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SENATE BILL DRS35386-MRxfa-140C

Short Title: Medicaid Transformation Necessities. (Public)

Sponsors: Senators Brown, Harrington, and B. Jackson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS FOR THE IMPLEMENTATION OF MEDICAID
3 TRANSFORMATION AND TO MAKE OTHER NECESSARY MEDICAID
4 TRANSFORMATION-RELATED CHANGES.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. INTRODUCTION**

8 **SECTION 1.1.** The provisions of the State Budget Act, Chapter 143C of the General
9 Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act
10 by reference.

11 **SECTION 1.2.** Departmental receipts, as defined in G.S. 143C-1-1, are appropriated
12 for the 2020-2021 fiscal year up to the amounts needed to implement the provisions in this act
13 for the 2020-2021 fiscal year.

14 **SECTION 1.3.** Except where expressly repealed or amended by this act, the
15 provisions of any other legislation enacted during the 2019 Regular Session expressly
16 appropriating funds to an agency, a department, or an institution covered under this act, shall
17 remain in effect.

18
19 **PART II. DELAY IMPLEMENTATION OF MEDICAID TRANSFORMATION**

20 **SECTION 2.1.** Subdivision (4) of Section 3 of S.L. 2015-245, as amended by
21 Section 4 of S.L. 2018-49, reads as rewritten:

22 "(4) ~~Eighteen months after the date that CMS approves the 1115 demonstration~~
23 ~~waiver request submitted as required by this act on June 1, 2016, as amended.~~
24 No later than January 1, 2021. – Capitated contracts shall begin. DHHS may
25 phase recipient enrollment on a regional basis, provided that initial recipient
26 enrollment shall be complete no later than five months after the date capitated
27 contracts ~~are required to begin.~~"

28
29 **PART III. FUNDS FOR OPERATION OF THE MEDICAID PROGRAM**

30 **SECTION 3.1.** There is appropriated from the General Fund a sufficient sum in
31 recurring funding for the 2020-2021 fiscal year to the Department of Health and Human Services,
32 Division of Health Benefits, to be used for the Medicaid and NC Health Choice programs rebase.

33 **SECTION 3.2.** There is appropriated from the General Fund a sufficient sum in
34 recurring funding for the 2020-2021 fiscal year to the Department of Health and Human Services,
35 Division of Health Benefits, for contracts, personnel, and projects related to transitioning to
36 Medicaid managed care.



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2 **PART IV. USE OF MEDICAID TRANSFORMATION FUND FOR MEDICAID**
3 **TRANSFORMATION NEEDS**

4 **SECTION 4.1.** The State Controller shall transfer a sufficient sum for the
5 nonrecurring Medicaid transformation needs in the 2020-2021 fiscal year from funds available
6 in the Medicaid Transformation Reserve in the General Fund to the Medicaid Transformation
7 Fund established under Section 12H.29 of S.L. 2015-241.

8 **SECTION 4.2.** Funds from the Medicaid Transformation Fund may be transferred
9 to the Department of Health and Human Services, Division of Health Benefits (DHB), as needed
10 for the purpose of paying claims related to services billed under the fee-for-service payment
11 model for recipients who are being, or have been, transitioned to managed care, otherwise known
12 as "claims run out." Funds may be transferred to DHB as the need to pay claims run out arises
13 and need not be transferred in one lump sum. To the extent that any funds are transferred under
14 this section, the funds are appropriated for the purpose set forth in this section.

15 **SECTION 4.3.(a)** Subject to the fulfillment of conditions specified in subsection (b)
16 of this section, nonrecurring funds for the 2020-2021 fiscal year from the Medicaid
17 Transformation Fund may be transferred to the Department of Health and Human Services,
18 Division of Health Benefits (DHB), for the sole purpose of providing the State share for
19 nonrecurring qualifying needs directly related to Medicaid transformation, as required by S.L.
20 2015-241, as amended. Funds may be transferred to DHB as nonrecurring qualifying needs arise
21 during the 2020-2021 fiscal year and need not be transferred in one lump sum. To the extent that
22 any funds are transferred under this subsection, the funds are appropriated for the purpose set
23 forth in this subsection.

24 For the purposes of this section, the term "qualifying need" shall be limited to
25 information technology, time-limited staffing, and contracts related to the following Medicaid
26 transformation needs:

- 27 (1) Program design.
28 (2) Beneficiary experience.
29 (3) NC FAST upgrades related to Medicaid transformation.
30 (4) Data management tools.
31 (5) Program integrity.
32 (6) Technical and operational integration.
33 (7) Other nonrecurring needs identified by DHB, as determined in consultation
34 with the Office of State Budget and Management.

35 **SECTION 4.3.(b)** A request by the Department of Health and Human Services,
36 Division of Health Benefits (DHB), for the transfer of funds pursuant to this section shall be
37 made to the Office of State Budget and Management (OSBM) and shall include the amount
38 requested and the specific nonrecurring qualifying need for which the funds are to be used. None
39 of the funds identified in this section shall be transferred to DHB until OSBM verifies all of the
40 following information:

- 41 (1) The amount requested is to be used for a nonrecurring qualifying need in the
42 2020-2021 fiscal year.
43 (2) The amount requested provides a State share that will not result in total
44 requirements that exceed one hundred forty million dollars (\$140,000,000) in
45 nonrecurring funds for the 2020-2021 fiscal year.

46 **SECTION 4.3.(c)** Any federal funds received in any fiscal year by the Department
47 of Health and Human Services, Division of Health Benefits (DHB), that represent a return of
48 State share already expended on a qualifying need related to the funds received by DHB under
49 this section shall be deposited into the Medicaid Transformation Fund.
50

1 **PART V. REPEAL OF PAST DIRECTIVE TO ELIMINATE GME TO ALIGN WITH**
2 **MEDICAID TRANSFORMATION**

3 **SECTION 5.1.** Section 12H.12(b) of S.L. 2014-100 and Section 12H.23 of S.L.
4 2015-241, as amended by Section 88 of S.L. 2015-264, are repealed.

5
6 **PART VI. MEDICAID TRANSFORMATION HOTLINE OPTION**

7 **SECTION 6.1.** The Department of Health and Human Services shall ensure that the
8 existing DHHS Customer Service hotline is responsive to questions posed by a Medicaid
9 beneficiary or provider or by the general public that are related to the rollout of Medicaid
10 Transformation.

11
12 **PART VII. TRIBAL OPTION/MEDICAID TRANSFORMATION**

13 **SECTION 7.1.(a)** The Department of Health and Human Services may contract with
14 an Indian managed care entity (IMCE) or an Indian health care provider (IHCP), as defined under
15 42 C.F.R. § 438.14(a), to assist in the provision of health care or health care–related services to
16 Medicaid and NC Health Choice beneficiaries who are members of federally recognized tribes
17 or who are eligible to enroll in an IMCE. Contracts may include health care or health care–related
18 services as agreed upon with the IMCE or IHCP, as approved by the Secretary of the Department
19 of Health and Human Services and as allowed by the Centers for Medicare and Medicaid Services
20 (CMS), including, but not limited to, the following services:

- 21 (1) Primary care case management as a primary care case managed system or
22 entity, as described in 42 C.F.R. § 438.2.
- 23 (2) Utilization management and referrals.
- 24 (3) The management or provision of home- and community-based services under
25 a 1915(c) waiver.
- 26 (4) The management or provision of specialized services covered by a BH IDD
27 Tailored Plan in accordance with G.S. 108D-60(8).

28 Coverage provided by the IMCE or IHCP may be more permissive, but no more
29 restrictive, than Medicaid or NC Health Choice medical coverage policy adopted or amended by
30 the Department of Health and Human Services; however, the coverage shall be in compliance
31 with federal regulations and policies related to the receipt of federal funding for these health care
32 or health care–related services.

33 **SECTION 7.1.(b)** G.S. 108D-40(a) reads as rewritten:

34 "(a) Capitated PHP contracts shall cover all Medicaid and NC Health Choice program aid
35 categories except for the following categories:

36 ...

- 37 (5a) Eligible recipients who are enrolled in a DHHS-contracted Indian managed
38 care entity, as defined in 42 C.F.R. § 438.14(a).

39"

40 **SECTION 7.1.(c)** G.S. 122C-115(e) reads as rewritten:

41 "(e) Beginning on the date that capitated contracts under Article 4 of Chapter 108D of the
42 General Statutes begin, LME/MCOs shall cease managing Medicaid services for all Medicaid
43 recipients other than recipients described in G.S. 108D-40(a)(1), (4), (5), (5a), (6), (7), (10), (11),
44 (12), and (13). Until BH IDD tailored plans become operational, all of the following shall occur:

- 45 (1) LME/MCOs shall continue to manage the Medicaid services that are covered
46 by the LME/MCOs under the combined 1915(b) and (c) waivers for Medicaid
47 recipients described in G.S. 108D-40(a)(1), (4), (5), (5a), (6), (7), (10), (11),
48 (12), and (13).
- 49 (2) The Division of Health Benefits shall negotiate actuarially sound capitation
50 rates directly with the LME/MCOs based on the change in composition of the
51 population being served by the LME/MCOs.

- 1 (3) Capitation payments under contracts between the Division of Health Benefits
2 and the LME/MCOs shall be made directly to the LME/MCO by the Division
3 of Health Benefits."

4 **SECTION 7.1.(d)** The Department of Health and Human Services is authorized to
5 seek approval from CMS and submit any necessary State Plan Amendments and waivers, or any
6 amendments thereto, to implement the provisions of this section.
7

8 **PART VIII. REVISE AND RENAME THE SUPPLEMENTAL PAYMENT PROGRAM**
9 **FOR ELIGIBLE MEDICAL PROFESSIONAL PROVIDERS**

10 **SECTION 8.1.(a)** The Department of Health and Human Services shall revise the
11 supplemental payment program for eligible medical professional providers described in the
12 Medicaid State Plan, Attachment 4.19-B, Section 5, Pages 2 and 3, as required by this section.
13 This payment program shall be called the Average Commercial Rate Supplemental and Directed
14 Payment Program. Effective January 1, 2021, the following two changes to the program shall be
15 implemented:

- 16 (1) The program shall no longer utilize a limit on the number of eligible medical
17 professional providers that may be reimbursed through the program and
18 instead shall utilize a limit on the total payments made under the program.
19 (2) Payments under the program shall consist of two components: (i)
20 supplemental payments that increase reimbursement to the average
21 commercial rate under the State Plan and (ii) directed payments that increase
22 reimbursement to the average commercial rate under the managed care
23 system.

24 **SECTION 8.1.(b)** The limitation on total payments made under the Average
25 Commercial Rate Supplemental and Directed Payment Program for eligible medical professional
26 providers shall apply to the combined amount of payments made as supplemental payments under
27 the State Plan and payments made as directed payments under the managed care system and shall
28 be based on the amount of supplemental payments for services provided during the 2018-2019
29 fiscal year as follows:

- 30 (1) For services provided during the period January 1, 2021, through June 30,
31 2021, the total annual supplemental and directed payments made under the
32 Average Commercial Rate Supplemental and Directed Payment Program shall
33 not exceed fifty percent (50%) of the gross supplemental payments for
34 services provided by eligible medical providers during the 2018-2019 fiscal
35 year increased by an inflation factor determined by the Department of Health
36 and Human Services, Division of Health Benefits.
37 (2) For services provided on or after July 1, 2021, the total annual supplemental
38 and directed payments made under the Average Commercial Rate
39 Supplemental and Directed Payment Program shall not exceed one hundred
40 percent (100%) of the gross supplemental payments for services provided by
41 eligible medical providers during the 2018-2019 fiscal year, increased at the
42 start of each State fiscal year by an inflation factor determined by the
43 Department of Health and Human Services, Division of Health Benefits.

44 **SECTION 8.1.(c)** Consistent with the existing supplemental payment program for
45 eligible medical professional providers, the Department of Health and Human Services shall limit
46 the total amount of supplemental and directed payments that may be received by the eligible
47 providers affiliated with the East Carolina University Brody School of Medicine and the
48 University of North Carolina at Chapel Hill Health Care System. Average commercial rate
49 supplemental payments and directed payments shall not be made for services provided in Wake
50 County.

1 **SECTION 8.1.(d)** The Department of Health and Human Services is not authorized
2 to make any modifications to the supplemental payment program for eligible medical
3 professional providers, except as authorized by this section.

4 **SECTION 8.1.(e)** Effective January 1, 2021, Section 12H.13(e) of S.L. 2013-360
5 and Sections 12H.13(b) and 12H.13A of S.L. 2014-100 are repealed.

6
7 **PART IX. MEDICAID CONTINGENCY RESERVE CODIFICATION**

8 **SECTION 9.1.** Article 4 of Chapter 143C of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 143C-4-11. Medicaid Contingency Reserve.**

11 (a) Medicaid Contingency Reserve. – The Medicaid Contingency Reserve is established
12 as a reserve to be used only for budget shortfalls in the Medicaid or NC Health Choice programs.

13 (b) Funds from the Medicaid Contingency Reserve may be allocated or expended only if
14 all of the following criteria are met:

15 (1) There is an act of appropriation by the General Assembly.

16 (2) After the State Controller has verified that all Medicaid and NC Health Choice
17 program receipts are being used appropriately, the Director of the Budget has
18 found that additional funds are needed to cover a shortfall in the Medicaid or
19 NC Health Choice budget for the State fiscal year.

20 (3) The Director of the Budget has reported immediately to the Fiscal Research
21 Division on the amount of the shortfall found in accordance with subdivision
22 (2) of this subsection. This report shall include an analysis of the causes of the
23 shortfall, such as (i) unanticipated enrollment and mix of enrollment, (ii)
24 unanticipated growth or utilization within particular service areas, (iii) errors
25 in the data or analysis used to project the Medicaid or NC Health Choice
26 budget, (iv) the failure of the program to achieve budgeted savings, (v) other
27 factors and market trends that have impacted the price of or spending for
28 services, (vi) variations in receipts from prior years or from assumptions used
29 to prepare the Medicaid and NC Health Choice budget for the current fiscal
30 year, or (vii) other factors. The report shall also include data in an electronic
31 format that is adequate for the Fiscal Research Division to confirm the amount
32 of the shortfall and its causes.

33 (c) Nothing in this section shall be construed to limit the authority of the Governor to
34 carry out the Governor's duties under the Constitution."

35
36 **PART X. REVISE AND UPDATE HOSPITAL ASSESSMENTS**

37 **SECTION 10.1.(a)** Effective January 1, 2021, Article 7 of Chapter 108A of the
38 General Statutes is repealed.

39 **SECTION 10.1.(a1)** Notwithstanding any provision of Article 7 of Chapter 108A of
40 the General Statutes to the contrary, the equity assessment, UPL assessment, equity payments,
41 and UPL payments required under that Article for the partial year beginning October 1, 2020,
42 and ending December 31, 2020, shall be carried out in accordance with this subsection. For the
43 annual period beginning October 1, 2020, the equity payment amount and the UPL payment
44 amount required by G.S. 108A-124 shall be calculated to exclude services rendered after
45 December 31, 2020. In order to account for these partial-year payment amounts, the Secretary of
46 the Department of Health and Human Services may adjust the quarterly equity payments and
47 UPL payments required by G.S. 108A-124. In order to account for any partial-year adjustments
48 to the equity payments or UPL payments, the Secretary of the Department of Health and Human
49 Services may make any necessary adjustments to the equity assessment percentage rate, the UPL
50 assessment percentage rate, any quarterly equity assessment, and any UPL assessment required
51 under G.S. 108A-122 and G.S. 108A-123.

1 **SECTION 10.1.(a2)** Subsection (a) of this section does not affect the rights or
2 liabilities of the State, a hospital subject to the equity assessment or the UPL assessment, or
3 another person arising under a statute repealed by subsection (a) of this section or arising under
4 subsection (a1) of this section before the effective date of its repeal.

5 **SECTION 10.1.(b)** Effective January 1, 2021, Chapter 108A of the General Statutes
6 is amended by adding a new Article to read:

7 "Article 7A.

8 "Hospital Assessment Act.

9 "Part 1. General.

10 **"§ 108A-130. Short title and purpose.**

11 This Article shall be known as the "Hospital Assessment Act." This Article does not authorize
12 a political subdivision of the State to license a hospital for revenue or impose a tax or assessment
13 on a hospital.

14 **"§ 108A-131. Definitions.**

15 The following definitions apply in this Article:

16 (1) Base assessment. – The assessment payable under G.S. 108A-142.

17 (2) CMS. – Centers for Medicare and Medicaid Services.

18 (3) Critical access hospital. – As defined in 42 C.F.R. § 400.202.

19 (4) Department. – The Department of Health and Human Services.

20 (5) Prepaid health plan. – As defined in G.S. 108D-1.

21 (6) Public hospital. – A hospital that certifies its public expenditures to the
22 Department pursuant to 42 C.F.R. § 433.51(b) during the fiscal year for which
23 the assessment applies.

24 (7) Secretary. – The Secretary of Health and Human Services.

25 (8) State's annual Medicaid payment. – An annual amount equal to one hundred
26 ten million dollars (\$110,000,000) for the taxable year October 1, 2020,
27 through September 30, 2021, increased each year over the prior year's
28 payment by the percentage specified as the Medicare Market Basket Index
29 less productivity most recently published in the Federal Register.

30 (9) Supplemental assessment. – The assessment payable under G.S. 108A-141.

31 (10) Total hospital costs. – The costs as calculated using the most recent available
32 Hospital Cost Report Information System's cost report data available through
33 CMS or other comparable data, including both inpatient and outpatient
34 components, for all hospitals that are not exempt from the applicable
35 assessment.

36 **"§ 108A-132. Due dates and collections.**

37 (a) Assessments under this Article are due quarterly in the time and manner prescribed
38 by the Secretary and shall be considered delinquent if not paid within seven calendar days of this
39 due date.

40 (b) With respect to any hospital owing a past-due assessment amount under this Article,
41 the Department may withhold the unpaid amount from Medicaid or NC Health Choice payments
42 otherwise due or impose a late payment penalty. The Secretary may waive a penalty for good
43 cause shown.

44 (c) In the event the data necessary to calculate an assessment under this Article is not
45 available to the Secretary in time to impose the quarterly assessments for a payment year, the
46 Secretary may defer the due date for the assessment to a subsequent quarter.

47 **"§ 108A-133. Assessment appeals.**

48 A hospital may appeal a determination of the assessment amount owed through a
49 reconsideration review. The pendency of an appeal does not relieve a hospital from its obligation
50 to pay an assessment amount when due.

51 **"§ 108A-134. Allowable costs; patient billing.**

1 (a) Assessments paid under this Article may be included as allowable costs of a hospital
2 for purposes of any applicable Medicaid reimbursement formula, except that assessments paid
3 under this Article shall be excluded from cost settlement.

4 (b) Assessments imposed under this Article may not be added as a surtax or assessment
5 on a patient's bill.

6 **"§ 108A-135. Rule-making authority.**

7 The Secretary may adopt rules to implement this Article.

8 **"§ 108A-136. Repeal.**

9 If CMS determines that an assessment under this Article is impermissible or revokes approval
10 of an assessment under this Article, then that assessment shall not be imposed and the
11 Department's authority to collect the assessment is repealed.

12 "Part 2. Supplemental and Base Assessments.

13 **"§ 108A-140. Applicability.**

14 (a) The assessments imposed under this Part apply to all licensed North Carolina
15 hospitals, except as provided in this section.

16 (b) The following hospitals are exempt from both the supplemental assessment and the
17 base assessment:

18 (1) Critical access hospitals.

19 (2) Freestanding psychiatric hospitals.

20 (3) Freestanding rehabilitation hospitals.

21 (4) Long-term care hospitals.

22 (5) State-owned and State-operated hospitals.

23 (6) The primary affiliated teaching hospital for each University of North Carolina
24 medical school.

25 (c) Public hospitals are exempt from the supplemental assessment.

26 **"§ 108A-141. Supplemental assessment.**

27 (a) The supplemental assessment shall be a percentage, established by the General
28 Assembly, of total hospital costs.

29 (b) The Department shall propose the rate of the supplemental assessment to be imposed
30 under this section when the Department prepares its budget request for each upcoming fiscal
31 year. The Governor shall submit the Department's proposed supplemental assessment rate to the
32 General Assembly each fiscal year.

33 (c) The Department shall base the proposed supplemental assessment rate on all of the
34 following factors:

35 (1) The percentage change in aggregate payments to hospitals subject to the
36 supplemental assessment for Medicaid and NC Health Choice enrollees,
37 excluding hospital access payments made under 42 C.F.R. § 438.6, as
38 demonstrated in data from prepaid health plans and the State, as determined
39 by the Department.

40 (2) Any changes in the federal medical assistance percentage rate applicable to
41 the Medicaid or NC Health Choice programs for the applicable year.

42 (d) The rate for the supplemental assessment for each taxable year shall be the percentage
43 rate set by law by the General Assembly.

44 **"§ 108A-142. Base assessment.**

45 (a) The base assessment shall be a percentage, established by the General Assembly, of
46 total hospital costs.

47 (b) The Department shall propose the rate of the base assessment to be imposed under
48 this section when the Department prepares its budget request for each upcoming fiscal year. The
49 Governor shall submit the Department's proposed base assessment rate to the General Assembly
50 each fiscal year.

1 (c) The Department shall base the proposed base assessment rate on all of the following
2 factors:

3 (1) The change in the State's annual Medicaid payment for the applicable year.

4 (2) The percentage change in aggregate payments to hospitals subject to the base
5 assessment for Medicaid and NC Health Choice enrollees, excluding hospital
6 access payments made under 42 C.F.R. § 438.6, as demonstrated in data from
7 prepaid health plans and the State, as determined by the Department.

8 (3) Any changes in the federal medical assistance percentage rate applicable to
9 the Medicaid or NC Health Choice programs for the applicable year.

10 (4) Any changes as determined by the Department in (i) reimbursement under the
11 Medicaid State Plan, (ii) managed care payments authorized under 42 C.F.R.
12 § 438.6 for which the nonfederal share is not funded by General Fund
13 appropriations, and (iii) reimbursement under the NC Health Choice program.

14 (d) The rate for the base assessment for each taxable year shall be the percentage rate set
15 by law by the General Assembly.

16 **"§ 108A-143. Payment from other hospitals.**

17 (a) If a hospital that is exempt from both the base and supplemental assessments under
18 this Part (i) makes an intergovernmental transfer to the Department to be used to draw down
19 matching federal funds and (ii) has acquired, merged, leased, or managed another hospital on or
20 after March 25, 2011, then the exempt hospital shall transfer to the State an additional amount.
21 The additional amount shall be a percentage of the amount of funds that (i) would be transferred
22 to the State through such an intergovernmental transfer and (ii) are to be used to match additional
23 federal funds that the exempt hospital is able to receive because of the acquired, merged, leased,
24 or managed hospital.

25 (b) Beginning October 1, 2021, the percentage described in subsection (a) of this section
26 shall be calculated by dividing the amount of the State's annual Medicaid payment by the total
27 amount collected under the base assessment under G.S. 108A-142.

28 (c) For the partial year beginning January 1, 2021, and ending September 30, 2021, the
29 percentage described in subsection (a) of this section shall be calculated by dividing three-fourths
30 of the amount of the State's annual Medicaid payment by the amount collected under the base
31 assessment under G.S. 108A-142.

32 **"§ 108A-144. Use of funds.**

33 The proceeds of the assessments imposed under this Part, and all corresponding matching
34 federal funds, must be used to make the State's annual Medicaid payment to the State, to fund
35 payments to hospitals made directly by the Department, to fund a portion of capitation payments
36 to prepaid health plans attributable to hospital care, and to fund the nonfederal share of graduate
37 medical education payments."

38 **SECTION 10.1.(b1)** Notwithstanding any provision of G.S. 108A-131, as enacted
39 by subsection (b) of this section, to the contrary, for the taxable year October 1, 2020, through
40 September 30, 2021, total hospital costs, as defined in G.S. 108A-131(10), shall be calculated
41 based on the Hospital Cost Report Information System's 2016 cost report data available through
42 the Centers for Medicare and Medicaid Services.

43 **SECTION 10.1.(c)** The percentage rate to be used in calculating the supplemental
44 assessment under G.S. 108A-141, as enacted in subsection (b) of this section, is two and
45 twenty-six hundredths percent (2.26%) for the taxable year October 1, 2020, through September
46 30, 2021. The supplemental assessment shall be imposed only for months beginning on or after
47 January 1, 2021. The supplemental assessment imposed during the period January 1, 2021,
48 through September 30, 2021, shall equal three-fourths of the amount of supplemental assessment
49 that would have been imposed for the full taxable year.

50 **SECTION 10.1.(d)** The percentage rate to be used in calculating the base assessment
51 under G.S. 108A-142, as enacted in subsection (b) of this section, is one and seventy-seven

1 hundredths percent (1.77%) for the taxable year October 1, 2020, through September 30, 2021.
2 The base assessment shall be imposed only for months beginning on or after January 1, 2021.
3 The base assessment imposed during the period January 1, 2021, through September 30, 2021,
4 shall equal three-fourths of the amount of base assessment that would have been imposed for the
5 full taxable year.

6 **SECTION 10.2.** Notwithstanding G.S. 143C-4-11, as enacted by Section 9.1 of this
7 act, the State Controller shall transfer funds from the Medicaid Contingency Reserve to the
8 Department of Health and Human Services, Division of Health Benefits (DHB), only upon
9 request by DHB as needed to cover any shortfall in receipts from the supplemental or base
10 assessments under G.S. 108A-141 and G.S. 108A-142, enacted by subsection (b) of Section 10.1
11 of this act, and only if the following two conditions are met:

- 12 (1) The Office of State Budget and Management (OSBM) has certified that there
13 will be a shortfall in receipts from the supplemental or base assessments.
- 14 (2) OSBM has certified that the amount requested by DHB does not exceed the
15 shortfall in receipts certified by OSBM under subdivision (1) of this
16 subsection.

17 Upon making the request to the State Controller for the transfer of funds pursuant to
18 this section, DHB shall notify the Fiscal Research Division and the Joint Legislative Oversight
19 Committee on Medicaid and NC Health Choice of the request and the amount of the request. To
20 the extent any funds are transferred under this section, the funds are hereby appropriated for the
21 purpose set forth in this section. The authority set forth in this section expires June 30, 2021.
22

23 **PART XI. GROSS PREMIUMS TAX/PREPAID HEALTH PLANS**

24 **SECTION 11.(a)** The title of Article 8B of Chapter 105 of the General Statutes reads
25 as rewritten:

26 "Article 8B.

27 "Taxes Upon Insurance ~~Companies~~-Companies and Prepaid Health Plans."

28 **SECTION 11.(b)** G.S. 105-228.3 reads as rewritten:

29 **"§ 105-228.3. Definitions.**

30 The following definitions apply in this Article:

- 31 (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of
32 the General Statutes, regulating hospital, medical, and dental service
33 corporations.
- 34 (2) Capitation payment. – Amounts paid by the Department of Health and Human
35 Services to prepaid health plans under capitated contracts for the delivery of
36 Medicaid and NC Health Choice services in accordance with Article 4 of
37 Chapter 108D of the General Statutes.
- 38 ~~(1a)~~(3) Captive insurance company. – Defined in G.S. 58-10-340.
- 39 ~~(1b)~~(4) Foreign captive insurance company. – A captive insurance company as
40 defined in G.S. 58-10-340(9), except that such company is not formed or
41 licensed under the laws of this State but is formed and licensed under the laws
42 of any jurisdiction within the United States other than this State.
- 43 ~~(2)~~(5) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who
44 have pooled their liabilities pursuant to G.S. 97-93 of the Workers'
45 Compensation Act.
- 46 (6) Prepaid health plan. – As defined in G.S. 108D-1.
- 47 ~~(3)~~(7) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of
48 the Workers' Compensation Act."

49 **SECTION 11.(c)** G.S. 105-228.5 reads as rewritten:

50 **"§ 105-228.5. Taxes measured by gross premiums.**

1 (a) Tax Levied. – A tax is levied in this section on insurers, Article 65 corporations, health
2 maintenance organizations, prepaid health plans, and self-insurers. An insurer, health
3 maintenance organization, prepaid health plan, or Article 65 corporation that is subject to the tax
4 levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4,
5 respectively, of this Chapter.

6 (b) Tax Base. –

7 (1) Insurers. – The tax imposed by this section on an insurer or a health
8 maintenance organization shall be measured by gross premiums from business
9 done in this State during the preceding calendar year.

10 (2) Repealed by Session Laws 2006-196, effective for taxable years beginning on
11 or after January 1, 2008.

12 (3) Article 65 Corporations. – The tax imposed by this section on an Article 65
13 corporation shall be measured by gross collections from membership dues,
14 exclusive of receipts from cost plus plans, received by the corporation during
15 the preceding calendar year.

16 (4) Self-insurers. – The tax imposed by this section on a self-insurer shall be
17 measured by the gross premiums that would be charged against the same or
18 most similar industry or business, taken from the manual insurance rate then
19 in force in this State, applied to the self-insurer's payroll for the previous
20 calendar year as determined under Article 36 of Chapter 58 of the General
21 Statutes modified by the self-insurer's approved experience modifier.

22 (5) Prepaid health plans. – The tax imposed by this section on a prepaid health
23 plan shall be measured by gross capitation payments received by the prepaid
24 health plan from the Department of Health and Human Services for services
25 provided to enrollees in the State Medicaid program or NC Health Choice
26 program in the preceding calendar year.

27 (b1) Calculation of Tax Base. – In determining the amount of gross premiums from
28 business in this State, all gross premiums received in this State, credited to policies written or
29 procured in this State, or derived from business written in this State shall be deemed to be for
30 contracts covering persons, property, or risks resident or located in this State unless one of the
31 following applies:

32 (1) The premiums are properly reported and properly allocated as being received
33 from business done in some other nation, territory, state, or states.

34 (2) The premiums are from policies written in federal areas for persons in military
35 service who pay premiums by assignment of service pay.

36 Gross premiums from business done in this State in the case of life insurance contracts,
37 including supplemental contracts providing for disability benefits, accidental death benefits, or
38 other special benefits that are not annuities, means all premiums collected in the calendar year,
39 other than for contracts of reinsurance, for policies the premiums on which are paid by or credited
40 to persons, firms, or corporations resident in this State, or in the case of group policies, for
41 contracts of insurance covering persons resident within this State. The only deductions allowed
42 shall be for premiums refunded on policies rescinded for fraud or other breach of contract and
43 premiums that were paid in advance on life insurance contracts and subsequently refunded to the
44 insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been
45 collected for the amounts as provided in the policy contracts for the time in force during the year,
46 whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or
47 by any other means except waiver of premiums by companies under a contract for waiver of
48 premium in case of disability.

49 Gross premiums from business done in this State in the case of prepaid health plans means
50 all capitation payments received by a prepaid health plan from the Department of Health and
51 Human Services for the delivery of services to enrollees in the State Medicaid program or NC

1 Health Choice program in the calendar year. Capitation payments refunded by a prepaid health
2 plan to the State are the only allowable deductions.

3 Gross premiums from business done in this State for all other health care plans and contracts
4 of insurance, including contracts of insurance required to be carried by the Workers'
5 Compensation Act, means all premiums written during the calendar year, or the equivalent
6 thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering
7 property or risks in this State, other than for contracts of reinsurance, whether the premiums are
8 designated as premiums, deposits, premium deposits, policy fees, membership fees, or
9 assessments. Gross premiums shall be deemed to have been written for the amounts as provided
10 in the policy contracts, new and renewal, becoming effective during the year irrespective of the
11 time or method of making payment or settlement for the premiums, and with no deduction for
12 dividends whether returned in cash or allowed in payment or reduction of premiums or for
13 additional insurance, and without any other deduction except for return of premiums, deposits,
14 fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

15 (c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the
16 following from the gross amount of premiums, and the gross amount of excluded premiums is
17 exempt from the tax imposed by this section:

- 18 (1) All premiums received on or after July 1, 1973, from policies or contracts
19 issued in connection with the funding of a pension, annuity, or profit-sharing
20 plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the
21 Code as defined in G.S. 105-228.90.
- 22 (2) Premiums or considerations received from annuities, as defined in
23 G.S. 58-7-15.
- 24 (3) Funds or considerations received in connection with funding agreements, as
25 defined in G.S. 58-7-16.
- 26 (4) The following premiums, to the extent federal law prohibits their taxation
27 under this Article:
 - 28 a. Federal Employees Health Benefits Plan premiums.
 - 29 b. ~~Medicaid or Medicare~~ premiums.
 - 30 c. Medicaid or NC Health Choice premiums, other than capitation
31 payments, paid by or on behalf of a Medicaid or NC Health Choice
32 beneficiary.

33 (d) Tax Rates; Disposition. –

- 34 (1) Workers' Compensation. – The tax rate to be applied to gross premiums, or
35 the equivalent thereof in the case of self-insurers, on contracts applicable to
36 liabilities under the Workers' Compensation Act is two and five-tenths percent
37 (2.5%). The net proceeds shall be credited to the General Fund.
- 38 (2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on
39 all other taxable contracts issued by insurers or health maintenance
40 organizations and to be applied to gross premiums and gross collections from
41 membership dues, exclusive of receipts from cost plus plans, received by
42 Article 65 corporations is one and nine-tenths percent (1.9%). The net
43 proceeds shall be credited to the General Fund.
- 44 (2a) Prepaid Health Plans. – The tax rate to be applied to gross premiums from
45 capitation payments received by prepaid health plans is one and nine-tenths
46 percent (1.9%). The net proceeds shall be credited to the General Fund.
- 47 (3) Additional Rate on Property Coverage Contracts. – An additional tax at the
48 rate of seventy-four hundredths percent (0.74%) applies to gross premiums on
49 insurance contracts for property coverage. The tax is imposed on ten percent
50 (10%) of the gross premiums from insurance contracts for automobile
51 physical damage coverage and on one hundred percent (100%) of the gross

1 premiums from all other contracts for property coverage. Twenty percent
2 (20%) of the net proceeds of this additional tax must be credited to the
3 Volunteer Fire Department Fund established in Article 87 of Chapter 58 of
4 the General Statutes. Twenty percent (20%) of the net proceeds must be
5 credited to the Department of Insurance for disbursement pursuant to
6 G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with
7 G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The
8 remaining net proceeds must be credited to the General Fund. The additional
9 tax imposed on property coverage contracts under this subdivision is a special
10 purpose assessment based on gross premiums and not a gross premiums tax.
11 The following definitions apply in this subdivision:

- 12 a. Automobile physical damage. – The following lines of business
13 identified by the NAIC: private passenger automobile physical
14 damage and commercial automobile physical damage.
15 b. Property coverage. – The following lines of business identified by the
16 NAIC: fire, farm owners multiple peril, homeowners multiple peril,
17 nonliability portion of commercial multiple peril, ocean marine, inland
18 marine, earthquake, private passenger automobile physical damage,
19 commercial automobile physical damage, aircraft, and boiler and
20 machinery. The term also includes insurance contracts for wind
21 damage.
22 c. NAIC. – National Association of Insurance Commissioners.

23 ...

24 (e) Report and Payment. – Each taxpayer doing business in this State shall, within the
25 first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total
26 gross premiums as defined in this section, the payroll and other information required by the
27 Secretary in the case of a self-insurer, or the total gross collections from membership dues
28 exclusive of receipts from cost plus plans collected in this State during the preceding calendar
29 year. The taxes imposed by this section shall be remitted to the Secretary with the report.

30 (f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by
31 this section and have a premium tax liability of ten thousand dollars (\$10,000) or more for
32 business done in North Carolina during the immediately preceding year shall remit three equal
33 quarterly installments with each installment equal to at least thirty-three and one-third percent
34 (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The
35 quarterly installment payments shall be made on or before April 15, June 15, and October 15 of
36 each taxable year. The ~~company-taxpayer~~ shall remit the balance by the following March 15 in
37 the same manner provided in this section for annual returns.

38 The Secretary may permit an insurance company or prepaid health plan to pay less than the
39 required estimated payment when the insurer or prepaid health plan reasonably believes that the
40 total estimated payments made for the current year will exceed the total anticipated tax liability
41 for the year.

42 An underpayment or an overpayment of an installment payment required by this subsection
43 accrues interest in accordance with G.S. 105-241.21. An overpayment of tax shall be credited to
44 the ~~company-taxpayer~~ and applied against the taxes imposed upon the ~~company-taxpayer~~ under
45 this Article.

46 (g) Exemptions. – This section does not apply to farmers' mutual assessment fire
47 insurance companies or to fraternal orders or societies that do not operate for a profit and do not
48 issue policies on any person except members. This section does not apply to a captive insurance
49 company taxed under G.S. 105-228.4A."

50 **SECTION 11.(d)** G.S. 58-6-25 reads as rewritten:

51 **"§ 58-6-25. Insurance regulatory charge.**

1 ...
 2 (e) Definitions. – The following definitions apply in this section:

3 ...
 4 (2) Insurance company. – A company or prepaid health plan, as defined in
 5 G.S. 58-93-5, that pays the gross premiums tax levied in G.S. 105-228.5 and
 6 G.S. 105-228.8.

7"

8 SECTION 11.(e) G.S. 105-259 reads as rewritten:

9 "**§ 105-259. Secrecy required of officials; penalty for violation.**

10 ...
 11 (b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
 12 access to tax information in the course of service to or employment by the State may not disclose
 13 the information to any other person except as provided in this subsection. Standards used or to
 14 be used for the selection of returns for examination and data used or to be used for determining
 15 the standards may not be disclosed for any purpose. All other tax information may be disclosed
 16 only if the disclosure is made for one of the following purposes:

17 ...

18 (49) To exchange information concerning a tax imposed by Article 8B of this
 19 Chapter with the North Carolina Department of Insurance or the North
 20 Carolina Department of Health and Human Services when the information is
 21 needed to fulfill a duty imposed on the ~~Department.~~Department of Revenue.

22"

23 SECTION 11.(f) This section is effective 30 days after it becomes law and applies
 24 to capitation payments received by prepaid health plans on or after that date.

25
 26 **PART XII. HOSPITAL UNCOMPENSATED CARE FUND**

27 SECTION 12.1. Article 9 of Chapter 143 of the General Statutes is amended by
 28 adding a new section to read:

29 "**§ 143C-9-9. Hospital Uncompensated Care Fund.**

30 (a) Creation. – The Hospital Uncompensated Care Fund is established as a nonreverting
 31 special fund in the Department of Health and Human Services.

32 (b) Source of Funds. – The Hospital Uncompensated Care Fund shall consist of federal
 33 disproportionate share adjustment receipts arising from certified public expenditures.

34 (c) Utilization of Funds. – The Department of Health and Human Services is authorized
 35 to utilize funds in the Hospital Uncompensated Care Fund to make the following payments,
 36 provided the entity receiving the payment has been determined to be an eligible entity in
 37 accordance with subsection (d) of this section:

38 (1) Payments to institutions for mental diseases, as defined in 42 C.F.R. §
 39 435.1010.

40 (2) Payments to hospitals to reimburse inpatient services uncompensated care
 41 costs or outpatient services uncompensated care costs, or both.

42 (d) Eligibility and Fund Allocations. – The Department of Health and Human Services
 43 shall adopt rules for determining eligibility for, and allocations of, Hospital Uncompensated Care
 44 Fund payments."

45
 46 **PART XIII. MEDICAID NONTAX REVENUE**

47 SECTION 13.1. It is the intent of the General Assembly to amend Section 2.3(b) of
 48 S.L. 2019-242 to reflect changes to the handling of nontax revenue in the North Carolina
 49 Medicaid program in a managed care environment.

50
 51 **PART XIV. EFFECTIVE DATE**

1 **SECTION 14.1.** Except as otherwise provided, this act is effective when it becomes
2 law.