

Social Services

After years of public discussion and debate, the General Assembly enacted legislation to phase out the fiscal responsibility of North Carolina counties for the nonfederal share of the cost of providing Medicaid services for county residents. The General Assembly also revised state laws governing the Medicaid estate recovery program and the Medicaid transfer of assets penalty, appropriated funds to increase enrollment under the Health Choice program for uninsured children, appropriated additional funds for child day care subsidies, and enacted additional legislation affecting social services agencies and programs.

State and Local Social Services Agencies

Division of Health Service Regulation

S.L. 2007-182 (H 720) renames the Department of Health and Human Services' (DHHS) Division of Facility Services as the DHHS Division of Health Service Regulation.

County Social Services Departments

S.L. 2007-372 (S 1023) amends G.S. 126-1.1 to provide that the term "career State employee" includes an employee of a county social services department (and other local government employees who are covered by the State Personnel Act) who is in a permanent position appointment and has been continuously employed by the state, a county social services department, or other local entity whose employees are subject to the State Personnel Act for at least twenty-four months. The effect of this change is to supersede the decision of the North Carolina Court of Appeals in *Early v. Durham County Department of Social Services*, 172 N.C. App. 344, 616 S.E.2d 553 (2005), and preclude a county social services employee who has not attained "career" status from filing a contested case with the Office of Administrative Hearings under G.S. 126-34.1(a)(1) alleging that the county social services director (or, in the case of the county social services director, the county social services board) lacked "just cause" to dismiss, demote, or suspend the employee.

Child Welfare

Court Reviews for Children in Custody

G.S. 7B-908 requires the juvenile court to conduct post-termination of parental rights review hearings every six months after a child's parents' rights have been terminated, when the child is in the custody of a county department of social services or a licensed child-placing agency. Previously hearings were required only until the juvenile was placed for adoption and an adoption petition was filed. S.L. 2007-276 (H 698) amends G.S. 7B-908(b) and (e) to require the court to continue holding these hearings until the juvenile's adoption is final. The act makes a comparable change to G.S. 7B-909, for hearings conducted when children have been relinquished to an agency for adoption. The act amends other sections of the Juvenile Code to specify the right of certain parties and non-parties to present evidence at hearings. These changes are described in Chapter 4, "Children and Juvenile Law." The act became effective October 1, 2007.

Termination of Out-of-State Parents' Rights

S.L. 2007-152 (H 866) amends G.S. 7B-1101, effective October 1, 2007, to provide that the district court has jurisdiction to terminate the parental rights of a parent, regardless of the parent's state of residence, if (1) the court has nonemergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (G.S. Chapter 50A) and (2) the parent has been served with a summons pursuant to G.S. 7B-1106. The background and details of the act are described in Chapter 4, "Children and Juvenile Law."

Termination Ground to Facilitate Out-of-State Adoptions

S.L. 2007-151 (H 865) addresses cases in which a child is freed for adoption in North Carolina but the adoption proceeding takes place in another state. Sometimes a parent's consent to adoption or relinquishment of a child to a social services department or child-placing agency for adoption under North Carolina law is not sufficient to satisfy the prerequisites for adoption in another state. S.L. 2007-151 creates a new ground for termination of parental rights that applies when the parent's North Carolina consent or relinquishment has become irrevocable, termination of the parent's rights is necessary in order for the adoption to occur in another state, and the parent does not contest the termination of parental rights. The new ground, in G.S. 7B-1111(a)(10), became effective October 1, 2007, and applies to termination petitions and motions filed on or after that date.

Adoption Jurisdiction

S.L. 2007-151 rewrites G.S. 48-2-100 to expand North Carolina's jurisdiction in adoption proceedings to include (1) cases in which the child to be adopted has lived in the state either since birth or for the six consecutive months preceding the filing of the adoption petition, regardless of the adoptive parents' domicile and (2) cases in which a social services department or licensed child-placing agency in the state has legal custody of the child when the adoption petition is filed.

The act also provides that North Carolina may exercise jurisdiction in an adoption proceeding even if another state is properly exercising jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act when the adoption petition is filed, if the other state either dismisses its proceeding or releases its exclusive continuing jurisdiction within sixty days after the adoption petition is filed in North Carolina.

These changes became effective October 1, 2007, and apply to adoption petitions filed on or after that date.

Access to Adoption Information

S.L. 2007-262 (H 445) rewrites various sections of the adoption law, G.S. Chapter 48, to allow county social services departments and licensed child-placing agencies in the state to agree to act as *confidential intermediaries* for purposes of obtaining and sharing confidential adoption information and facilitating contact between individuals when there is written consent by all parties to the contact or information sharing. Agencies may charge a reasonable fee for the service. The act does not create an adoption registry or provide details about how the process will work, but it requires the state Division of Social Services to develop guidelines for confidential intermediary services.

Those who may seek and consent to information or contact or both through a confidential intermediary include an adoptee who has reached the age of twenty-one; an adult lineal descendant of a deceased adoptee; and a biological parent of an adoptee. An agency also may act as a confidential intermediary for the adoptive parents of a minor adoptee for purposes of obtaining and sharing non-identifying birth-family health information. The act is effective January 1, 2008.

Criminal History Checks

S.L. 2007-276 (H 698) rewrites the definition of “criminal history” for purposes of various criminal record checks required in relation to foster care and adoption, by amending G.S. 48-1-101(5a), 48-3-309, 131D-10.2(6a), 131D-10.3A(e), and related statutes.

Child and Family Team Initiative

Section 10.9 of S.L. 2007-323 (H 1473), the Current Operations and Capital Improvements Appropriations Act of 2007, continues the School-Based Child and Family Team Initiative, to provide for agency collaboration in identifying and providing services for children who are at risk of school failure or out-of-home placement.

Comprehensive Treatment Services

Section 10.10 of S.L. 2007-323 directs DHHS to continue the Comprehensive Treatment Services Program, in consultation with other agencies, to provide appropriate and medically necessary nonresidential and residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement.

Intensive Family Preservation Services

Section 10.33 of S.L. 2007-323 continues the Intensive Family Preservation Services Program.

Child Welfare Postsecondary Support Program

Section 10.34 of S.L. 2007-323 provides funding, from both the General Fund and the Escheat Fund, for a child welfare postsecondary support program, to provide scholarships and case management services for two categories of youth—those who age out of the foster care system and those with special needs who are adopted from foster care after the age of twelve. The funds may be used only for youth who attend public institutions of higher education in this state. Most of the funds appropriated by the section are to be allocated to the North Carolina State Education Assistance Authority, and the act requires DHHS to collaborate with the authority to develop policies and procedures for distributing the funds.

Safe Surrender Education

S.L. 2007-126 (H 485) amends G.S. 115C-47 to require local boards of education to adopt policies to ensure that students in grades nine through twelve receive information annually on the procedure through which a parent may lawfully abandon a newborn baby with a responsible person. The act is described in more detail in Chapter 4, “Children and Juvenile Law.”

Family Resource Centers

Part 5B of Article 3 of G.S. Chapter 143B establishes the Family Resource Center Grant Program. S.L. 2007-130 (H 696) amends G.S. 143B-152.10 to restate the program’s purpose as implementing research-based family support programs that have been evaluated for effectiveness (was, establishing family support centers) and that provide services to children from birth through age seventeen (was, through elementary school age) and their families. It also adds to the types of services provided those that “prevent child abuse and neglect by implementing program models that have been evaluated and found to improve outcomes for children and families.”

Medicaid

State and County Medicaid Funding

Unlike most states, North Carolina historically has required counties to pay 15 percent of the nonfederal share of the cost (approximately 5.5 percent of the total cost or more than \$400 million in state fiscal year 2002) of Medicaid services provided to county residents.¹

The Current Operations and Capital Improvements Appropriations Act of 2007, S.L. 2007-323 (H 1473), phases out the fiscal responsibility of North Carolina counties for Medicaid services. (Counties will continue to be responsible for paying the nonfederal share of the local cost of administering the state Medicaid program.) The counties’ fiscal responsibility for Medicaid services will be reduced to 11.25 percent of the nonfederal share of the cost of Medicaid services (and Medicare Part D “clawback” payments) effective October 1, 2007; will be reduced to 7.5 percent effective July 1, 2008; and will be eliminated effective July 1, 2009. Phasing out the counties’ fiscal responsibility for Medicaid services will reduce county spending and increase state spending by approximately \$86 million in state fiscal year 2007–08 and \$271 million in 2008–09.

Medicaid Special Fund

S.L. 2007-117 (S 1119) amends G.S. 143C-9-1 to establish a nonreverting Medicaid Special Fund and require DHHS to transfer into the fund the balance of federal Medicaid funding for “disproportionate share hospitals” remaining after payments are made to hospitals from these funds. Funds deposited in the Medicaid Special Fund may be expended only through appropriation by the General Assembly.

Medicaid Estate Recovery Plan and Liens

In 2005 the General Assembly enacted legislation (S.L. 2005-276, sec. 10.21C) amending North Carolina’s law regarding recovery of Medicaid payments from the estates of deceased Medicaid recipients and authorizing DHHS to impose liens against the property of certain Medicaid recipients to recover the cost of Medicaid services. Subsequent legislation (S.L. 2006-66, S.L. 2007-145, S.L. 2007-323), however, prevented these changes from taking effect.

1. See John L. Saxon, “The Fiscal Impact of Medicaid on North Carolina Counties,” *Popular Government* 67(4):14–22 (Summer 2002).

Effective August 23, 2007, S.L. 2007-442 (H 1537)

- repeals the 2005 amendments to G.S. 108A-70.5 that would have authorized DHHS to impose liens against the property of certain Medicaid recipients to recover the cost of Medicaid services;
- amends G.S. 108A-70.5 to provide that a Medicaid claim against the estate of a deceased Medicaid recipient may be asserted only with respect to (1) Medicaid services provided to a Medicaid recipient while he or she was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other Medicaid institution and could not reasonably have been expected to be discharged to return home or (2) nursing facility services, home- and community-based services, hospital care, prescription drugs, and personal care services provided to a Medicaid recipient who was at least fifty-five years old;
- repeals G.S. 108A-70.6 and G.S. 108A-70.7, which established statutory criteria for the waiver or postponement of Medicaid liens and claims, and instead requires DHHS to adopt rules to waive estate recovery in whole or in part if recovery would not be administratively cost-effective or if recovery would be inequitable because it would work an undue hardship;
- repeals G.S. 108A-70.8 and G.S. 108A-70.9, which established statutory requirements with respect to notice regarding Medicaid liens and estate recovery claims;
- provides that, unless required by federal law, the DHHS rules with respect to notice regarding Medicaid estate recovery are limited to notice during the Medicaid application process and notice following the death of a Medicaid recipient;
- repeals G.S. 108A-70.5(e), which referred to the treatment of “special needs trusts” under the Medicaid program; and
- requires DHHS to report by April 15, 2008, to the chairs of the Senate Appropriations Committee for Health and Human Services and the House Appropriations Subcommittee for Health and Human Services with respect to the provision of personal care services to Medicaid recipients and Medicaid estate recovery claims for personal care services.

Medicaid Transfer of Assets Penalty

The federal Medicaid statute (Title XIX of the Social Security Act, as amended by P.L. 109-171) requires state Medicaid programs to 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. In 2006 the General Assembly enacted G.S. 108A-58.1 amending North Carolina’s Medicaid “transfer of assets” penalty and directed DHHS to adopt rules regarding waiver of the transfer of assets penalty in cases involving “undue hardship.” On January 19, 2007, DHHS adopted final rules with respect to waiver of the transfer of assets penalty in cases involving undue hardship (10A NCAC 21B.0314) and these rules were approved by the Rules Review Commission on March 15, 2007.

Effective August 23, 2007, S.L. 2007-442 disapproves the DHHS rules regarding waiver of the Medicaid transfer of assets penalty in cases involving undue hardship and instead enacts a new statute, G.S. 108A-58.2, setting forth the administrative procedure for requesting waiver of the Medicaid transfer of assets penalty in cases involving undue hardship and the standards for waiving the transfer of assets penalty because of undue hardship.

Under new G.S. 108A-58.2, a request for waiver of the transfer of assets penalty made by or on behalf of a person who is applying for Medicaid will be considered and determined in conjunction with the individual’s Medicaid application. When a person is receiving Medicaid and is subject to the transfer of assets penalty, the county social services department must notify the Medicaid recipient that he or she may request waiver of the penalty due to undue hardship. To do so, a Medicaid recipient must request the waiver within twelve calendar days from the date of the notice. If an institutionalized Medicaid recipient requests waiver of the penalty, the Medicaid program must continue to provide the same level of services to the recipient until the last day of

the month following the expiration of ten workdays following notice of the decision regarding the recipient's waiver request or the date of the local hearing decision under G.S. 108A-79 involving the recipient's waiver request, whichever is later. The Medicaid program, however, will not make "bed hold" payments under 42 U.S.C. § 1396p(c)(2)(D) while a waiver request is pending.

A county social services director or the director's designee may not waive imposition of the transfer of assets penalty unless a Medicaid applicant or recipient demonstrates that imposition of the penalty would endanger his or her health or life by depriving him or her of medical care, food, clothing, shelter, or other necessities. In order to demonstrate that imposition of the penalty would endanger the health or life of a Medicaid applicant or recipient, the applicant or recipient must submit a written certification by a medical doctor with knowledge of the individual's medical condition stating that, in the doctor's professional opinion, the individual will be in danger of death or that the individual's health will suffer irreparable harm if the penalty is imposed. In order to obtain a waiver, a Medicaid applicant or recipient also must demonstrate that (1) he or she has no alternative income or resources [as defined in G.S. 108A-58.2(e)] available to provide the medical care, food, clothing, shelter, or other necessities that would be denied as a result of the penalty and (2) he or she, or someone acting on his or her behalf, is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset.

Medicaid "Ticket to Work" Program

In 2005 the General Assembly enacted G.S. 108A-54.1 establishing a Medicaid "Ticket to Work" demonstration program that would allow disabled people who work and are not otherwise eligible for Medicaid to enroll in the state's Medicaid program. S.L. 2007-144 (S 254) delays the effective date of this legislation from July 1, 2007, to July 1, 2008.

Temporary Assistance for Needy Families

S.L. 2007-323 approves North Carolina's Temporary Assistance for Needy Families (TANF) State Plan for 2007-09, and designates Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, and Wilson counties as "electing" counties under G.S. 108A-27.3 through 108A-27.5.

S.L. 2007-323 also amends G.S. 108A-27.9 and G.S. 108A-27.10 to revise the process for adopting the TANF state plan. Under these amendments, DHHS must consult with local government and private sector organizations regarding its proposed TANF state plan and give those organizations at least forty-five days to comment on the proposed plan before it is submitted to the General Assembly. Following this comment period, the proposed plan must (1) be submitted to the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services; (2) be submitted to, reviewed by, and approved by the Governor; and (3) be submitted to the General Assembly for approval by May 15 of each odd-numbered year.

Food Stamps

Because assistance under the Food Stamp Program is now provided through the issuance of electronic benefit transfer cards rather than food stamp coupons, S.L. 2007-97 (S 836) changes the name of the Food Stamp Program to the Food and Nutrition Services Program.

Child Support Enforcement Services

S.L. 2007-460 (H 825) amends G.S. 110-130.1(a) to require state and local child support enforcement programs to impose and collect an annual fee of \$25 for any child support enforcement case involving a family that has not received public assistance under the Aid to Families with Dependent Children or Temporary Assistance for Needy Families (Work First) programs if the state has collected for and disbursed to the family at least \$500 in support during the federal fiscal year.

State–County Special Assistance

Legislation affecting the State-County Special Assistance program is discussed in Chapter 25, “Senior Citizens.”

Health Choice

S.L. 2007-323 appropriates \$7.5 million in recurring funding for each year of the 2007–09 fiscal biennium to allow a 6 percent annual increase in enrollment in the Health Choice program for uninsured children in low-income families.

Children’s Health Care

S.L. 2007-323 directs the DHHS Division of Medical Assistance to produce a report that identifies the most cost-efficient and cost-effective method of developing and implementing a program of comprehensive health care benefits for children in families with incomes between 200 and 300 percent of the federal poverty level and determines whether this program should be implemented by expanding eligibility under the state Medicaid or Health Choice programs. DHHS must submit a final report of its findings and recommendations by February 1, 2008, to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

S.L. 2007-323 also states the General Assembly’s intent to expand access to health insurance for children in families with incomes above 200 percent of the federal poverty level and appropriates \$7 million for state fiscal year 2008–09 to do so.

Child Day Care

S.L. 2007-323 appropriates an additional \$8.4 million in recurring funding for each year of the 2007–09 fiscal biennium for child day care subsidies that will implement rate adjustments and provide services to 643 children on the waiting list for subsidized child day care.

Public Benefits and Services for Victims of Human Trafficking

Effective December 1, 2007, S.L. 2007-547 (S 1079) amends G.S. 14-43.11 to provide that a person who is a victim of human trafficking under that statute and is not a legal resident of North Carolina is eligible for public benefits and services provided by any state agency if the victim otherwise would be eligible for the benefit or service but for his or her status as a nonresident.

Eligibility for public benefits and services under this statute terminates when the victim's eligibility to remain in the United States is terminated under federal law.

Maternity Homes, Child Placing Agencies, and Residential Child Care Facilities

S.L. 2007-30 (H 697) directs the state Social Services Commission to adopt rules establishing educational requirements for executive directors and staff employed in maternity homes, child placing agencies, and residential child care facilities.

Licensed Clinical Social Workers

S.L. 2007-379 (S 1090) amends G.S. 90B-7(f) and other statutes regarding the issuance of provisional licenses to provide clinical social work services. Under these amendments, a provisional licensee must pass the qualifying clinical examination within two years in order to be eligible for renewal of a provisional license and generally must satisfy all requirements for full licensure within six years. S.L. 2007-379 also repeals the exemptions from licensure requirements under G.S. 90B-10(b) other than the exemption for students completing a clinical requirement for graduation while pursuing a course of study in social work in an institution accredited by or in candidacy status with the Council on Social Work Education.

Migrant Housing

S.L. 2007-548 (S 1466) rewrites numerous parts of the Migrant Housing Act of North Carolina (Article 19 of G.S. Chapter 95) to make changes relating to the health and safety of migrant workers, establish procedures for addressing uninhabitable migrant housing, and direct the North Carolina Housing Finance Agency to study the development of a low-interest loan program for agricultural employers.

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