completely. Although there were calls for a special session on economic incentives and film tax credits, the Governor announced several weeks ago that he would not call the Legislature back into session unless agreements were reached on these contentious issues. The Governor even stated that everyone probably needed a break from the process, including himself. So the interminable battle between and within the chambers, caucuses, and departments of State government will wait until next session.

The main goal of any short session is twofold: to complete the unfinished business held over from the previous year’s long session, and to approve a budget update. Since the budget approved in the long session covers both years of the fiscal biennium these updates are not technically required, but historically have always been done. This year the single most important priority of both chambers was tied to the budget update: providing a substantial raise for the state’s teachers, a campaign promise both House and Senate leaders intended to fulfill before returning to the districts to seek reelection. Rumors swirled before the session began in May that significant work on the budget update had already been completed, fueling talk of a very short session. After all, the story went, House Speaker Tillis is running for U.S. Senate and will want to get back on the campaign trail as soon as possible, and Senate President Pro Tem Berger would also favor an early adjournment, presumably so he could assist his



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



THIS LEGISLATIVE REPORT IS A
PUBLICATION OF KOCHANЕК LAW GROUP
AND IS A MEMBER BENEFIT OF NCCEP.
ANY USE OR REPRODUCTION OF THIS
REPORT IS LIMITED TO NCCEP
AND ITS MEMBERS.

FOR MORE INFORMATION:

Colleen Kochanek
NCCEP Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988

colleen@kochaneklawgroup.com
www.kochaneklawgroup.com

son's Congressional runoff campaign. The Senate even introduced an adjournment resolution with an end date of June 27th, and dreams of July beach vacations began to seem realistic, if only for a moment.

Almost from the outset, hope of an early adjournment was strained by the release of the Senate budget, which proposed to pay for an average 11% teacher raise by making deep cuts to Medicaid eligibility and eliminating thousands of Teaching Assistant positions, while also requiring teachers to forfeit tenure rights to receive an increase. The House responded with a more modest teacher raise, which did not require such deep cuts to Medicaid and saved the Teacher Assistant positions. Over the following weeks the stalemate only deepened, with Governor McCrory's decision to publicly back the House position only hardening the Senate's resolve. Eventually, a series of Joint Appropriations Committee meetings were held to negotiate the budget. These meetings made the process unprecedentedly public and, while heated at times, produced a compromise budget which essentially split the difference on most major issues of contention – a 7% average teacher raise (this average is in dispute this campaign season) paid for with Medicaid provider rate cuts and other reductions to Health and Human services; Teaching Assistant positions saved – but only for one year in 3rd grade – and with problematic funding language that may result in lost positions; no requirement that teachers give up tenure rights but an end to automatic funding on enrollment growth in public schools. There was little real celebration at the passage of the budget, as it came over a month after the state's fiscal year had already begun, and the Governor's signature could not erase the bruising battles of the preceding months.

While the budget process ground slowly and haltingly along, the other major issues of the session were effectively on hold. Once the budget was passed, however, action resumed on a slate of issues, a great many of which had seen tremendous movement in one chamber or the other before the budget breakdown put a chill on their forward progress. The most prominent of these was the reform of the state's Medicaid program, a major priority of the Governor's administration. The Senate included in its initial budget a proposal to spin Medicaid off from DHHS into its own Department, which was not included in the final budget agreement. The House preferred a reform plan based on provider-led Accountable Care Organizations (which is the reform preferred by almost all health care related entities), despite the Governor's stated preference at the outset of the process for a Managed-Care based plan. As the close of session loomed the Senate countered the House's proposal with a plan that allowed Managed Care and provider-led plans to compete, but no compromise could be reached. Both sides agreed to return to Raleigh after the November election to take up the issue in a special session, yet that plan was eventually discarded as well, meaning further action on Medicaid reform – and the cost savings and budget predictability that all sides hope it will deliver – will have to wait until 2015.

Despite the impasse on Medicaid reform there were some issues on which compromise was finally reached. The transfer of the State Bureau of Investigation from the Department of Justice to the Department of Public Safety (Oversight would be transferred to a Republican led agency from the Department of Justice, which is led by a Democrat who is expected to run against the Governor in 2016), a priority of the new majority for the past two sessions, was completed. A new 3-judge panel was created to hear cases related to the constitutionality of laws passed by the General Assembly, possibly in response to judicial intervention in several majority-passed changes in the past three years. A major Regulatory Reform bill was approved, despite being presumed dead for the session until the final days before adjournment. A compromise bill on coal ash cleanup, also a presumed casualty until the final days of session, was the last bill completed. Given the ongoing battles over these bills, the fate of typically routine legislation

such as the annual technical corrections measure was also unclear going until the final days, making what is always an unpredictable time significantly more chaotic.

While compromise was found on some issues, others were abandoned when the chambers decided to end session. This was not particularly surprising given the contentious nature of the session - the members even endured a two-week lull during which the chambers could not even agree on what issues they would agree to take up before adjournment. Aside from Medicaid reform, measures requiring insurance companies to cover Autism spectrum disorders and an extension of the state's film tax credit – both favored by Speaker Tillis – were both abandoned when the Senate concluded its business. An economic incentive package requested by the Governor's Commerce Department was tied to a local sales tax cap favored by the Senate, yet the combined bill was unpalatable to the House and was rejected in a rare floor defeat. The following day the House and Senate, perhaps exhausted with the conflict and each other, adjourned *sine die* (without day), abandoning any plans to reconvene later this year. It was fitting that the last day did not feature the traditional “hanky drop” ceremony between the chambers, and felt to all involved less like a celebratory end-of-school (as is typical) and more like the unremarkable end to a remarkably contentious few months.

It has been an honor to represent the interests of the North Carolina College of Emergency Physicians at the 2013-2014 Session of the General Assembly. We have included in this Final Legislative Report a summary of relevant legislation that was approved during 2014 and also a summary of the final version of the budget. We hope you will contact us if you have any questions and look forward to working with you again during the 2015-2016 Session.

The Kochanek Law Group

Colleen Kochanek

LEGISLATION OF INTEREST

HOUSE BILL 625, Zoning/Health Care Structure, provides for the zoning of temporary family health care structures, which are transportable residential structures that provide an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code. **Effective: October 1, 2014, and applies to temporary family health care structures existing on or after that date.**

HOUSE BILL 644, Prevent Hazardous Drug Exposure, directs the Commissioner of Labor to adopt rules by January 1, 2016, regarding the handling of antineoplastic agents (a chemotherapy drug or cytotoxic drug used to treat cancer patients and some non-cancer patients) in facilities where there is occupational exposure to these agents. The Commissioner will establish an advisory workgroup, consisting of hospitals, organizations representing health care personnel, and other interested stakeholders, for the development of rules, and consider what constitutes a reasonable time frame for facilities to implement the new requirements. **Effective: July 22, 2014.**

HOUSE BILL 698, Background Check for Firefighters, authorizes criminal history records checks for current volunteer or paid fire department and emergency medical services personnel and not just applicants to these positions. The legislation also establishes an Urban Search and Rescue Program in the Division of Emergency Management and an Urban Search and Rescue Team Advisory Committee. Members of a contract response team will be immune from liability under the provisions of the North Carolina Emergency Management Act while on an urban search and rescue team or specialty rescue team mission authorized by the Division of Emergency Management. The Department of Public Safety will study the costs of implementing the program, including the apportionment of costs between State and local governments, prior to the Program's implementation. **Effective: The criminal history check provisions are effective January 1, 2015, and the Urban Search and Rescue Program provisions are effective July 1, 2014.**

HOUSE BILL 1050, Omnibus Tax Law Changes, is a major piece of legislation that contains a significant number of changes to the state's tax code, dealing with issues as diverse as the taxation of "e-cigarette" nicotine vapor products to vending machines. Most of these changes (48 pages worth) will be of interest mainly to tax professionals; however, there are important changes to deductions for State net loss, investment limitations on accelerated depreciation, excise tax changes for bonds and letters of credit, taxation of prepaid meal plans, entertainment activity admissions and compensation for License Plate Agents as well as many others. The most significant change proposed by the legislation would be a repeal of the state's current privilege license tax (PLT) system, which varies widely from city to city (and some counties as well). As we previously reported this change is referred to by sponsors and supporters as the Fair and Flat Local Business Tax. While previous versions would have repealed the PLT effective this year, the final version of the legislation makes the repeal effective on July 1, 2015, but does provide that a city may only levy privilege license taxes on specified trades, occupations, professions, businesses, and franchises *physically located* within the city (previously the tax could be applied to on specified trades, occupations, professions, businesses, and franchises *carried on* within the city). In addition, the bill would prohibit a city from enacting a privilege license tax ordinance for fiscal year 2014-15 if the city did not have a privilege license tax ordinance in effect for fiscal year 2013-14. **Effective: Restriction of the privilege license tax to businesses physically located within city limits is effective July 1, 2014, and the repeal of the privilege license tax is effective July 1, 2015.** NOTE: Critics of the change, many representing the state's cities, have warned that the revenue they stand to lose when the repeal goes into effect will require raising property taxes and cutting vital services. Proponents of the bill responded that additional reforms to the state's tax code that they intend to work on during the next session of the General Assembly, particularly a significant broadening of the sales tax base, will provide revenue to replace the revenue previously generated through the PLT system.

HOUSE BILL 1133, Technical and Other Corrections. This legislation was the vehicle for the annual technical corrections bill that includes many technical amendments (many of which are recommended by the General Statutes Commission), but also a variety of substantive law changes. The provisions of the legislation include the following:

- amending the provisions regarding standing of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution. The law already provides the procedure for interventions at trial level in State court and the law was amended to provide the procedure for intervention at the appellate level in State

court by motion in the appropriate appellate court or by any other relevant procedure set forth in the Rules of Appellate Procedure; and

- amending the requirements of the controlled substances reporting system by providing that a dispenser is not required to report instances in which a Schedule V non-narcotic, non-anorectic Schedule V controlled substance is provided directly to the ultimate user for the purpose of assessing a therapeutic response when prescribed according to indications approved by the United States Food and Drug Administration.

Effective: Most of the provisions are effective August 11, 2014.

HOUSE BILL 1145, Insurance and Registration Required for Mopeds, requires mopeds to be registered with the Division of Motor Vehicles. The legislation also directs the Joint Legislative Transportation Oversight Committee to study whether additional statutory changes are needed to ensure the safe operation of mopeds and whether insurance should be required to operate a moped on a public street or highway. The report must include data on: (i) the number of mopeds involved in traffic accidents; (ii) the number and types of injuries resulting from traffic accidents involving mopeds; and (iii) the causes for the traffic accidents involving mopeds. The Committee will report its findings and any recommended legislation to the 2015 General Assembly when it convenes. **Effective: August 6, 2014. The moped registration provisions are effective July 1, 2015.**

HOUSE BILL 1220, Hope 4 Haley and Friends, enacts the North Carolina Epilepsy Alternative Treatment Act to permit medical professionals to conduct limited-scope, evidence-based studies exploring the safety and efficacy of treating intractable epilepsy using hemp extract. The Department of Health and Human Services will create a secure, electronic, and online Intractable Epilepsy Alternative Treatment Pilot Study database registry for the registration of pilot studies, neurologists, caregivers, and patients, which will be accessible to law enforcement agencies in order to verify registration of caregivers. The legislation also provides that the University of North Carolina at Chapel Hill and East Carolina University may, and Duke University and Wake Forest University are encouraged to, conduct research on hemp extract development, production, and use for the treatment of seizure disorders and to participate in any ongoing or future clinical studies or trials. **Effective: July 3, 2014.**

HOUSE BILL 1276, Adjournment, was the Joint Resolution that adjourned the 2013-2014 session of the General Assembly “sine die” (without day). While adjournment sine die is typical at the end of a short session, it was expected that at least one “special session” would be convened later this year, including one to tackle Medicaid reform that was scheduled to begin November 17th, after the midterm elections. As we’ve reported, these plans were abandoned in the last days of session, and with the Governor’s announcement that he does not plan to call a special session to deal with economic incentives (unless a major development occurs), the General Assembly will not reconvene until January 14, 2015. **Effective: August 20, 2014.**

SENATE BILL 403, Omnibus Election Clarifications, makes a number of changes to the state’s election laws, including to:

- prohibit a person from filing a notice of candidacy in a party primary unless that person has been affiliated with that party for at least 90 days as of the date that the person files the notice;
- apply the provisions regarding the random ordering of candidates on official ballots to candidates whether the primary is partisan or nonpartisan and apply to any nonpartisan general election ballot item, and providing that the same random selection process is to be used for all primaries and elections in a calendar year.

- clarify that the phrase "cumulative total number of scheduled voting hours" includes those at the office of the county board of elections or a reasonably close alternate site;
- clarify that public education on the requirement that voters must have photo identification in order to vote in person beginning in 2016 will be included as a brief statement in the notices of elections published by county boards of elections for the 2014 primary and the 2015 general election;
- clarify that the individuals made available by the county board of elections to engage in the review of voters presenting photo identification to a local election official at a time other than on election day, may reside anywhere in the county or may be an employee of the county or the state;
- provide that in instances where photo identification is presented for voting purposes, if the individual presents a US military identification card or a Veterans Identification Card issued by the US Department of Veterans Affairs, there is no requirement that the identification card have a printed expiration or issuance date;
- provide that if the individual presents as photo identification for voting purposes a tribal enrollment card issued by a federally recognized tribe that lacks a printed expiration date, the card is acceptable if it has a printed issuance date that is not more than eight years before the date it is presented for voting;
- provide that the repeal of the requirement that the Board of Elections publish a Voter Guide becomes effective when the funds for publishing the Judicial Voter Guide are exhausted;
- allow a registrant who appears at an old precinct be permitted to vote by a provisional ballot, and provide that the ballot will count as long as it is determined the individual was eligible to vote under State or federal law;
- provide that if a provisional ballot is found to be valid and eligible, pursuant to the specified requirements, then it will be counted by the county board of elections before the canvass. If the ballot is found to not be valid or eligible because the voter did not vote in the proper precinct, is not registered in the county, or is not otherwise eligible to vote, the ballot will not be counted;
- provide that candidates required to file statements of economic interest must file with the Commission within 10 days of the filing deadline for the office sought.
- remove the requirement that statements of economic interest be filed at the same place and same manner as the notice of candidacy;
- remove the requirement that individuals nominated after the primary and before the general election, as well as unaffiliated candidates, must file statements of economic interest with the county board of elections in each county in the senatorial or representative district;
- set out a three-day deadline to file statements of economic interest for unofficial candidates, write in candidates, and candidates of a new party;
- provide that the State Board of Elections has the authority to perform list maintenance pursuant to this section, with the same authority as the county board.
- provide that a registered voter that votes in a primary, moves to another county in the State prior to a second primary, qualifies to vote in the new precinct and registers in a timely manner is allowed to vote a provisional ballot in that precinct for the second primary and will have the ballot counted for all the ballot items the county board determines the individual was eligible to vote.

Effective: Except as noted, August 6, 2014.

SENATE BILL 477, No Set Fee/Noncovered Vision Services, prohibits insurers and health benefit plans from limiting or fixing the fee an optometrist may charge patients for services or

materials unless the services or materials are reimbursed as covered services under the contract with the optometrist. **Effective: October 1, 2014, and applies to contracts entered into, amended, or renewed on or after that date.**

SENATE BILL 729, Coal Ash Management Act of 2014. This legislation as originally filed was recommended by the Governor and filed by Senate leader Berger and Rules Chairman Tom Apodaca in response to the February disaster in which the failure of a stormwater pipe under a utility coal ash impoundment pond spilled an estimated 39,000 tons of coal ash into the Dan River. As enacted, the legislation will:

- prohibit an electric public utility from recovering from the retail electric customers costs resulting from an unlawful discharge to the surface waters of the State from a coal ash pond, unless the Commission determines the discharge was due to an Act of God;
- establish a moratorium on the Utilities Commission granting an increase in the base rates of electric public utilities for costs related to coal ash ponds from January 15, 2015, to allow the State to study the disposition of coal ash ponds, including any final rules adopted by the United States Environmental Protection Agency on the regulation of coal combustion residuals;
- create the Coal Ash Management Commission to review and approve coal ash ponds classifications and closure plans and otherwise study and make recommendations on laws governing management of coal combustion residuals;
- require expedited review by the Department of Environment and Natural Resources of any permit necessary to conduct activities required by this act;
- establish various reporting requirements to the General Assembly, including a quarterly report from the Department of Environment and Natural Resources on its operations, activities, programs, and progress with respect to its obligations under this act for coal ash ponds;
- prohibit local government regulation of management of coal ash or coal combustion products;
- prohibit construction of new or expansion of existing coal ash ponds effective October 1, 2014;
- prohibit the disposal of coal combustion residuals into coal ash ponds at coal-fired generating units that are no longer producing coal combustion residuals effective October 1, 2014;
- prohibit disposal of stormwater to coal ash ponds effective December 31, 2018;
- require all electric generating facilities to convert to generation of dry fly ash on or before December 31, 2017, and dry bottom ash on or before December 31, 2020, or retire;
- require the owner of a coal ash pond to conduct groundwater monitoring and assessment as provided;
- require an owner of a coal ash pond to submit a proposed Groundwater Assessment Plan for the impoundment to the Department for review and approval;
- require an owner of a coal ash pond to conduct a Drinking Water Supply Well Survey and to submit an annual Groundwater Protection and Restoration Report to the Department and to the Coal Ash Management Commission no later than January 31 of each year;
- require the identification, assessment, and correction of unpermitted discharges from coal ash ponds;
- require the Department of Environment and Natural Resources to, as soon as practicable, but no later than December 31, 2015, prioritize for the purpose of closure and remediation coal ash ponds, including active and retired sites, based on these sites' risks to public health, safety, and welfare, the environment, and natural resources;

- require owners of coal ash ponds to submit a proposed plan for closure of all impoundments to the Department of Environment and Natural Resources;
- require closure and remediation of certain coal ash ponds as soon as practicable, but no later than August 1, 2019;
- require the Department of Environment and Natural Resources to establish a schedule and process for closure and remediation of all coal ash ponds based upon the department's risk assessment of these sites, baseline requirements set by the general assembly, evaluation of proposed closure plans submitted by impoundment owners, and input from the public and other stakeholders;
- establish minimum statutory requirements for structural fill projects using coal combustion products and require the Department of Environment and Natural Resources to inventory and inspect certain structural fill projects;
- place a moratorium on certain projects using coal combustion products as structural fill until August 1, 2015, and direct the Department of Environment and Natural Resources and the Environmental Management Commission to jointly (1) review the uses of coal combustion products as structural fill and for other beneficial uses and the regulation of these uses to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources, and (2) report to the Environmental Review Commission no later than January 15, 2015, on their findings and recommendations regarding the use of coal combustion products as structural fill and for other beneficial uses;
- place a moratorium on the expansion and construction of coal ash landfills until August 1, 2015, and direct the Department of Environment and Natural Resources to assess the risks to public health, safety, and welfare, the environment, and natural resources of coal ash ponds located beneath these landfills to determine the advisability of continued operation of these landfills;
- strengthen the reporting and notification requirements applicable to discharges of wastewater to waters of the state;
- require certain emergency calls to be recorded;
- require development of emergency action plans for high and intermediate hazard dams and amend other dam safety law requirements applicable to coal ash ponds;
- transfer solid waste rule-making authority from Commission for Public Health to Environmental Management Commission;
- amend compliance boundary provisions;
- provide for various studies;
- require the State Construction Office and the Department of Transportation to develop technical specifications for use of coal ash products; and
- provide resources for implementation of this Act.

Effective: September 20, 2014. The legislation became law without the Governor's signature, since Governor McCrory did not sign or veto the legislation within the required time frame.

SENATE BILL 734, Regulatory Reform Act of 2014. This legislation was approved in the final days of session and contains several provisions that previously appeared in one of the many Regulatory Reform bills considered during the session. Of course, what is interesting are the provisions that were NOT included and the new provisions that were added at the last minute. We will summarize all the provisions that are included that are relevant. As enacted, the legislation:

- eliminates, as obsolete, the Board of Directors of the North Carolina Center for Nursing;

- clarifies the process for the re-adoption of rules in accordance with the periodic review and exemption of existing rules provision of the Administrative Procedures Act by (1) requiring the Rules Review Commission (RRC) report to the Joint Legislative Administrative Procedure Oversight Committee any agency that fails to conduct the existing rule review, (2) requiring, once the final determination report becomes effective, the RRC to establish a date by which the agency must re-adopt the rules, (3) allowing the agency to amend a rule as part of the re-adoption process, and (4) providing that if a rule is re-adopted without change, the agency is not required to prepare a fiscal note;
- authorizes licensing boards to adopt rules for professional corporations and to establish fees within the limits of the Professional Corporation Act;
- amends the reporting requirements for occupational licensing boards by adding to the current list of information required to be included in the boards' annual report: (1) the total number of licensees supervised by the board; and (2) the number of persons who failed the board's licensure examination. The legislation also requires each board to provide the required annual financial report electronically; directs the required reports currently delivered to the Joint Regulatory Reform Committee to be delivered instead to the Joint Legislative Procedure Oversight Committee, and requires the Joint Legislative Procedure Oversight Committee to notify the boards which fail to file any of the required reports;
- under the Good Samaritan statute, provides that, in order to be immune from liability for damages, a person, including a volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center or a volunteer member of a rescue squad, must *voluntarily and without expectation of compensation* render first aid or emergency health care treatment to a person who is unconscious, ill or injured; and
- provides that in order for a prescription drug to be placed on the maximum allowable cost price list, the drug must be available for purchase by pharmacies in the state from national or regional wholesalers, must not be obsolete and either (1) be listed as "A" or "B" rated in the most recent version of the US Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations or (2) have an "NR" or "NA" rating, or similar rating, by a nationally recognized reference.

Effective: Except as otherwise noted in the legislation, September 18, 2014.

SENATE BILL 761, Credit for Military Training, updates the existing statute dealing with licensure for individuals with military training and experience by occupational licensure boards, by:

- removing the authority of the boards to determine the experience of the applicant when the applicant has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: (i) completed a military program of training, (ii) completed testing or equivalent training experience, and (iii) performed in the occupational specialty (this provision is effective on January 1, 2015);
- requiring that within 30 days following receipt of an application, an occupational licensing board must notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration. The board must also specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination (this provision is effective on January 1, 2015);

- requiring each occupational licensing board to publish a document that lists the specific criteria or requirements for licensure, registration, or certification by the board, with a description of the criteria or requirements that are satisfied by military training or experience, and any necessary documentation needed for obtaining the credit or satisfying the requirement. This information must be published on the occupational licensing board's website as well as the website of the North Carolina Division of Veterans Affairs.
- requiring each occupational licensing board to contact training offices at military installations or any other federal offices that provide information on military occupational specialties and training for the purpose of (i) acquiring information necessary for an adequate understanding of military training and job requirements and (ii) assisting in determining the applicability and correlation of military training and experience to the criteria and requirements for licensure, certification, or registration. No later than September 1, 2014, each occupational licensing board must submit a report to the co-chairs of the Legislative Research Commission Study Committee on Civilian Credit for Military Training and State Adjutant Selection Criteria which details the results of their consultation with military training officials as well as the status of the document summarized in the paragraph;
- requiring the Board of Governors of The University of North Carolina and the State Board of Community Colleges to jointly develop a plan for implementing a uniform system of granting course credits to all students based on the students' military training or experience. The plan must: (i) include a description of the procedure to be utilized in evaluating military training or experience and its correlation to school course credits; (ii) include the process for the transfer of course credits between constituent institutions and community colleges when course credit has been granted based upon military training or experience; and (iii) consider a process for recognizing Associate of Arts or Associate of Science degrees granted by institutions that are participants in the Service members Opportunity Colleges Consortium or the Community College of the Air Force, and must report on the plan to committees of the General Assembly as detailed; and
- requiring the Board of Governors of the University of North Carolina and the State Board of Community Colleges, through the NC Community College System Office, to consult with the NC National Guard Education and Employment Center, the Department of Commerce, the Department of Labor, and other appropriate state and federal agencies to complete five specified tasks including identifying job development programs requiring the same Military Occupation Skills or sharing the same aptitude skills required to complete the program and determine the ability of state community colleges to conduct non-degree programs conducted in other states that have a high employment demand in North Carolina.

Effective: Except as otherwise noted, July 10, 2014.

SENATE BILL 773, Implement GSC Recommendations, implements various recommendations of the General Statutes Commission and the North Carolina Bar Association, including allowing interactive videoconferencing between a treatment facility and a courtroom for inpatient commitment hearings. **Effective: August 6, 2014.**

SENATE BILL 786, Energy Modernization Act, also known as the “fracking bill,” makes a variety of changes to the statutes enacted in the past few years, which collectively open North Carolina to oil and gas exploration and development by hydraulic fracturing. Previous legislation required action by the General Assembly before permits could be issued; however, this legislation allows permits to be issued 61 days after rules the Commission is required to develop

to regulate fracking are adopted and approved by the Rules Review Commission. The legislation moves the deadline for the adoption of those rules back to January 1, 2015, meaning unless the General Assembly takes action during the next session to block the rules, fracking permits could begin being issued early next year.

Legislators opposed to or skeptical of the claims by sponsors that the rules being developed by the Commission provide sufficient protections for our state's groundwater attempted to change the bill in various ways, but were voted down. Concerns expressed by these members and by environmental advocates noted that the proposed rules allow fracking wastewater to be stored in open pits, and treated wastewater to be dumped into lakes and rivers. Sponsors countered that the rules being developed would be the most stringent in the nation in protecting groundwater from fracking activities.

The provisions in the legislation will:

- Create a new Oil and Gas Commission and reconstitute the Energy and Mining Commission to just the Mining Commission to oversee mining resources of the state. The members, powers and duties of the existing Mining and Energy Commission related to oil and gas development will transfer to the Oil and Gas Commission;
- Provide for disclosure of fracking fluid ingredients through the FracFocus website, and require disclosure of fracking fluid formulas deemed "trade secrets" by the Commission to the State Geologist. The State Geologist will provide this information to the Division of Emergency Management and local Fire Chiefs in emergency situations (as defined), and health care providers who determine the information is necessary to provide emergency treatment. Those who make unlawful disclosure of such information are subject to a Class 1 misdemeanor.
- Amend the rebuttable presumption provision enacted in 2012 (which stated that "it shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within 5,000 feet of a wellhead that is part of the oil or gas developer's or operator's activities") by reducing the radius from 5000 feet to a half-mile. Sponsors of the bill defended this change by saying the original intent was for a 5000 ft diameter (2500 ft radius) to be established, and that a half-mile (2640 ft) is still the largest area for such rebuttable presumptions in the nation.
- Require oil or gas developers to pay the "reasonable cost" of testing all water supplies within a half-mile radius of each wellhead 30 days prior to initial drilling activities and at least 5 follow-up tests (increased from 2), at 6, 12, 18 and 24 months after production commenced, and within 30 days of completion of production activities. Surface owners will be required to use an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program to sample wells located on their property, and the developer or operator will pay for the reasonable costs involved in testing of the wells in question. All analytical results from testing must be provided to DENR within 30 days of testing and will constitute a public record. DENR must post any results to their website within 30 days of receipt of the results.
- Require oil or gas developers or operators to provide a minimum \$1 million bond to the state sufficient to cover potential environmental damage.
- Prohibit local ordinances that prohibit oil and gas exploration, development and production, and in cases where such ordinances exist, allow operators to petition the Commission to review the matter. The Commission will in these cases hold a public hearing within 60 days in the affected municipality. Local zoning and land-use

ordinances that do not have the effect of prohibiting oil and gas exploration, development and production will be presumed valid and enforceable.

- Prohibit the disposal of waste, produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose by injection to subsurface or groundwaters of the State by means of wells.
- Exempt from the requirement to receive certification as a certified well contractor the following activities: “construction, repair or abandonment of a well used for the exploration or development of oil or gas.”
- Establish the structure for a severance tax to be imposed on all oil and gas minerals “severed from the soil or water of the state.”
- Require timely notice to surface owners of intended activities by operators.
- Require DENR to issue specific recommendations for legislative action related to compulsory pooling and dormant mineral statutes, and report the findings of its study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before October 1, 2015.
- Direct a number of studies related to oil and gas development to be conducted, including one to determine the desirability and feasibility of siting, constructing, and operating a liquefied natural gas export terminal in North Carolina.

Effective: June 4, 2014.

SENATE BILL 794, Disapprove Industrial Commission Rules. This legislation disapproves certain rules adopted by the North Carolina Industrial Commission for worker's compensation. The legislation includes the following provisions:

- disapproves 04 NCAC 10A .0202 (Hearing Costs or Fees), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014; and 04 NCAC 10A .0702 (Review of Administrative Decisions), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012;
- removes provisions in GS 97-25 (Medical treatment and supplies) that allow a party to file an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. Instead, the bill would allow a party, in claims subject to GS 97-18(b) and (d) to file a motion as specified regarding a request for medical compensation or a dispute involving medical issues. The nonmoving party would have the right to contest the motion, and motions and responses would be submitted contemporaneously via e-mail to the Commission and to the opposing party or the opposing party's attorney;
- requires the North Carolina Industrial Commission to include in its annual report to the Joint Legislative Commission on Governmental Operations the total number of requests for, and disputes involving, medical compensation under G.S. 97-25 in which final disposition was not made within 75 days (currently, 45 days) of the filing of the motion with the Commission;
- directs the Industrial Commission to adopt rules to replace the rules disapproved by the act, in accordance with specified directions in the legislation; and
- requires the Industrial Commission to adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules, which would be subject to review by the Rules Review Commission. The Industrial Commission must consult with the Office of Administrative Hearings to ensure that the adopted rules are submitted to the RRC in time to be eligible for legislative disapproval in the 2015 Regular Session of the 2015 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 will remain in

effect with regard to the disapproved rules until rules adopted to replace the disapproved rules become effective.

Effective: July 22, 2014.

SENATE BILL 797, 911 Board/Back-up PSAP, amends the duties of the 911 Board to include ensuring that individual PSAPs (Public Safety Answering Points) have a plan and means for taking 911 calls in the event 911 calls cannot be received and processed in the primary PSAP. A back-up PSAP must have the capability to operate as part of the 911 System and all other features of its associated primary PSAP. The legislation also authorizes the Board to reduce, suspend, or terminate distributions to a PSAP if it does not comply with all requirements.

Effective: July 22, 2014.

SENATE BILL 884, 2014 Appointments Bill, appoints persons to various boards and commissions based upon the recommendations of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Generally, many of these boards and commissions also have appointees from the Governor's office. **Effective: August 15, 2014.**

PRESIDENT PRO TEMPORE'S APPOINTMENTS

- Roger B. Moore of Wake County is appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for a term expiring on June 30, 2017.

SPEAKER'S APPOINTMENTS

- Dr. Thomas A. Brant of Mecklenburg County is appointed to the North Carolina Emergency Medical Services Advisory Council for a term effective January 1, 2015, and expiring on December 31, 2019.
- Joe M. Cabaleiro R.Ph. of Wake County, Michael A. Tramber of Forsyth County, and Cathy Swanson of Caldwell County are appointed to the License to Give Trust Fund Commission for terms effective January 1, 2015, and expiring on December 31, 2016.
- Justin K. Brackett of Cleveland County is appointed to the Commission for Mental Health, Development Disabilities, and Substance Abuse Services for a term expiring on June 30, 2017.
- Deputy Chief Dinah L. Jeffries of Alamance County and Sheriff Len D. Hagaman, Jr., of Watauga County are appointed to the 911 Board for terms effective January 1, 2015, and expiring on December 31, 2018, and Eric S. Cramer of Forsyth County is appointed to the 911 Board for a term expiring on December 31, 2016, to fill the unexpired term of Jean Thaxton.

BUDGET

The headline of this year's budget was the inclusion of a substantial pay increase for teachers, which was the first raise authorized in 5 years, and which the leadership and Governor have called the largest teacher pay raise in our state's history. While this is technically true in total dollars, critics have noted that previous raises have been larger both as a percentage, and in total dollars when adjusted for inflation. The amount of the raise – 7% on average, according to sponsors – has also been a matter of contention. While the average teacher will receive a 7% raise, the rolling in of longevity pay for teachers with more than 10 years of experience lowers

the total raise to 5.5% on average. Also, while the “average” increase has been frequently quoted, the vast majority of teachers will not receive that amount - 5th and 6th year teachers will receive close to a 20% increase, for example, while many veteran teachers would see raises of less than 0.5%. Regardless of these details, many of those who voted for the budget have already made teacher pay raises the center of their fall campaign platforms, perhaps trusting that their constituents will reward them for providing such a substantial increase for educators, and will be less concerned with its place in history.

As we reported at the time, the House and Senate differed greatly on how to pay for the teacher pay raise. The Senate’s proposal included a controversial proposal to cut Teaching Assistants in grades 2 and 3. The House preferred to keep all Teacher Assistants in the classrooms and favored an increased use of lottery funding to help pay for the raises. In the end the budget does rely on roughly \$150 million in additional lottery funding to fund teacher and TA salaries, which is an issue that evoked strong reactions by anti-lottery legislators and will likely continue to be a issue of contention going forward. While the budget writers announced that the final version saved Teachers Assistants from elimination, the budget does cut the total TA funding by \$100 million this year and \$130 million going forward. Districts can shift funds allocated for teacher positions to pay for TAs; however, after the budget was passed, an issue was identified with the wording of the transfer provision, but the legislature failed to pass a correction before adjourning, meaning some districts will either need to contribute more funding to cover the gap or be forced to eliminate TA positions. Legislative leaders, pressed on the issue, said the Governor likely has the authority to make the fix himself.

Because North Carolina must pass a balanced budget each year, the funding for teacher raises required cuts in other areas of the budget (the idea of raising taxes was a nonstarter, with the majority committed to further tax cuts next session and beyond). While most of the necessary reductions were made in other areas of the budget, there were some cuts to education line items, including a 10% reduction in operational funding for the Department of Public instruction, a 3% cut to local central office administration and an elimination of the Teaching Fellows program.

The education portion of the budget included a little-discussed but potentially significant provision, which eliminate the automatic funding increase for schools based on Average Daily Membership (ADM), which has been in place since 1933. Budget writers told the media that the change was made because in recent years enrollment growth was less than expected, and the resulting reduction in district budgets appears to be a funding cut. For example, this year the projected number of students was over by 6,286, resulting in an ADM adjustment of \$37.5 million statewide. What eliminating the automatic funding increase means for local districts is they will not longer receive the planning documents that have gone out each March, with the projected funding numbers used for planning, hiring, etc. Theoretically, the budget numbers will be available by July 1 of each year; however, in years the state budget is not passed by that date, some districts will start the school year without a solid budget number to work from (for example, this year’s budget was signed by the Governor on August 7th). In addition, since the full funding of enrollment growth will now be optional, it will become another item subject to reductions as future budget battles unfold.

Education

Epi Pens. The budget includes a requirement that local boards of education provide for a supply of emergency epinephrine auto-injectors on school property for use by trained school personnel to provide emergency medical aid to persons suffering from an anaphylactic reaction during the

school day and at school-sponsored events on school property (not including transportation). Each school must store in a secure but unlocked and easily accessible location a minimum of two epinephrine auto-injectors. The provision details training requirements for school personnel and clarifies that local boards of education, its members, employees, designees, agents, or volunteers, and physicians, physician assistants, or nurse practitioners of the local health department are not liable for civil damages for any act or omission related to the provision “unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing.” Similar provisions are also included for charter and regional schools.

Health and Human Services

NC TRACKS. The budget provides funding for continued development of the NC TRACKS system by using prior year earned revenue of over \$5.2 million. The total budget for this year for development costs is \$10.7 million and for ongoing operations and maintenance is an additional \$10.7 million.

NC FAST. The budget provides funding to support the continued development and implementation of the Eligibility Information System for Child Care, Low Income Energy Assistance and Crisis Intervention Programs, and Federally-Facilitated Exchange Interoperability. The funding of over \$4.1 million for this year will be provided from prior-year earned revenue. These projects are funded with 90% federal funds until December 31, 2015. The total budget for this fiscal year is \$55.6 million.

Competitive Block Grant Transfer. The budget transfers over \$225,000 from the competitive block grant funds for traumatic brain injury to the Division of Mental Health, Developmental Disability Services and Substance Abuse Services. The budget reduces the competitive block grant General Fund appropriation by 4.5% to over \$9.1 million recurring.

St. Gerard House. The budget provides \$175,000 to the St. Gerard House to assist individuals with autism spectrum disorders, learning disabilities, developmental delays, and behavioral health needs. Next year, this organization will be required to apply for funding through the competitive block grant process.

Health Information Exchange. The budget provides \$2 million for State matching funds to support the Health Information Exchange.

Supplemental Short-Term Assistance for Group Homes. The budget provides a maximum of \$2 million for funding for one year for group home residents who were determined to be ineligible for Medicaid personal care services on or after January 1, 2013. The maximum monthly payment is set at \$464.30 and is based on providing 33 hours of service per eligible recipient. Group homes may only use these funds to provide supervision and medication management to residents who meet the required eligibility criteria. This funding will expire when funds are expended, or June 30, 2015.

State Funding for County Medicaid Administration Eliminated. The budget eliminates funding of almost \$1.7 million provided to local departments of social services to offset counties' cost for Medicaid enrollment. The federal match rate is increasing from 50% to 75% for eligibility determination for Medicaid, and counties will receive additional federal funds.

Child Protective Services Statewide Evaluation. The budget provides \$700,000 to the Division of Social Services for an independent, statewide evaluation of Child Protective Services at local departments of social service and the Department of Health and Human Services. The evaluation will assess performance, caseload sizes, administrative structure, adequacy of funding, worker turnover, and monitoring and oversight of county departments of social services, and will include recommendations on improving Child Protective Services. The Division will report the findings and recommendations from the evaluation to the Joint Legislative Oversight Committee on Health and Human Services by March 1, 2016.

Child Protective Services Pilot Program. The budget provides \$300,000 to the Division of Social Services to develop and implement a pilot program designed to enhance coordination of services and information among agencies to improve the protection and outcomes for vulnerable children served through Child Welfare Services. The agencies in the pilot include local county departments of social services, local law enforcement, the court system, Guardian Ad Litem programs, and other appropriate agencies. The Division will begin the pilot program by December 1, 2014, and report its final findings and recommendations to the Joint Legislative Oversight Committee on Health and Human Services by March 1, 2016.

AIDS Drug Assistance Program. The budget reduces funding for the AIDS Drug Assistance Program (ADAP) by almost \$5.8 million due to increased pharmaceutical rebates and federal receipts. \$68.8 million remains in the ADAP budget to provide services this year to all eligible persons, with no waiting lists anticipated.

Incubation Project. The budget eliminates funding of \$100,000 for the North Carolina Public Health Incubator Collaborative. Funds were used to support a contract with the UNC Institute of Public Health. Regional health departments will continue to develop and disseminate best practices.

Office of Chief Medical Examiner. The budget provides an additional \$1 million to the Office of the Chief Medical Examiner to address operational issues in the statewide medical examiner system. The budget also directs the Program Evaluation Division to study ways to improve North Carolina's medical examiner system. The study will include (i) an evaluation of the Office of the Chief Medical Examiner within the Epidemiology Section of the Department of Health and Human Services, Division of Public Health, and that Office's policies and procedures with respect to death investigations, and (ii) recommendations for best practices in death investigations to achieve greater efficiencies. In addition, the budget authorizes the Chief Medical Examiner to appoint one or more county medical examiners for each county for a three-year term. The Chief Medical Officer must give preference to physicians licensed to practice medicine in this State, but may also appoint licensed physician assistants, nurse practitioners, nurses, coroners, or emergency medical technician paramedics.

LME/MCOs. The budget reduces funding by \$1.8 million or 5.6% for Local Management Entity/Managed Care Organization (LME/MCO) administrative cost allocations. Administrative cost savings will be achieved by merging the nine LME/MCOs operating in FY 2013-14 to seven or fewer by June 30, 2015. Approximately \$30 million remains in the FY 2014-15 budget for LME/MCO administration. The budget also eliminates funds of \$6.1 million held in reserve for LME/MCO risk management.

Brain Injury Association of North Carolina. The budget continues funding of \$225,000 for the Brain Injury Association of North Carolina, which provides information, referral, and training services for persons with traumatic brain injury, their families, and health care professionals.

Community-Based Crisis Services. The budget provides \$2.2 million each year to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to increase community-based crisis stabilization services. These services provide alternatives to the use of local hospital emergency departments or inpatient services in State-operated facilities, and include psychiatric outpatient clinics, 24-hour crisis walk-in clinics, psychiatric urgent care units, facility-based crisis treatment, 23-hour observation, and non-hospital detoxification.

Provider Rate and Hospital DRG Weight Mix Reduction. **The budget reduces provider rates by 1%, effective January 1, 2015.** This reduction applies to all fee-for-service payments for services rendered to Medicaid and NC Health Choice recipients on or after January 1, 2015. Exceptions are provided for hospital inpatient services, drugs and dispensing fees, nursing homes, non-PCS home care services, private duty nursing, all cost based providers, services where rates or rate methodologies are set by the federal government, negotiated through a contract, hospice, CAP services, federally qualified health centers, and rural health centers. The budget also reduces Hospital diagnosis-related group (DRG) case weighting factors for all DRGs for inpatient services payments rendered to Medicaid and NC Health Choice recipients by 2.1% effective January 1, 2015. This reduction will be uniformly applied to the case weighting factor assigned to each DRG.

Hospital Outpatient Cost. The budget reduces funding to the Division of Medical Assistance by almost \$10 million by reducing the settlement for the UNC Hospitals (UNC-CH) and Vidant formally known as Pitt Memorial Hospital (ECU) for outpatient services to 70% of Medicaid costs effective July 1, 2014. The State has funded the State share of payment to UNC-CH and ECU at 100% of costs, unlike other hospitals which are paid 70% of cost through the claims and settlement processes. The reduction in the settlement percentage will be factored into supplemental payments under the Disproportionate Share Hospital (DSH) and hospital GAP payment plans, as appropriate. This represents a 2.1% reduction in overall hospital outpatient Medicaid spending, leaving an estimated \$821 million in the budget for outpatient services for all hospitals in FY 2014-15.

State Retention of the Hospital GAP Plan Assessment. The budget increases the State retention on assessments through the hospital GAP plan from 25.9% to 28.85% effective July 1, 2014 for a reduction of \$15.1 million. The increased retention percentage will apply to the total amount assessed under the GAP plan. The residual amount of assessment will be used to make supplemental equity and upper payment limit payments. The GAP plan for the year ending September 30, 2014, provides for payments from hospitals totaling \$366 million and supplemental payments for outpatient equity and inpatient upper payment limit of \$787 million. This change will increase the amount of payments from the hospitals, but will not change the supplemental payments the hospitals receive.

Single Base Rate for All Hospitals. The budget establishes a single base diagnosis related group (DRG) rate of \$2,788 for inpatient hospital services or the statewide median base rate at June 30, 2014, whichever is less, for all hospitals effective January 1, 2015, for a reduction of \$10.8 million. However, this does not apply to UNC Hospitals or Vidant Medical Center (fka Pitt County Memorial Hospital), and their base rates will not be included in the calculation of the statewide median rate. This reduces payments for hospital services by \$35.5 million and

increases the GAP plan retention by \$9.2 million on an annual basis. In FY 2013-14 total spending for inpatient hospital services is projected to be \$938 million. This represents a 1.8% reduction in spending for inpatient hospital services, leaving an estimated \$992 million in the FY 2014-15 budget.

Medicaid Funds FY 13-14. The budget provides \$136.5 million for this year only to address a projected FY 2013-14 Medicaid budget shortfall of \$72.3 million and liability associated with unpaid claims and enrollment backlogs that will be paid this year. (The final numbers could not be determined as a result of the problems with NC Tracks.)

Personal Care Services Study. The budget provides \$300,000 to the Legislative Services Commission for a study to define a new limited Personal Care Services optional services program.

Health Choice. The budget reduces funding by \$14.5 million for the NC Health Choice program. The budget also reduces the Health Choice administrative budget by \$1.25 million to reflect actual expenditures and anticipated costs this year.

Single Information Technology System for Medicaid Claims by LMEs/MCOs. The budget directs the Department of Health and Human Services to develop and submit a plan to implement a single, stand-alone information technology system to be used for Medicaid claim adjudication by all local management entities, including LMEs approved to operate the 1915(b)/(c) Medicaid Waiver.

Traumatic Brain Injury Funding. The budget requires \$2.4 million of the funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2014-2015 fiscal year, to be used exclusively to support traumatic brain injury (TBI) specified services.

Report on Strategies for Improving Mental Health, Developmental Disabilities, and Substance Abuse Services. The budget directs the Department of Health and Human Services to report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division by November 1, 2014, on strategies for improving mental health, developmental disabilities, and substance abuse services. This would include a plan developed in collaboration with local management entities that have been approved to operate as managed care organizations (LME/MCOs) to increase access to, and availability of, community-based outpatient crisis and emergency services for the stabilization and treatment of individuals experiencing mental health, developmental disability, or substance abuse crises in settings other than local hospital emergency departments and State-operated psychiatric hospitals.

Study Expansion of Health Care Cost Reduction and Transparency Act. The budget directs the Department of Health and Human Services to study and report by December 1, 2014, to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on its recommendations for extending North Carolina's Health Care Cost Reduction and Transparency Act of 2013 (this legislation required Hospitals to list cost information) to additional health care providers.

Medicaid Reform. The budget declares that "it is the intent of the General Assembly to continue to work toward the details of Medicaid reform during a special session in November 2014. Until the General Assembly enacts legislation authorizing a plan to reform Medicaid, the Department

of Health and Human Services (i) shall continue to consult with stakeholder groups, study, and recommend options for Medicaid reform that will provide greater budget predictability for the Medicaid program and (ii) shall not commit the State to any particular course on Medicaid reform and shall not submit any reform-related State plan amendments, waivers, or grant applications nor enter into any contracts related to implementing Medicaid reform.” After the budget was approved the General Assembly changed course and decided NOT to have the special November session regarding Medicaid Reform.

Traumatic Brain Injury Waiver. The budget directs the Department of Health and Human Services, Division of Medical Assistance, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in conjunction with the North Carolina Traumatic Brain Injury Advisory Council, to design and draft a 1915(c) waiver to add a new service package for Medicaid eligibles with traumatic brain injury (TBI). DHHS will report the draft waiver, other findings, and any additional options to provide Medicaid services to those suffering from TBI by February 1, 2015, and may submit drafts of the waiver to the Centers for Medicare and Medicaid Services (CMS) to solicit feedback. However, DHHS may not submit the waiver for CMS approval until authorized by the General Assembly.

Supplemental Payments to Eligible Medical Professional Providers. The budget modifies the supplemental payments that increase reimbursement to the average commercial rate for certain eligible medical providers described in the Medicaid State Plan, effective July 1, 2014, as follows:

- The number of eligible medical professional providers is limited as follows:
 - 418 with the East Carolina University (ECU) Brody School of Medicine.
 - 1,176 with the UNC at Chapel Hill Faculty Physicians.
 - 14 with the UNC Hospitals Pediatric Clinic.
 - 75 with UNC Physicians Network.
 - 18 with Chatham Hospital.
- Supplemental payments may not be made for services provided in Wake County.

The Department of Health and Human Services may not make any other modifications to the portion of the Medicaid State Plan referenced in this section, except as otherwise provided. Beginning on December 31, 2014, and each year thereafter, UNC and ECU must submit an annual report based on their preceding fiscal year to the Joint Legislative Oversight Committee on Health and Human Services containing all of the following information for each individual provider for whom this supplemental payment is received:

- For each service provided by the provider and for which the supplemental payment is received, the location where the service was provided, including county, municipality, and zip code.
- The percentage of the provider's total time spent serving Medicaid recipients annually that is for services provided at locations other than the ECU Brody School of Medicine, the Firetower Medical Office, or the UNC School of Medicine.
- The amount of Medicaid reimbursement for each service for which a supplemental payment was made for services provided by the provider.
- On an annual basis, the percentage of the provider's time spent engaging in the following: clinical patient care; teaching; research; and other activities.
-

Repeal Shared Savings Program/Maintain Certain Rate Reductions. The budget repeals the provision in the budget passed last year that created a shared savings plan with providers. The budget requires DHHS to reduce (instead of withhold) three percent (3%) of payments for the following services rendered to Medicaid and NC Health Choice

recipients on or after January 1, 2014: (1) inpatient hospital; (2) physician, excluding primary care until January 1, 2015; (3) dental; (4) optical services and supplies; (5) podiatry; (6) chiropractors; (7) hearing aids; (8) personal care services; (9) adult care homes; and (10) dispensing drugs. The Department did not deduct this amount beginning on January 1, 2014, and as of the date of this report, we understand that DHHS does not have a plan in place for how they will recover these funds retroactively from physicians. There has also been a request to CMS to disallow any retroactive collection and only allow payments from July 1, 2014 forward. We do not have a clear answer yet on how this matter will be resolved.

Publish Medicaid Payments to Providers. The budget directs DHHS, Division of Medical Assistance, for payments made in fiscal year 2013-2014 and for subsequent years, to publish on its website comprehensive information on Medicaid payments made to providers. The information published will include all of the following for each individual providing Medicaid services:

- Name of the individual providing the service.
- Location of service provider's principal place of business.
- Location of provided services, listed with both municipality and county.
- Practice name, hospital name, or other business name with which the individual providing service is affiliated.
- Type of service provider and practice area.
- Number of Medicaid patients seen.
- Number of visits with Medicaid patients.
- Number of procedures performed or items furnished for Medicaid patients.
- Amount of Medicaid service payments received.
- Amount of Medicaid supplemental payments received.
- Amount of Medicaid settlement payments received.
- Amount of Medicaid recoupments.

The information must be published in a format that may easily be imported into software used for spreadsheets, databases, and data analytics, and DHHS must ensure that no protected patient information is published. In addition, the budget directs the Division of Medical Assistance to begin discussions with the UNC School of Public Health or other appropriate educational or nonprofit party to perform analytics on the information or to generate an interactive website to access the information required to be reported. The website should be designed to exceed the functionality of South Carolina's HealthViz Medicaid statistics website.

Repeal Planned CCNC Payment of PMPMS. The budget repeals the per member per month (PMPM) payments or other payments to providers participating in Community Care of North Carolina (CCNC) programs, and states that it is the General Assembly's intent that this be considered as a part of any Medicaid reform plan for the State.

Primary Care Case Management for Dual Eligibles. The budget directs the Department of Health and Human Services, Division of Medical Assistance, to draft one or more waivers that would expand specified primary care case management.

Option to Cancel Contracts. The budget requires the Department of Health and Human Services and the Division of Medical Assistance to ensure that any Medicaid-related or NC Health Choice-related State contract entered into contains a clause that allows the Department or the Division to terminate the contract without cause upon 30 days' notice for this fiscal year. Any contract subject to this section that is entered into on or after the effective date of this section but

that lacks such a termination clause will be deemed to include such a termination clause and shall be cancellable without cause upon 30 days' notice.

Ambulance Transports to Crisis Centers. The budget directs the Division of Medical Assistance to study the practice of reimbursing for ambulance transports that divert individuals in mental health crisis from hospital emergency departments to alternative appropriate locations for care. The Department will study existing pilot programs in North Carolina and other states, and will specifically study expansion of the Wake County Emergency Medical Services (EMS) Advanced Practice Paramedics pilot program. The study will: (1) propose necessary Medicaid and mental health policy changes; (2) identify funding needs and available funding sources; and (3) identify any other actions that would be necessary to facilitate implementation. The Department will report its findings and recommendations to the House and Senate Appropriations Committees on Health and Human Services by March 1, 2015.

Medicaid Contingency Reserve. The budget establishes a Medicaid Contingency Reserve and directs the State Controller to reserve \$186.4 million in available General Funds each year to the Reserve. Funds in the Reserve may be used only for budget shortfalls in the Medicaid program that occur during the 2014-15 fiscal year, and may only be spent by an act of the General Assembly.

Control of Data Disclosure to the NC HIE by Required Participants. The budget requires the NC HIE(Health Information Exchange) to give the Department of Health and Human Services real-time access to data and information disclosed through the HIE Network. At the request of the Director of the Fiscal Research, Bill Drafting, Research, or Program Evaluation Divisions of the General Assembly, the NC HIE will provide their staff with data and information responsive to the request, and must redact any personal identifying information in a manner consistent with HIPAA Privacy Rules prior to providing the information. Any data disclosed and any data or product derived from the data disclosed to the HIE Network will remain the sole property of the State. The NC HIE will not allow proprietary information it receives to be used by any person or entity for commercial purposes.

Traumatic Brain Injury Subcommittee. The budget establishes a Joint Legislative Oversight Committee on Health and Human Services Traumatic Brain Injury (TBI) Subcommittee to examine specified issues and report its findings and recommendations to the Joint Legislative Oversight Committee on Health and Human Services by December 14, 2014.

Crisis Solutions Initiative. The budget provides \$750,000 from the Mental Health Services Block Grant for a crisis solutions initiative critical time intervention. The budget also provides \$420,000 for walk-in crisis centers and \$60,000 for community paramedic mobile crisis management from the Substance Abuse Prevention and Treatment Block Grant.

Natural and Economic Resources

Film and Entertainment Grant Fund. The budget provides \$10 million to the Department of Commerce for a Film and Entertainment Grant Fund, which will be used to encourage the production of motion pictures, television shows, and commercials and to develop the film-making industry within the State. This Grant Fund is in place of the previous tax credit which was over \$60 million in the last fiscal year.

Justice and Public Safety

Adult and Juvenile Inmate Medical Costs. The budget requires the Department of Public Safety (DPS) to reimburse providers and facilities providing approved inmate medical services outside the correctional *or juvenile* facility the lesser amount of either a rate of 70% of the provider's then-current prevailing charge or two times the then-current Medicaid rate for any given service. In addition, the budget requires the Department of Public Safety to consult with the Division of Medical Assistance to develop protocols for prisoners and juveniles committed to DPS who would be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody, under extended limits of confinement, or committed to the Department.

Director of the State Bureau of Investigation. The budget provides for appointment of the director of the State Bureau of Investigation by the Governor for a term of 8 years subject to confirmation by the General Assembly by joint resolution. If the Governor fails to submit a name as required, the President Pro Tempore of the Senate and the Speaker of the House of Representatives will jointly submit a name of an appointee to the General Assembly, and the appointment will then be made by enactment of a bill.

Study Merger of State Crime Lab and Office of the State Medical Examiner. The budget directs the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight Committee on Health and Human Services to study merging the North Carolina State Crime Laboratory and the Office of the State Medical Examiner into a single independent State agency and report their findings and recommendations to the 2015 General Assembly. The study must: (1) examine whether the quality or quantity of services provided by each agency would improve if the two agencies were merged into a single independent State agency; (2) analyze potential cost-savings; and (3) identify potential obstacles to the merger.

Three-Judge Panel. The budget provides for a three-judge panel based in Wake County to rule on claims that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. The budget also provides that appeal lies of right directly to the State Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law.

Transportation

Medical Review Unit. The budget provides \$350,000 to the Division of Motor Vehicles to increase funding for contractual physician case reviews and Medical Review Board hearings.

Driver License Examiner Facilitators. The budget provides \$822,000 for 14 driver license examiners to reduce customer wait times at high volume Division of Motor Vehicles offices.

Remote Drivers License Renewal. The budget authorizes the Division of Motor Vehicles to offer remote drivers license renewal by mail, telephone, electronic device, or other approved secure means of a drivers license to a license holder who meets specified requirements. These requirements include that the person's license is valid and unexpired and has no restrictions, other than corrective lenses.

Regulation of Unmanned Aircraft Systems. The budget provides for the regulation of unmanned aircraft systems (drones), and includes provisions regarding crimes committed using unmanned aircraft systems, interference with manned aircraft by unmanned aircraft systems, unlawful possession and use of unmanned aircraft systems, training required for operation of unmanned aircraft systems, and a license requirement for the commercial operation of unmanned aircraft systems.. We have reported on these provisions in previous summaries of House Bill 1099, Unmanned Aircraft Regulation.

- Colleen Kochanek
NCCEP Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

ⁱ THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANЕК LAW GROUP AND IS A MEMBER BENEFIT OF NCCEP. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO NCCEP AND ITS MEMBERS.
