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Senior Citizens

The 2005 General Assembly considered, but rejected, a proposed budget cut that would have eliminated or limited the Medicaid eligibility of approximately 65,000 elderly or disabled persons, made several changes to the laws governing licensure of adult care homes, and enacted legislation creating two new criminal offenses dealing with financial exploitation of elderly or disabled persons.

Government Programs for Senior Citizens

Adult Protective Services

S.L. 2005-23 (H 45) directs the state Department of Health and Human Services (DHHS) adult protective services task force to collaborate with stakeholders and others interested in improving adult protective services and to report its recommendations to the North Carolina Study Commission on Aging and the Legislative Study Commission on State Guardianship Laws by April 1, 2006.

Medicaid

The General Assembly considered, but rejected, a proposed budget cut that would have eliminated or limited Medicaid eligibility of approximately 65,000 elderly or disabled persons with incomes between the Supplemental Security Income income limit (\$579 per month for an individual) and the federal poverty level (\$798 per month for an individual).

Other legislative changes to the state's Medicaid program are summarized in Chapter 23, "Social Services."

Prescription Drug Assistance for Senior Citizens

In 1999 the General Assembly created a state-funded prescription drug assistance program for senior citizens. In 2002 this program was replaced by the Senior Care prescription drug assistance program, funded by the Health and Wellness Trust Fund.

Section 10.4 of the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), terminates the Senior Care prescription drug assistance program effective

December 31, 2005, and authorizes DHHS to enroll senior citizens who receive benefits under this program in one of the federally approved Medicare Part D prescription drug programs, which are effective January 1, 2006, if the senior citizens qualify for the \$0 premium and \$0 deductible benefit for Medicare recipients with incomes under 135 percent of the federal poverty level and do not decline enrollment under Medicare Part D.

Senior Center Outreach and Start-Up

S.L. 2005-276 requires that state funding appropriated for the enhancement of senior center programs be used to (1) expand the outreach capacity of senior centers to reach unserved or underserved areas or (2) provide start-up funds for new senior centers. Appropriated funds must be allocated by October 1 of each fiscal year and may not exceed 75 percent of reimbursable costs. In the case of start-up funding for a new senior center, the board of commissioners of the county where the new center will be located must formally endorse the need for the center, agree on the sponsoring agency for the center, and make a formal commitment to use local funds to support ongoing operation of the center.

State–County Special Assistance for Adult Care Home Residents

S.L. 2005-276 increases the maximum monthly payment for State–County Special Assistance for elderly or disabled residents of adult care homes from \$1,084 to \$1,118 (\$1,515 for residents of special care units), effective October 1, 2005. This rate increase will require North Carolina counties to provide an additional \$1.7 million in local funding for the State–County Special Assistance program in fiscal year 2005-06 and an additional \$1.8 million in 2006-07.

State–County Special Assistance for In-Home Care

Effective October 1, 2005, S.L. 2005-276 continues, revises, and expands a special program that allows payment of State–County Special Assistance benefits to individuals who do not live in adult care homes but otherwise are eligible for assistance. The maximum payment under the demonstration project may not exceed 75 percent of the State–County Special Assistance payment the individual would receive if he or she resided in an adult care home.

Long-Term Care

Adult Care Home Licensure and Inspection

G.S. 131D-2 governs the licensure of adult care homes for persons who are elderly or mentally or physically disabled. Effective October 1, 2005, S.L. 2005-66 (S 572) provides that there are two types of adult care homes: adult care homes and adult care homes that serve only elderly persons [defined as persons who either (1) are at least fifty-five years old and require assistance with activities of daily living, housing, and services, or (2) have a primary diagnosis of Alzheimer’s disease or other form of dementia and require assistance with activities of daily living, housing, and services provided by a licensed Alzheimer’s and dementia care unit]. The Medical Care Commission is directed to adopt rules implementing the act.

Effective July 1, 2007, Section 10.40A(i) of S.L. 2005-276 amends G.S. 131D-2 to require DHHS to issue an initial six-month license (rather than a standard one-year license) to an adult care home not currently licensed. If an initially licensed adult care home demonstrates substantial compliance with Articles 1 and 3 of G.S. Chapter 131D and rules adopted pursuant thereto, DHHS must issue a license for the remainder of the calendar year. Thereafter the license may be renewed annually.

Effective October 1, 2005, Section 41.2 of S.L. 2005-276 doubles the license fees for adult care homes (and other long-term care and health care facilities).

Section 10.40A(j) of S.L. 2005-276 rewrites the adult care home inspection requirements of G.S. 131D-2(b)(1a). Effective July 1, 2007, adult care homes must be inspected on an annual basis and every two years to determine compliance with physical plant and life-safety requirements. Effective August 13, 2005, county departments of social services must provide written documentation of all on-site visits, monitoring visits, and complaint investigations to the DHHS Division of Facility Services (DFS) within twenty working days after each visit. DFS must conduct an annual review of the county departments' performance of these inspection and monitoring responsibilities. If a county fails to conduct timely monitoring or to identify or document noncompliance with licensure requirements, DFS must provide technical assistance, take corrective action, or, if necessary, assume a county's regulatory responsibilities.

S.L. 2005-276 also appropriates additional funding (over \$1 million in state fiscal year 2005-06 and over \$2 million in 2006-07) to increase the staff of the DFS adult care licensure section (fourteen additional positions in 2005-06 and seventeen more positions in 2006-07) and to create two additional regional DFS adult care licensure offices.

Effective July 1, 2006, Section 10.40A(j) of S.L. 2005-276 also amends G.S. 131D-2(b)(1a) to require adult care home specialists and supervisors employed by county departments of social services to complete eight hours of pre-basic training within sixty days of employment, thirty-two hours of basic training and at least eight hours of complaint investigation training within six months of employment, twenty-four hours of post-basic training within six months of completing basic training, and at least sixteen hours of statewide DFS training annually. Adult care home specialists and supervisors employed on or before July 1, 2006, must complete the required training components by June 1, 2007.

Effective August 13, 2005, Section 10.40A(l) of S.L. 2005-276 amends G.S. 131D-34 to increase the minimum and maximum civil penalties for Type A violations of adult care home licensing requirements. For adult care homes licensed for six or fewer beds, the minimum penalty is \$500 and the maximum penalty is \$10,000; for adult care homes licensed for seven or more beds, the minimum penalty is \$1,000 and the maximum penalty is \$20,000. Section 10.40A(l) also doubles the maximum penalty for failing to correct violations (\$1,000 for a Type A violation and \$500 for a Type B violation); provides that a plan to correct a Type B violation must be implemented within a "reasonable" time and may not impose requirements greater than those imposed by existing laws or rules; and requires DHHS to impose a civil penalty in the same amount as for a Type A violation on any applicant for licensure who provides false information or omits information on the portion of the licensure application requesting information about owners, administrators, principals, or affiliates of the facility.

Effective August 13, 2005, Section 10.40A(l) of S.L. 2005-276 also amends G.S. 131D-34(h) to require the DHHS penalty review committee to meet at least semiannually; require that the committee be cochaired by one member who is not affiliated with DHHS and one member of DHHS working outside of DFS; repeal the training requirement for committee members; require DHHS to notify families or guardians of affected residents that they may request the committee to review a penalty decision by DHHS; require the committee to meet and review a penalty decision within sixty days of receipt of a request by a family member or guardian of an affected resident; require the secretary of DHHS to give notice of the committee's meetings to licensed providers who may be subjected to a civil penalty, the county social services department that is responsible for oversight of the facility, and the families or guardians of affected residents; and allow the committee to make recommendations and reports to DHHS regarding changes in policy, training, or rules as a result of its reviews.

Effective August 13, 2005, Section 10.40A(k) of S.L. 2005-276 amends G.S. 131D-2 to require adult care homes to post the DFS complaint hotline number conspicuously in a public place.

Section 10.40A(p) of S.L. 2005-276 requires the DHHS Division of Aging and Adult Services (DAAS), in consultation with adult care homes, county social services departments, consumer advocates, and other interested stakeholders, to develop a quality improvement consultation program for adult care homes and to submit a progress report regarding the program to the North Carolina Study Commission on Aging and the legislative appropriations committees for health and human services by April 1, 2006. County social services departments will be responsible for implementing the program. DAAS must conduct a pilot of the program in no more than four counties. If DAAS

concludes that the pilot program is effective and should be expanded, it must submit its report and recommendations regarding program expansion, a proposed timetable for expanding the program, the estimated cost of an expanded program, and necessary statutory and administrative rule changes to the North Carolina Study Commission on Aging and the legislative appropriations committees for health and human services.

Section 10.41 of S.L. 2005-276 requires DHHS to develop a plan for implementing a star-rating system for adult care homes to improve quality of care and to submit a report regarding its plan to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services by January 1, 2007.

Criminal History Checks for Employees of Long-Term Care Facilities

G.S. 131D-40 and G.S. 131E-265 require adult care homes, nursing homes, and home care agencies to conduct a national criminal history check of nonlicensed applicants for employment who have lived in North Carolina less than five years. An applicant's conviction of a criminal offense that may bear on his or her fitness to have responsibility for the safety and well-being of elderly or disabled persons is not, in and of itself, a basis for denying employment, but may be considered in conjunction with other factors, such as the date and seriousness of the crime and the nexus between the offense and the duties of the position for which the individual is applying, in determining whether to hire the individual.

National criminal history checks must be requested through the state Department of Justice and conducted by the Federal Bureau of Investigation. In the case of nursing home or home care agency employees who will provide direct patient care, federal and state law allows the Department of Justice to provide the results of a national criminal history check to the nursing home or home care agency. In the case of adult care home employees and nursing home and home care agency employees who do not provide direct patient care, G.S. 131D-40 and G.S. 131E-265 required the state Department of Justice to forward the results of national criminal history checks to the state DHHS DFS and DFS to provide the results of the check to the adult care home, nursing home, or home care agency. Federal law, however, prohibits a state agency from disclosing the results of an FBI national criminal history check. Because of this prohibition, the General Assembly enacted legislation suspending the national criminal history check requirements of G.S. 131D-40 and G.S. 131E-265 until January 1, 2005. S.L. 2005-4 (S 41) attempts to address this problem by amending G.S. 131D-40 and G.S. 131E-265 to (1) require the Department of Justice to provide the results of national criminal history checks of nonlicensed applicants for employment with adult care homes, nursing homes, or home care agencies (other than those applicants who would provide direct patient care) to the DHHS criminal records check unit, rather than to the DHHS DFS; (2) require DHHS to notify the adult care home, nursing home, or home care agency whether the national criminal history check may affect an applicant's employability; and (3) prohibit DHHS from sharing the results of these checks with an adult care home, nursing home, or home care agency.

If DHHS notifies an adult care home, nursing home, or home care agency that the results of a national criminal history check might affect an applicant's employability, the affected entity must consider seven statutory factors in determining whether to hire the applicant and may not refuse to employ the applicant solely because he or she has been convicted of a relevant offense. G.S. 131D-40(b); G.S. 131E-265(b). Since DHHS cannot release the results of the national criminal history check to the adult care home, nursing home, or home care agency, the affected entity must obtain information regarding the applicant's criminal history from another source. One possible solution is to require the applicant or employee to request DHHS to release the national criminal history check to the applicant or employee and require the applicant or employee to provide the report to the adult care home, nursing home, or home care agency.

Home Health Care Clients' Bill of Rights

Section 10.40A(n) of S.L. 2005-276 enacts a bill of rights for home health care clients, codified as Article 6 of G.S. Chapter 131E. This legislation is discussed in Chapter 12, "Health."

Medication Aides

Section 10.40C of S.L. 2005-276 authorizes medication aides to perform the technical aspects of medication administration in skilled nursing facilities. This legislation is discussed in Chapter 12, "Health."

Section 10.40D of S.L. 2005-276 authorizes DHHS to continue its pilot program involving the use of medication aides and requires DHHS and the state community college system to study the use of medication aides to perform the technical aspects of medication administration and to submit a report and recommendations to the General Assembly. This legislation is discussed in Chapter 12, "Health."

Retired State and Local Government Employees

Retirement Benefits for State and Local Government Employees

S.L. 2005-276 provides a 2 percent cost-of-living increase for persons receiving retirement benefits under the Teachers' and State Employees' Retirement System (TSERS), the Consolidated Judicial Retirement System, the Legislative Retirement System, and Local Government Employees' Retirement System. S.L. 2005-276 also appropriates \$25 million in nonrecurring funding for partial repayment of funds withheld from TSERS due to the budget crisis in state fiscal year 2001-02.

Section 29.28(e) of S.L. 2005-276 rewrites the definition of "retirement" for state government employees who are members of TSERS, thereby affecting their eligibility for retirement benefits and health insurance coverage as retired employees under TSERS. As rewritten, G.S. 135-1(20) defines *retirement* as an employee's termination of employment and complete separation from active service with no intent or agreement, express or implied, to return to service. In order for a retired employee's retirement to become effective in any month, the retired employee may not render any service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following his or her effective date of retirement. The amendment to G.S. 135-1(20) is effective November 1, 2005, but will not apply to The University of North Carolina Phased Retirement Program until June 30, 2007.

In 1998 the General Assembly enacted legislation allowing retired teachers to continue receiving their TSERS retirement benefits regardless of whether their post-retirement earnings exceeded the "retirement earnings cap" under G.S. 135-3(8)c. *if* (1) they were reemployed as public school teachers and (2) their retirement and reemployment met other statutory requirements. This legislation, which was amended in 2000, 2001, 2002, and 2004, was set to expire on June 30, 2005. Section 7A of S.L. 2005-144 (H 1630), Section 29.28 of S.L. 2005-276, and Section 43 of S.L. 2005-345 (H 320), however, extend this sunset to June 30, 2007, and revise the legislation so that it (1) applies only to teachers who have been retired for at least six months and have not been employed in any capacity (including as a substitute teacher or part-time tutor) with a public school for at least six months preceding the effective date of reemployment, and (2) excludes from the TSERS "retirement earnings cap" earnings while the beneficiary is employed to teach in a public school on a permanent full-time basis or part-time capacity that exceeds 50 percent of the workweek. Retired teachers who return to work under this provision are also subject to the requirements of G.S. 135-1(20) discussed above.

State Income Tax Deduction for State and Local Government Retirement Benefits

House Bill 1267, allowing the deduction of state and local (and federal) government retirement benefits from taxable income under the state's income tax law, was introduced but was not reported out of committee.

Other Legislation Affecting Senior Citizens

Exemption from Jury Service

G.S. 9-6.1 established a special procedure through which a person could request an exemption from jury service if he or she was summoned for service and was at least sixty-five years old. Effective October 1, 2005, S.L. 2005-149 (S 321) amends G.S. 9-6.1 to make this procedure applicable to persons at least seventy-two years old and to allow these persons to be granted a temporary exemption, excuse, or deferral from jury service or a permanent exemption from jury service.

Financial Exploitation of Elderly or Disabled Adults

Effective December 1, 2005, S.L. 2005-272 (H 1466) revises the criminal penalty for financial exploitation of elderly or disabled adults, repealing G.S. 14-32.3(c) and replacing it with a new statute, G.S. 14-112.2.

The prior statute applied to the caretaker of an elderly or disabled adult residing in a domestic setting if the caretaker knowingly, willfully, and with the intent to permanently deprive the owner of property or money caused an elderly or disabled adult to give or lose possession and control of property or money through coercion, command, or threat, abuse of a position of trust or fiduciary duty, or making a false representation.

The new statute makes it unlawful for a person to knowingly, by deception or intimidation, obtain, use, or endeavor to obtain or use an elderly or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly or disabled adult of the use, benefit, or possession of the funds, assets, or property or to benefit someone other than the elderly or disabled adult if the person (1) stands in a position of trust or confidence with the elderly or disabled adult or (2) has a business relationship with the elderly or disabled adult. Violation of this provision is a Class F felony if the value of the funds, assets, or property is at least \$100,000, a Class G felony if the value is at least \$20,000 and not more than \$100,000, and a Class H felony if the value is less than \$20,000.

The new statute also makes it unlawful for any person, other than a person acting within the scope of his or her lawful authority as the agent for an elderly or disabled adult, to obtain, use, endeavor to obtain or use, or conspire to obtain or use an elderly or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly or disabled adult of the use, benefit, or possession of the funds, assets, or property or to benefit someone other than the elderly or disabled adult if the person knows or reasonably should know that the elderly or disabled adult lacks the capacity to consent to the transfer or use of the funds, assets, or property. Violation of this provision is a Class G felony if the value of the funds, assets, or property is at least \$100,000, a Class H felony if the value is at least \$20,000 and not more than \$100,000, and a Class I felony if the value is less than \$20,000.

Health Care Agent's Authority Regarding Anatomical Gifts, Autopsy, and Disposition of Remains

S.L. 2005-351 (H 967) clarifies a health care agent's authority regarding anatomical gifts, autopsy, and disposition of remains under a valid health care power of attorney. This legislation is summarized in Chapter 12, "Health."

Homestead Property Tax Exemption

Three bills concerning the homestead property tax exemption were introduced in 2005 but were not enacted. House Bill 1777 would have allowed municipalities to expand the homestead property tax exemption for senior citizens using revenue generated from an additional local one-half cent sales and use tax. House Bill 36 would have provided an income tax credit for property taxes paid on primary residences owned by elderly or disabled persons having annual household incomes that do not exceed

\$30,000. Senate Bill 852 would have allowed low-income elderly or disabled homeowners to defer property taxes on their primary residences.

Mediation in Incompetency and Guardianship Proceedings

S.L. 2005-67 (H 1015) authorizes the clerk of superior court to order mediation in incompetency and guardianship proceedings under G.S. Chapter 35A. Agreements resulting from mediation in these proceedings are not binding between the parties but may be considered by the clerk in making a decision. S.L. 2005-67 applies to incompetency and guardianship proceedings pending on or after the date on which the North Carolina Supreme Court adopts rules implementing the act. S.L. 2005-67 is discussed in more detail in Chapter 6, "Courts and Civil Procedure."

Parent's Testamentary Recommendation of Guardian for Unmarried, Incapacitated Adult

Effective August 26, 2005, S.L. 2005-333 (H 1394) enacts new G.S. 35A-1212.1 allowing the parent of an unmarried adult who has been adjudicated incompetent to execute a will that includes provisions recommending the appointment of a particular individual as the incompetent adult's guardian, specifying desired limitations on the guardian's powers, and allowing the guardian to serve without posting a bond. If both parents make recommendations, the most recent will prevails unless other relevant factors require a contrary result. In appointing a guardian, the clerk of superior court first must consider appointing the recommended individual but is not required to appoint that individual as guardian if appointing another qualified individual or entity is in the incompetent adult's best interest. Despite a parent's recommendation, the clerk may require a recommended individual to post a bond as guardian if doing so is in the incompetent adult's best interest.

Recognition of Attorney-in-Fact

Article 5 of G.S. Chapter 32A, enacted by S.L. 2005-178 (H 510),

1. provides legal protection for persons who act in good faith reliance on the authority granted by a duly acknowledged power of attorney that is regular on its face;
2. allows a person to rely on an affidavit executed by an attorney-in-fact regarding the authenticity and current validity of a power of attorney;
3. provides that a person or entity is not required to make a loan to the principal at the request of an attorney-in-fact, to open an account for the principal at the attorney-in-fact's request if the principal is not a current customer, or to recognize an attorney-in-fact's authority or conduct business with an attorney-in-fact under a power of attorney if the person is not required to conduct business with the principal in the same circumstances or the person has reasonable cause to question the authenticity or validity of the power of attorney;
4. authorizes initiation of a special proceeding to determine the authenticity or validity of a power of attorney; and
5. provides that a person who unreasonably refuses to recognize an attorney-in-fact's authority under a valid power of attorney is liable for reasonable attorneys' fees and costs in any action or proceeding required to confirm the power of attorney's validity.

The act applies to powers of attorney executed on, before, or after October 1, 2005. It does not apply to health care powers of attorney executed under G.S. Chapter 32A, Article 3.

Tax Credit for Long-Term Care Insurance

The General Assembly failed to enact legislation that would have reinstated the state income tax credit for payment of premiums for long-term care insurance, which expired for tax years beginning on or after January 1, 2004.

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