

## NORTH CAROLINA LEGISLATIVE SUMMARY – 2020 SHORT SESSION

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### INTRODUCTION

The North Carolina General Assembly convened the 2020 short session on April 28, 2020 to address immediate policy needs related to COVID-19, and to allocate nearly \$1.6 billion from the federal government’s Coronavirus Aid, Relief, and Economic Security (CARES) Act. On May 18, 2020, the legislature began regular business for the short session, and remained in session for a little over seven weeks. The House and Senate adjourned the 2020 short session on the morning of June 26, 2020. The legislature did not adjourn *sine die*, and returned on July 7<sup>th</sup> to attempt overrides of several vetoes issued by Governor Cooper. All the veto override votes failed, however, and the legislature is now on an extended break until September 2<sup>nd</sup> when they will reconvene to allocate remaining funds from the CARES Act and to address unfinished business.

### LEGISLATIVE PRIORITIES

Duke State Relations identifies several issues as priorities for Duke University and Duke Health. The issues generally reoccur every legislative session and have the potential to significantly alter the University’s and Health System’s ability to fulfill their respective core missions of providing higher education and delivering quality health care. As such, the topics and bills in this section are generally the focus of advocacy efforts at the General Assembly in Raleigh.

#### COVID-19 Relief Packages

The House and Senate unanimously passed two COVID-19 relief bills ([S.L. 2020-3](#) and [S.L.2020-4](#)) that were signed into law by the Governor several days later. Highlights from the bills include:

1. **\$15M in the form of a direct appropriation to the Duke Human Vaccine Institute** for vaccine development.
2. **\$15M to establish the Teaching Hospitals Relief Fund** to be allocated to the five hospitals located within the State that are classified as teaching hospitals by the CMS (\$3M to Duke).
3. **\$15M to establish the Non-teaching Hospitals Relief Fund.**
4. **\$65M to establish the Rural Hospital Relief Fund** (Duke LifePoint Hospitals).

5. **5% increase in the Medicaid Fee-For-Service rates paid to all provider types** by the Division of Health Benefits. The rate increase will be effective 3/1/20, and will expire on the earlier of: (i) the date the nationwide COVID-19 public health emergency expires, (ii) the date Executive Order 116 – NC State of Emergency - is rescinded, or (iii) 3/31/21.
6. Authorizes DHHS to provide **Medicaid coverage for COVID-19 testing** for certain uninsured individuals during the declared nationwide public health emergency period.
7. **\$50M for PPE** - 50% of which will be sent to the NCHA Foundation for the purchase of PPE for hospitals.
8. **\$29M for COVID-19 research initiatives** to include community testing and countermeasure development. The fund will be administered by the UNC Collaboratory.
9. The following funds to NCDHHS:
  - a. **\$20M for flexible funds to support local health departments, rural health providers, the State Laboratory of Public Health, and behavioral health and crisis services.** Allowable uses of these funds include, but are not limited to, increasing nursing capacity, increasing the number of community health workers, expanding telehealth services, providing infection control support and training in nursing homes and adult care homes, and diverting behavioral health emergencies from emergency departments.
  - b. **\$50M to provide funds for rural and underserved communities especially hard hit by the COVID–19 pandemic.** The emergency flexible funds allocated shall support health provider grants, targeted Medicaid assistance for rural hardship grants to nonhospital providers, enhanced Telehealth services, transportation for critical services, health care security for the uninsured, the Office of Minority Health, and related items.
  - c. **\$25M to expand public and private initiatives for COVID-19 testing, contact tracing, and trends tracking and analysis.**
  - d. **\$20M to support behavioral health and crisis services** to respond to the COVID-19 pandemic.
10. **\$20M for North Carolina’s private colleges and universities** (\$500,000 to Duke University).

The legislature passed [another COVID-19 relief package](#) during the last several days of session that appropriates an additional \$500 million in CARES Act funding. This bill included minimal support for hospitals and healthcare providers. The House and Senate are awaiting additional

guidance and flexibility from the federal government on how the CARES Act funds can be spent when they return in September.

## **Immunity Protections**

Several bills were enacted this session that provide immunity from COVID-19 related lawsuits. Duke University and Duke Health played a lead role in advocacy efforts to pass these bills, which was a coordinated effort between Duke State Relations and Office of Counsel. Immunity provisions include:

1. Protection for all institutions of higher education **from current and future claims relating to tuition and fees** paid for the 2020 spring semester. [See S.L. 2020-70.](#)
2. Protection for **any negligent act and omission by a healthcare provider** – regardless of whether for treatment of COVID or not - in response to the COVID epidemic. See Section 3.D.7 of [S.L. 2020-3.](#)
3. Protection from negligence claims against any “business” - to include institutions of higher education - **for COVID-19 exposure in reopening.** [See S.L. 2020-89.](#)
4. Protection from tort claims **against “essential businesses” for COVID-19 exposures.** See Section 4.14 of [S.L. 2020-3.](#)

## **Medicaid Transformation**

In February 2019, the NC Department of Health and Human Services announced which Prepaid Health Plans won managed-care contracts to serve North Carolina’s 1.6 million Medicaid recipients. The Medicaid transformation program was originally scheduled to roll out in two phases, with the Triangle and Triad transitioning to the new managed-care system on November 1<sup>st</sup>, followed by the rest of the state on February 1<sup>st</sup>. The vetoed state budget contained a number of essential legislative changes that needed to be enacted prior to the go-live date on November 1<sup>st</sup>, such as language for adjustments to the hospital assessment plan (provider tax) made necessary by the transition of Medicaid to managed care. DHHS stated that they could not move forward with Medicaid transformation unless the budget was passed. Last August, the House and Senate passed a bill that included funding for Medicaid transformation to move forward on November 1<sup>st</sup>. A week later, Governor Cooper vetoed the bill given that it, like the budget bill, did not include Medicaid expansion. Due to the lack of a compromise agreement between the General Assembly and Governor, NCDHHS was forced to announce an indefinite delay of Medicaid transformation.

The House and Senate reached a final agreement this session on the [Medicaid Funding Act](#) that would require Medicaid transformation to go live on July 1, 2021. The final bill reallocates state funding to cover the \$475M shortfall in next year's Medicaid budget, revises the current hospital assessments, and includes a variety of other funding provisions for the Medicaid program. The bill also includes additional COVID-19 response funds for NCDHHS, and

funds for the department's North Carolina Families Accessing Services through Technology (NC FAST) program. A provision was stripped from the final bill that would require NCDHHS to compensate each managed care company \$4M per month to cover their losses if Medicaid transformation did not go live on July 1, 2021. Removal of this provision was the focus of our advocacy efforts so that NCDHHS retains the flexibility to delay transformation should the Secretary determine a July 1, 2021 go live date is not possible given the redirection of resources due to COVID-19. Governor Cooper signed this bill into law on July 2<sup>nd</sup>.

## **State Budget and Medicaid Expansion**

Last year, Democratic Governor Roy Cooper vetoed the Republican-controlled legislature's budget, and the state has since been operating on a continuing resolution budget along with "mini budgets" to fund certain fiscal priorities. The House and Senate took the same piecemeal approach this short session by passing a series of mini budget bills. State economists released a [revised revenue consensus forecast](#) at the end of May, which predicted a nearly \$5 billion shortfall in North Carolina's revenue due to the COVID-19 pandemic. The forecast predicts a 6.6 percent decrease in revenue collections for fiscal year 2019-20, and a 9.9 percent decrease for fiscal year 2020-21. The updated consensus forecast for North Carolina does not factor in if there is a second wave of the coronavirus later in the fall or winter. State economists will revise the forecast in August once delayed tax collections are completed in July, and once there is more data on how the pandemic has impacted the economy.

Governor Cooper vetoed last year's budget because it did not include Medicaid expansion, which the Governor has continued to state is a non-negotiable issue for any budget resolution. The Governor did not insist on including Medicaid expansion in the Medicaid Funding Act (above) and never threatened to veto the bill in an effort to have it added. He continues to talk about the importance of expansion, as does Secretary Cohen, and will likely raise it again during the September special session. Medicaid expansion remains a highly partisan and divisive political issue, but will likely not be given any consideration until the long session in 2021.

## **Patient Visitation Policy**

The Senate introduced a bill this session that would require hospitals to ensure visitation rights for patients during a disaster declaration or public health emergency. The [No Patient Left Alone Act](#) would override hospitals' prohibition on visitors during the COVID-19 pandemic by requiring that hospitals must allow at least one visitor for an admitted patient. Visitation policies were restricted at the beginning of the pandemic due to fear of spreading the virus and a lack of personal protective equipment. The North Carolina Healthcare Association (NCHA) and NC Department of Health and Human Services Secretary, Dr. Mandy Cohen, expressed concerns about the bill, stating that it interferes with federal regulations and other regulatory guidelines that hospitals must follow. NCHA recommended creating an advisory committee of doctors, patient advocates, and infectious disease experts to report best practices for visitation policies

during an emergency period, instead of requiring it in legislation. The House passed a revised version of the bill that was consistent with federal guidelines for hospital visitation policies, but the Senate did not agree with these changes. It's possible the bill could resurface when the legislature returns in September, but hospitals will continue to push for legislation that is consistent with existing laws and regulations.

## **Certificate of Need**

Duke supports the existing Certificate of Need (CON) law regulating the growth of health care services and facilities to control costs, utilization, and distribution. Duke believes CON ensures medical providers are able to meet the health needs of our communities. Governor Cooper's [Executive Order 130](#) in response to the COVID-19 pandemic temporarily modified the state's Certificate of Need laws to provide increased flexibility for hospitals to prepare for a surge of COVID-19 patients. A bill that was discussed in the Senate this session would temporarily extend certain healthcare waivers and Certificate of Need changes from the Governor's executive order for up to one year after the emergency declaration period ends.

The proposed legislation allows for licensed healthcare facilities to expand bed capacity and relocate beds as needed, allows for facilities to acquire additional medical equipment, and allows for ambulatory surgery centers to act as temporary hospitals. If healthcare facilities make changes to expand capacity or shift resources, they must explain how those changes are related to COVID-19. The bill would also delegate authority to healthcare licensing boards to permit out of state providers to practice in North Carolina during the emergency declaration period, and seeks to protect vulnerable patients in congregate healthcare settings. Hospitals across the state did not support this bill and still want to prevent any of these temporary CON changes from becoming permanent. The bill was defeated in the Senate Health Committee and did not receive additional consideration.

## **Telehealth**

The COVID-19 pandemic drastically accelerated and expanded the use of telehealth services. Hospitals have pushed for telehealth payment parity in years past, but the increased use of telehealth during the pandemic has emphasized that our healthcare system offers a great value through telehealth and that services should be reimbursed at the same rate as in-person visits. Federal waivers and some insurance companies have temporarily allowed for telehealth payment parity and expanded flexibilities for telehealth services, but hospitals would like to see these temporary changes become permanent. The House initially agreed to include telehealth provisions their COVID-19 relief proposal, however, Senate leadership refused to consider these provisions in the final bill. Hospitals plan to continue to push for permanent payment parity and increased flexibilities for telehealth services.

## **STAND ALONE LEGISLATION**

Duke State Relations identifies legislation that Duke supports, opposes, or amends and is regularly approached by faculty or staff from within Duke about advancing specific legislation. The result is that our office engages on dozens of bills each session on behalf of both the University and Health System. In addition, there are also several bills each session that we independently monitor even though we have not received a specific request from within Duke to do so. We also monitor, but do not directly engage in advocacy efforts either for or against, any legislation on which Duke has constituencies or interests on both sides of the issue.

In addition to the priorities discussed above, legislation enacted during the 2020 short session that Duke State Relations either directly lobbied or monitored is listed below (organized by bill number and chamber of origin). Bills that failed to pass are not included in this report given the legislation is no longer eligible for consideration. A complete bill tracking spreadsheet can be found on our [website](#).

### ***Legislation Originating in the NC Senate***

The hyperlink provided for the session law is to the text of the enacted legislation, while the hyperlink for the bill title is to the official bill summary.

- [Session Law 2020-3](#)
  - [Senate Bill 704: COVID-19 Recovery Act](#)
  - Duke's Position: Support
- [Session Law 2020-70](#)
  - [Senate Bill 208: COVID-19 Immunity/IHEs](#)
  - Duke's Position: Support
- [Session Law 2020-78](#)
  - [Senate Bill 681: Agency Policy Directives/2019-2020](#)
  - Duke's Position: Monitor
- [Session Law 2020-84](#)
  - [Senate Bill 361: Healthy NC](#)
  - Duke's Position: Support
- [Session Law 2020-88](#)
  - [Senate Bill 808: Medicaid Funding Act](#)
  - Duke's Position: Monitor

### ***Legislation Originating in the NC House***

The hyperlink provided for the session law is to the text of the enacted legislation, while the hyperlink for the bill title is to the official bill summary.

- [Session Law 2020-17](#)
  - [House Bill 1169: Bipartisan Elections Act of 2020](#)
  - Duke's Position: Monitor
- [Session Law 2020-6](#)
  - [House Bill 1079: Various Sales Tax Changes](#)
  - Duke's Position: Monitor
- [Session Law 2020-4](#)
  - [House Bill 1043: 2020 COVID-19 Recovery Act](#)
  - Duke's Position: Support
- [Session Law 2020-80](#)
  - [House Bill 1123: Coronavirus Relief Fund/Additions & Revisions](#)
  - Duke's Position: Monitor
- [Session Law 2020-74](#)
  - [House Bill 308: Regulatory Reform Act of 2020](#)
  - Duke's Position: Monitor
- [Session Law 2020-79](#)
  - [House Bill 1087: Water/Wastewater Public Enterprise Reform](#)
  - Duke's Position: Monitor
- [Session Law 2020-58](#)
  - [House Bill 1080: Revenue Laws Recommendations](#)
  - Duke's Position: Monitor
- [Session Law 2020-85](#)
  - [House Bill 471: Exempt Direct Primary Care from DOI Regs.](#)
  - Duke's Position: Monitor
- [Session Law 2020-87](#)
  - [House Bill 1053: PED/Military OL & Audiology Interstate Compact](#)
  - Duke's Position: Support
- [Session Law 2020-89](#)
  - [House Bill 118: COVID-19 Liab. Safe Harbor](#)
  - Duke's Position: Support

## **2020 ELECTION**

All 170 members of the North Carolina General Assembly are up for re-election this November. Currently, North Carolina has a Republican majority in both the N.C. House and Senate. The

2020 election brings the possibility of a shift in political power at the state legislature and in Congress, with newly drawn district maps that could allow for Democrats to pick up more seats. Democratic Governor Roy Cooper is also up for re-election this November and is running against the current Republican Lieutenant Governor, Dan Forest. This race has garnered much attention over the last several months due to Lieutenant Governor Forest's criticism of Governor Cooper's coronavirus response.

Durham County has seen two new state legislators in 2020, with the recent passing of Rep. MaryAnn Black and Sen. Floyd McKissick accepting an appointment to the North Carolina Utilities Commission. Vernetta Alston was appointed to serve in MaryAnn Black's seat in House District 29, and Natalie Murdock was appointed to serve in Floyd McKissick's seat in Senate District 20. Alston and Murdock both won their primaries in March and will be up for re-election in November. Current Representatives Zack Hawkins, Marcia Morey, Robert Reives, and Senator Mike Woodard are all running for re-election in Durham County and will easily win their general election contests in November.



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