

## **NORTH CAROLINA LEGISLATIVE SUMMARY – 2022 SHORT SESSION**

**Prepared by: Duke State Relations**

### **INTRODUCTION**

The North Carolina General Assembly convened for the 2022 short session on May 18<sup>th</sup> and completed most business by July 1<sup>st</sup>. Legislators were only in session for six weeks following the historically long legislative session from 2021. While a number of significant policy provisions were debated during the short session, legislators adjourned without a resolution on many of these major issues. The legislature did not adjourn *sine die* on July 1<sup>st</sup> and is scheduled to convene again on July 26<sup>th</sup>, with plans to hold session on a monthly basis until the end of the year to address veto overrides or essential compromise legislation they failed to negotiate during the short session. Republicans continue to hold a majority in both the North Carolina House of Representatives (69-51) and Senate (28-22), but lack supermajorities in either chamber to override a veto from Democratic Governor Roy Cooper.

### **LEGISLATIVE PRIORITIES**

Each year Duke State Relations (DSR) identifies several issues that are priorities for Duke University, Duke University Health System and Duke LifePoint Healthcare. Many issues generally reoccur every legislative session and have the potential to significantly alter Duke's ability to fulfill our 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.

#### **Medicaid Expansion**

Medicaid expansion was a top priority at the legislature during the short session. After being opposed to Medicaid expansion for years, Republican Senate Leader Phil Berger introduced a [healthcare omnibus bill](#) at the start of session to include Medicaid expansion and other significant health policy reforms. The Senate's Medicaid expansion plan included work requirements for certain beneficiaries (a provision that has been struck down in other states), along with requiring hospitals to cover the state's 10% share of the expansion population through an increased assessment tax. If the federal share were to drop below 90% or if the state budget was impacted, Medicaid expansion would end. Republicans have typically been opposed to Medicaid expansion but the posture changed over the last few years due to incentives for non-expansion states in the federal government's American Rescue Plan Act. The incentives include a two-year, 5% increase in the federal match rate for Medicaid, meaning North Carolina could receive an additional \$1.5B from the federal government if the state were to adopt expansion.

The omnibus bill also directed NCDHHS to pursue optimized Medicaid reimbursements for hospitals through the Healthcare Access and Stabilization Program (more below). Other healthcare provisions in the bill include major reforms to the state's Certificate of Need laws that govern the distribution of healthcare services and facilities, surprise billing language that requires for patients to be notified if they will be treated by an out-of-network provider, and stipulations for the coverage of telehealth services. The bill also includes the entirety of the SAVE Act, which would grant full practice authority for APRNs in North Carolina.

The legislation passed the Senate with bipartisan support, but the House refused to consider the bill given concerns over the CON and telehealth provisions along with granting full-practice authority for APRNs. Instead, Speaker of the House Tim Moore introduced a separate [plan](#) to create a path forward for Medicaid expansion in North Carolina. Speaker Moore's proposal created a new "Joint Committee on Medicaid Rate Modernization and Savings" that directs the NC Department of Health and Human Services to put forth a "Medicaid Modernization Plan" for the committee to consider in December this year. The Department's plan would include a proposal for Medicaid expansion, the Healthcare Access and Stabilization Program, an investment of \$1 billion dollars to address the opioid, substance abuse and mental health crisis, and specific proposals to increase access to healthcare in rural areas of the State. The Speaker's proposal also directed the NC Secretary of Commerce develop a plan for a comprehensive workforce development program and requires NCDHHS to pursue work requirements for the Medicaid program if there is an indication that work requirements would receive federal approval. Upon recommendation from the committee, the legislature would vote on the Medicaid expansion plan in December.

The House's Medicaid expansion proposal also passed with bipartisan support, but the Senate did not want to discuss a plan that did not include CON reform. House and Senate leaders concluded the short session without reaching an agreement on Medicaid expansion. Negotiations on expansion are expected to continue and the legislature could reconvene at some point later this year to consider compromise legislation.

### **Healthcare Access and Stabilization Program (HASP)**

As referenced above, the Healthcare Access and Stabilization Program (HASP) was closely tied to the discussion on Medicaid expansion and was included in both the House and Senate's proposal. HASP would provide enhanced Medicaid reimbursements for hospitals through an optimized Average Commercial Rate (ACR) payment program that will pay hospitals the difference between their current Medicare equivalent rates and the average commercial rate they would receive for those services. The current Medicaid Program, with a State share primarily funded by assessments on hospitals, reimburses hospitals at Medicare equivalent rates i.e., at cost for services to Medicaid patients. HASP would help hospitals overcome the significant financial liabilities incurred to support those payment levels, unreimbursed costs for uninsured patients, and the significant reimbursement gap for providing safety-net services. The program would be implemented at no cost to the State and would put hospitals in the right financial condition to consider using the hospital assessment tax to pay for the entire State share of Medicaid expansion.

HASP was a top priority for Duke and other hospitals this session and the issue received bipartisan support in both chambers. Duke leaders met with Speaker Moore, Senator Berger and Governor Cooper on several separate occasions to discuss the importance of HASP and the need to pass it separately from other healthcare issues being discussed. However, the House and Senate both continued to link HASP to Medicaid expansion legislation and the chambers failed to reach a compromise on this critical issue during the short session.

### **Certificate of Need (CON)**

The Senate has pushed for changes to the North Carolina's Certificate of Need (CON) laws for years and included it as a non-negotiable issue in their Medicaid expansion package, although the House was

opposed to taking up any CON reforms this session. The NC Healthcare Association (NCHA) released a [statement](#) against the Senate's Medicaid expansion proposal, citing concerns about the inclusion of CON provisions that would carve out certain service lines and negatively impact the stability of hospitals, especially in rural communities. Duke typically opposes any significant CON changes and supports the existing law as a way to regulate the growth of health services and facilities, control costs, and manage distribution. However, Duke and other hospitals were willing to negotiate with Speaker Moore, Senator Berger and Governor Cooper on some CON reforms in exchange for Medicaid expansion and HASP. The Senate's multiple compromise offers on CON continued to be detrimental to hospitals, but negotiations on acceptable CON reforms will likely continue if legislators move forward with conversations on Medicaid expansion over the coming months.

### **SAVE Act**

The [SAVE Act](#) was also included in the Senate's Medicaid expansion proposal, which would grant full-practice authority for APRNs in North Carolina including nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists. A similar version of the SAVE Act has been introduced in past legislative sessions but has been defeated every year due to overwhelming opposition from the physician community despite widespread bipartisan support. Republican legislative leaders also failed to reach an agreement on the SAVE Act during the Medicaid expansion negotiations this session given Speaker Moore's opposition to the issue.

Before the start of short session, Duke University School of Nursing Dean Vincent Guilamo-Ramos testified before the Joint Legislative Committee on Access to Healthcare and Medicaid Expansion to support full practice authority for nurse practitioners providing primary care. In response to Dean Ramos' [presentation](#) to the committee, DUHS released a statement in support of full-practice authority for nurse practitioners but remains neutral on the SAVE Act and has not commented on full practice authority for all APRNs listed in the bill, including CRNAs, CNMs and CNSs.

### **State Budget Adjustments**

Governor Cooper [signed the state budget bill](#) into law on July 11<sup>th</sup>, approving the allocation of \$27.9 billion for FY 2022-2023. The North Carolina House and Senate passed the state budget bill with broad bipartisan support on July 1st. With a \$6 billion surplus in state reserves, Republican budget-writers were focused on adding money to the state's \$4.75 billion rainy-day fund along with responding to inflation concerns and fears of an economic recession by creating a \$1 billion State Inflationary Reserve. The state budget did not include any significant funding for hospitals or private institutes of higher education. Other highlights include:

- \$14.8 million for mental health programs
- \$1.3 million to the 988 Crisis Helpline call center
- \$6 million for local management entities/managed care organizations (LME/MCOs) to support opioid remediation programs throughout the State
- \$883 million for water and wastewater infrastructure projects
- \$5 million to expand broadband access in underserved areas
- \$876 million to supplement major economic development projects in NC
- \$950 million to the State Emergency Response and Disaster Relief Reserve
- \$1.8 million from the federal Help America Vote Act (HAVA) grant for election security

- \$15 million for the Atlantic Coast Conference to keep its headquarters in North Carolina for at least the next 15 years
- Provides additional funding for contracts, projects, and programs that support the transition to Medicaid managed care
- Makes technical adjustments to the hospital assessment for expanding Medicaid for postpartum women
- Provides additional funding for the Rural Health Loan Assistance Repayment Program for recruitment and retention incentives for primary care providers in rural areas

When Governor Cooper signed the budget into law he also announced that North Carolina's COVID-19 State of Emergency Order would be lifted on August 15th. A provision in the budget includes certain necessary continuing authorities for healthcare facilities to be equipped to respond to potential future public health emergencies after the State of Emergency Order ends, including regulatory and licensing flexibilities for facilities to scale up services and resources. The budget bill also permits the State Health Director to issue standing orders for COVID-19 vaccines, testing and treatment, which was previously only allowable under the State of Emergency Order. Authorizing these continuing authorities past the emergency period was top priority for the NC Department of Health and Human Services and hospitals during the short session.

### **Nonprofit Status and Related Issues**

State Treasurer Dale Folwell continued to target nonprofit hospitals and health systems during the short session. The Treasurer's office pushed for the legislature to file the "[Medical Debt De-Weaponization Act](#)" which sets parameters around the provision of charity care for large nonprofit hospitals and regulates certain billing practices. The legislation was introduced in response to a [report](#) that was released by the State Treasurer's office earlier this year claiming that North Carolina nonprofit hospitals are not fully honoring their charitable mission and bill poor patients. DUHS [pushed back](#) against the claims in the report by detailing significant charity care and community benefit investment as well as financial assistance and discounted care policies in place to help patients who are unable to pay for care. The bill was heard for discussion only during a committee meeting but did not advance during the short session.

Treasurer Folwell also issued a new [report](#) in late June claiming that North Carolina's seven largest hospital systems, including Duke Health, profited from the federal government's pandemic relief funding at the expense of rural hospitals and independent physicians. The report claimed that nonprofit hospitals also did not share their profits with disadvantaged patients through increased charity care. Duke Health joined the [NCHA](#) and other hospitals in releasing a [statement](#) to refute the Treasurer's accusations. Although legislation was not introduced on this issue during the short session, the State Treasurer continues to say that nonprofit hospitals need accountability on tax exemptions and charity care spending at the state and federal level.

### **Abortion Issues**

In response to the Supreme Court overturning the decision on Roe v. Wade, state Republican leaders announced they would not pursue legislation to restrict abortion access in North Carolina during the short session. Democrats filed several bills seeking to codify abortion statutes granted in Roe v. Wade but the legislation did not advance. After the Supreme Court's ruling, Republican leaders called on

Attorney General Josh Stein to take action to reinstate the 20-week abortion ban in North Carolina which was blocked by a federal judge in 2019 under the precedent once set by *Roe v. Wade*. The Attorney General responded to legislative leaders by reiterating his commitment to protecting reproductive rights in the state and said his office would complete a legal review of the 20-week ban.

Speaker Moore stated that pro-life protections would be a top priority when lawmakers return for the long session in January 2023. Senator Berger said he could not predict what restrictions Republicans would seek during the long session next year if given a supermajority, but is supportive of taking a moderate approach to the issue by supporting more autonomy earlier in a woman's pregnancy while also protecting the life of a fetus.

## **STAND ALONE LEGISLATION**

DSR 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. 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 2022 short session that DSR either directly lobbied or monitored is listed below (organized by bill number and chamber of origin). A comprehensive list of bills we monitored this session can be found [here](#). All Session Laws enacted during the 2022 short session can be found [here](#).

### ***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 2022-7](#)
  - [Senate Bill 347: Captive Insurance Amendments](#)
  - Duke's Position: Neutral
- [Session Law 2022-9](#)
  - [Senate Bill 448: Amendments to Schedule VI of the CSA](#)
  - Duke's Position: Neutral
- [Session Law 2022-57](#)
  - [Senate Bill 435: Terminations of States of Emergencies](#)
  - Duke's Position: Neutral
- [Session Law 2022-63](#)
  - [Senate Bill 138: Funeral Dir. Exam/Death Certs](#)
  - Duke's Position: Neutral

### ***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 if available.

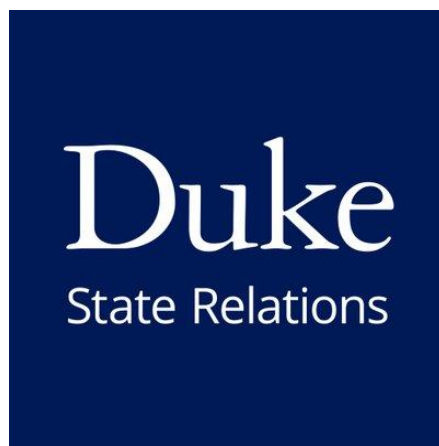
- [Session Law 2022-13](#)
  - [House Bill 83: Rev. Laws Tech., Clarifying, & Admin. Changes](#)
  - Duke's Position: Neutral
- [Session Law 2022-43](#)
  - [House Bill 219: Amend Environmental Laws](#)
  - Duke's Position: Neutral
- [Session Law 2022-50](#)
  - [House Bill 674: Require DNA Various Convict'ns/Other Matters](#)
  - Duke's Position: Neutral
- [Session Law 2022-52](#)
  - [House Bill 791: Lic. Counselors Compact/DHHS Contracting](#)
  - Duke's Position: Neutral
- [Session Law 2022-54](#)
  - House Bill 776: Remote Electronic Notarization (no bill summary available)
  - Duke's Position: Neutral
- [Session Law 2022-74](#)
  - [House Bill 103: 2022 Appropriations Act](#)
  - Duke's Position: Neutral
- [Session Law 2022-75](#)
  - [House Bill 911: Regulatory Reform Act of 2022](#)
  - Duke's Position: Neutral

## **2022 ELECTION**

With most business completed for the short session, legislators will now turn their attention to campaigning for the November 8<sup>th</sup> election. All 170 members of the North Carolina General Assembly are up for re-election this year. After the decennial redistricting process was finalized in February, Durham County's new state legislative districts include House Districts 2, 29, 30 and 31, and Senate Districts 20 and 22. Wake County's districts include House Districts 11, 21, 33-41, 49 and 66, and Senate Districts 13-18.

In Durham County, Democratic Representatives Zack Hawkins, Marcia Morey and Vernetta Alston, and Senators Natalie Murdock and Mike Woodard are all running for re-election and are expected to easily win their election contests in November. Rep. Robert Reives' district was redrawn and no longer includes parts of Durham County. The Durham Delegation will also see one new legislator in House District 2.

Many predict Republicans will regain a supermajority in one or both chambers after the November election, allowing them the opportunity to easily override any vetoes from Governor Cooper. This has the potential to significantly alter the trajectory of policy in North Carolina and Republican legislative leaders hinted they may pursue more controversial legislation during the long session if they win supermajorities in either chamber. The 2022 election will also set the stage for the 2024 gubernatorial election with the Governor's seat up for grabs.



**DOUG HERON, ASSOCIATE VICE PRESIDENT**

919-416-8923 / [doug.heron@duke.edu](mailto:doug.heron@duke.edu)

**KATIE LIPE, ASSISTANT DIRECTOR**

919-668-1571 / [katie.stanley@duke.edu](mailto:katie.stanley@duke.edu)