



INTRODUCTION

It's been a busy time at the General Assembly as hundreds of bills were rushed to be filed to meet the Senate's bill filing deadline on April 2nd. The House will have a few more weeks to prepare for their bill filing deadline on Tuesday, April 16th (bills not related to the budget). Once both chambers' deadlines have passed, legislators will turn their attention to meeting the May 9th crossover date, by which time bills must be passed by the chamber in which it was introduced in order to remain eligible for the remainder of the 2-year session, unless the bill has a fiscal impact on the State.

NC GOP Chairman Indicted

North Carolina Republican Party Chairman Robin Hayes was indicted by a federal grand jury on conspiracy and bribery charges, for allegedly attempting to influence NC Insurance Commissioner Mike Causey. The indictment accuses the former congressman of funneling bribe money to Causey's re-election campaign and of making false statements to the FBI.

On Monday, Hayes announced that he would not be seeking another term as NC GOP chairman due to health concerns. His indictment was brought on through an investigation into a major political donor, Greg Lindberg. Lindberg has given millions of dollars to Republican groups, and has given significantly to Democrats as well.

Legislative Spring Break

The House has voted to take a break from session from April 18th - 24th. This was a change from the original proposed break of April 22-26, which the Senate is still expected to take. If the two chambers take different spring breaks it would require that much of the building staff, lobbyists and staff cover the days only one chamber is in session, limiting their break to two days. While we can hope the two chambers decide to align their schedules, those who have experienced a few legislative sessions have learned not to expect it to be so just because it is logical and efficient. Regardless of what overlap (if any) the chambers choose, we will continue to be on hand for each session, even if it's just one chamber.



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
Ashley Matlock Perkinson
Rachel E. Beaulieu
P.O. Box 1038
Wake Forest, NC 27588
919.747.9988

colleen@kochaneklawgroup.com
ashley@perkinsonlawfirm.com
rachel@beaulieuedlaw.com
www.kochaneklawgroup.com

BILLS OF INTEREST

HOUSE BILL 446, Civil Pro./Punitive Damages/Change of Venue, would require an action in which punitive damages are requested to be tried in the county where the party from whom punitive damages are sought resides or has its principal office. However, the action would be tried in the county where the cause of action arose if punitive damages are sought: (1) from more than one party and those parties' residences or principal office or offices are in more than one county; or (2) by both plaintiff and defendant. **Introduced by Representatives Zachary, Strickland, and Dixon and referred to the House Judiciary Committee.**

HOUSE BILL 450, Reduce Barriers to Improve NC Health & Safety, would:

- define abuse-deterrent opioid analgesic drug products as opioid analgesic drug products approved by the FDA with a labeling claim that indicates the drug is expected to deter abuse;
- allow a health benefit plan that covers these products to impose a prior authorization requirement for the product only if the plan imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim;
- prohibit a health benefit plan covering the abuse-deterrent opioid analgesic drug product from requiring the use of an opioid analgesic drug product without an abuse-deterrence labeling claim before authorizing the use of an abuse-deterrent opioid analgesic drug product;
- create “Administration of Step Therapy Protocols,” which requires criteria used to establish step therapy protocols to be based on clinical practice guidelines that meet five specified requirements;
- require that patients and prescribers have access to a clear and convenient process for requesting a step therapy override determination when coverage for a prescription drug is restricted for use by a health benefit plan or utilization review organization through the use of a step therapy protocol;
- establish the conditions under which a step therapy override determination request must be expeditiously granted and then implemented; and
- specify that nothing in the legislation impacts an insurer's ability to substitute a generic drug for a name brand drug.

Introduced by Representatives Potts, Dobson, Lewis and Sasser and referred to the House Health Committee.

HOUSE BILL 451, Titus’s Law, would

- require consent from the mother before disposing of fetal remains when fetal death results from accidental injury, stillbirth, or miscarriage;
- require consent from the father if the mother is unable to give consent and the father is known and able to be contacted within seven days;
- allow the fetal remains to be disposed of if neither parent is able or available to give consent;
- require, in the case of death from accidental injury, stillbirth or miscarriage, the fetal remains to be released to the mother or father, upon his or request, for burial or cremation; and
- allow the attending physician or the individual in charge of the institution to dispose of the remains if neither the mother nor the father has requested the fetal remains within seven days.

Introduced by Representatives Potts, Zachary, White and Jarvis and referred to the House Health Committee.

HOUSE BILL 454, Allow ERPOs to Save Lives & Prevent Suicides, would allow a family or household member or a law enforcement officer or agency to file a petition for an Extreme Risk Protection Order (ERPO) to temporarily restrict a person's access to firearms in situations where a person poses a significant danger of harming themselves or others by possessing a firearm. The bill would:

- require the petition to include all of the following:
 - an allegation, including supporting facts, that the respondent poses a danger of physical harm to self or others by having in his or her care, custody, possession, ownership, or control a firearm. If the petitioner is seeking an ex parte ERPO, the petition would include an allegation that the respondent poses an imminent danger of physical harm to self or others by having in his or her care, custody, possession, ownership, or control a firearm;
 - an identification, to the best of the petitioner's knowledge, of the number, types, and locations of firearms under the respondent's custody or control;
 - an identification of any existing protection order under State law governing the respondent;
 - an identification of any pending lawsuits, complaints, petitions, or other 36 actions between the petitioner and the respondent;
 - require an ERPO issued to include:
 - a statement of the grounds supporting issuance of the ERPO;
 - the date and time the ERPO was issued and when it expires;
 - whether a mental health evaluation or chemical dependency evaluation of the respondent is required;
 - the address of the court in which any responsive pleading may be filed
 - a description of the requirements for relinquishment and retrieval of any firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, ownership, or control of the respondent;
 - a description of the process for seeking termination of the ERPO;
 - a statement that a violation of the ERPO is punishable as a Class A1 misdemeanor;
 - require the court, upon issuance of an ERPO, including an ex parte ERPO, to order the respondent to surrender to the sheriff all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the respondent;
 - require the court to consider whether a mental health evaluation or chemical dependency evaluation of the respondent is appropriate and may order the respondent to undergo evaluation if appropriate;
 - require the court, upon receipt of a petition for an ex parte ERPO, to hold a hearing in person on the day the petition is filed or the judicial day immediately following the day the petition is filed;
 - allow the court, if it clearly appears to the court from specific facts shown that the respondent poses an imminent danger of causing physical harm to self or others by having in his or her custody a firearm, to issue an ex parte ERPO before a hearing for a full ERPO and without evidence of service of process or notice;
 - include provisions regarding the surrender, retrieval, and disposal of firearms;
 - include provisions regarding the duration and renewal of ERPOs;
 - allow a respondent to request the termination of a full ERPO by filing a motion with the court;
 - require the clerk of court to deliver on the same day that an ERPO is issued, a certified copy of that ERPO to the sheriff of the county in which the ERPO is issued, and the sheriff
-

to provide for prompt entry of the ERPO into the National Crime Information Center registry and to provide for access of such orders to the courts on a 24-hour-a-day basis;

- make it a Class A1 misdemeanor for any person to possess, purchase, or receive, or attempt to possess, purchase, or receive, a firearm, ammunition, or permits to purchase or carry concealed firearms for so long as an effective ERPO is entered against that person;
- make it a Class 2 misdemeanor for any person to knowingly make a false statement when petitioning for an ERPO, and for any person to knowingly make a false statement to law enforcement that an ERPO remains in effect; and
- include petitioners for an ERPO in the Address Confidentiality Program.

Introduced by Representatives Morey, Clark, Harrison, and Martin and referred to the House Judiciary Committee.

HOUSE BILL 456, Permit Req'd/Assault Weapon & Long Gun, would require a permit for the purchase of an assault weapon or long gun. **Introduced by Representatives Clark, Morey, and Harrison and referred to the House Judiciary Committee.**

HOUSE BILL 464, Small Business Health Care Act, would enact a new Article 50A, Association Health Plans to:

- require all association health plans delivered or issued for delivery in the State to be in compliance with GS Chapter 58 (contains insurer requirements including prudent layperson), regardless of the domicile of the sponsoring association receiving the policy;
- define *associated health plan* as a fully insured group health insurance policy sponsored by a sponsoring association and offered or sold to members of the sponsoring association, to provide health benefits;
- define *sponsoring association* as an association comprised of one or more employer members that provides an association health plan to its employer members; if it meets the other requirements, a sponsoring association is treated as an employer of a single group health plan;
- define *employer member* as a sole proprietorship, or an individual or entity employing at least one person, which is a member of a sponsoring association;
- prohibit an insurer from delivering or issuing for delivery an association health plan to a sponsoring association unless the sponsoring association meets specified requirements, including: (1) having at least one substantial business purpose unrelated to the offering and providing of health insurance or other employee benefits to its employer members and their employees; (2) having registered as a multiple employer welfare arrangement (MEWA) with the Insurance Commissioner; and (3) having a commonality of interest shared among the employer members based on either the establishment by employer members in the same trade/industry/business/profession, or by employer members as a statewide association in an area that does not exceed State boundaries;
- include employer membership requirements to obtain coverage under a plan, requiring the employer member to be a member of the sponsoring association and either be domiciled or have a principal headquarters or administrative office in the State, or be licensed by the State agency for the employer member's industry, trade, or profession;
- limit the provision of coverage to eligible employees and individuals paid on an IRS Form 1099, and require employer members to commit to remaining members of the sponsoring association and receiving and paying for benefits under the plan for a period of at least two years;
- include criteria a plan must meet, including that the plan can neither be offered nor advertised to the public generally, and require the plan to provide a level of coverage that is at least 60% of the actuarial value of allowed costs for covered benefits;

- require a sponsoring association to meet certain solvency requirements before it can be delivered or issued for delivery of a plan;
- prohibit a plan or sponsoring association from conditioning eligibility for coverage on any health-status factor, including claims experience, evidence of insurability, and disability;
- allow a plan or sponsoring association to make rating distinctions among its employer members on factors other than health-status factors, if the rating distinction is not directed at individual beneficiaries or based on a health factor specifically identified;
- prohibit plans from imposing limitations based on preexisting conditions;
- prohibit a plan or sponsoring association from requiring any individual, as a condition of initial or continued enrollment in the plan, to pay a premium or contribution greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health-status factor in relation to the individual or to an individual enrolled in the plan as a dependent of the individual;
- clarify that the statute does not restrict the amount an insurer can charge for coverage under a plan, or prevent an insurer from establishing premium discounts or modifying otherwise applicable co-payments or deductibles for an association health plan in return for adherence to programs of health promotion and disease prevention; and
- specify that the Article does not preclude a sponsoring association from engaging a broker or agent licensed to sell insurance in the State for purposes of reviewing and considering any plan.

Introduced by Representatives K. Hall, Grange, Dobson, and B. Turner and referred to the House Insurance Committee.

HOUSE BILL 471, Reduce Admin. Duplication MH/DD/SAS Providers, would:

- require the Secretary of the Department of Health and Human Services to establish a workgroup to examine current administrative requirements for mental health, intellectual/developmental disability, and substance use disorder providers and how best to integrate these requirements with similar requirements for physical health providers in order to avoid duplication and enhance efficiency;
- specify that the workgroup should include representatives from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Division of Health Benefits, the Division of Health Service Regulation, local management entity/managed care organizations, providers, and stakeholders;
- require the study to include a review of at least 14 specified categories of requirements imposed on mental health, intellectual/developmental disability, and substance use disorder providers and physical health providers;
- require the workgroup to identify the federal or State entity that created each requirement examined and provide a recommendation about whether that requirement should remain, be eliminated or redesigned;
- require the workgroup to consider any requirement imposed on mental health, intellectual/developmental disability, and substance use disorder providers that: (1) is not federally mandated; (2) exceeds what is required for physical health; (3) does not add value to the delivery of behavioral health services; or (4) is unable to be incorporated into standard electronic health records or does not align with meaningful use of electronic health records; and
- require the Department of Health and Human Services to report the workgroup's findings by March 31, 2020.

Introduced by Representatives Hardister, White, Dobson and Adcock and referred to the House Health Committee.

HOUSE BILL 474, Death by Distribution, would:

- create the crime of death by distribution of certain controlled substances to apply in instances when (1) the person unlawfully distributed at least one certain controlled substance to the victim, (2) the ingestion of the certain controlled substance or substances caused the user's death, (3) the person's unlawful distribution of the certain controlled substance or substances was a proximate cause of the victim's death, and (4) the person did not act with malice;
- make the crime of death by distribution a Class C felony;
- create the crime of aggravated death by distribution of certain controlled substances if the person meets the elements of distribution of certain controlled substances described above and also has a previous conviction under a number of state drug statutes or a prior conviction in any federal or state court that is substantially similar to listed offense, within seven years of the date of the offense;
- make the crime of aggravated death by distribution a Class B2 felony; and
- define certain controlled substances as any opioids, cocaine, methamphetamine, certain depressants or a mixture of one or more of these substances.

Introduced by Representatives Arp, D. Hall, C. Smith and Faircloth and referred to the House Judiciary Committee.

HOUSE BILL 480, NC Cancer Treatment Fairness, would:

- require health benefit plans that provide coverage for both orally and IV administered anticancer drugs to provide coverage for the oral versions that are no less favorable than those for the IV or injected versions;
- prohibit coverage for orally administered anticancer drugs from being subject to prior authorization, dollar limit, co-payment, coinsurance, deductible provision, or any other out-of-pocket expense that does not apply to intravenously administered or injected anticancer drugs;
- prohibit complying with these regulations by reclassifying drugs or increasing cost-sharing expenses imposed on anticancer drugs; and
- provide that if out-of-pocket expenses are increased for anticancer drugs then the same must also be applied to the majority of comparable medical or pharmaceutical benefits of the policy, contract, or plan.

Introduced by Representatives Zachary, Lewis and Lambeth and referred to the House Health Committee.

HOUSE BILL 491, WF Baptist Health Regional Autopsy Ctr Funds, would appropriate \$2,940,515 in nonrecurring funds for 2019-20 and \$14,566,220 for 2020-21 in nonrecurring funds from the General Fund to the Wake Forest University Baptist Medical Center to be used to help fund the construction of the new Wake Forest Baptist Health Regional Autopsy Center in Winston-Salem. **Introduced by Representatives Lambeth, Conrad, Montgomery and Hardister and referred to the House Health Committee.**

HOUSE BILL 493, Abuse & Neglect Resources, would direct the State Board of Education to adopt a policy to be implemented by local boards of education, charter schools, and regional schools to provide students in grades six through 12 with information on child abuse and neglect, including age-appropriate information on sexual abuse. Information would be provided in a document provided to all students at the beginning of each school year and on a display posted in visible, high-traffic areas throughout each school. The document and display would include, at a minimum, the following information:

- likely warning signs indicating that a child may be a victim of abuse or neglect, including age-appropriate information on sexual abuse;
- the telephone number used for reporting abuse and neglect to the department of social services in the county in which the school is located;
- a statement that information reported will be held in the strictest confidence, to the extent permitted by law; and
- available resources, including the anonymous safety tip line application.

Introduced by Representatives White and Horn and referred to the House Education K-12 Committee.

HOUSE BILL 496, 4-Year Terms for Legislators in 2022, would amend the State Constitution, if approved by voters of the State at the general election in November 2020, to provide for four-year terms for members of the General Assembly beginning with members elected in 2022. **Introduced by Representative Adams and referred to the House Rules Committee.**

HOUSE BILL 498, NC Constitutional Carry Act, would:

- amend the statute that prohibits carrying concealed weapons to provide that the **term weapon does not include a firearm** for purposes of the statute;
- allow any person who is a citizen of the United States and who is at least 18 years old to carry a concealed handgun in this State unless provided otherwise by law (currently, the Sheriffs Department issues concealed carry permits);
- make it unlawful for a person who meets any of the specified criteria to carry a concealed handgun, including a person who is under indictment for a felony, who is an unlawful user of, or addicted to, marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance, or who is or has been adjudicated to be a danger to self or others due to mental illness or lack of mental capacity;
- make a violation a Class 2 misdemeanor for a first offense and a Class H felony for a second or subsequent offense;
- require a person to carry valid identification when carrying a concealed handgun and to disclose to any law enforcement officer that the person is carrying a concealed handgun when approached or addressed by the officer and display the proper identification upon the officer's request;
- make it unlawful to carry a concealed weapon into certain areas, as specified; and
- require the State to continue to make a concealed handgun permit available to any person who applies for and is eligible to receive a concealed handgun permit.

Introduced by Representatives Kidwell, Speciale, and Hanig and referred to the House Judiciary Committee.

HOUSE BILL 500, Eliminate Second Primaries, would eliminate second primaries and instead enact new procedures for instances where candidates receive the same number of votes as follows:

- when more than one person is seeking election to a single office and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the board of elections would determine the nominee by lot; and
- when there are more persons seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the board of elections will, from among those candidates receiving the same number of votes, determine the nominee by lot.

Introduced by Representatives Floyd and Alexander and referred to the House Elections and Ethics Law Committee.

HOUSE BILL 501, Justice/Judge May Continue Term Past Age 72, would allow a justice or judge elected to office prior to the justice or judge's seventy-second birthday to continue in office past the mandatory judicial retirement age of seventy-two until January 1 of the year following the next election for members of the General Assembly. **Introduced by Representatives Morey and John and referred to the House Judiciary Committee.**

HOUSE BILL 508, Firearm Safe Storage Awareness Initiative, would direct the Department of Health and Human Services to launch a two-year statewide firearm safe storage awareness initiative to educate the public about the importance of the safe storage of firearms and to facilitate the distribution of gun locks. The initiative would include the development of a website and toolkit and an outreach process. The bill would provide \$86,500 this year and \$69,200 next year to the Department to cover any costs associated with launching the initiative. **Introduced by Representatives McNeill, White, C. Smith, and Sauls and referred to the House Health Committee.**

HOUSE BILL 510, Reenact Nonpartisan Judicial Elections/Fund, would reenact nonpartisan judicial elections and reestablish public financing for judicial campaigns. **Introduced by Representatives John and Morey and referred to the House Rules Committee.**

HOUSE BILL 512, "We the People" Act/Referendum, is identical to Senate Bill 339, summarized in the March 27, 2019, Legislative Report. **Introduced by Representatives Dahle and Insko and referred to the House Elections and Ethics Law Committee.**

HOUSE BILL 514, Equality for All, would make it unlawful to discriminate against a person because of a person's protected status, defined as a person's race, color, national origin, religion, age, disability, sex, marital status, familial status, sexual orientation, gender identity, military or veteran status, or genetic information. The bill would also enact the Equal Access to Public Accommodations Act to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination because of race, religion, color, national origin, sex, sexual orientation, gender identity, disability, marital status, familial status, military or veteran status, or genetic information; however, it is not to be deemed to constitute discrimination on the basis of sexual orientation or gender identity for a public accommodation to provide separate bathrooms or changing facilities based on gender, but a place of public accommodation would provide access to such facilities based on a person's gender identity. **Introduced by Representatives Harrison, Fisher, Butler, and Alexander and referred to the House Rules Committee.**

HOUSE BILL 515, Full Repeal of HB2, would repeal GS Chapter 143 Article 81A, Preemption of Regulation of Access to Multiple Occupancy Restrooms, and SL 2017-4, Section 3, which prohibits local governments from enacting or amending an ordinance regulating private employment practices or regulating public accommodations. **Introduced by Representatives Meyer, Morey, Beasley, and John and referred to the House Rules Committee.**

SENATE BILL 352, Amend NC Controlled Substances Act, would amend the Controlled Substances Act to:

- define *isomer* as the optical isomer, unless otherwise specified (was any type of isomer, including structural, geometric, or optical isomers, and stereoisomers);
- modify *narcotic drug* to specify that the term includes cocaine and any isomer whether optical or geometric;

- add to the Schedule I opiates Isopropyl-U-47700, U-51754, and U-48800, as specified;
- provide that the fentanyl derivatives included in the Schedule include any compound as previously described unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the US FDA;
- add *designer benzodiazepines* to the systemic depressants included in the Schedule;
- amend Schedule II controlled substances to specify that cocaine includes any isomer chemically equivalent or identical whether optical or geometric;
- amend Schedule III controlled substances to specify that the identified Schedule III substances include any isomer of the substance, whether optical, positional or geometric;
- include desalkylflurazepam and diclazepam to the Schedule IV depressants; and
- include the distinction of optical or geometric isomers of cocaine in the felony offense of trafficking cocaine.

Introduced by Senators McInnis and J. Davis and referred to the Senate Rules Committee.

SENATE BILL 359, *Born-Alive Abortion Survivors Protection Act*, would:

- require any health care provider present at the time a child is born alive resulting from an abortion or attempt to perform an abortion to: (1) exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any child born alive at the same gestational age and (2) ensure that the child born alive is immediately transported and admitted to a hospital;
- define *born alive* to mean the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion;
- require a health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of noncompliance to immediately report to an appropriate State or federal law enforcement agency;
- bar prosecution of the mother of a child born alive under the legislation;
- make violations of the legislation's requirements regarding born alive babies Class D felonies punishable by a fine of up to \$250,000, unless the conduct is covered under some other law providing greater punishment;
- make any person who intentionally performs or attempts to perform an act that kills a child born alive punishable for murder, a Class A felony; and
- provide civil remedies for the woman upon whom the abortion was performed or attempted in which a child is born alive and there is a violation of the legislation.

Introduced by Senators Krawiec, Hise and Harrington and referred to the Senate Rules Committee.

SENATE BILL 361, *Health Care Expansion Act of 2019* (The Senate version that is not really expansion), would:

- **require the Department of Health and Human Services, Division of Health Benefits (Division), to amend the North Carolina Innovations waiver to increase the number of slots by a maximum of 1,000 slots to be made available on January 1, 2020, and an additional 1,000 slots to be made available on January 1, 2021;**
- appropriate \$10,250,000 in recurring funds for 2019-20 and \$30,750,000 in recurring funds for 2020-21 fiscal year from the General Fund to the Division to be used for these additional slots;

- **repeal North Carolina's Certificate of Need laws;**
- enact the Psychology Interjurisdictional Licensure Compact, which seeks to increase public access to professional psychological services by allowing telepsychological practice across state lines and temporary in-person, face-to-face services into a state in which the psychologist is not licensed to practice;
- establish provisions related to administration of the Compact that are effective when at least seven states have enacted the PSYPACT;
- **expand the providers eligible to perform the first commitment examinations for involuntary commitment of individuals with mental illness or substance use disorders required by law to include licensed marriage and family therapist;**
- clarify that certification of a licensed marriage and family therapist under the statute does not authorize the therapist to expand their scope of practice;
- create an exemption from licensure requirements when home care services are provided to participants of the Program for All-Inclusive Care for the Elderly through an organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Divisions of Health Benefits of the Department of Health and Human Services;
- amend the definitions of adult care home, assisted living residence, and multiunit assisted housing with service to include those residences that provide the specified services with a Program for All-Inclusive Care for the Elderly organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits of the Department of Health and Human Services;
- prohibit multiunit assisted housing caring for individuals who require maximum physical assistance as documented by a uniform assessment instrument unless the individual is enrolled in the Program for All-Inclusive Care for the Elderly, or the physician determines otherwise;
- give the resident of an assisted living facility the right to select the Program for All-Inclusive Care for the Elderly as the resident's health care provider without jeopardizing residence in the facility;
- exempt from certification of adult care program regulations a Program for All-Inclusive Care for the Elderly organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits of the Department of Health and Human Services; and
- clarify that, if the annual inspection of an adult care home is conducted separately from the inspection required every two years to determine compliance with physical plant and life-safety requirements, the Division of Health Service Regulation must not cite, as part of the annual inspection, any violation that overlaps with an area addressed by the physical plant and life-safety inspection, unless failure to address the violation poses a risk to resident health or safety.

Introduced by Senators Krawiec, Bishop and Hise and referred to the Senate Rules Committee.

SENATE BILL 368, Physical and Psych. Evals. for LEOs, would direct the North Carolina Criminal Justice Education and Training Standards Commission to establish minimum standards to ensure applicants for criminal justice officers are psychologically and physically suited to fulfill essential job functions. The standards would include, at a minimum, the following: (1) completion of a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina who is trained and experienced specifically in pre-employment psychological evaluations for public safety positions, which would include a written psychological test battery and an in-person interview; and (2) certification of a physical examination by a North Carolina licensed physician, physician's assistant, or nurse practitioner to ensure the applicant

meets the physical standards needed to fulfill the officer's particular responsibilities as stated in the essential job functions. **Introduced by Senator Steinburg and referred to the Senate Rules Committee.**

SENATE BILL 370, Study Generator Req's for Medical Offices, is identical to House Bill 382, summarized in the March 27, 2019, Legislative Report. **Introduced by Senator Lowe and referred to the Senate Rules Committee.**

SENATE BILL 373, Electric Standup Scooters, would:

- define an electric standup scooter as a device with no more than three 12-inch or smaller diameter wheels that has handlebars, is designed to be stood upon by the user while riding, and is powered by an electric motor that is capable of propelling the device with or without human propulsion at a speed no greater than 20 miles per hour on a paved level surface;
- exempt electronic standup scooters from registration and certificate of title requirements;
- provide that conflicting ordinances in effect on or adopted after the effective date of the act are null and void; and
- direct municipalities that have adopted an ordinance or regulation affecting standup electronic scooters to review their ordinances and regulations for compliance with the act.

Introduced by Senators Woodard and Krawiec and referred to the Senate Rules Committee.

SENATE BILL 375, Death by Distribution, is identical to House Bill 474, summarized above in this Legislative Report. **Introduced by Senators Brown and Bishop and referred to the Senate Judiciary Committee.**

SENATE BILL 386, Greater Transparency in Health Care Billing. Despite the title of this bill, it is really a bill to prohibit balanced billing and is being pushed by health insurers to create state mandated prices for all physician services. The insurers argue that such a law is needed to stop “out of network/surprise” billing, but, in reality, the bill would create state government price controls on all physicians’ services that only serve to benefit insurance companies bottom lines.

The North Carolina College of Emergency Physicians opposes this legislation. The bill would:

- set a benchmark amount, to be calculated at least annually, which is presumed to be a reasonable total payment for services provided by a health care provider outside an insurer's health care provider network, or for emergency care services provided;
- **set the benchmark as the lesser of: (1) 100% of the current Medicare payment rate for the same or similar services; (2) 70% of the health care provider's actual charges; or (3) The median contracted rate in the insurer's health care provider network for the same or similar services;**
- prohibit an insurer from subjecting an insured to the out-of-network benefit levels offered under the insured's approved health benefit plan unless contracting health care providers able to meet health needs of the insured are reasonably available to the insured without unreasonable delay;
- require the insurer, upon notice from the insured, to determine whether a health care provider able to meet the needs of the insured is reasonably available to the insured without unreasonable delay by reference to the insured's location and the specific medical needs of the insured;
- require the amount allowed for services outside of provider networks to be calculated using the benchmark amount unless otherwise agreed to by the health care provider and the insurer;

- **establish that the statute does not require an insurer to make any direct payment to a health care provider (this means the insurer does not have to honor a valid assignment of benefits);**
- prohibit health care providers from subjecting an insured to or otherwise requiring prior payment of an amount in excess of the applicable reasonable payment (based on the benchmark) prior to services being rendered to the insured;
- deem noncompliance an unfair and deceptive trade practice and actionable;
- require a health services facility or a health care provider participating in the insurer's health care network to provide the insured with a written disclosure containing five specific components at the time the facility or provider: (1) treats the insured for anything other than screening and stabilization, (2) admits an insured to receive emergency services, (3) schedules a procedure for nonemergency services for an insured, or (4) seeks prior authorization from an insurer for the provisions of nonemergency services to an insured;
- require health services facilities to provide a written disclosure to the insured containing four specified components at the time the facility begins the provision of emergency services to an insured when the facility does not have a contract with the applicable insurer;
- prohibit health services facilities and health care providers from collecting an amount for services in excess of the benchmark, unless the insurer does not have contracted health care providers or health services facilities in its health care provider network that are able to meet the needs of the insured and that are reasonably available to the insured without unreasonable delay;
- **require a health care provider that does not participate in the health care provider network of the insured's insurer to include a statement on any billing notice to an insured that the insured is not responsible for paying any more than the applicable in-network deductible, co-payment, or coinsurance amounts and has no legal obligation to pay any remaining balance in excess of the benchmark amount; and**
- basically, would establish billing and collection practices and what constitutes reasonable payments and total payment.

Introduced by Senators Hise and Krawiec and referred to the Senate Rules Committee.

SENATE BILL 387, Medicaid Work and Engagement Opp, would:

- require the Department of Health and Human Services (DHHS) to develop work and community engagement as a requirement to participation in the Medicaid program in a way that adheres to federal guidance and that is aligned with the work requirements for Able-Bodied Adults Without Dependents policy under the Supplemental Nutrition Assistance Program as much as possible;
- require that all recipients be subject to the work and community engagement condition of participation, but makes exceptions for 21 classes of individuals, including individuals under the age of 19, individuals over the age of 64, and individuals with specified types of disorders;
- require DHHS, on or before October 1, 2019, to submit to the Centers for Medicare and Medicaid Services any State Plan amendments or waivers necessary to implement work and community engagement as a requirement to participation in the North Carolina Medicaid program for non-elderly, non-pregnant adult Medicaid beneficiaries who are eligible for Medicaid on a basis other than disability;
- require that work and community engagement be implemented upon approval of the applicable State Plan amendment or waiver, or July 1, 2020, whichever is later; and
- specify that the act does not authorize DHHS to make any changes to eligibility for the Medicaid program beyond the addition of work and community engagement as a requirement to participation in the Medicaid program.

Introduced by Senators Hise, Bishop, Krawiec and referred to the Senate Rules Committee.

SENATE BILL 398, Felony Forfeiture Changes/Retirement, would prohibit the payment of any retirement benefits or allowances, except for a return of member contributions plus interest, to any justice or judge who was either convicted on impeachment or removed from office for reasons other than physical or mental incapacity. In addition, the bill would enact new provisions regarding Department of the State Treasurer fraud and compliance investigations (this language impacts the current effort of the State Treasurer to make changes to the State Health Plan) to:

- allow the Department of the State Treasurer or authorized representatives to examine and inspect persons, records, property, equipment, and facilities in the course of conducting a compliance investigation or fraud investigation;
- define *compliance investigation* as an independent review or examination by the Department of State Treasurer staff, or authorized representatives who are assisting the Department's staff, of records, activities, actions, or decisions by entities having an impact on the Department or benefits administered by the State Treasurer. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of State funds;
- define *fraud investigation* as an independent review or examination by Department of State Treasurer staff, or authorized representatives who are assisting the Department's staff, of records, activities, actions, or decisions by entities having an impact on the Department. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of State funds;
- provide for the authority and access granted, including the procedure for requesting records and certain restrictions on confidential records;
- require providers of social and medical services to a beneficiary of a program administered by the Department to make copies of the records provided to the beneficiary available to the Department to permit verification of the health or other status of the beneficiary required for the payment of benefits;
- require the Department to maintain a complete file of all compliance investigative reports, fraud, investigative reports and reports of other examinations, investigations, surveys, and reviews issued under the State Treasurer's authority for 10 years;
- include provisions regarding the retention of fraud and compliance investigation work papers and other evidence, and allow inspection by duly authorized representatives of the State or federal government for a matter officially before them;
- provide for confidentiality except upon order of Wake County Superior Court, upon 10 days' notice and hearing, finding access necessary to a proper administration of justice;
- provide that the identity of any person reporting fraud, waste, and abuse is confidential and not a public record.

Introduced by Senators Johnson and Wells and referred to the Senate Rules Committee.

SENATE BILL 405, Establish Duty to Report & Render Assistance, would:

- require a person who witnesses the commission or attempted commission of a crime that is reasonably believed to result in the victim suffering serious physical injury or death to report the attempt or crime to a law enforcement officer or agency as soon as reasonably practicable by telephone or any other means;
- define "serious physical injury" as physical injury that causes great pain and suffering;
- require a person at the scene of a crime or an emergency who knows that another person is exposed to or has suffered serious physical injury to give reasonable assistance to the

- person, which reasonable assistance would include obtaining or attempting to obtain aid from law enforcement or medical personnel by telephone or any other means;
- provide that these requirements do not apply to a person who reasonably believes reporting or rendering aid would place that person or another person in danger of immediate bodily harm;
 - require the identity of a person who reports the commission or attempted commission of a crime to be held in the strictest confidence by the law enforcement agency that receives the report and to only be disclosed by the law enforcement agency pursuant to a court order or without a court order only to a federal, State, or local government entity that demonstrates a need for the identity of the person to carry out the entity's mandated responsibilities;
 - provide that a person who gives reasonable assistance may not be liable in civil damages for any acts or omissions related to the assistance provided, unless the acts or omissions amount to wanton conduct or intentional wrongdoing; and
 - make a violation a Class 2 misdemeanor, including a fine of not less than \$100 or more than \$500, unless the conduct is covered under another provision of law providing greater punishment.

Introduced by Senator McInnis and referred to the Senate Rules Committee.

SENATE BILL 415, Grand Jury if LEO Charged Performing Duties, would require the district attorney, in any matter where the grand jury is to consider a presentment or indictment of a sworn law enforcement officer as a defendant for actions arising out of or in the performance of the officer's duties as a sworn law enforcement officer, to notify the officer by personal service 10 days prior to the grand jury session. The officer would be notified that the officer is entitled to appear before the grand jury and voluntarily testify or present evidence if the officer so desires. If the officer elects to testify, the officer would be called to testify after the State's evidence has been presented to the grand jury. **Introduced by Senators Daniel, Edwards, and Britt and referred to the Senate Judiciary Committee.**

SENATE BILL 418, The I. Beverly Lake, Jr., Fair Trial Act, would require the court to conduct a pretrial hearing to determine whether the reliability of the testimony of an in-custody informant is sufficient to overcome a rebuttable presumption of inadmissibility, unless the defendant waives such hearing. The judge would: (1) require certification from the district attorney vouching for the trustworthiness of the in-custody informant; and (2) determine whether the prosecution has proven by a preponderance of the evidence that the testimony of the in-custody witness is reliable. The bill includes factors the judge must consider and jury instruction regarding in-custody informant testimony. If an in-custody informant receives leniency (plea bargain, reduced or dismissed charges, bail consideration, reduction, or modification of sentence) related to a pending charge, a conviction, or a sentence for a crime against a victim in connection with offering or providing testimony against a suspect or defendant, the prosecutor would have to notify the victim. **Introduced by Senators Daniel, McKissick, and Britt and referred to the Senate Rules Committee.**

SENATE BILL 423, North Carolina Animal Abuser Registry Act, would require the North Carolina Department of Public Safety, beginning January 1, 2020, to post a publicly accessible list on its website of any person convicted of an animal abuse offense on and after that date. The list would include a photograph taken of the convicted animal abuser as part of the booking process, the animal abuser's full legal name, and other identifying data deemed necessary to properly identify the animal abuser and to exclude innocent persons. The list would not include the abuser's Social Security number, drivers license number, or any other State or federal identification number. A person who, after the person's first conviction, is convicted of another animal cruelty

violation would forfeit ownership, charge, or custody of all animals and could not own an animal for up to five years from the date of the conviction. **Introduced by Senators McKissick and Britt and referred to the Senate Rules Committee.**

BILL UPDATES

HOUSE BILL 50, Allow Hyperbaric Oxygen Therapy for TBI/PTSD, was heard in the Committee on Rules, Calendar and Operations of the House and a committee substitute was adopted. The new version would prohibit any person other than an authorized medical professional from prescribing (was, prescribing or providing) hyperbaric oxygen therapy treatment to a veteran for the treatment of traumatic brain injury or posttraumatic stress disorder. **This bill was approved by the House Rules Committee and the full House and will next be considered by the Senate Rules Committee.**

HOUSE BILL 106, Inmate Health Care, was heard in the House Committee on Health and a committee substitute was adopted. The new version would:

- clarify that any contracts and extensions of contracts (was, extension of contracts only) for medical services provided to inmates by contracted providers and facilities include the specified reimbursement rates and that any such contracts entered into on or after July 1, 2019, must follow the specified reimbursement rates;
- remove the provisions from the previous version that required the creation of performance measures for the telemedicine pilot program;
- insert new language requiring the DPS, Health Services Section, to establish a telemedicine pilot program to provide physical health services to inmates in remote correctional facilities, initially in two correctional facilities serving male inmates, one located in the eastern portion of the state and one located in the western portion;
- establish specific entities and reports for collaboration when designing the pilot;
- require the pilot to connect the two pilot sites with the Central Prison Healthcare Complex and its contracted providers' facilities and be operational by October 1, 2019;
- specify specialties and areas of service that are to be included in the pilot;
- establish methods to be used to assess the pilot; and
- require a report to the General Assembly by October 1, 2021, on the assessment criteria and recommendations on whether to expand the pilot to additional sites.

The bill was approved by the House Health Committee and will next be considered by the House Judiciary Committee.

HOUSE BILL 108, PED/Safekeeper Health Care Cost Recov. Pract., was heard in the Committee on Rules, Calendar and Operations of the House and a committee substitute was approved. The new version would:

- require the Department of Public Safety (DPS) to determine the appropriateness of submitting a Medicaid application, and to apply when appropriate, on behalf of county prisoners housed in the State prison system under safekeeping orders who receive health care services outside the prison (previously, did not specify that the county prisoners must receive health care services outside the State prison to have DPS review Medicaid eligibility);
- require health care providers to invoice the Inmate Medical Costs Management Plan through the Sheriffs' Association for services provided to prisoners held under a safekeeping order;
- limit a safekeeping order transferring a prisoner to a unit of the State prison system to 30 days (previously proposed 15 days);

- prohibit the DPS Secretary from refusing to accept a safekeeper because the county failed to pay DPS for services (previously, prohibited the DPS Secretary from accepting a safekeeper from a county that has failed to pay DPS).

The bill was approved by the House Rules Committee and has been referred to the House Finance Committee.

HOUSE BILL 184, Study State Health Plan Design, was heard in the House Committee on Health and a committee substitute was adopted. The new version would add a second member appointed by the State Employees' Association to the Joint Legislative Study Committee on the Sustainability of the North Carolina State Health Plan. That change increases the committee to 17 members instead of 16. The timing of the final report to the General Assembly would also shift from April 1, 2020 to December 15, 2019. **The bill as amended was approved by the House Health Committee, the House Rules Committee, and the full House and will next be considered by the Senate Rules Committee. This legislation is supported by the North Carolina College of Emergency Physicians.**

SENATE BILL 220, Removal of Political Signs by Citizens, was amended on the Senate floor to: (1) provide that any political sign remaining in the right-of-way of the State highway system more than 30 days after the end of the period is deemed unlawfully placed and abandoned property, and allow a person to remove and dispose of such political sign without penalty; and (2) require municipalities adopting an ordinance regulating political sign placement to include the same provisions applicable to signs remaining in the right-of-way of streets located in the corporate limits of and maintained by the municipality. **The bill as amended was approved by the Senate and will next be considered by the House Rules Committee.**

- Colleen Kochanek
NCCEP Legislative Counsel
Kochanek Law Group
919.274.0982
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

Ashley Matlock Perkinson
Perkinson Law Firm
919.210.8209
ashley@perkinsonlawfirm.com

Rachel E. Beaulieu
Rachel E. Beaulieu Law Office, PLLC
919.896.6296
Rachel@BeaulieuEdLaw.com

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.