

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H

1

HOUSE BILL 734

Short Title: Dept. of Health & Human Services Revisions. (Public)

Sponsors: Representatives Potts and Stevens (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Health, if favorable, Rules, Calendar, and Operations of the House

May 3, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER MODIFICATIONS TO  
3 LAWS PERTAINING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.  
4 The General Assembly of North Carolina enacts:

5  
6 **ALIGNMENT OF DEVELOPMENTAL DISABILITY DEFINITION WITH FEDERAL**  
7 **LAW**

8 **SECTION 1.** G.S. 122C-3(12a) reads as rewritten:

9 "(12a) Developmental disability. – A severe, chronic disability of a person that  
10 satisfies all of the following:

11 a. Is attributable to ~~one or more impairments~~ a mental or physical  
12 impairment or combination of mental and physical impairments.

13 ...."  
14

15 **CONFORMING CHANGE TO PROCEDURE FOR APPEALING DECISIONS ON**  
16 **LICENSURE WAIVER REQUESTS**

17 **SECTION 2.** G.S. 122C-23(f) reads as rewritten:

18 "(f) Upon written application and in accordance with rules of the Commission, the  
19 Secretary may for good cause waive any of the rules implementing this Article, provided those  
20 rules do not affect the health, safety, or welfare of the individuals within the licensable facility.  
21 Decisions made pursuant to this subsection may be appealed ~~to the Commission for a hearing in~~  
22 accordance with by filing a contested case under Article 3 of Chapter 150B of the General  
23 Statutes."  
24

25 **COPAYMENT SCHEDULE FOR BEHAVIORAL HEALTH, INTELLECTUAL AND**  
26 **DEVELOPMENTAL DISABILITIES, AND SUBSTANCE USE DISORDER SERVICES**

27 **SECTION 3.** G.S. 122C-112.1(a)(34) reads as rewritten:

28 "(34) Adopt ~~rules for the implementation of a co-payment graduated a copayment~~  
29 schedule to for behavioral health services, intellectual and developmental  
30 disabilities services, and substance use disorder services based on the  
31 Medicaid copayments for those services to be used by LMEs and by  
32 contractual provider agencies under G.S. 122C-146. The ~~co-payment~~  
33 ~~graduated copayment~~ schedule shall be developed to adopted under this  
34 subdivision shall require a ~~co-payment~~ copayment for services identified by  
35 the Secretary. Families whose family income is three hundred percent (300%)



1 or greater of the federal poverty level are eligible for services with the  
2 applicable ~~co-payment~~copayment."

3  
4 **STATE CONSUMER AND FAMILY ADVISORY COMMITTEE (CFAC)**  
5 **APPOINTMENT CHANGES**

6 **SECTION 4.(a)** G.S. 122C-171(b) reads as rewritten:

7 "(b) The State CFAC shall be composed of 21 members. The members shall be composed  
8 exclusively of adult consumers of mental health, developmental disabilities, and substance abuse  
9 services; and family members of consumers of mental health, developmental disabilities, and  
10 substance abuse services. The terms of members shall be three years, and no member may serve  
11 more than two consecutive terms. Vacancies shall be filled by the appointing authority. The  
12 members shall be appointed as follows:

13 (1) Nine members appointed by the Secretary. The Secretary's appointments shall  
14 reflect each of the disability groups. The terms shall be staggered so that terms  
15 of three of the appointees expire each year.

16 (2) ~~Three~~Four members appointed by the President Pro Tempore of the ~~Senate,~~  
17 ~~one each of whom shall come from the three State regions for institutional~~  
18 ~~services (Eastern Region, Central Region, and Western Region).~~Senate as  
19 follows:

20 a. One member from the eastern region of the State.

21 b. One member from the central region of the State.

22 c. Two members from the western region of the State.

23 The terms of the appointees shall be staggered so that the term of one appointee  
24 expires every year.

25 (3) ~~Three~~Four members appointed by the Speaker of the House of  
26 ~~Representatives, one each of whom shall come from the three State regions~~  
27 ~~for institutional services (Eastern Region, Central Region, and Western~~  
28 ~~Region).~~Representatives as follows:

29 a. One member from the eastern region of the State.

30 b. Two members from the central region of the State.

31 c. One member from the western region of the State.

32 The terms of the appointees shall be staggered so that the term of one appointee  
33 expires every year.

34 (4) ~~Three by the Council of Community Programs, one each of whom shall come~~  
35 ~~from the three State regions for institutional services (Eastern Region, Central~~  
36 ~~Region, and Western Region). The terms of the appointees shall be staggered~~  
37 ~~so that the term of one appointee expires every year.~~

38 (5) ~~Three~~Four members appointed by the North Carolina Association of County  
39 ~~Commissioners, one each of whom shall come from the three State regions~~  
40 ~~for institutional services (Eastern Region, Central Region, and Western~~  
41 ~~Region).~~Commissioners as follows:

42 a. Two members from the eastern region of the State.

43 b. One member from the central region of the State.

44 c. One member from the western region of the State.

45 The terms of the appointees shall be staggered so that the term of one appointee  
46 expires every year."

47 **SECTION 4.(b)** This section is effective when it becomes law and shall apply only  
48 to appointments to the Consumer and Family Advisory Committee made on or after that date.

49  
50 **COLLECTION OF INVOLUNTARY COMMITMENT TRANSPORTATION DATA**

51 **SECTION 5.** G.S. 122C-255 reads as rewritten:

**"§ 122C-255. Report required.**

Each 24-hour facility that (i) falls under the category of nonhospital medical detoxification, facility-based crisis service, or inpatient hospital treatment, (ii) is not a State facility under the jurisdiction of the Secretary of Health and Human Services, and (iii) is designated by the Secretary of Health and Human Services as a facility for the custody and treatment of individuals under a petition of involuntary commitment pursuant to G.S. 122C-252 and 10A NCAC 26C.0101 shall submit a written report on involuntary commitments each January 1 and each July 1 to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall include all of the following:

- (1) The number and primary presenting conditions of individuals receiving treatment from the facility under a petition of involuntary commitment.
  - (1a) The transportation method utilized by individuals admitted under a petition of involuntary commitment to the 24-hour facility.
  - (1b) The number of individuals moved to voluntary status at any time between arrival at the 24-hour facility and completion of the required 24-hour examination.
- (2) The number of individuals for whom an involuntary commitment proceeding was initiated at the facility, who were referred to a different facility or program.
- (3) The reason for referring the individuals described in subdivision (2) of this section to a different facility or program, including the need for more intensive medical supervision."

**PERMANENT AUTHORIZATION FOR THE USE OF TELEHEALTH TO CONDUCT REQUIRED EXAMINATIONS PRIOR TO INVOLUNTARY COMMITMENT DUE TO MENTAL ILLNESS OR SUBSTANCE USE DISORDER**

**SECTION 6.(a)** G.S. 122C-263 reads as rewritten:

**"§ 122C-263. Duties of law enforcement officer; first examination.**

(a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated or required to provide transportation pursuant to G.S. 122C-251(g) shall take the respondent to a facility or other location identified by the LME/MCO in the community crisis services plan adopted pursuant to G.S. 122C-202.2 that has an available commitment examiner and is capable of performing a first examination in conjunction with a health screening at the same location, unless circumstances indicate the respondent appears to be suffering a medical emergency in which case the law enforcement officer will seek immediate medical assistance for the respondent. If a commitment examiner is not available, whether on-site, on-call, or via ~~telemedicine~~, telehealth, at any facility or location, or if a plan has not been adopted, the person designated to provide transportation shall take the respondent to an alternative non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location. If no non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location for health screening and first examination exists, the person designated to provide transportation shall take the respondent to a private hospital or clinic, a general hospital, an acute care hospital, or a State facility for individuals with mental illnesses. If a commitment examiner is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for individuals with mental illnesses, but not in a jail or other penal facility. For the purposes of this section, "non-hospital provider" means an outpatient provider that provides either behavioral health or medical services.

1 (a1) A facility or other location to which a respondent is transported under subsection (a)  
2 of this section shall provide a health screening of the respondent. The health screening shall be  
3 conducted by a commitment examiner or other individual who is determined by the area facility,  
4 contracted facility, or other location to be qualified to perform the health screening. The  
5 Department will work with commitment examiner professionals to develop a screening tool for  
6 this purpose. The respondent may either be in the physical face-to-face presence of the person  
7 conducting the screen or may be examined utilizing ~~telemedicine~~ telehealth equipment and  
8 procedures. Documentation of the health screening required under this subsection that is  
9 completed prior to transporting the patient to any general hospital, acute care hospital, or  
10 designated facility shall accompany the patient or otherwise be made available at the time of  
11 transportation to the receiving facility.

12 ...

13 (c) The commitment examiner described in subsection (a) of this section shall examine  
14 the respondent as soon as possible, and in any event within 24 hours after the respondent is  
15 presented for examination. When the examination set forth in subsection (a) of this section is  
16 performed by a commitment examiner, the respondent may either be in the physical face-to-face  
17 presence of the commitment examiner or may be examined utilizing ~~telemedicine~~ telehealth  
18 equipment and procedures. A commitment examiner who examines a respondent by means of  
19 ~~telemedicine~~ telehealth must be satisfied to a reasonable medical certainty that the determinations  
20 made in accordance with subsection (d) of this section would not be different if the examination  
21 had been done in the physical presence of the commitment examiner. A commitment examiner  
22 who is not so satisfied must note that the examination was not satisfactorily accomplished, and  
23 the respondent must be taken for a face-to-face examination in the physical presence of a person  
24 authorized to perform examinations under this section. As used in this section, "~~telemedicine~~" is  
25 ~~the use of two-way real-time interactive audio and video between places of lesser and greater~~  
26 ~~medical capability or expertise to provide and support health care when distance separates~~  
27 ~~participants who are in different geographical locations.~~ "telehealth" means the use of two-way,  
28 real-time interactive audio and video where the respondent and commitment examiner can hear  
29 and see each other. A recipient is referred by one provider to receive the services of another  
30 provider via ~~telemedicine~~ telehealth.

31 The examination shall include an assessment of at least all of the following with respect to  
32 the respondent:

- 33 (1) Current and previous mental illness and intellectual disability including, if  
34 available, previous treatment history.
- 35 (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined  
36 in G.S. 122C-3(11)b.
- 37 (3) Ability to survive safely without inpatient commitment, including the  
38 availability of supervision from family, friends, or others.
- 39 (4) Capacity to make an informed decision concerning treatment.

40 ...."

41 **SECTION 6.(b)** G.S. 122C-266 is amended by adding a new subsection to read:

42 "(a1) The second examination of a respondent required by subsection (a) of this section to  
43 determine whether the respondent will be involuntarily committed due to mental illness may be  
44 conducted either in the physical face-to-face presence of a physician or utilizing telehealth  
45 equipment and procedures, provided that the physician who examines the respondent by means  
46 of telehealth is satisfied to a reasonable medical certainty that the determinations made in  
47 accordance with subdivisions (a)(1) through (a)(3) of this section would not be different if the  
48 examination had been done in the physical presence of the examining physician. An examining  
49 physician who is not so satisfied shall note that the examination was not satisfactorily  
50 accomplished, and the respondent shall be taken for a face-to-face examination in the physical  
51 presence of a physician. As used in this section, "telehealth" means the use of two-way, real-time

1 interactive audio and video where the respondent and commitment examiner can hear and see  
2 each other."

3 **SECTION 6.(c)** G.S. 122C-283 reads as rewritten:

4 "**§ 122C-283. Duties of law enforcement officer; first examination by commitment**  
5 **examiner.**

6 (a) Without unnecessary delay after assuming custody, the law enforcement officer or  
7 the individual designated or required to provide transportation under G.S. 122C-251(g) shall take  
8 the respondent to a facility or other location identified by the LME/MCO in the community crisis  
9 services plan adopted pursuant to G.S. 122C-202.2 that has an available commitment examiner  
10 and is capable of performing a first examination in conjunction with a health screening in the  
11 same location, unless circumstances indicate the respondent appears to be suffering a medical  
12 emergency in which case the law enforcement officer will seek immediate medical assistance for  
13 the respondent. If a commitment examiner is not available, whether on-site, on-call, or via  
14 ~~telemedicine, telehealth,~~ at any facility or location, or if a plan has not been adopted, the person  
15 designated to provide transportation shall take the respondent to an alternative non-hospital  
16 provider or facility-based crisis center for a first examination in conjunction with a health  
17 screening at the same location. If no non-hospital provider or facility-based crisis center for a  
18 first examination in conjunction with a health screening at the same location, the person  
19 designated to provide transportations shall take the respondent to a private hospital or clinic, a  
20 general hospital, an acute care hospital, or a State facility for individuals with mental illnesses.  
21 If a commitment examiner is not immediately available, the respondent may be temporarily  
22 detained in an area facility if one is available; if an area facility is not available, the respondent  
23 may be detained under appropriate supervision, in the respondent's home, in a private hospital or  
24 a clinic, or in a general hospital, but not in a jail or other penal facility. For the purposes of this  
25 section, "non-hospital provider" means an outpatient provider that provides either behavioral  
26 health or medical services.

27 ...

28 (c) The commitment examiner described in subsection (a) of this section shall examine  
29 the respondent as soon as possible, and in any event within 24 hours, after the respondent is  
30 presented for examination. The examination performed by a commitment examiner pursuant to  
31 subsection (a) of this section may be performed either in the physical face-to-face presence of  
32 the commitment examiner or utilizing telehealth equipment and procedures. A commitment  
33 examiner who examines a respondent by means of telehealth must be satisfied to a reasonable  
34 medical certainty that the determinations made in accordance with subsection (d) of this section  
35 would not be different if the examination had been conducted in the physical presence of the  
36 commitment examiner. A commitment examiner who is not so satisfied shall note that the  
37 examination was not satisfactorily accomplished, and the respondent shall be taken for a  
38 face-to-face examination in the physical presence of a person authorized to perform examinations  
39 under this section. As used in this section, "telehealth" is the use of two-way, real-time interactive  
40 audio and video where the respondent and commitment examiner can hear and see each other. A  
41 recipient is referred by one provider to receive the services of another provider via telehealth.  
42 The examination shall include but is not limited to an assessment of all of the following:

- 43 (1) The respondent's current and previous substance abuse including, if available,  
44 previous treatment history.
- 45 (2) The respondent's dangerousness to self or others as defined in  
46 G.S. 122C-3(11).

47 ...."

48 **SECTION 6.(d)** G.S. 122C-285 is amended by adding a new subsection to read:

49 "(a1) The second examination of a respondent required by subsection (a) of this section to  
50 determine whether the respondent will be involuntarily committed due to substance abuse may  
51 be conducted either in the physical face-to-face presence of a physician or utilizing telehealth

1 equipment and procedures, provided that the physician who examines the respondent by means  
 2 of telehealth is satisfied to a reasonable medical certainty that the determinations made in  
 3 accordance with subsection (a) of this section would not be different if the examination had been  
 4 done in the physical presence of the commitment examiner. An examining physician who is not  
 5 so satisfied shall note that the examination was not satisfactorily accomplished, and the  
 6 respondent shall be taken for a face-to-face examination in the physical presence of a qualified  
 7 professional; provided, however, that if the initial commitment examination was performed by a  
 8 qualified professional, then this face-to-face examination shall be in the presence of a physician.  
 9 As used in this section, "telehealth" means the use of two-way, real-time interactive audio and  
 10 video where the respondent and commitment examiner can hear and see each other."

11  
 12 **TECHNICAL CORRECTION TO STATUTE GOVERNING TRANSITIONAL**  
 13 **PERMITS FOR FOOD ESTABLISHMENTS**

14 **SECTION 7.** G.S. 130A-248 reads as rewritten:

15 **"§ 130A-248. Regulation of food and lodging establishments.**

16 ...

17 (c) If ownership of an establishment is transferred or the establishment is leased, the new  
 18 owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a  
 19 transitional permit. A transitional permit may be issued upon the transfer of ownership or lease  
 20 of an establishment to allow the correction of construction and equipment problems that do not  
 21 represent an immediate threat to the public health. Upon issuance of a new permit or a transitional  
 22 permit for the same establishment, any previously issued permit for an establishment in that  
 23 location becomes void. This subsection does not prohibit issuing more than one owner or lessee  
 24 a permit for the same location if (i) more than one establishment is operated in the same physical  
 25 location and (ii) each establishment satisfies all of the rules and requirements of subsection ~~(g)~~  
 26 (a) of this section. For purposes of this subsection, "transitional permit" ~~shall mean~~ means  
 27 a permit issued upon the transfer of ownership or lease of an existing food establishment to allow  
 28 the correction of construction and equipment problems that do not represent an immediate threat  
 29 to the public health.

30 ...."

31  
 32 **REGULATION OF TEMPORARY DISPLAY SPAS**

33 **SECTION 8.** G.S. 130A-280 reads as rewritten:

34 **"§ 130A-280. Scope.**

35 This Article provides for the regulation of public swimming pools in the State as they may  
 36 affect the public health and safety. As used in this Article, the term "public swimming pool"  
 37 means any structure, chamber, or tank containing an artificial body of water used by the public  
 38 for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances,  
 39 and equipment used in connection with the body of water, regardless of whether a fee is charged  
 40 for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic  
 41 club, or other membership facility pools and spas, spas operating for display at temporary events,  
 42 and artificial swimming lagoons. As used in this Article, an "artificial swimming lagoon" means  
 43 any body of water used for recreational purposes with more than 20,000 square feet of surface  
 44 area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the  
 45 swimming zone that is protective of the public health. This Article does not apply to a private  
 46 pool serving a single family dwelling and used only by the residents of the dwelling and their  
 47 guests. This Article also does not apply to therapeutic pools used in physical therapy programs  
 48 operated by medical facilities licensed by the Department or operated by a licensed physical  
 49 therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."

50  
 51 **EFFECTIVE DATE**

1

**SECTION 9.** This act is effective when it becomes law.