

# NORTH CAROLINA LEGISLATIVE SUMMARY – 2019 LONG SESSION

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## INTRODUCTION

The 2019 North Carolina General Assembly long session adjourned on October 31<sup>st</sup>. Republicans, who lost their supermajority in both the House and Senate, still maintain a majority in both chambers. The loss of the supermajority means Republicans no longer have the votes necessary to automatically override a veto by Democratic Governor Roy Cooper, which led to a much longer and more contentious session than in previous years.

The NCGA did not adjourn the long session *sine die*, and therefore the legislature can hold special sessions between now and the beginning of short session in May, 2020. The General Assembly returned on November 13<sup>th</sup> for a special session on redistricting matters and will return again on January 14<sup>th</sup> for a special session on healthcare issues, veto overrides, and outstanding budget items.

## 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.

### State Budget Bill

After the House and Senate passed competing versions of the state appropriations act at the end of May, a compromise [\\$24 billion budget](#) was adopted by the General Assembly and sent to Governor Cooper on June 27<sup>th</sup>. The Governor vetoed the budget the next day citing his pledge from earlier in session that he would reject any budget proposal that did not include Medicaid expansion.

After months of a budget standoff, House Republicans called for a surprise vote on September 11<sup>th</sup> and were able to override the budget veto in a vote of 55-9. Most House Democrats were absent as they were under the impression there would be no recorded votes. Senate Republicans, however, were unable to secure the one Democrat vote needed to override the budget, and adjourned without calling for an override vote. As stated above, the Senate may bring up the budget veto override during the special session in January.

In order to fund certain fiscal obligations throughout the state, the legislature passed a series of widely agreed upon "mini-budgets". The mini-budgets that became session law include:

- HB 609: Salary Increases/Adult Correctional Employees
  - [Session Law 2019-208](#)
- HB 226: Pay Increases/State Employees
  - [Session Law 2019-209](#)
- HB 126: Pay Increases/State Highway Patrol

- [Session Law 2019-210](#)
- HB 777: Pay Increases/SBI & ALE
  - [Session Law 2019-211](#)
- HB 29: Standing Up for Rape Victims Act of 2019
  - [Session Law 2019-221](#)
- HB 75: School Safety Funds, Programs, and Reports
  - [Session Law 2019-222](#)
- SB 118: Prison Safety/TANF State Plan/Clarifications
  - [Session Law 2019-223](#)
- SB 429: Disaster Recovery- 2019 Budget Provisions
  - [Session Law 2019-224](#)
- HB 1001: Raise the Age Funding
  - [Session Law 2019-229](#)
- HB 387: Growing G.R.E.A.T.
  - [Session Law 2019-230](#)
- HB 100: DOT Budget for 2019-2021 Biennium
  - [Session Law 2019-231](#)
- SB 61: Community Colleges Budget/2019-2021 Biennium
  - [Session Law 2019-235](#)
- HB 377: Teacher Step Act
  - [Session Law 2019-247](#)
- HB 111: 2019-2021 Base Budget/Certain Agencies
  - [Session Law 2019-242](#)
- HB 200: 2019 Storm Recovery/Var. Budget Corrections
  - [Session Law 2019-250](#)

### **Medicaid Transformation**

In February, 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.

In August, the House and Senate passed [House Bill 555](#) to provide funding for Medicaid transformation to move forward in the first phase as scheduled 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. In response, DHHS announced that Medicaid transformation would have to be delayed statewide until February 1<sup>st</sup>, but that they would continue to move forward with the parts of Medicaid transformation that didn't rely on the budget. For example, the open enrollment process began as planned on October 15<sup>th</sup>.

On October 23<sup>rd</sup>, the House Health Committee held an oversight meeting to examine aspects of the Medicaid transformation rollout. NC DHHS Secretary Cohen, and presenters from the North Carolina

Healthcare Association and the North Carolina Medical Society, expressed concerns with moving forward with transformation as scheduled on February 1<sup>st</sup>, 2020. At that same legislative hearing, Secretary Cohen said that the state could not move forward with transformation on February 1, 2020 if a budget that funds transformation was not in place. The legislature adjourned on October 31<sup>st</sup> without an enacting a state budget and did not consider legislation to fund Medicaid transformation, despite a last-minute press by the managed care companies, during the November special session. Shortly thereafter, [NCDHHS announced an indefinite delay of Medicaid transformation](#).

Going forward, North Carolina's Medicaid program will continue to operate on the current fee-for-service model, and nothing will change for current Medicaid beneficiaries. In a [press release](#), DHHS stated that they will not decide on a new go-live date until there is a sufficient budget in place. It is expected that the legislature will take up health care issues during a special session in January, and the future of Medicaid transformation could be addressed then.

### **Medicaid Expansion**

Medicaid expansion was at the center of the budget standoff this session. Governor Roy Cooper and his fellow Democrats promised in January that if Medicaid expansion was not included in the budget, or if a separate expansion bill was not approved by the time the budget was presented to the Governor, that the Governor would veto the budget bill. The Governor delivered on his promise by vetoing the budget bill in June.

Although House Republicans did propose a form of [Medicaid expansion](#) with work requirements and co-pays that passed through several key House committees in July, the bill remained on the House calendar for two months without any action. Once the House overrode the budget veto, the incentive to vote on the expansion bill became less appealing and even the House Republicans who once supported the bill became less interested in pushing forward with a vote. House Democrats, who felt victimized by the veto override vote and the manner in which it occurred, started pressing for changes to the bill and the elimination of key provisions of importance to many Republicans. As such, in the end the House did not vote on the Medicaid expansion bill during the 2019 long session.

Since the end of the long session, there have been some talks of developing a Medicaid expansion proposal similar to what was approved in Arkansas. While there were some initial indications the proposal could be considered during the January special session, it seems highly unlikely that Republicans will allow for any form of Medicaid expansion to be seriously considered during 2020 given it is an election year for all members of the General Assembly and Governor. The issue remains a highly divisive partisan and political issue.

### **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. Many of the services hospitals provide do not cover the costs of care. Some services, including emergency and trauma care, are provided in response to community need, regardless of payment. There were a number of bills introduced during the long session concerning repeal or amendment of the certificate of need laws. Although no significant changes to CON laws occurred, repeal of or amendments to CON continue to be an issue that is used against hospitals to extract concessions on other issues. Should any CON reforms advance in 2020, they will likely be included as a part of a broader healthcare reform bill during the special session in January.

### **State Health Plan**

State Treasurer Dale Folwell announced a plan in 2018 to move the State Health Plan away from a commercial-based payment model to a Medicare reference-based pricing model starting on January 1<sup>st</sup>, 2020. In response, hospitals pursued [legislation](#) that would prevent the Treasurer from moving forward with his plan and create a special study committee to consider alternatives towards achieving long-term financial stability for the SEHP. Although the legislation passed the House in April, it stalled in the Senate because senators were reluctant to interfere with or alter the Treasurer's statutory responsibility to serve as the fiduciary for the SEHP. Leadership from Duke Health met with Senate leaders and the Treasurer in late June to press for a legislative solution that ultimately did not materialize. Still, legislators acknowledged that the effort at the legislature, supported by a massive targeted grassroots and media campaign, was making it difficult for Treasurer Folwell to push forward with his Clear Pricing Project.

The first deadline for providers to sign on to the plan passed on July 1<sup>st</sup>. With only four hospitals signing contracts, Folwell announced that he would offer a new plan and re-open enrollment for providers from July 26<sup>th</sup> through August 5<sup>th</sup>. The new proposal came with additional incentives, such as increased payments to providers and the creation of an advisory committee of health care leaders to recommend changes going forward for the SEHP. After the second deadline passed and only one additional hospital agreed to the proposed plan, it became clear to the Treasurer that he had no choice but to relent for the upcoming plan year.

Treasurer Folwell announced on August 8<sup>th</sup> that he was, for the time being, ending his efforts to pull large hospitals into his Medicare referenced-based pricing plan (Clear Pricing Project). In his announcement, Folwell stated that the providers who refused to sign on to the proposed Medicare reference-based plan would continue to be in network for state employees and retirees through their existing contracts with Blue Cross Blue Shield. With that said the disagreement over how to achieve savings and transparency for the SEHP will continue. The provider community is coalescing around an idea to bring stakeholders together, separate from the Treasurer's advisory committee, to develop a long-term plan for the sustainability of the SEHP. In response, Treasurer Folwell recently announced that he will require the third-party administrator for the SEHP (currently BCBSNC) participate in the Clear Pricing Project.

### **Taxes, Nonprofit Status and Related Issues**

Both Duke University and Duke Health System are nonprofits that receive an exemption under the North Carolina Tax Code for sales taxes. Under the current system, nonprofits pay sales taxes at the time of purchase but then apply for and receive a sales tax refund from the state twice a year. For Duke University, the refund is approximately \$20 million annually. For the Health System, the number tends to fluctuate but also averages about \$20 million annually. Duke University and Duke Health System are separate taxable entities for the purposes of the refund.

In 2013, the legislature placed a \$45 million cap on the refund amount a nonprofit could receive. This was done over the objections of the greater nonprofit community even though the cap did not immediately affect anyone in North Carolina, including Duke. Although there were no specific legislative proposals in 2019 to reduce the cap or to eliminate the sales tax refund, the threat of doing either or both continues to be one of the biggest issues for Duke and other nonprofits. Fortunately, the nonprofit community continues to be united in efforts to defeat such proposals.

## **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 2019 long 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.

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

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

#### **[SB 9: Female Genital Mutilation/Clarify Prohibition](#)**

- [Session Law 2019-183](#)
- Duke's Position: Neutral

#### **[SB 56: Revenue Laws Technical Changes](#)**

- [Session Law 2019-6](#)
- Duke's Position: Neutral

#### **[SB 86: Small Business Healthcare Act](#)**

- [Session Law 2019-202](#)
- Duke's Position: Neutral

#### **[SB 88: Electrician Requirements for Certain Orgs.](#)**

- [Session Law 2019-78](#)
- Duke's Position: Neutral

#### **[SB 151: Break or Enter Pharmacy/Increase Penalty](#)**

- [Session Law 2019-40](#)
- Duke's Position: Support

#### **[SB 154: Allow Sports/Horse Race Wagering Tribal Lands](#)**

- [Session Law 2019-163](#)
- Duke's Position: Neutral

#### **[SB 199: Child Sex Abuse/Strengthen Laws](#)**

- [Session Law 2019-245](#)
- Duke's Position: Neutral

[SB 230: NC Military and Veteran Act of 2019](#)

- [Session Law 2019-201](#)
- Duke's Position: Support

[SB 297: Cancer Research Advisory Panel](#)

- [Session Law 2019-145](#)
- Duke's Position: Support

[SB 302: Update ACH Svc & Care Plan/Bd of Nursing](#)

- [Session Law 2019-180](#)
- Duke's Position: Neutral

[SB 420: NC Servicemembers Civil Relief Act](#)

- [Session Law 2019-161](#)
- Duke's Position: Neutral

[SB 458: PTS Day/Cardiac Task Force/Titus's Law/Data.](#)

- [Session Law 2019-225](#)
- Duke's Position: Neutral

[SB 508: Civil Procedure/Deponent Declaration](#)

- [Session Law 2019-147](#)
- Duke's Position: Neutral

[SB 532: Amends Probate/Trusts/Wills Choice of Law](#)

- [Session Law 2019-178](#)
- Duke's Position: Neutral

[SB 537: Licensing & HHS Amends & Rural Health Stable](#)

- [Session Law 2019-240](#)
- Duke's Position: Neutral

[SB 557: Various Finance Law Changes](#)

- [Session Law 2019-246](#)
- Duke's Position: Neutral

[SB 559: Storm Securitization](#)

- [Session Law 2019-244](#)
- Duke's Position: Neutral

[SB 604: Amend NC Veterinary Practice Act](#)

- [Session Law 2019-15](#)
- Duke's Position: Neutral

[SB 683: Combat Absentee Ballot Fraud](#)

- [Session Law 2019-239](#)

- Duke's Position: Neutral

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

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

#### [HB 50: Allow Hyperbaric Oxygen Therapy for TBI/PTSD](#)

- [Session Law 2019-175](#)
- Duke's Position: Neutral

#### [HB 70: Delay NC HealthConnex for Certain Providers](#)

- [Session Law 2019-23](#)
- Duke's Position: Neutral

#### [HB 106: Inmate Health Care & 340B Program](#)

- [Session Law 2019-135](#)
- Duke's Position: Support

#### [HB 108: PED/Safekeeper Health care Cost Recov. Pract.](#)

- [Session Law 2019-171](#)
- Duke's Position: Neutral

#### [HB 217: DIT Changes- AB](#)

- [Session Law 2019-200](#)
- Duke's Position: Neutral

#### [HB 220: Insurance Technical Changes](#)

- [Session Law 2019-179](#)
- Duke's Position: Neutral

#### [HB 228: Modernize Laws Pertaining to NC Medical Board.-AB](#)

- [Session Law 2019-191](#)
- Duke's Position: Support

#### [HB 283: Conner's Law](#)

- [Session Law 2019-228](#)
- Duke's Position: Support

#### [HB 325: Opioid Epidemic Response Act](#)

- [Session Law 2019-159](#)
- Duke's Position: Neutral

#### [HB 329: Renewable Energy Amends](#)

- [Session Law 2019-132](#)
- Duke's Position: Neutral

[HB 388: Immunizing Pharmacists](#)

- [Session Law 2019-21](#)
- Duke's Position: Neutral

[HB 474: Death by Distribution](#)

- [Session Law 2019-83](#)
- Duke's Position: Neutral

[HB 548: Modify Physical Therapy Definition](#)

- [Session Law 2019-43](#)
- Duke's Position: Neutral

[HB 646: ID Approval/Flex Muni One-Stop](#)

- [Session Law 2019-22](#)
- Duke's Position: Support

[HB 656: Medicaid Changes for Transformation](#)

- [Session Law 2019-81](#)
- Duke's Position: Neutral

[HB 658: Allow Donations of Unexpired Drugs](#)

- [Session Law 2019-54](#)
- Duke's Position: Support

[HB 668: Various Higher Education Changes](#)

- [Session Law 2019-139](#)
- Duke's Position: Neutral

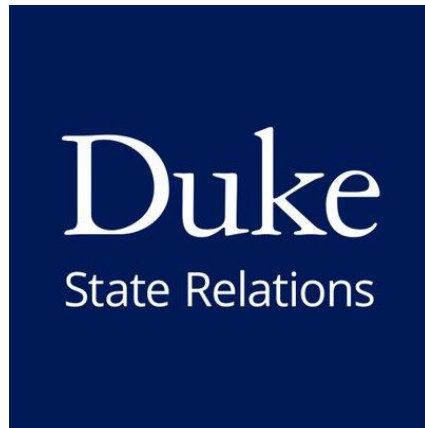
[HB 770: Freedom to Work/OLB Reform](#)

- [Session Law 2019-91](#)
- Duke's Position: Neutral

[HB 934: Right to Try Adult Stem Cell Treatments](#)

- [Session Law 2019-70](#)
- Duke's Position: Neutral





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