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## Senior Citizens

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In the face of the continuing state budget crisis, the General Assembly reduced funding for the state's Division of Aging, mandated additional cost-containment measures in the state's Medicaid program, imposed new license fees on long-term care facilities, made few substantive changes with respect to government programs for senior citizens, and increased the retirement benefits of state and local government retirees. The General Assembly also directed nursing homes to take steps to ensure the safe prescribing, dispensing, and administration of medications to elderly and disabled nursing home patients but failed to enact legislation authorizing a comprehensive study of North Carolina's guardianship law.

### **Government Programs for Senior Citizens**

#### **Home and Community Care Block Grant**

S.L. 2003-284 (H 397), the Current Operations and Capital Improvements Appropriations Act of 2003, decreases state funding to the state Division of Aging for the Home and Community Care Block Grant by \$1 million per year.

#### **Medicaid**

Legislation affecting the state's Medicaid program for elderly, disabled, and low-income persons is discussed in Chapter 21, "Social Services."

#### **Senior Cares Prescription Drug Access Program**

Section 10.5 of S.L. 2003-284 authorizes the Department of Health and Human Services to administer the Senior Cares prescription drug access program funded by the Health and Wellness Fund.

## **Senior Centers**

S.L. 2003-284 increases state funding for senior center outreach by \$100,000 (to \$984,000 per year, partially offsetting a \$381,000 per year funding reduction in the previous biennium). Section 10.42 of S.L. 2003-284 requires the Division of Aging to allocate senior center outreach funds by October 1 of each fiscal year. These funds may be used only to pay 75 percent of the reimbursable costs (rather than 90 percent under prior law) of expanding the outreach capacity of senior centers to reach unserved or underserved areas or (with the approval of and financial commitment by the board of county commissioners) to provide start-up funds for new senior centers.

## **State–County Special Assistance**

Legislation affecting the State–County Special Assistance program for adult care home residents is summarized in Chapter 21, “Social Services.”

## **Long-Term Care Facilities**

### **Adult Care Home Licensure**

Before July 4, 2003, G.S. 131D-2(b)(1b) prohibited the issuance of an adult care home license to an applicant who was the owner, principal, or affiliate of an adult care home whose license was revoked during the preceding year. S.L. 2003-294 (S 926) amends this statute to prohibit the issuance of an adult care home license to an applicant who was the owner, principal, or affiliate of any facility whose license under G.S. Chapter 122C, G.S. Chapter 131D, or Article 7 of G.S. Chapter 110 was revoked within the preceding year. S.L. 2003-294 also provides that if an applicant for an adult care home license is the owner, principal, or affiliate of any facility whose license was summarily suspended or downgraded to provisional status as a result of violations of G.S. Chapter 122C or Article 1 of G.S. Chapter 131D, or whose license was summarily suspended or denied under Article 7 of G.S. Chapter 110, the Department of Health and Human Services (DHHS) may not issue an adult care home license until six months from the date the facility’s license was reinstated, restored, or upgraded. S.L. 2003-294 became effective on July 4, 2003.

### **Adult Care Home Model for Community-Based Services**

Section 10.43 of S.L. 2003-284 (H 397) requires DHHS to develop a pilot model project for delivering mental health, developmental disability, and substance abuse services through adult care homes that have excess capacity. DHHS is required to submit a report regarding the project to the General Assembly’s Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by March 1, 2004.

### **Adult Day Care and Adult Day Health Centers**

Section 10.58 of S.L. 2003-284 directs the state Social Services Commission to consider adopting rules to increase the rates for adult day care and adult day health centers but directs that rate increases be implemented using existing funds.

### **Criminal Record Checks of Adult Care Home and Nursing Home Employees**

Section 10.8E of S.L. 2003-284 delays until at least January 1, 2005, the requirements under G.S. 131D-2 and G.S. 131E-265 to conduct national criminal record checks of nursing home employees who do not provide direct patient care and of adult care home employees.

## **Health Care Facility License Fees**

Effective October 1, 2003, S.L. 2003-284 requires the Department of Health and Human Services to charge an annual license fee for licensed adult care homes, nursing homes, home care agencies, and other specified health care facilities. The fee for adult care homes with six or fewer beds is \$125; the fee for adult care homes with more than six beds is \$175 plus \$6.25 per bed. The fee for nursing homes is \$225 plus \$6.25 per bed. The fee for continuing care retirement communities with licensed nursing home or adult care home beds is \$225 plus \$6.25 per bed. The fee for home health care agencies is \$175. These license fee requirements are codified in G.S. 131D-2(b)(1), 131E-102(b), 131E-138(c), and 131E-138.1.

## **Long-Term Care Community Service Coordination**

Section 10.8F of S.L. 2003-284 directs DHHS to implement a communications and coordination initiative to support the local coordination of long-term care and to pilot the establishment of local lead agencies to coordinate long-term care at the county or regional level. DHHS is required to submit an interim report on the pilot project to the North Carolina Study Commission on Aging by October 1, 2004, and a final report by October 1, 2005.

## **Nursing Home Financial Assessment**

Effective October 1, 2003, Section 10.28 of S.L. 2003-284 (H 397) requires DHHS to impose a financial assessment on skilled nursing facilities licensed under G.S. Chapter 131E and to use the funds generated by this assessment to pay 100 percent of the nonfederal share of Medicaid costs related to implementing the new reimbursement plan for nursing homes and increasing nursing facility rates in accordance with the plan. Funds realized from the assessment may not be used to supplant state funds appropriated for nursing facility services.

## **Nursing Home Medication Management**

Effective January 1, 2004, S.L. 2003-393 (S 1016) requires nursing homes to establish medication management advisory committees to assist in identifying medication-related errors, evaluating the causes of those errors, and taking appropriate actions to ensure the safe prescribing, dispensing, and administration of medications to nursing home patients. The duties of these medication management advisory committees, nursing home quality assurance committees, nursing home administrators, and consulting pharmacists with respect to prevention of medication errors are codified in G.S. 131E-128.1 through 131E-128.4. S.L. 2003-393 also enacts a new statute, G.S. 131E-128.5, which requires the Secretary of Health and Human Services to implement, through contract using available grants and federal funds, a medication error quality initiative to review and analyze annual medication-related error reports submitted by nursing homes.

## **State and Local Government Retirees**

### **Benefits for Retired State and Local Government Employees**

Effective July 1, 2003, Section 30.17 of S.L. 2003-284 provides a 1.28 percent cost-of-living increase for retired state government employees who receive retirement benefits under the Teachers' and State Employees' Retirement System (TSERS), the Consolidated Judicial Retirement System, and the Legislative Retirement System. S.L. 2003-284 does not adjust the multiplier (currently 1.82 percent) that is used, along with an employee's years of service and average final compensation, to determine the amount of full retirement benefits for future retirees under TSERS.

Effective July 1, 2003, S.L. 2003-319 (H 1170) increases from 1.82 percent to 1.85 percent the multiplier that is used, along with an employee's years of service and average final compensation, to determine the amount of full retirement benefits under the Local Government Employees' Retirement System (LGERS) for local government employees who retire on or after July 1, 2003. The legislation also increases the retirement benefits of employees who retired on or before June 1, 2003, by 1.5 percent. S.L. 2003-319 provides a 2 percent cost-of-living increase in the LGERS retirement benefits of persons who retired on or before July 1, 2002; an additional 6 percent cost-of-living increase in the LGERS retirement benefits of persons who retired on or before June 1, 1982; and an additional 1.1 percent cost-of-living increase in the LGERS retirement benefits of persons who retired between July 1, 1982, and June 30, 1993.

## **Other Legislation of Interest to Senior Citizens and Their Families**

### **Guardianship**

Effective December 1, 2003, S.L. 2003-236 (H 1123) amends G.S. Chapter 35A to clarify the clerk of superior court's authority to enter a limited guardianship order allowing an adult who has been adjudicated incompetent to retain certain legal rights and privileges when appropriate, based on the nature and extent of the ward's capacity. S.L. 2003-236 also amends G.S. 35A-1107 to

- require the guardian ad litem appointed to represent an allegedly incompetent adult to personally visit the respondent as soon as possible following the guardian ad litem's appointment;
- make every reasonable effort to determine the respondent's wishes regarding the incompetency proceeding and proposed guardianship;
- present to the clerk the respondent's expressed wishes at all relevant stages of the incompetency and guardianship proceeding;
- make recommendations to the clerk concerning the respondent's best interests if those interests differ from the respondent's express wishes; and
- in cases in which limited guardianship may be appropriate, make recommendations to the clerk concerning the rights, powers, and privileges that the respondent should retain under a limited guardianship.

S.L. 2003-236 also provides that the incompetency and guardianship procedures established under G.S. Chapter 35A do not affect a judge's authority to appoint a guardian ad litem for an allegedly incompetent adult pursuant to North Carolina's rules of civil procedure (G.S. 1A-1, Rule 17). This provision effectively negates the Court of Appeals' decision in *Culton v. Culton*, 96 N.C. App. 620, 386 S.E.2d 592 (1989) [*rev'd on other grounds*, 327 N.C. 624, 398 S.E.2d 323 (1990)].

The Senate and House considered, but failed to enact, legislation that would have authorized a study of North Carolina's guardianship law (S 273, H 156, S 34, and H 674).

### **Unemployment Compensation**

S.L. 2003-220 (S 439) amends G.S. 96-14 to provide that an individual is not disqualified from receiving unemployment compensation based on his or her leaving work solely due to an adequate disability or health condition of his or her aged or disabled parent.

### **Tax Credit for Long-Term Care Insurance Premiums**

In 1998 the General Assembly enacted legislation (G.S. 105-151.28) allowing taxpayers to claim a state income tax credit for long-term care insurance premium payments but provided that the credit expires for tax years beginning on or after January 1, 2004. In 2003 the General Assembly considered, but failed to enact, legislation that would have removed the sunset on the tax credit for purchasing long-term care insurance (H 157 and S 346).

## **Advocacy Programs**

Section 18.2 of S.L. 2003-284 requires the Secretary of Administration, in collaboration with appropriate entities that focus on public policy and business management, to study the function of advocacy programs within the Department of Administration (including the Governor's Advocacy Council for Persons with Disabilities and the Division of Veterans Affairs) to determine their appropriate organizational placement within state government and whether the programs might be more efficiently and effectively performed by a nonprofit organization. The secretary's findings and recommendations must be reported to the General Assembly by May 1, 2004.

## **Decedents' Estates and Trusts**

Article 1A of G.S. Chapter 30 allows a surviving spouse to claim an "elective share" of his or her deceased spouse's estate that is equal to one-sixth to one-half of the total net assets of the estate (as defined) minus the value of property passing to the surviving spouse (as defined). S.L. 2003-296 (H 807) clarifies the provisions of this article regarding the amount of death taxes that may be taken as a claim against the decedent's estate in determining the surviving spouse's elective share, the circumstances under which property held in trust for the surviving spouse must be considered in determining the surviving spouse's elective share, and written waiver of a spouse's right to claim an elective share. S.L. 2003-296 is discussed in greater detail in Chapter 5, "Courts and Civil Procedure."

S.L. 2003-255 (S 502) allows a person who has been given written permission by a lessee or cotenant of a safe-deposit box to open and inventory the safe-deposit box pursuant to G.S. 28A-15-13(c) after the lessee's or cotenant's death. The written permission must have been granted in a manner and form designated by the institution that has possession or supervision of the safe deposit box to which the decedent had access.

S.L. 2003-295 (S 881) enacts a new statute (G.S. 28A-21-3.1) allowing the payment of phase II payments under the National Tobacco Grower Settlement Trust to the heirs or devisees of a deceased tobacco grower without reopening the decedent's estate if there are no unsatisfied creditors of the estate, there are no unsatisfied general monetary bequests, all other assets have been distributed, and the superior court clerk endorses the list of distributees filed by the decedent's personal representative. Phase II payments that covered a time period when the decedent was alive are deemed cash and do not pass by virtue of any devise or inheritance of the decedent's real property.

S.L. 2003-93 (H 656), clarifying the legal procedures for modifying and terminating irrevocable trusts, is discussed in Chapter 5, "Courts and Civil Procedure."

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