SENATE BILL 537: Licensing & HHS Amends & Rural Health Stable.

2019-2020 General Assembly

Committee:		**Date:**	November 14, 2019
Introduced by:		**Prepared by:**	Theresa Matula
Analysis of:	S.L. 2019-240		Legislative Analyst

OVERVIEW: S.L. 2019-240 amended a wide range of laws in the health and human services area as outlined below.

- ***Establishes a new adult care home payment methodology.***
- ***Amends the Licensed Professional Counselors Act effective January 1, 2020.***
- ***Amends the Substance Abuse Professional Practice Act effective October 1, 2019, for licenses granted or renewed on or after that date and for applications for licenses on or after that date; the changes to the structure of the Board effective July 1, 2020.***
- ***Amends the Social Worker Certification and Licensure Act effective January 1, 2021.***
- ***Clarifies the Medicaid subrogation statute.***
- ***Makes technical and clarifying changes to social services reform and the child support enforcement program effective July 1, 2020.***
- ***Changes to the name of the Vocational State Rehabilitation Council.***
- ***Repeals the Employee Assistance Professionals Article.***
- ***Makes technical and conforming changes the adoption preplacement assessment.***
- ***Expands immunity for cooperating in child abuse and neglect reports and assessments.***
- ***Amends laws pertaining to Department of Health and Human Services law enforcement and the joint security force for various facilities.***
- ***Adds a definition for "security recordings" to the mental health statutes.***
- ***Makes a clarifying change to the NC REACH Program.***
- ***Adds a definition for "Traumatic Brain Injury" to the mental health statutes.***
- ***Adds a Continuing Care Retirement Community representative to the Medical Care Commission.***
- ***Postpones the NC FAST Case-Management Functionality for child welfare and aging and adult services.***
- ***Implements statutes pertaining to criminal history record checks for child care institutions.***
- ***Makes technical and conforming changes to involuntary commitment statutes.***
- ***Enacts statutes to address rural health care stabilization.***

Except as outlined above, the remainder of this act became effective November 6, 2019.

Karen Cochrane-Brown
Director

S537-SMSH-85 SL -V-5

Legislative Analysis Division
919-733-2578

BILL ANALYSIS:

PART I: ADULT CARE HOME PAYMENT METHODOLOGY

PART I directs the Department of Health and Human Services (DHHS) to convene a workgroup that includes adult care home industry representatives and relevant stakeholders, to evaluate reimbursement options. The workgroup must include all funding streams in the evaluation and must develop a service definition(s) under Medicaid managed care. By December 1, 2020, DHHS must submit a report containing the new service definition(s) to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid and NC Health Choice, and the Fiscal Research Division. DHHS is prohibited from submitting any NC Medicaid State Plan amendments to the Centers for Medicare and Medicaid Services to implement the new service definition without prior approval from the General Assembly. [Similar content was also included in Section 9D.12B of House Bill 966, 2019 Appropriations Act.]

PART II: LICENSED PROFESSIONAL COUNSELORS, SUBSTANCE ABUSE PROFESSIONALS, AND SOCIAL WORKERS

PART II-A changes the name of the Licensed Professional Counselors Act to the "Licensed Clinical Mental Health Counselors Act," makes conforming changes, and updates the Board's duties. Amendments broadly include:

- *Terminology Changes (G.S. 90-330)* of "professional counselor" to "clinical mental health counselor" throughout Article 24 of Chapter 90 of the General Statutes.
- *Establishes Mental Health Program (G.S. 90-334(l))* for licensees experiencing substance use disorders, burnout, compassion fatigue, and other mental health concerns.
- *Allows Reciprocity (G.S. 90-337) & Removes Certain Exemptions (G.S. 90-338)* by permitting the Board to enter into reciprocity agreements. Removes certain exemptions for applicants who did not meet academic qualifications.

Part II-B makes technical and conforming changes to reflect Part II-A.

Part II-A and II-B became effective January 1, 2020.

[Similar content may have been included in a version of HB 678.]

PARTS II-C, D, E, F, G and H amends the Substance Abuse Professional Practice Act and changes the name to the "Substance Use Disorder Professional Practice Act," makes conforming changes, and amends the Board**.** Amendments and effective dates are outlined below.

- *Changes Title of Act* from the "North Carolina Substance Abuse Professional Practice Act" to the "North Carolina Substance Use Disorder Professional Practice Act" and makes conforming changes. These changes are contained in Section 8 which became effective October 1, 2019, and apply to licenses granted or renewed on or after that date.
- *Amends Definition (G.S. 90-113.31A)* of independent study and adds a definition for traditional classroom-based study. The changes in Section 4 became effective October 1, 2019.
- *Renames and Restructures Board (G.S. 90-113.32).* Renames the Board to the North Carolina Addictions Specialist Professional Practice Board (Addiction Specialist Board). Replaces the 19 member board with 9 members who serve 3-year staggered terms. Outlines board member reimbursements, election of officers, officer terms, terms of the chair, and vacancies. The changes to the Board in Section 5 become effective July 1, 2020.
- *Increases Required Certification Hours (G.S. 90-113.40(a)(6), G.S. 90-113.40(d1)(1)).* Increases the education hours required for certification as a substance abuse counselor, substance abuse prevention

consultant, or criminal justice addictions specialist from 270 hours to 300 hours. These changes in Section 6 became effective October 1, 2019, and applies to applications for licenses submitted on or after that date.

- *Establishes North Carolina Impaired Professionals Program (G.S. 90-113.48)* with the purpose of operating independently of the Addiction Specialist Board to provide a variety of support services for credentialed professionals for treatment of an impairment due to physical or mental illness, substance use disorder, or professional sexual misconduct. Section 7 became effective October 1, 2019, and applies to licenses granted or renewed on or after that date.
- *Discontinues Certified Substances Abuse Residential Facility Director Credentialing* and removes references to the certified substance abuse residential facility director. The credential is discontinued as of the date the act becomes law and the remaining subsections of the section become effective upon the expiration of the last credential issued.

[Similar content may have also been included in versions of HB 887 and HB 678.]

PART II-I amends the Social Worker Certification and Licensure Act effective January 1, 2021, and the qualifications for the certificate of Certified Social Work Manager apply only to applications for certification received by the Board on or after January 1, 2021. Amendments are outlined below.

- *Creates New Definitions (G.S. 90B-3)* for "applicant," "social work continuing education," and "supervision."
- *Identifies Where Credential Is Held (G.S. 90B-4).* Requires a person who resides and practices in the State while credentialed in another state to amend his or her credential to identify the state where the credential is held. A person who resides and practices in the State for a period of not more than 5 days in any calendar year, while credentialed in another state, shall amend his or her credential to identify the state where the credential is held.
- *Amends Membership (G.S. 90B-5)* and amends the qualifications for the members of the North Carolina Social Worker Certification and Licensure Board (Board).
- *Amends Duties of Board (G.S. 90B-6)* to provide the power to adopt supervision standards. Extends the period of time that a licensed social worker is required to maintain records from 3 years to the longer of (i) 10 years from the date services to the client are terminated or (ii) the record retention period mandated by a third-party payee.
- *Amends Qualifications for Certificates (G.S. 90B-7).* The Board shall issue a certificate as a "Certified Social Worker" or a "Certified Master Social Worker" to applicants who have, among other qualifications, the appropriate degree in social work from a college or university social work program approved by the Council on Social Work Education and have passed a Board-approved qualifying examination.
- *Amends Qualifications for Licensure (G.S. 90B-7).* The Board will issue a license as a "Licensed Clinical Social Worker" or issue a certificate as a "Certified Social Work Manager" to applicants who meet specified criteria
- *Permits Board to Issue Associate License (G.S. 90B-7)* in clinical social work to a person meets specified criteria.
- *Allows Board to Grant Reciprocal and Temporary Licenses (G.S. 90B-8). Renewals of Certificates and Licenses (G.S. 90B-9).* All certificates and licenses, excluding temporary licenses, shall be renewed on or before the expiration date of the certificate or license. The process for renewal of a certificate or license is altered. Requires written request for reactivation, payment of renewal fee and Board verification of compliance with current requirements before reinstating a certificate or license.

- *Amends Nonpracticing Status (G.S. 90B-9.1)* and requires proof of completed continuing education requirements before a certificate or license may be reactivated.
- *Alters Board's Disciplinary Procedures (G.S. 90B-11).*

PART III: STATUTORY AMENDMENTS PERTAINING TO DEPARTMENT OF HEALTH AND HUMAN SERVICES PROGRAMS

[Similar content for Parts III-A-M may have been included in a version of H 250.]

PART III-A clarifies the Medicaid Subrogation Statute. This section applies to claims brought by medical assistance beneficiaries against third parties on or after that date.

- *Background*: G.S. 108A-57 governs Medicaid subrogation, which occurs when (i) a Medicaid beneficiary has been injured by a third party, (ii) Medicaid paid for services to the beneficiary as a result of the injury, and (iii) the beneficiary later receives compensation from the third party for the injury. Under these circumstances, G.S. 108A-57 requires the beneficiary to return a portion of the recovery from the third party to the Medicaid program, as required by federal law.[1] G.S. 108A-57 establishes a presumption that the amount the beneficiary must return to the Medicaid program is either one-third of the beneficiary's recovery from the third party, or the total amount of Medicaid payments related to the injury, whichever is less. G.S. 108A-57 also establishes a process for a beneficiary to dispute the presumed amount of Medicaid's share of the recovery.
- Makes the following technical and clarifying changes to the current subrogation law:
  - Defines "beneficiary" to also include the beneficiary's parent, legal guardian, or personal representative.
  - Replaces references to a "personal injury or wrongful death claim" against a third party, to "any claim" against a third party, consistent with federal law.[2]
- Clarifies that disputes under the statute must be filed with a court in this State.
- Clarifies, in cases where a beneficiary receives recoveries from multiple parties for the same injury, that Medicaid's combined share from all the recoveries cannot exceed the total amount of Medicaid payments related to the injury.
- Extends, from 30 to 60 days, the amount of time within which a court must hold the evidentiary hearing when a beneficiary disputes the presumed amount of Medicaid's share of the recovery.

PART III-B amends select social services statutes.

- Delays from March 1, 2020, to July 1, 2020, the changes to G.S. 108A-74 that were enacted in 2017 which pertain to counties and regional social services departments entering into annual written agreements for social services programs other than medical assistance, local department failure to comply with the written agreement or applicable law, corrective action, and state intervention in or control of service delivery.
- Makes further clarifying changes to G.S. 108A-74, adds language in G.S. 108A-74 (h)-(*l*) that previously existed, and provides an effective date of July 1, 2020, to conform to the date above.

PART III-C amends statutes to comply with federal law for the Child Support Enforcement Program.

- Adds "electronic communications or Internet service provider" to the list of entities that must provide DHHS specified information needed to locate a parent for the purpose of collecting child support or to

[1] 42 U.S.C. 1396k(1)(A).
[2] 42 U.S.C. 1396k(1)(A).

establish or enforce an order for child support. The DHHS reports this is needed to comply with federal law.

PART III-D changes the name of the Vocational Rehabilitation Council to the Vocational State Rehabilitation Council.

- Aligns the term with the federal Workforce Innovation and Opportunity Act.

PART III-E modifies the State Consumer and Family Advisory Committee.

- Eliminates the three appointments by the Council of Community Programs to the State Consumer and Family Advisory Committee due to the dissolution of the Council for Community Programs. The three appointments are being redistributed – one to each of the three remaining appointment authorities (President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the NC Association of County Commissioners).
- Section 15(b) provides instructions pertaining to the current members appointed by the Council of Community Programs to allow them to serve out the remainder of their terms and to provide staggering of the new appointments.

Part III-F repeals the Employee Assistance Professionals Article.

- Repeals Article 32 of Chapter 90, enacted in 1995, which provides for the Employee Assistance Professionals board and licensure process. G.S. 90-500(5) defines an "employee assistance professional" as a person who provides the following services to the public in a program designed to assist in the identification and resolution of job performance problems in the workplace:
  - Expert consultation and training of appropriate persons in the identification and resolution of job performance issues.
  - Confidential and timely assessment of problems.
  - Short-term problem resolution for issues that do not require clinical counseling or treatment.
  - Referrals for appropriate diagnosis, treatment, and assistance to certified or licensed professionals when clinical counseling or treatment is required.
  - Establishment of linkages between workplace and community resources that provide such services.
  - Follow-up services for employees and dependents who use such services.
- DHHS reports that NC is the only state that licenses these professionals and the national certification process is already part of the current NC licensure requirement in Article 32. The Board of Employee Assistance Professionals, created under Article 32, has agreed to dissolve. In anticipation of the repeal, DHHS reports the Board is not currently issuing licenses. There are 33 current licensees.
- There is approximately $1,300 in fee revenue in the Board's account, and absent contrary direction by the General Assembly, the revenue will be transferred to the General Fund.

PART III-G provides compliance with the Multi-Ethnic Placement Act.

- Clarifies that a prospective adoptive parent's nationality, race, ethnicity, or religious preference may not be used as a determining factor when evaluating the suitability of the prospective adoptive parents in compliance with the federal Multi-Ethnic Placement Act (MEPA).

PART III-H amends the statute (G.S. 7B-309) **to provide immunity for cooperating in child abuse and neglect reports and assessments in order to comply with the federal Child Abuse Prevention and Treatment Act.**

- The change provides immunity for individuals who provide information or assistance, including medical evaluations or consultation in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect.

- DHHS reports the federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to be compliant with provisions to prevent children from being abused/neglected and as a condition of funding.

PART III-I updates statutes pertaining to DHHS law enforcement/joint security force.

- Corrects statutory references to DHHS facilities and provides that upon assignment by the Secretary or designee, to any State operated facility, the special police officers may exercise the same power within the territory of the named facility and within the county in which the facility is located.
- Deletes statutes that provided for the Dorothea Dix Hospital Joint Security Force.

PART III-J provides a definition for "security recordings" in mental health statutes.

- Defines "security recordings" as any films, videos, or electronic or other media records of a common area in a State facility that are produced for the purpose of maintaining or enhancing the health and safety of clients, residents, staff or visitors of that State facility. The term does not include recordings of a client's clinical sessions or any other recordings that are part of a client's confidential records.
- Provides the following: security recordings are not a public record and are confidential; a State facility is not required to disclose its security recordings unless required by federal law or compelled by a court of competent jurisdiction; permits a State facility to allow viewing by an internal client advocate; permits viewing by a client or their legally responsible person if in the best interest of the client.

PART III-K clarifies that funds for the child welfare postsecondary support program shall be used to continue providing assistance with the "cost of attendance" for the educational needs of youth who exit foster care to a permanent home through the Guardianship Assistance Program.

PART III-L provides a definition of "traumatic brain injury" (TBI) in the mental health statutes.

- Defines TBI as an injury to the brain caused by an external physical force resulting in total or partial functional disability psychosocial impairment, or both, and meets all of the following criteria:
  a. Involves an open or closed head injury.
  b. Resulted from a single event or resulted from a series of events which may include multiple concussions.
  c. Occurs with or without a loss of consciousness at the time of injury.
  d. Results in impairments in one or more areas of the following functions: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
  e. Does not include brain injuries that are congenital or degenerative.

PART III-M amends the membership of the North Carolina Medical Care Commission to add an individual affiliated with a nonprofit Continuing Care Retirement Community.

PART III-N postpones deployment of NC FAST Case-Management functionality for the child welfare system. The Department of Health and Human Services, Division of Social Services is prohibited from deploying the child welfare case-management component of the NC FAST system statewide prior to July 1, 2020. The Department must continue to develop and improve case-management functionality only in those counties that participated in the initial pilot program prior to January 1, 2019. Counties that were phased-in the NC FAST Child Welfare System after January 1, 2019, may elect to opt out of the utilization of the Intake and Assessment functionality of the NC FAST system.

The Division is required to continue developing and issuing requests for information (RFIs) to consider a vehicle for improving or replacing the child welfare case-management component but is prohibited from issuing any contracts without prior approval from the General Assembly. The Division is required to consult with the Executive Committee of the North Carolina Association of County Directors of Social

Services. Additionally, the Department is required to report to the chairs of the Senate Committee on Health Care, the chairs of the Senate Appropriations Committee on Health and Human Services, the chairs of the House of Representatives Committee on Health, and the chairs of the House of Representatives Appropriations Committee on Health and Human Services no later than May 1, 2020.

The Joint Legislative Program Evaluation Oversight Committee must revise the biennial 2019-2020 work plan for the Program Evaluation Division to include a study of the case-management functionality of the child welfare component of NC FAST. The Program Evaluation Division must submit its evaluation to the Joint Legislative Program Evaluation Oversight Committee and to the Joint Legislative Oversight Committee on Health and Human Services no later than May 1, 2020.

PART III-O establishes a required criminal history record check process for employees, applicants for employment, and individuals wishing to volunteer in a child care institution as defined by Title IV-E of the Social Security Act. The language is similar to other statutorily required criminal history record check processes and was required by federal law according to the Department of Health and Human Services.
The following is definition of "child care institution"

- "Child care institution" is defined in Federal regulations (45 CFR 1355.20) as:

  Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing.

  Child care institutions in NC - According to DHHS, there are two licensing authorities for child care institutions as defined by Title IV-E of the Social Security Act – the Division of Social Services (DSS) for facilities under Chapter 131D of the North Carolina General Statutes, and the Division of Health Services Regulation for facilities under Chapter 122C. The DSS licenses both public and private residential child care facilities- private residential child care facilities are owned and operated by a private agency. Public facilities are owned and operated by a county government agency or a county DSS. There are 44 private residential child care facilities/agencies and 3 public residential child care facilities/agencies currently licensed by DSS. Some residential child care facilities may meet the definition of child care institution under Title IV-E, but not all.

[Similar content was included in HB 935, Section 2.]

PART IV: INVOLUNTARY COMMITMENT CHANGES

PART IV makes technical and conforming changes to the Involuntary Commitment statutes.

PART V: RURAL HEALTH CARE STABILIZATION

PART V: Establishes the Rural Health Care Stabilization Fund as outlined below.

- Establishes the Rural Health Care Stabilization Fund as a nonreverting loan fund. HB 966, if enacted, would appropriate $20m to the fund over the 2019-20 biennium
- Establishes a loan program, administered by UNC Health Care, to provide below-market interest-rate loans for the support of hospitals located in rural areas that are in financial crisis due to operation of oversized and outdated facilities and recent changes to the viability of health care delivery in their communities.
- The loan applicant may be a unit of local government, the owner of a health care facility, or a partnership that includes a public agency or the owner of a health care facility.

- The purpose of the loan is to help financially distressed hospitals transition to sustainable, efficient, and more proportionately sized health care service models in their communities.
- An award of a loan may not be made unless the Local Government Commission (LGC) approves it. The consideration process used by the LGC would be substantially similar to the consideration process it uses to assess the feasibility of local financing agreements.
- The terms of the loan may include changes to the governance structure of the hospital. The interest rate may not exceed the interest rate obtained by the State on its most recent GO bond offering. The maturity for the loan may not exceed 20 years.
- The program is flexibly designed to be able to meet different applicant needs. If the applicant is a unit of local government, there are current law requirements that a unit of local government may have to meet that are not part of this loan program.
- UNC Health Care must publish a report by November 1 each year on the Rural Health Care Stabilization Fund. The report must include the following for the prior fiscal year: the beginning and ending balances of the Fund; the amount of revenue credited to the Fund, by source; the total amount of loans awarded; and for each loan awarded: the recipient of the award, the amount of the award, the amount disbursed, and the amount remaining to be disbursed.

[Similar content was contained in H 704 v. 3.]

** Jessica Boney, Erika Churchill, and Cindy Avrette, Legislative Analysis Division staff, contributed to this summary.*