

Legislative Update: February 26, 2021

Related Professionals

David P. Ferrell
919.573.7421
dferrell@nexsenpruet.com

Michelle L. Frazier
919.573.7433
mfrazier@nexsenpruet.com

Practices

Legislative & Regulatory

Article

02.26.2021

The 2021 legislative session picked up momentum this week as each chamber continued to introduce bills and hold committee meetings. The session is still in its early stages, and lawmakers are still allowed to file bills. After each chamber's bill filing deadlines pass in April, legislators will work to move bills to the opposite chamber before the May 13 crossover deadline.

The House and Senate Appropriations' subcommittees started meeting routinely this week. The committees are going over their subject areas' budgets, and hearing from state agencies on budget needs. These meetings also allow new members to acquaint themselves with the budgetary process.

Governor Cooper signed House Bill 4 into law this week, which extends ABC permit fee payment deadlines and reinstates some inactive permits in response to pandemic restrictions. The Governor still has Senate Bill 37 on his desk, which would require school systems to offer some level of in-person instruction to students whose parents request it. The Governor has expressed opposition to this bill, and has until February 27 to take action on the bill or it becomes law without his signature.

Governor Cooper also issued a new executive order to relax COVID-19 restrictions, as the State sees its cases numbers and hospitalization rates decline.

Bill Action Dates

- March 11: Senate local bill filing deadline
- March 25: House local bill filing deadline
- April 6: Senate public bill filing deadline (does not apply to constitutional amendments, elections bills, or appointments)
- April 20: House filing deadline for non-budget bills
- April 27: House filing deadline for budget bills
- May 13: Crossover deadline for both the House and Senate in which bills must have passed at least one chamber to remain eligible for

consideration

Executive Order 195

Governor Cooper issued Executive Order 195 this week, which relaxes many of the previously enacted COVID-19 restrictions. The Governor and Department of Health and Human Services (DHHS) Secretary Mandy Cohen cited decreasing COVID cases and hospitalizations in their announcement. Many industries have been asking for months for lighter restrictions as their businesses have struggled.

The Executive Order goes into effect on February 26 at 5pm and expires on March 26. It lifts the statewide 10pm curfew but still keeps the face covering requirement for individuals in public. Under the Order, bars and entertainment facilities will be allowed 30% of their capacity, but limited to 250 people indoors. Outdoor bars are allowed to have up to 250 people. Alcohol sold for on-premise consumption was previously cut off at 9pm, but will now be cut off at 11pm and not allowed until 7am the next day. Large indoor facilities and arenas over a 5,000 person capacity will be exempt from the 250 person restriction, but will be capped at 15% of their capacity. Gyms, personal fitness centers, restaurants, and retail establishments will be limited to 50% of their capacity.

The 100 person limit on stadiums will be lifted and a 30% capacity restriction will be set. This may alleviate some of the need for a bill filed last week titled "Let Them Play and Let Us Watch," which sought to increase the capacity of high school sporting events to 40%. Governor Cooper said his move was not due to legislative pressure. The bill cleared the Senate Rules committee this week, and one of the bill sponsors has indicated plans to continue advancing the legislation, claiming that Cooper's order did not go far enough.

The Executive Order still requires businesses to follow social distancing and other safety guidelines. The mass gathering limit is 25 people indoors and 50 people outdoors for places not specifically carved out in other sections.

WRAL: Cooper lifts curfew, eases gathering and occupancy limits

Remote Notarization Expiration

During the 2020 legislative session, the General Assembly passed a provision that temporarily allowed attorneys to use emergency remote notary and witness requirements in response to the COVID-19 pandemic. That provision is set to expire on Monday, March 1, 2021. The legislature is expected to extend the provision in the coming weeks; however, until the extension becomes law, attorneys will need to proceed according to the old law and use in-person notaries and witnesses.

The Secretary of State's office released the following statement, "VIDEO NOTARIZATION TO EXPIRE The General Assembly has not finalized action on the extension of the temporary emergency video notarization law, and will not do so before the law sunsets on Monday. We anticipate the General Assembly will be supportive of the extension and we expect it to be part of the upcoming COVID-related budget bill to be rolled out next week. However, other items in the bill are still being negotiated and the temporary emergency remote notarization will expire, even if it is for a short time. The law will expire at 12:01 a.m. on Monday, March 1, 2021. After this time, all notarial acts will revert to the original law requiring in-person presence by the principal signers.

Also expiring will be the time extension permitting an appointee to appear before a Register of Deeds within 90 days to take the oath of office. That time will revert back to 45 days.”

Summer School Option

The House unanimously passed a bill this week that would give parents the option to send their children to a summer school program. The summer school would be in-person and aimed to help the students struggling with the challenges of online learning. School districts would be required to offer at least 150 hours or 30 days of instruction.

Bill sponsors cite data showing that many students are below grade level and at risk of being held back from promotion. The bill does not make summer school mandatory, leaving that decision in the hands of parents. Teachers will also not be required to teach summer school, but will receive additional pay if they choose to teach. The additional instruction will be paid for with federal relief money. Governor Cooper has said that he supports the idea, and realizes that many students will be in need of additional instruction, but claims that it is too early to tell if it will be safe to return large numbers of students to in-person settings by the summer. House leadership says that it anticipates tweaks to the bill, but is optimistic that in-person instruction will be safe by summer.

The summer programs will target reading and math in early grades, while science will be added to higher grade levels. The bill also requires school lunches and transportation to be offered, as well as enrichment activities to keep students motivated.

WRAL: Lawmakers propose 6 weeks of summer school to help NC students make up for learning lost during pandemic

Bills Passed by Each Chamber

So far, only five House Bills have cleared the House and six Senate bills have been passed in the Senate. Bills taken up by the House includes a bill (now S.L. 2021-2) to extend ABC permits, a bill to allow two county commissioners to serve on the Isothermal Community College Board, a report on K-12 Computer Science Data, a bill to require the State Board of Education to maintain a digital learning dashboard, and a bill to offer summer school to students. The Senate has passed a bill to place public notices online, a COVID-19 relief package (now S.L. 2021-1), a bill requiring schools to offer in-person instructions (on Governor’s desk), a bill to allow an S-corporation owner to represent themselves in court without an attorney under certain circumstances, a bill to clarify the distance a sex offender’s residency must be from a school, and a bill to disapprove of Wildlife Resources Commission’s rules pertaining to deer secretions. As the May 13 Crossover deadline approaches, each chamber is expected to pick up its pace passing bills and have lengthier calendars.

House Telehealth Bill

House Healthcare Committee Chairs filed a bill this week to require health insurance plans to cover telehealth visits. Telehealth would be provided by licensed healthcare professionals and be conducted real-time interactive audio and video technology with the provider able to receive and review patient medical records prior to the visit. Providers would need to screen patients and identify those that need an in-person visit. Health insurance plans would be required to cover the visits without prior authorization if the same in-person visit would not have required it. Plans must also not charge deductibles for telehealth visits that are higher than what they would be in-person. Health plans are

also forbidden from placing distance restrictions on where the patient is located and the provider is located. Health insurance plans are not required under the bill to reimburse at the same rate as an in-person visit.

The House passed a telehealth bill with a vote of 113-4 last session, but the bill did not receive a vote in the Senate. Some insurance companies have seen previous telehealth coverage bills as a mandate, and have opposed them. However, with the COVID-19 pandemic, the practice of medicine, like many other things, has been forced to shift to conducting some business virtually. The bill's effective date is October of 2021.

Medicaid Fraud Audit

State Auditor Beth Wood's office released an audit last week showing that DHHS has been reimbursing for Medicaid claims not performed by a licensed professional. The audit claims that the Medicaid Provider enrollment process does not remove providers who have had their license revoked or scope of practice limited, and that it did not check contractors to determine if they had the proper license for the procedure they were billing for. The report notes that DHHS did not check the disciplinary records from providers licensing boards, even allowing an oral surgeon whose license was revoked due to a patient's death to still bill Medicaid. Other providers who had lost their license due to sexual misconduct or fraud were still being allowed to bill Medicaid according to the audit.

DHHS has a system to verify provider credentials, but the Auditor's report claims that it has not worked since 2013. DHHS Secretary Mandy Cohen says that changes have already been made and that provider credentials are now being checked weekly and that a new automated system should be ready by mid-2023. The Department is now trying to recoup over \$13 million in erroneous payments to unlicensed providers, but the Auditor's Office estimates that the total amount outstanding could be much higher given that they only looked at small sample of providers.

WRAL: Audit: DHHS allowed unlicensed providers to remain in the Medicaid program

List of All Filed Bills: <https://www.ncleg.gov/Legislation/Bills/WithAction/2021/10>

2020 Summary of Substantive Legislation

The Legislative Analysis Division has published the 2020 Summary of Substantive Legislation, which breaks down new laws by subject matter. Below is a link to the document: <https://www.ncleg.gov/Legislation/SummariesPublication/Subjects/2020/>.