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Senior Citizens

The 2004 General Assembly enacted relatively little legislation directly affecting senior citizens. It did, however, increase state funding for several government programs for senior citizens, make several changes to the state's law regarding guardianship of incapacitated adults, establish a legislative commission to study the state's guardianship law, and increase the benefits for state government retirees. Additional legislation affecting senior citizens is discussed in Chapter 10, "Health"; Chapter 16, "Mental Health"; and Chapter 21, "Social Services."

Government Programs for Senior Citizens

Adult Day Services

Section 10.21 of S.L. 2004-124 (H 1414) requires the Department of Health and Human Services (DHHS) to contract with a national adult day services resource center to (1) provide training and consultation to adult day services providers and state and county adult day services consultants and (2) study the current method of reimbursement for adult day services and make recommendations regarding changes. A final report must be made to the Study Commission on Aging by January 1, 2005.

Medicaid PACE Pilot

S.L. 2004-124 requires DHHS to develop a pilot program to implement the Program for All-Inclusive Care for the Elderly (PACE), with one site in the southeastern part of the state and one in the west. The pilots must be designed to access federal Medicaid and Medicare dollars to provide acute and long-term care services for older patients through interdisciplinary teams. DHHS must report on the PACE pilot program by March 1, 2005.

Nursing Home for Veterans

S.L. 2004-124 provides \$500,000 in start-up funding for the new state veterans' nursing home in Salisbury.

Senior Care and the Medicare Prescription Drug Program

Section 10.2B of S.L. 2004-124 allows DHHS to enroll senior citizens in the federal Medicare Prescription Drug Discount Program if they participate in the state's Senior Care Prescription Drug Assistance Program and have incomes that do not exceed 135 percent of the federal poverty level. DHHS must give individuals the opportunity to decline enrollment before it enrolls them in Medicare's discount drug program. S.L. 2004-124 also provides that the state's Senior Care Prescription Drug Assistance Program will be the payor of last resort for its participants.

State-County Special Assistance

Effective October 1, 2004, Section 10.21A of S.L. 2004-124 increases the maximum monthly rate for assistance for residents in adult care home facilities to \$1,084. Counties must provide an additional \$3 million per year to match state funding for this rate increase.

State and Federal Funding for Adult Services

S.L. 2004-124 partially restores a previous reduction in state funding for the Home and Community Care Block grant, increases state funding for adult day care and adult day health care services, provides additional funding for senior centers, and allocates funds from the federal Social Services Block Grant for the state Home and Community Care Block Grant, in-home services provided by county departments of social services, and adult day care services.

Guardianship

Appointment and Removal of Guardians for Incompetent Adults

Section 31 of S.L. 2004-203 (H 281) amends G.S. 35A-1213(b) to remove the restriction that a general guardian or guardian of the estate must be a North Carolina resident. The act requires a nonresident general guardian or guardian of the estate to post a bond, to submit to the jurisdiction of North Carolina courts in matters relating to the guardianship, and to appoint a resident agent for service of process. The act also amends G.S. 35A-1290(c) to allow the clerk of superior court to remove a guardian or take other appropriate action if the guardian is a nonresident and refuses or fails to obey any citation, notice, or process served on the guardian or the guardian's process agent.

The act amends G.S. 35A-1291 to allow the clerk of superior court to remove a guardian without a hearing if the clerk finds reasonable cause to believe that an emergency exists that threatens the ward's physical well-being or constitutes a risk of substantial injury to the ward's estate.

Compensation of Attorney-in-Fact for Incapacitated Adult

Effective January 1, 2005, Section 3 of S.L. 2004-139 (S 470) amends G.S. 32A-11(c) to provide that an attorney-in-fact for an incapacitated adult under a power of attorney is entitled to reasonable compensation for his or her services in an amount determined by the clerk of superior court considering the factors established in G.S. 32-54(b).

Guardian's Authority to Create Medicaid Qualifying Trusts

Section 15 of S.L. 2004-199 (S 1225) amends G.S. 35A-1251(23) to expand a guardian's authority to create a Medicaid qualifying trust for the benefit of an incompetent ward who meets the requirements of 42 U.S.C. § 1396p(d)(4).

Guardianship Study

S.L. 2004-161 (S 1152) creates the Legislative Commission on State Guardianship Laws to study guardianship laws and their relationship to powers of attorney, the right to a natural death, and other laws. The act directs the commission to study (1) whether guardianship should be a remedy of last resort, used only if less restrictive alternatives are insufficient; (2) the definition of incompetence; (3) whether the court should be required to make express findings regarding the extent of a person's incapacity; (4) legal rights that are lost or retained as the result of an adjudication of incompetence; (5) the proper role of attorneys and guardians ad litem in incompetency and guardianship proceedings; (6) legal procedures in guardianship proceedings; (7) the role of public human services agencies in providing guardianship services; (8) powers, duties, and liabilities of guardians; (9) public monitoring of guardianships; and (10) enactment of the Uniform Guardianship and Protective Proceedings Act.

The commission is composed of sixteen members: four members of the House of Representatives; four members of the Senate; the director of the Administrative Office of the Courts; the director of the Division of Aging; a county director of social services and a physician who specializes in geriatrics, both appointed by the President Pro Tempore of the Senate; a clerk of superior court, an attorney with experience in guardianships, and a local director for mental health, developmental disabilities, and substance abuse services, all appointed by the Speaker of the House; and a representative of the Governor's Advocacy Council for Persons with Disabilities. The act also provides that an ex officio, nonvoting commission member may be designated by each of the following: the North Carolina Bar Association, the Arc of North Carolina, the North Carolina Guardianship Association, Alzheimer's Association—Western Chapter, Alzheimer's Association—Eastern Chapter, Carolina Legal Assistance, Area Agencies on Aging, County Departments of Aging, and Friends of Residents in Long Term Care. The commission must make a final report by the convening of the 2006 session of the General Assembly.

Long-Term Care

Criminal Records Checks

Section 10.19D of S.L. 2004-124 amends state law to require the state Department of Justice to forward the results of national criminal history checks on persons seeking employment with long-term care facilities to the DHHS Division of Facility Services, which will provide the results of the criminal history check to the long-term care facility within five business days.

With respect to criminal records checks of persons seeking employment with an adult care home, S.L. 2004-124 amends G.S. 131D-40 to include within the definition of *relevant offense* any conviction or pending indictment for a crime under county, state, or federal law that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons.

Health Care Personnel Registry

The state's health care personnel registry includes the names of health care personnel who have abused or neglected persons who reside in a health care facility or receive home health or hospice services. Section 52 of S.L. 2004-203 amends G.S. 131E-56 to (1) provide that the registry must include a brief statement submitted by an individual disputing the finding entered against him or her and (2) in cases involving patient neglect, allow an individual to petition DHHS to remove his or her name from the registry if his or her personal and employment history does not reflect a pattern of abusive behavior or neglect, the neglect that was the basis of the finding involved a singular occurrence, and the petition is submitted after the expiration of a one-year period that began when the petitioner's name was added to the registry.

Long-Term Care Insurance Tax Credit

The General Assembly failed to enact legislation extending the state's income tax credit for long-term care insurance premiums. The previous credit expired for tax years beginning on or after January 1, 2004.

Studies

S.L. 2004-161 authorizes the Legislative Research Commission to study issues related to the care and safety of residents of residential care facilities.

S.L. 2004-161 also authorizes the North Carolina Study Commission on Aging to study (1) the feasibility of implementing a remediation program for long-term care facilities similar to Michigan's Collaborative Remediation Project and (2) issues related to mentally ill residents of long-term care facilities.

S.L. 2004-124 requires DHHS to study issues concerning the care of mentally ill residents of long-term care facilities and to report its findings to the North Carolina Study Commission on Aging by October 1, 2005.

S.L. 2004-144 (S 1148) requires DHHS to study the mission of geriatric mental health specialty teams to assist long-term care facilities in serving mentally ill residents of those facilities and to standardize criteria and track expenditures related to the care of mentally ill residents of these facilities. DHHS must report its findings and actions to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

State and Local Government Retirement

Cost-of-Living Increases for State Government Retirees

S.L. 2004-124 provides for a 1.7 percent cost-of-living increase for most state government retirees.

Reemployment of Retired Teachers

Current state law allows retired teachers to accept reemployment as classroom teachers without losing their eligibility for state retirement benefits. Section 31.18A of S.L. 2004-124 extends these provisions to June 30, 2005.

Retiree Health Benefit Fund

Section 31.20 of S.L. 2004-124 establishes the Retiree Health Benefit Fund and requires that it be administered by the board of trustees of the Teachers' and State Employees' Retirement System (TSERS) to provide health benefits to retired and disabled state government employees. Employer contributions to the fund are irrevocable.

Retirees' Contributory Death Benefit

With respect to retired members of TSERS, the Local Government Employees' Retirement System, the Legislative Retirement System, and the Consolidated Judicial Retirement System who die on or after July 1, 2004, and who have made voluntary contributions for death benefits for at least twenty-four months, S.L. 2004-147 (H 1624) increases to \$9,000 the death benefit payable to the deceased retiree's surviving spouse or estate.

Studies

S.L. 2004-161 authorizes the Legislative Research Commission to study issues related to the reemployment of government retirees, postretirement earnings of retirees, an optional graduated twenty-five-year retirement plan for local government employees, and meeting the Internal Revenue Service's request for a defined retirement age.

Section 31.18B of S.L. 2004-124 directs the Administrative Office of the Courts to study the mandatory retirement age for judges and make recommendations regarding whether the state's current policy should be changed. The report is due to the General Assembly by February 1, 2005.

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