

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

3

SENATE BILL 808
Appropriations/Base Budget Committee Substitute Adopted 6/10/20
Third Edition Engrossed 6/17/20

Short Title: Medicaid Funding Act.

(Public)

Sponsors:

Referred to:

May 20, 2020

A BILL TO BE ENTITLED

AN ACT APPROPRIATING FUNDS FOR THE DOROTHEA DIX CAMPUS RELOCATION PROJECT AND FOR THE CHILD WELFARE CASE MANAGEMENT COMPONENT OF NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST); APPROPRIATING CORONAVIRUS RELIEF FUNDS FOR BEHAVIORAL HEALTH AND CRISIS SERVICES; APPROPRIATING FUNDS FOR THE OPERATION OF THE NORTH CAROLINA MEDICAID PROGRAM AND THE IMPLEMENTATION OF MEDICAID TRANSFORMATION; AND MAKING MEDICAID TRANSFORMATION-RELATED CHANGES.

The General Assembly of North Carolina enacts:

PART I. DOROTHEA DIX CAMPUS RELOCATION PROJECT

SECTION 1.(a) There is transferred from the General Fund to the State Capital and Infrastructure Fund the sum of fifteen million dollars (\$15,000,000) in nonrecurring funds for the 2020-2021 fiscal year.

SECTION 1.(b) There is appropriated from the State Capital and Infrastructure Fund to the Office of State Budget and Management the sum of fifteen million dollars (\$15,000,000) in nonrecurring funds for the 2020-2021 fiscal year to be allocated for the Dorothea Dix campus relocation project with the Department of Health and Human Services.

SECTION 1.(c) The Department of Administration, in collaboration with the Department of Health and Human Services, shall select land located in Wake County suitable for the Dorothea Dix campus relocation project. The funds appropriated in this Part shall be used for planning expenses associated with the relocation project.

SECTION 1.(d) This Part becomes effective July 1, 2020.

PART II. FUNDS FOR CHILD WELFARE CASE MANAGEMENT COMPONENT OF NC FAST

SECTION 2.(a) There is appropriated from the General Fund to the Department of Health and Human Services, Division of Central Management and Support, the sum of six million one hundred fifty-four thousand four hundred eighty dollars (\$6,154,480) in nonrecurring funds for the 2020-2021 fiscal year for updates and changes to the child welfare case management component of the North Carolina Families Accessing Services through Technology (NC FAST) system, including child welfare program changes in accordance with the federal Family First Prevention Services Act, updates for the Comprehensive Child Welfare Information System



1 (CCWIS), funding for the Independent Verification and Validation (IV&V) contract, and risk
2 assessment tool changes under Rylan's Law, S.L. 2017-41.

3 **SECTION 2.(b)** This section becomes effective July 1, 2020.
4

5 **PART III. FUND BEHAVIORAL HEALTH AND CRISIS SERVICES IN RESPONSE TO**
6 **THE COVID-19 PANDEMIC**

7 **SECTION 3.(a)** The State Controller shall transfer the sum of fifty million dollars
8 (\$50,000,000) in nonrecurring funds for the 2020-2021 fiscal year from the Coronavirus Relief
9 Reserve established in Section 2.1 of S.L. 2020-4 to the Coronavirus Relief Fund established in
10 Section 2.2 of that same act (Coronavirus Relief Fund).

11 **SECTION 3.(b)** There is appropriated from the Coronavirus Relief Fund to the
12 Office of State Budget and Management (OSBM) the sum of fifty million dollars (\$50,000,000)
13 in nonrecurring funds for the 2020-2021 fiscal year, to allocate to the Department of Health and
14 Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse
15 Services (DMH/DD/SAS), for distribution to the local management entities/managed care
16 organizations (LME/MCOs) to fund behavioral health and crisis services in response to the
17 COVID-19 pandemic. The DMH/DD/SAS shall determine how to distribute these funds among
18 the LME/MCOs.

19 **SECTION 3.(c)** The requirements and limitations set forth in Part I of S.L. 2020-4
20 apply to the funds appropriated in this Part. The OSBM shall include the funds transferred and
21 appropriated in this section in the report required under Section 1.7 of S.L. 2020-4.

22 **SECTION 3.(d)** This Part becomes effective July 1, 2020.
23

24 **PART IV. DISALLOW TRANSFER OF MEDICAID BUDGET SURPLUS**

25 **SECTION 4.(a)** Notwithstanding Section 11F.2(d) of S.L. 2017-57, Section
26 3.6(b)(1) of S.L. 2019-242, or any other provision of law to the contrary, the Department of
27 Health and Human Services, Division of Health Benefits, shall not transfer any amount of the
28 certified Medicaid budget surplus calculated for the 2019-2020 fiscal year to the Department of
29 Health and Human Services, Division of Mental Health, Developmental Disabilities, and
30 Substance Abuse Services, for allocation to local management entities/managed care
31 organizations (LME/MCOs) to offset any reduction in single-stream funding.

32 **SECTION 4.(b)** This section becomes effective June 30, 2020.
33

34 **PART V. FUNDS FOR OPERATION OF THE MEDICAID PROGRAM**

35 **SECTION 5.1.(a)** Funds received by the Department of Health and Human Services,
36 Division of Health Benefits, during the 2019-2020 fiscal year due to the acceleration of the
37 federal fiscal year 2019-2020 MRI/GAP Plan that (i) represent the portion of the State's annual
38 Medicaid payment, as defined in G.S. 108A-121, attributable to the quarter July 1, 2020, through
39 September 30, 2020, and (ii) have not been expended by June 30, 2020, shall not revert at the
40 end of the fiscal year but shall remain available and shall be used for the Medicaid program for
41 the 2020-2021 fiscal year.

42 **SECTION 5.1.(b)** This section becomes effective June 30, 2020.

43 **SECTION 5.2.** There is appropriated from the General Fund to the Department of
44 Health and Human Services, Division of Health Benefits, the sum of one million four hundred
45 thousand dollars (\$1,400,000) in nonrecurring funds for the 2020-2021 fiscal year to be used for
46 the implementation of an electronic visit verification (EVV) system that will be used for personal
47 care services and home health services under the Medicaid program.

48 **SECTION 5.3.(a)** Of the funds appropriated to the Department of Health and Human
49 Services, Division of Health Benefits, for the 2019-2020 fiscal year that have not been expended
50 by June 30, 2020, and in addition to the funds described in Section 5.1 of this act, the sum of
51 thirty million dollars (\$30,000,000) in nonrecurring funds shall not revert at the end of the fiscal

1 year but shall remain available and shall be used for the Medicaid and NC Health Choice
2 programs rebase in the 2020-2021 fiscal year.

3 **SECTION 5.3.(b)** This section becomes effective June 30, 2020.

4 **SECTION 5.4.** The State Controller shall transfer the sum of eighty-four million
5 dollars (\$84,000,000) in nonrecurring funds for the 2020-2021 fiscal year from funds available
6 in the Medicaid Transformation Reserve in the General Fund to the Department of Health and
7 Human Services, Division of Health Benefits, to be used for the Medicaid and NC Health Choice
8 programs rebase. Funds transferred under this section are appropriated for the purpose set forth
9 in this section.

10 **SECTION 5.5.** Notwithstanding G.S. 143C-4-11, as enacted by Section 14 of this
11 act, the sum of one hundred thirty-six million dollars (\$136,000,000) in nonrecurring funds for
12 the 2020-2021 fiscal year shall be transferred from the Medicaid Contingency Reserve in the
13 General Fund to the Department of Health and Human Services, Division of Health Benefits, to
14 be used for the Medicaid and NC Health Choice programs rebase. Funds transferred under this
15 section are appropriated for the purpose set forth in this section.

16 **SECTION 5.6.** There is appropriated from the General Fund the sum of two hundred
17 thirteen million dollars (\$213,000,000) in nonrecurring funds for the 2020-2021 fiscal year to the
18 Department of Health and Human Services, Division of Health Benefits, to be used for the
19 Medicaid and NC Health Choice programs rebase.

20 **SECTION 5.7.** Except as otherwise provided, this Part becomes effective July 1,
21 2020.

22 **PART VI. MEDICAID ELIGIBILITY REDETERMINATIONS**

23 **SECTION 6.** No later than 60 days after the expiration of the declared nationwide
24 public health emergency as a result of the 2019 novel coronavirus, each county department of
25 social services, and any federally recognized Native American tribe within the State that has
26 assumed responsibility for the Medicaid program pursuant to G.S. 108A-25(e), shall do all of the
27 following:
28

- 29 (1) Redetermine Medicaid eligibility for all Medicaid beneficiaries for whom
30 eligibility was continued as a result of Section 6008(b)(3) of P.L. 116-127,
31 including all of the following:
32 a. Beneficiaries who were due for an annual or other periodic renewal of
33 their Medicaid eligibility.
34 b. Beneficiaries who experienced a change in circumstance affecting
35 their Medicaid eligibility.
36 c. Beneficiaries whose Medicaid eligibility was affected by information
37 received through post-eligibility verification.
38 (2) Provide notice to beneficiaries determined to be ineligible for Medicaid as a
39 result of subdivision (1) of this section, in accordance with G.S. 108A-79.
40

41 **PART VII. MEDICAID TRANSFORMATION NECESSITIES**

42 **DELAY IMPLEMENTATION OF MEDICAID TRANSFORMATION**

43 **SECTION 7.(a)** Subdivision (4) of Section 3 of S.L. 2015-245, as amended by
44 Section 4 of S.L. 2018-49, reads as rewritten:

- 45 "~~(4) Eighteen months after the date that CMS approves the 1115 demonstration~~
46 ~~waiver request submitted as required by this act on June 1, 2016, as amended.~~
47 No later than July 1, 2021. – Capitated contracts shall begin. DHHS may phase
48 recipient enrollment on a regional basis, provided that initial recipient
49 enrollment shall be complete no later than five months after the date capitated
50 contracts are required to begin."
51

1 **SECTION 7.(b)** If Medicaid capitated payments do not begin on July 1, 2021, as
2 required by Subdivision (4) of Section 3 of S.L. 2015-245, as amended by Section 4 of S.L.
3 2018-49 and subsection (a) of this section, then, to compensate for the delay, the Department of
4 Health and Human Services, Division of Health Benefits, shall make the following monthly
5 payments to prepaid health plans (PHPs), as defined in G.S. 108D-1, for each full month after
6 June 30, 2021, that Medicaid capitated payments have not been paid to the PHPs:

- 7 (1) Four million dollars (\$4,000,000) to each PHP that has been awarded a
8 statewide standard benefit plan PHP capitated contract as of June 1, 2020.
- 9 (2) A prorated amount of four million dollars (\$4,000,000) to each PHP that has
10 been awarded a regional standard benefit plan PHP capitated contract as of
11 June 1, 2020, based upon the number of regions the PHP is contracted to serve.

12 **SECTION 7.(c)** The payments required under subsection (b) of this section shall not
13 be required for any month in which the failure of a PHP to receive a capitation payment after
14 July 1, 2021, is caused by the PHP.

15 16 **USE OF MEDICAID TRANSFORMATION FUND FOR MEDICAID** 17 **TRANSFORMATION NEEDS**

18 **SECTION 8.(a)** The State Controller shall transfer the sum of sixty-nine million four
19 hundred twenty thousand dollars (\$69,420,000) for the 2020-2021 fiscal year from funds
20 available in the Medicaid Transformation Reserve in the General Fund to the Medicaid
21 Transformation Fund established under Section 12H.29 of S.L. 2015-241.

22 **SECTION 8.(b)** Subject to the fulfillment of conditions specified in subsection (c)
23 of this section, the sum of sixty-nine million four hundred twenty thousand dollars (\$69,420,000)
24 in nonrecurring funds for the 2020-2021 fiscal year from the Medicaid Transformation Fund may
25 be transferred to the Department of Health and Human Services, Division of Health Benefits
26 (DHB), for the sole purpose of providing the State share for qualifying needs directly related to
27 Medicaid transformation, as required by S.L. 2015-241, as amended. Funds may be transferred
28 to DHB as qualifying needs arise during the 2020-2021 fiscal year and need not be transferred in
29 one lump sum. To the extent that any funds are transferred under this subsection, the funds are
30 appropriated for the purpose set forth in this subsection.

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

- 34 (1) Program design.
- 35 (2) Beneficiary experience.
- 36 (3) NC FAST upgrades related to Medicaid transformation.
- 37 (4) Data management tools.
- 38 (5) Program integrity.
- 39 (6) Technical and operational integration.
- 40 (7) Provider experience.

41 **SECTION 8.(c)** A request by the Department of Health and Human Services,
42 Division of Health Benefits (DHB), for the transfer of funds pursuant to this section shall be
43 made to the Office of State Budget and Management (OSBM) and shall include the amount
44 requested and the specific qualifying need for which the funds are to be used. None of the funds
45 identified in this section shall be transferred to DHB until OSBM verifies all of the following
46 information:

- 47 (1) The amount requested is to be used for a qualifying need in the 2020-2021
48 fiscal year.
- 49 (2) The amount requested provides a State share that will not result in total
50 requirements that exceed two hundred seventy million dollars (\$270,000,000)
51 for the 2020-2021 fiscal year.

1 **SECTION 8.(d)** Any federal funds received in any fiscal year by the Department of
2 Health and Human Services, Division of Health Benefits (DHB), that represent a return of State
3 share already expended on a qualifying need related to the funds received by DHB under this
4 section shall be deposited into the Medicaid Transformation Fund.

5 **SECTION 8.(e)** This section becomes effective July 1, 2020.

6
7 **REPEAL OF PAST DIRECTIVE TO ELIMINATE GME TO ALIGN WITH MEDICAID**
8 **TRANSFORMATION**

9 **SECTION 9.** Section 12H.12(b) of S.L. 2014-100 and Section 12H.23 of S.L.
10 2015-241, as amended by Section 88 of S.L. 2015-264, are repealed.

11
12 **MEDICAID TRANSFORMATION HOTLINE OPTION**

13 **SECTION 10.** The Department of Health and Human Services shall ensure that the
14 existing DHHS Customer Service hotline is responsive to questions posed by a Medicaid
15 beneficiary or provider or by the general public that are related to the rollout of Medicaid
16 transformation.

17
18 **DURABLE MEDICAL EQUIPMENT RATE FLOOR**

19 **SECTION 11.** For the first three years of the initial standard benefit plan prepaid
20 health plan capitated contracts required under Article 4 of Chapter 108D of the General Statutes,
21 the rate floor for durable medical equipment under managed care shall be set at one hundred
22 percent (100%) of the Medicaid fee-for-service rates for durable medical equipment.

23
24 **TRIBAL OPTION/MEDICAID TRANSFORMATION**

25 **SECTION 12.(a)** The Department of Health and Human Services may contract with
26 an Indian managed care entity (IMCE) or an Indian health care provider (IHCP), as defined under
27 42 C.F.R. § 438.14(a), to assist in the provision of health care or health care-related services to
28 Medicaid and NC Health Choice beneficiaries who are members of federally recognized tribes
29 or who are eligible to enroll in an IMCE. Contracts may include health care or health care-related
30 services as agreed upon with the IMCE or IHCP, as approved by the Secretary of the Department
31 of Health and Human Services and as allowed by the Centers for Medicare and Medicaid Services
32 (CMS), including, but not limited to, the following services:

- 33 (1) Primary care case management as a primary care case managed system or
34 entity, as described in 42 C.F.R. § 438.2.
35 (2) Utilization management and referrals.
36 (3) The management or provision of home- and community-based services under
37 a 1915(c) waiver.
38 (4) The management or provision of specialized services covered by a behavioral
39 health and intellectual/developmental disabilities (BH/IDD) tailored plan in
40 accordance with G.S. 108D-60(8).

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

46 **SECTION 12.(b)** G.S. 108D-40(a) reads as rewritten:

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

49 ...

- 50 (5a) Eligible recipients who are enrolled in a DHHS-contracted Indian managed
51 care entity, as defined in 42 C.F.R. § 438.14(a).

...."

SECTION 12.(c) G.S. 122C-115(e) reads as rewritten:

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

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

SECTION 12.(d) The Department of Health and Human Services is authorized to seek approval from CMS and submit any necessary State Plan Amendments and waivers, or any amendments thereto, to implement the provisions of this section.

REVISE AND RENAME THE SUPPLEMENTAL PAYMENT PROGRAM FOR ELIGIBLE MEDICAL PROFESSIONAL PROVIDERS

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

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

SECTION 13.(b) The limitation on total payments made under the Average Commercial Rate Supplemental and Directed Payment Program for eligible medical professional providers shall apply to the combined amount of payments made as supplemental payments under the State Plan and payments made as directed payments under the managed care system and shall be based on the amount of supplemental payments for services provided during the 2018-2019 fiscal year. For services provided on or after July 1, 2021, the total annual supplemental and directed payments made under the Average Commercial Rate Supplemental and Directed Payment Program shall not exceed one hundred percent (100%) of the gross supplemental payments for services provided by eligible medical providers during the 2018-2019 fiscal year, increased at the start of each State fiscal year by an inflation factor determined by the Department of Health and Human Services, Division of Health Benefits.

SECTION 13.(c) Consistent with the existing supplemental payment program for eligible medical professional providers, the Department of Health and Human Services shall limit the total amount of supplemental and directed payments that may be received by the eligible providers affiliated with the East Carolina University Brody School of Medicine and the

1 University of North Carolina at Chapel Hill Health Care System. Average commercial rate
2 supplemental payments and directed payments shall not be made for services provided in Wake
3 County.

4 **SECTION 13.(d)** The Department of Health and Human Services is not authorized
5 to make any modifications to the supplemental payment program for eligible medical
6 professional providers, except as authorized by this section.

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

9 10 **MEDICAID CONTINGENCY RESERVE CODIFICATION**

11 **SECTION 14.** Article 4 of Chapter 143C of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 143C-4-11. Medicaid Contingency Reserve.**

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

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

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

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

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

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

38 39 **REVISE AND UPDATE HOSPITAL ASSESSMENTS**

40 **SECTION 15.1.(a)** Effective July 1, 2021, Article 7 of Chapter 108A of the General
41 Statutes is repealed.

42 **SECTION 15.1.(a1)** Notwithstanding any provision of Article 7 of Chapter 108A of
43 the General Statutes to the contrary, the equity assessment, UPL assessment, equity payments,
44 and UPL payments required under that Article for the partial year beginning October 1, 2020,
45 and ending June 30, 2021, shall be carried out in accordance with this subsection. For the annual
46 period beginning October 1, 2020, the equity payment amount and the UPL payment amount
47 required by G.S. 108A-124 shall be calculated to exclude services rendered after June 30, 2021.
48 In order to account for these partial-year payment amounts, the Secretary of the Department of
49 Health and Human Services may adjust the quarterly equity payments and UPL payments
50 required by G.S. 108A-124. In order to account for any partial-year adjustments to the equity
51 payments or UPL payments, the Secretary of the Department of Health and Human Services may

1 make any necessary adjustments to the equity assessment percentage rate, the UPL assessment
2 percentage rate, any quarterly equity assessment, and any UPL assessment required under
3 G.S. 108A-122 and G.S. 108A-123.

4 **SECTION 15.1.(a2)** Subsection (a) of this section does not affect the rights or
5 liabilities of the State, a hospital subject to the equity assessment or the UPL assessment, or
6 another person arising under a statute repealed by subsection (a) of this section or arising under
7 subsection (a1) of this section before the effective date of its repeal.

8 **SECTION 15.1.(b)** Effective July 1, 2021, Chapter 108A of the General Statutes is
9 amended by adding a new Article to read:

10 "Article 7A.

11 "Hospital Assessment Act.

12 "Part 1. General.

13 **"§ 108A-130. Short title and purpose.**

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

17 **"§ 108A-131. Definitions.**

18 The following definitions apply in this Article:

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

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

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

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

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

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

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

28 (8) State's annual Medicaid payment. – An annual amount equal to one hundred
29 twenty million dollars (\$120,000,000) for the taxable year October 1, 2020,
30 through September 30, 2021, increased each year over the prior year's
31 payment by the percentage specified as the Medicare Market Basket Index
32 less productivity most recently published in the Federal Register.

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

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

39 **"§ 108A-132. Due dates and collections.**

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

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

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

50 **"§ 108A-133. Assessment appeals.**

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

4 **"§ 108A-134. Allowable costs; patient billing.**

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

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

10 **"§ 108A-135. Rule-making authority.**

11 The Secretary may adopt rules to implement this Article.

12 **"§ 108A-136. Repeal.**

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

16 "Part 2. Supplemental and Base Assessments.

17 **"§ 108A-140. Applicability.**

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

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

22 (1) Critical access hospitals.

23 (2) Freestanding psychiatric hospitals.

24 (3) Freestanding rehabilitation hospitals.

25 (4) Long-term care hospitals.

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

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

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

30 **"§ 108A-141. Supplemental assessment.**

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

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

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

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

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

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

48 **"§ 108A-142. Base assessment.**

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

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

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

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

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

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

14 (4) Any changes as determined by the Department in (i) reimbursement under the
15 Medicaid State Plan, (ii) managed care payments authorized under 42 C.F.R.
16 § 438.6 for which the nonfederal share is not funded by General Fund
17 appropriations, and (iii) reimbursement under the NC Health Choice program.

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

20 **"§ 108A-143. Payment from other hospitals.**

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

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

32 (c) For the partial year beginning July 1, 2021, and ending September 30, 2021, the
33 percentage described in subsection (a) of this section shall be calculated by dividing one fourth
34 of the amount of the State's annual Medicaid payment by the amount collected under the base
35 assessment under G.S. 108A-142.

36 **"§ 108A-144. Use of funds.**

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

42 **SECTION 15.1.(b1)** Notwithstanding any provision of G.S. 108A-131, as enacted
43 by subsection (b) of this section, to the contrary, for the taxable year October 1, 2020, through
44 September 30, 2021, total hospital costs, as defined in G.S. 108A-131(10), shall be calculated
45 based on the Hospital Cost Report Information System's 2017 cost report data available through
46 the Centers for Medicare and Medicaid Services.

47 **SECTION 15.1.(c)** The percentage rate to be used in calculating the supplemental
48 assessment under G.S. 108A-141, as enacted in subsection (b) of this section, is two and
49 thirty-two hundredths percent (2.32%) for the taxable year October 1, 2020, through September
50 30, 2021. The supplemental assessment shall be imposed only for months beginning on or after
51 July 1, 2021. The supplemental assessment imposed during the period July 1, 2021, through

1 September 30, 2021, shall equal one-fourth of the amount of supplemental assessment that would
2 have been imposed for the full taxable year.

3 **SECTION 15.1.(d)** The percentage rate to be used in calculating the base assessment
4 under G.S. 108A-142, as enacted in subsection (b) of this section, is two and four hundredths
5 percent (2.04%) for the taxable year October 1, 2020, through September 30, 2021. The base
6 assessment shall be imposed only for months beginning on or after July 1, 2021. The base
7 assessment imposed during the period July 1, 2021, through September 30, 2021, shall equal
8 one-fourth of the amount of base assessment that would have been imposed for the full taxable
9 year.

10 **SECTION 15.2.** Notwithstanding G.S. 143C-4-11, as enacted by Section 14 of this
11 act, the State Controller shall transfer funds from the Medicaid Contingency Reserve to the
12 Department of Health and Human Services, Division of Health Benefits (DHB), only upon
13 request by DHB as needed to cover any shortfall in receipts from the supplemental or base
14 assessment under G.S. 108A-141 and G.S. 108A-142, enacted by subsection (b) of Section 15.1
15 of this act, and only if the following two conditions are met:

- 16 (1) The Office of State Budget and Management (OSBM) has certified that there
17 will be a shortfall in receipts from the supplemental or base assessment.
- 18 (2) OSBM has certified that the amount requested by DHB does not exceed the
19 shortfall in receipts certified by OSBM under subdivision (1) of this section.

20 Upon making the request to the State Controller for the transfer of funds pursuant to
21 this section, DHB shall notify the Fiscal Research Division and the Joint Legislative Oversight
22 Committee on Medicaid and NC Health Choice of the request and the amount of the request. To
23 the extent any funds are transferred under this section, the funds are hereby appropriated for the
24 purpose set forth in this section. The authority set forth in this section expires June 30, 2022.
25

26 **GROSS PREMIUMS TAX/PREPAID HEALTH PLANS**

27 **SECTION 16.(a)** The title of Article 8B of Chapter 105 of the General Statutes reads
28 as rewritten:

29 "Article 8B.

30 "Taxes Upon Insurance ~~Companies~~ Companies and Prepaid Health Plans."

31 **SECTION 16.(b)** G.S. 105-228.3 reads as rewritten:

32 **"§ 105-228.3. Definitions.**

33 The following definitions apply in this Article:

- 34 (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of
35 the General Statutes, regulating hospital, medical, and dental service
36 corporations.
- 37 (2) Capitation payment. – Amounts paid by the Department of Health and Human
38 Services to prepaid health plans under capitated contracts for the delivery of
39 Medicaid and NC Health Choice services in accordance with Article 4 of
40 Chapter 108D of the General Statutes.
- 41 ~~(1a)~~(3) Captive insurance company. – Defined in G.S. 58-10-340.
- 42 ~~(1b)~~(4) Foreign captive insurance company. – A captive insurance company as
43 defined in G.S. 58-10-340(9), except that such company is not formed or
44 licensed under the laws of this State but is formed and licensed under the laws
45 of any jurisdiction within the United States other than this State.
- 46 ~~(2)~~(5) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who
47 have pooled their liabilities pursuant to G.S. 97-93 of the Workers'
48 Compensation Act.
- 49 (6) Prepaid health plan. – As defined in G.S. 108D-1.
- 50 ~~(3)~~(7) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of
51 the Workers' Compensation Act."

1 **SECTION 16.(c)** G.S. 105-228.5 reads as rewritten:

2 "**§ 105-228.5. Taxes measured by gross premiums.**

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

8 (b) Tax Base. –

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

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

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

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

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

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

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

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

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

1 Gross premiums from business done in this State in the case of prepaid health plans means
2 all capitation payments received by a prepaid health plan from the Department of Health and
3 Human Services for the delivery of services to enrollees in the State Medicaid program or NC
4 Health Choice program in the calendar year. Capitation payments refunded by a prepaid health
5 plan to the State are the only allowable deductions.

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

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

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

36 (d) Tax Rates; Disposition. –

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

1 insurance contracts for property coverage. The tax is imposed on ten percent
2 (10%) of the gross premiums from insurance contracts for automobile
3 physical damage coverage and on one hundred percent (100%) of the gross
4 premiums from all other contracts for property coverage. Twenty percent
5 (20%) of the net proceeds of this additional tax must be credited to the
6 Volunteer Fire Department Fund established in Article 87 of Chapter 58 of
7 the General Statutes. Twenty percent (20%) of the net proceeds must be
8 credited to the Department of Insurance for disbursement pursuant to
9 G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with
10 G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The
11 remaining net proceeds must be credited to the General Fund. The additional
12 tax imposed on property coverage contracts under this subdivision is a special
13 purpose assessment based on gross premiums and not a gross premiums tax.

14 The following definitions apply in this subdivision:

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

26 ...

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

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

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

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

49 (g) Exemptions. – This section does not apply to farmers' mutual assessment fire
50 insurance companies or to fraternal orders or societies that do not operate for a profit and do not

1 issue policies on any person except members. This section does not apply to a captive insurance
2 company taxed under G.S. 105-228.4A."

3 **SECTION 16.(d)** G.S. 58-6-25 reads as rewritten:

4 "**§ 58-6-25. Insurance regulatory charge.**

5 ...

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

7 ...

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

11"

12 **SECTION 16.(e)** G.S. 105-259 reads as rewritten:

13 "**§ 105-259. Secrecy required of officials; penalty for violation.**

14 ...

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

21 ...

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

26"

27 **SECTION 16.(f)** This section is effective 30 days after it becomes law and applies
28 to capitation payments received by prepaid health plans on or after that date.

30 HOSPITAL UNCOMPENSATED CARE FUND

31 **SECTION 17.** Article 9 of Chapter 143 of the General Statutes is amended by adding
32 a new section to read:

33 "**§ 143C-9-9. Hospital Uncompensated Care Fund.**

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

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

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

42 (1) Payments to institutions for mental diseases, as defined in 42 C.F.R. §
43 435.1010.

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

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

50 MEDICAID NONTAX REVENUE

1 **SECTION 18.** It is the intent of the General Assembly to enact legislation before the
2 start of the 2021-2022 fiscal year to reflect changes to nontax revenue in the North Carolina
3 Medicaid program in a managed care environment.
4

5 **PART VIII. MISCELLANEOUS**

6 **SECTION 19.1.** The provisions of the State Budget Act, Chapter 143C of the
7 General Statutes, are reenacted and shall remain in full force and effect and are incorporated in
8 this act by reference.

9 **SECTION 19.2.** Departmental receipts, as defined in G.S. 143C-1-1, are
10 appropriated for the 2020-2021 fiscal year up to the amounts needed to implement the provisions
11 in this act for the 2020-2021 fiscal year.

12 **SECTION 19.3.** Except where expressly repealed or amended by this act, the
13 provisions of any other legislation enacted during the 2019 Regular Session expressly
14 appropriating funds to an agency, a department, or an institution covered under this act, shall
15 remain in effect.
16

17 **PART IX. EFFECTIVE DATE**

18 **SECTION 20.** Except as otherwise provided, this act is effective when it becomes
19 law.