

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 423  
Committee Substitute Favorable 4/20/11  
Committee Substitute #2 Favorable 5/10/11  
Senate Mental Health & Youth Services Committee Substitute Adopted 6/7/12

Short Title: Ch.Protect.Serv./Ch.Care Sub./Rent Exempt.

(Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) MAINTAIN COUNTY LEVEL EXPENDITURES IN LOCAL FUNDS FOR CHILD PROTECTIVE SERVICES WORKERS; (2) USE 2011 DATA SOURCE FOR CHILD CARE SUBSIDY ALLOCATION FORMULA; (3) CLARIFY THE TERM SUBSTANTIAL COMPLIANCE AS IT RELATES TO MEDICAID AND HEALTH CHOICE PROVIDER REQUIREMENTS, AND (4) EXEMPT CONTRACTS FOR THE RENTAL OF OFFICE SPACE THAT DO NOT CONSTITUTE A FINANCIAL RELATIONSHIP UNDER THE FEDERAL STARK ACT FROM THE CONFLICT OF INTEREST PROVISION OF THE HOSPITAL AUTHORITY ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Counties shall maintain their level of expenditures in local funds for Child Protective Services workers. Of the block grant funds appropriated for Child Protective Services workers, the total expenditures from State and local funds for the 2012-2013 fiscal year shall not be less than the total expended from State and local funds for the 2011-2012 fiscal year.

**SECTION 2.** Section 10.2(a) of S.L. 2011-145 is amended by adding the following new subdivision to read:

**"SECTION 10.2.(a)** The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

- (1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.
- (2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.
- (3) For fiscal year 2012-2013, the Division of Child Development and Early Education shall base the formula identified in subdivision (1) of this subsection on the same data source used for the 2011-2012 fiscal year."

**SECTION 3.** G.S. 108C-2 is amended by adding a new subdivision to read:



1           "(4a) Failed to substantially comply with the requirements of State or federal law  
2           or regulation. – Based on a statistically significant and valid sample of a  
3           provider's claims for the audited period, twenty percent (20%) or more of the  
4           sampled claims did not comply with the requirements of State or federal law  
5           or regulation and met the definition of abuse as defined in  
6           42 C.F.R. § 455.2."

7           **SECTION 4.** G.S. 131E-21 reads as rewritten:

8           "**§ 131E-21. Conflict of interest.**

9           (a) No commissioner or employee of the hospital authority or that person's spouse shall  
10          do either of the following:

- 11           (1) Acquire any interest, direct or indirect, in any hospital facility or in any  
12           property included or planned to be included in a hospital facility.  
13           (2) Have any interest, direct or indirect, in any contract or proposed contract for  
14           materials or services to be furnished or used in connection with any hospital  
15           facility, except an employment contract for an employee. The foregoing  
16           restriction shall not apply to any contract, undertaking, or other transaction  
17           with a bank or banking institution, savings and loan association or public  
18           utility in the regular course of its business; Provided that any such contract,  
19           undertaking, or other transaction shall be authorized by the commissioners  
20           by specific resolution on which no commissioner having an interest, direct or  
21           indirect, shall vote.

22          (b) The fact that a person or that person's spouse owns ten percent (10%) or less stock  
23          of a corporation or has a ten percent (10%) or less ownership in any other business entity or is  
24          an employee of that corporation or other business entity does not make the person have an  
25          "interest, direct or indirect" as this phrase is used in subsection (a) of this section; provided that,  
26          in order for the exception to apply, the contract, undertaking or other transaction shall be  
27          authorized by the commissioners by specific resolution on which no commissioner or employee  
28          having an interest, direct or indirect, shall vote.

29          (c) If a commissioner or employee of an authority or that person's spouse owns or  
30          controls an interest, direct or indirect, in any property included or planned to be included in any  
31          hospital facility, the commissioner or employee shall immediately disclose the same in writing  
32          to the authority and the disclosure shall be entered upon the minutes of the authority. Failure to  
33          disclose shall constitute misconduct in office and shall be grounds for a commissioner's  
34          removal from office under G.S. 131E-22.

35          (d) Subsection (a) of this section shall not apply to any commissioner of a hospital  
36          authority if (i) the undertaking or contract or series of undertakings or contracts between the  
37          hospital authority and one of its officials is approved by specific resolution of the governing  
38          body adopted in an open and public meeting and recorded in its minutes and the amount does  
39          not exceed twelve thousand five hundred dollars (\$12,500) for medically related services and  
40          twenty-five thousand dollars (\$25,000) for other goods or services within a 12-month period;  
41          and (ii) the official entering into the contract or undertaking with the hospital authority does not  
42          in an official capacity participate in any way or vote.

43          (e) Subsection (a) of this section shall not apply to any employment relationship  
44          between a hospital authority and the spouse of a commissioner of the hospital authority.

45          (e1) Subsection (a) of this section shall not apply to any contract for the rental of office  
46          space made by a lessee to a lessor if the lease agreement meets the following requirements:

- 47           (1) The agreement is set out in writing, is signed by the parties, and specifies the  
48           premises it covers.  
49           (2) The term of the agreement is at least one year. If the agreement is terminated  
50           during the term with or without cause, the parties may not enter into a new  
51           agreement during the first year of the original term of the agreement.

- 1           (3)    The space leased does not exceed that which is reasonable and necessary for  
2           the legitimate business purposes of the lease. The space shall not be shared  
3           with or used by the lessor or any person or entity related to the lessor, except  
4           that the lessee may make payments for the use of space consisting of  
5           common areas if the payments do not exceed the lessee's pro rata share of  
6           expenses for the space based upon the ratio of the space used exclusively by  
7           the lessee to the total amount of space other than common areas occupied by  
8           all persons using the common areas.
- 9           (4)    The rental charges over the term of the agreement are set in advance and are  
10          consistent with fair market value.
- 11          (5)    The rental charges over the term of the agreement are not determined in a  
12          manner that takes into account the volume or value of any referrals or other  
13          business generated between the parties.
- 14          (6)    The agreement would be commercially reasonable even if no referrals were  
15          made between the lessee and the lessor.
- 16          (7)    A holdover month-to-month rental for up to six months immediately  
17          following an agreement of at least one year that met the conditions of  
18          subdivision (1) of this subsection shall be valid, provided the holdover rental  
19          is on the same terms and conditions as the immediately preceding  
20          agreement.

21          (f)    A contract entered into in violation of this section is void. A contract that is void  
22          under this section may continue in effect until an alternative can be arranged when: (i)  
23          immediate termination would result in harm to the public health or welfare, and (ii) the  
24          continuation is approved as provided in this subsection. A hospital authority that is a party to  
25          the contract may request approval to continue contracts under this subsection from the  
26          chairman of the Local Government Commission. Approval of continuation of contracts under  
27          this subsection shall be given for the minimum period necessary to protect the public health or  
28          welfare."

29                **SECTION 5.** Section 3 of this act is effective when it becomes law and applies to  
30          all audits except those with overpayments that have become final prior to that date. The  
31          remainder of this act is effective when it becomes law.