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Social Services

The General Assembly expanded the juvenile permanency mediation program, clarified the rules regarding school residency requirements for children who are the subjects of juvenile court proceedings, temporarily capped the fiscal responsibility of North Carolina counties for Medicaid costs, rewrote the rules that penalize Medicaid applicants and recipients who transfer assets for less than fair market value, and authorized a number of studies of subjects related to social services.

Child Protective Services

Confidential Information

S.L. 2006–205 (S 1216) rewrites G.S. 7B-302(a) to add a requirement that a social services department disclose confidential information to any federal, state, or local government entity (or its agent) that needs the information to protect a child from abuse or neglect. It also specifies that the governmental entity to which social services discloses the confidential information may redisclose it only for purposes directly connected with that entity’s mandated responsibilities.

County social services departments and many other state and local agencies in North Carolina already are mandated to share confidential information about possibly abused, neglected, or dependent children in circumstances described in G.S. 7B-3100 and rules issued by the Department of Juvenile Justice and Delinquency Prevention pursuant to that section. (*See* 28 N.C. Admin. Code 01A .0301 and .0302.) S.L. 2006–205 rewrites G.S. 7B-3100(a) to expand the time frame within which the information sharing must occur. Instead of applying only between the time a juvenile petition is filed and the time the court stops exercising jurisdiction, the duty now arises when a social services department is responding to a report of abuse, neglect, or dependency (by conducting an assessment or providing or arranging for protective services) and extends until the court’s jurisdiction ends or the department of social services closes its protective services case.

These changes became effective August 8, 2006.

Permanency Mediation

Three district court districts in the State—District 26 (Mecklenburg County), District 27A (Gaston County), and District 28 (Buncombe County)—have established local programs to provide mediation services in juvenile cases involving abuse, neglect, dependency, or termination of parental rights. Section 4 of S.L. 2006–187 (H 1848) requires the Administrative Office of the Courts (AOC) to establish, in phases, local district programs to provide uniform permanency mediation services statewide.

The act requires the AOC to promulgate policies and regulations for administration of the program but also sets out a number of specific program requirements relating to attendance, confidentiality, and the effect of mediated agreements. These provisions are described more fully in Chapter 4, “Children and Juvenile Law.”

School Admissions

When the court places a child in foster care, with a relative, or in a group home or other facility, special rules apply regarding the assignment of the child to a particular public school. S.L. 2006-65 (H 1074) rewrites G.S. 115C-366 and repeals G.S. 115C-366.2 to consolidate and clarify those rules.

One new provision allows a child who is not a domiciliary of a local school administrative unit to attend school in that location without paying tuition if the child is living with an adult who is domiciled there because the student’s parent or legal guardian relinquished physical custody and control of the student based on the recommendation of a county department of social services or the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The adult with whom the child lives must assume responsibility for making educational decisions on the child’s behalf.

The act applies beginning with the 2006–07 school year. S.L. 2006-65 is discussed in more detail in Chapter 4, “Children and Juvenile Law.” and Chapter 10, “Elementary and Secondary Education.”

Medicaid

Medicaid Funding

County funding of Medicaid services. North Carolina generally requires counties to pay 15 percent of the nonfederal share of Medicaid services provided to county residents (or about 5.2 percent of the total cost of Medicaid services). In state fiscal year 2004–05, North Carolina counties spent approximately \$427 million for Medicaid services for county residents.

Section 10.9E of the 2006 appropriations act (S.L. 2006-66, S 1714) appropriates \$27.4 million in nonrecurring state funding to offset part of the counties’ fiscal responsibility for Medicaid services and limit county spending for Medicaid services to the amount paid by counties in state fiscal year 2005–06. These funds will be distributed to counties to the extent that their expenditures for Medicaid services for state fiscal year 2006–07 exceed their expenditures for Medicaid services for state fiscal year 2005–06. If county expenditures for Medicaid services for state fiscal year 2006–07 exceed the amount of county expenditures for Medicaid services for state fiscal year 2005–06 plus the one-time state funding, counties will be required to pay 15 percent of the amount by which the nonfederal share of payments for Medicaid services exceeds county expenditures for Medicaid services for state fiscal year 2005–06 plus the one-time state funding. For purposes of this section, payments for Medicaid services include Medicare Part D “claw back” payments. The Department of Health and Human Services (DHHS) must make a monthly report to the General Assembly’s Fiscal Research Division regarding each county’s portion of the nonfederal share of Medicaid payments, excluding administrative costs.

Medicaid trust fund. Section 10.7 of S.L. 2006-66 allocates \$53 million in “disproportionate share hospital payments” and contributions received under G.S. 143-23.2 for Medicaid programs, including \$3 million to replace reduced state General Fund appropriations for Medicaid. Section 10.7 of S.L. 2006-66 also authorizes DHHS to use \$5,004,504 of the Medicaid trust fund to implement the Medicaid Management Information System and to use other unappropriated funds in the Medicaid Trust Fund to fund audit issues between the federal government and DHHS with respect to disproportionate share hospital payments for fiscal years 1997 through 2002.

Medicaid Transfer of Assets Penalty

Since 1980, federal law has allowed, and later required, as a condition of receiving funding for state Medicaid programs, that states adopt rules that disqualify individuals from receiving certain types of Medicaid services if they, or their spouses or others acting on their behalf, transfer certain types of property, resources, or assets for less than fair market value. The Deficit Reduction Act of 2005 (Pub. Law 109-171) revised the federal requirements governing Medicaid’s “transfer of assets” rules.

Section 10.4 of S.L. 2006-66, as amended by Section 8 of S.L. 2006-221 (S 198), repeals North Carolina’s prior transfer of assets rule (G.S. 108A-58) and enacts a new statute, G.S. 108A-58.1, that incorporates the transfer of assets requirements contained in the federal Medicaid law.

In the case of transfers of assets that occur on or after February 8, 2006, the new transfer of assets rule generally establishes a “lookback” date that is sixty months before an individual applies for Medicaid (or, in the case of an institutionalized individual, the date he or she applies for or receives Medicaid while he or she is institutionalized) and provides that the penalty period begins on the date an asset is transferred for less than fair market value or the date on which the individual who is subject to the penalty would otherwise have become eligible for Medicaid services, whichever is later.

The new law includes provisions that specify the institutionalized and noninstitutionalized Medicaid applicants or recipients who are subject to the transfer of assets rule and the nursing facility, home health, personal care, long-term care, and other Medicaid services to which the rule applies. The new law expressly exempts from the transfer of assets rule persons who are eligible for Medicaid based on their receipt of State-County Special Assistance. The new law also incorporates additional exceptions contained in federal law and requires DHHS to waive the transfer of assets penalty if imposition of the penalty would result in undue hardship.

Medicaid Liens, Estate Recovery, and Third Party Liability Rules

Medicaid estate recovery and liens. Section 10.9B of S.L. 2006-66 delays until July 1, 2007, the effective date of the statutory changes to the state’s Medicaid estate recovery program enacted by S.L. 2005-276 (amending G.S. 108A-70.5 and enacting G.S. 108A-70.6 through 108A-70.9).

Third party liability claims and required data sharing by private health insurers. Effective January 1, 2007, Section 10.8 of S.L. 2006-66, as amended by Section 9 of S.L. 2006-221, enacts a new statute, G.S. 108A-55.4, that requires private health insurers to provide to the state’s Medicaid program specified information regarding Medicaid applicants or recipients who are covered by a health insurance policy and to accept the state’s right to payment under the Medicaid “third party liability” laws (G.S. 108A-57, 108A-59, and 108A-70(b)).

Medicaid Eligibility, Services, and Payment Rates

Medicaid eligibility of Medicare beneficiaries. Section 10.6 of S.L. 2006-66 amends G.S. 108A-55.1 to require a Medicaid recipient who qualifies for prescription drug coverage under Medicare Part D to enroll in Medicare Part D unless the Medicaid recipient has creditable prescription drug coverage as defined by the federal Medicare law.

Medicaid Ticket to Work. Section 10.9 of S.L. 2006-66 delays until July 1, 2007, the effective date of the Medicaid Ticket to Work program established under G.S. 108A-54.1, requires DHHS to develop a plan for implementing the program, and requires DHHS to provide an implementation and fiscal impact report on the program to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007.

Medicaid coverage policies. Section 10.4 of S.L. 2006-66 codifies, in new G.S. 108A-54.2, the requirements regarding the development or amendment of Medicaid coverage policies that were enacted by Section 10.11(2) of S.L. 2005-276. The newly codified provisions require DHHS (1) to consult with and seek the advice of the North Carolina Medical Society's Physician Advisory Group, relevant professional associations or societies representing providers who are affected by Medicaid coverage policies, and other organizations when DHHS develops or amends Medicaid coverage policies; (2) to provide advance notice to all Medicaid providers of proposed new or amended Medicaid coverage policies; (3) to accept oral and written comments regarding proposed new or amended Medicaid coverage policies; and (4) to provide an additional notice and opportunity for comment to all Medicaid providers if a proposed Medicaid coverage policy is modified after the first comment period.

Increases in Medicaid provider payments. S.L. 2006-66 appropriates \$12 million in recurring funding for inflationary increases in payments to Medicaid providers. Section 10.3A of S.L. 2006-66 requires the Secretary of Health and Human Services to develop a plan to allocate these funds among groups of Medicaid providers in accordance with the interim report of a study of Medicaid provider rates and to present the plan to and consult with the Joint Legislative Commission on Governmental Operations before submitting the plan to the Centers for Medicare and Medicaid Services no later than December 15, 2006. Section 10.11 of S.L. 2006-66 requires DHHS to develop a proposal for an equitable standard for providing inflationary increases and other cost-related increases to Medicaid service providers and to submit its recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007. Section 10.11 of S.L. 2006-66 also requires the DHHS Division of Medical Assistance and the DHHS Office of Internal Auditor to study the reimbursement system for skilled nursing facilities, to develop recommendations regarding rebasing the payment rates for the 2006-07 fiscal year, and to report their recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by November 1, 2006.

Pharmacy management services. Section 10.9D of S.L. 2006-66, as amended by Section 13A of S.L. 2006-221, requires DHHS to study strategies for assisting pharmacists in providing pharmacy management services to Medicaid recipients who are enrolled in Medicare Part D, to assess the impact of the Deficit Reduction Act of 2005 on the payment for generic drugs under the Medicaid program, and to report its findings and recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by February 1, 2007.

Prescription drug dispensing fee. Section 10.9D of S.L. 2006-66 directs DHHS to supplement the Medicaid dispensing fee for prescription drugs if a decrease in the average manufacturer's price of prescription drugs during the period January 1, 2007, through June 30, 2007, results in estimated savings to the Medicaid program. The supplemental payment may not exceed the estimated average savings minus the administrative cost of implementing the supplemental payment. Implementation of the supplemental fee is contingent upon federal approval of an amendment to the state Medicaid plan, if approval is required. The supplemental fee may not be implemented before January 1, 2007, or after June 30, 2007.

Prescription drug dispensing cost. Section 44 of S.L. 2006-248 (H 1723) requires DHHS to determine the cost of dispensing a Medicaid prescription in the state by either (1) conducting a survey of pharmacy providers that participate in the state's Medicaid program or (2) using a recently conducted national survey of a statistically relevant sample of pharmacies. The act requires the department to report its findings to the Senate Appropriations Subcommittee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2007.

Dental administrative services. Section 10.9A of S.L. 2006-66 directs the DHHS Division of Medical Assistance to study the costs and benefits of implementing a carve-out of dental

administrative services provided by third-party administrators for Medicaid and North Carolina Health Choice recipients and to report its findings and recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007.

Payments for ocular prosthesis. S.L. 2006-198 (H 2037) clarifies the qualifications that an ocular prosthetist must have in order to be reimbursed by Medicaid.

Telemonitoring equipment in home care services. S.L. 2006-194 (S 1280) requires the Division of Medical Assistance to implement a pilot program for the use of telemonitoring equipment in home- and community-based services, to provide remuneration to home care agencies and other providers that participate in the program, and to include a representative number of older adults in the program. S.L. 2006-194 also requires that the division's findings and recommendations regarding the cost-effectiveness of telemonitoring and the benefits to individuals and providers be reported to the Study Commission on Aging by August 1, 2007.

Long-term care partnership program. Section 10.10 of S.L. 2006-66 requires DHHS to develop a long-term care partnership program under the authority of 42 U.S.C. § 1396p(c) to reduce future Medicaid long-term care costs by delaying or eliminating dependence on Medicaid. The proposed program must be submitted to the Fiscal Research Division and the legislative health and human services appropriations committees for review and approval before it is submitted for federal approval.

Community Alternatives Program for Disabled Adults. S.L. 2006-109 (S 1276) directs DHHS to examine the Community Alternatives Program for Disabled Adults in response to issues identified in the Medicaid Institutional Bias Study. The department must make an interim report by August 30, 2006, and a final report by August 30, 2007, to the North Carolina Study Commission Aging.

Community Care of NC. Section 10.7A(a) of S.L. 2006-66 amends Section 10.17(a) of S.L. 2005-276 to allow DHHS, in expanding the scope of the Community Care of NC care management model, to authorize one or more pilot projects to control costs and improve quality of care for aged, blind, and disabled Medicaid recipients.

Office of Rural Health and Community Care. Section 10.7A(b) of S.L. 2006-66 amends Section 10.14 of S.L. 2005-276 to allow DHHS to use funds appropriated for Medicaid cost-containment activities to provide grants through the Office of Rural Health and Community Care to plan, develop, and implement cost-containment programs.

State–County Special Assistance

Special Assistance and Personal Care Services Rates

Effective July 1, 2007, Section 10.9F of S.L. 2006-66 increases the maximum Special Assistance payment rate for adult care home residents to \$1,148 per month. Section 10.9F also requires DHHS to recommend rates for the Special Assistance and Adult Care Home Personal Services programs using appropriate cost modeling methodology and cost reports submitted by adult care homes, to ensure that the standard for cost reporting for these programs is the same as that for other residential service providers and to assure coordination of the rates for these programs with the DHHS Division of Medical Assistance, the Division of Aging and Adult Services, and the Office of the Controller.

Special Assistance In-Home Services Program

S.L. 2006-156 (H 2576) authorizes DHHS to increase the maximum number of assignments to the Special Assistance in-home program to 1,500 persons.

Studies

Legislative Research Commission

Section 2 of S.L. 2006-248 authorizes the Legislative Research Commission to study a variety of subjects, including those listed below.

- Post-Adoption Contact (This study may evaluate the need to establish laws for post-adoption contacts or communication between an adopted child and a birth relative. Senate Bill 209, which would have made specific statutory changes relating to post-adoption contacts, did not pass.)
- Treatment Services and Funding for Drug Treatment Courts
- Trafficking of Persons (This study, originally proposed by House Joint Resolution 1461, may include identifying programs that provide services to victims of trafficking and developing recommendations about methods of providing coordinated support and assistance to victims of trafficking.)
- System of Care Common Identifiers
- The Homestead Exemption
- Impact of Undocumented Immigrants (The study may assess the impact of undocumented immigrants in relation to social services systems, health care, education, criminal justice, corrections, and other issues specified in the act.)

The commission may report its findings and recommendations to the 2007 session of the General Assembly.

State Fair Housing Study

Section 33 of S.L. 2006-248 requires the North Carolina Human Relations Commission to study whether the State Fair Housing Act should be amended to make it an unlawful discriminatory housing practice to refuse to enter into a residential real estate transaction with a person based upon the fact that the person receives public assistance due to age or physical or mental disability. The act directs the commission to review other states' laws related to housing discrimination and determine the extent to which those laws protect certain forms of public assistance. The commission must consult with representatives of the residential real estate and residential rental community and must report any findings and recommendations to the 2007 General Assembly.

Child Care Studies

Sections 26 and 56 of S.L. 2006-248 create the Smart Start and Child Care Funding Study Commission and the Legislative Study Commission on Day Care and Related Programs. These are described in more detail in Chapter 4, Children and Juvenile Law.

Miscellaneous

Housing

The General Assembly established more specific target income requirements that public housing authorities must apply in renting property and selecting tenants. S.L. 2006-219 (H 767) rewrites G.S. 157-29(b), effective August 8, 2006, to (1) create a basic targeting requirement that not fewer than 40 percent of families admitted to a public housing program from an authority's waiting list have incomes at or below 30 percent of the area median income, (2) establish a targeting requirement that not fewer than 75 percent of families admitted to an authority's

tenant-based voucher program from its waiting list have incomes at or below 30 percent of the area median income, and (3) address the relationship between these two target requirements.

Assault on Handicapped Person

S.L. 2006-179 (S 488) amends G.S. 14-32.1(f) to make the crime of simple assault or battery on a handicapped person a Class A1, instead of Class 1, misdemeanor. The change applies to offenses committed on or after December 1, 2006.

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