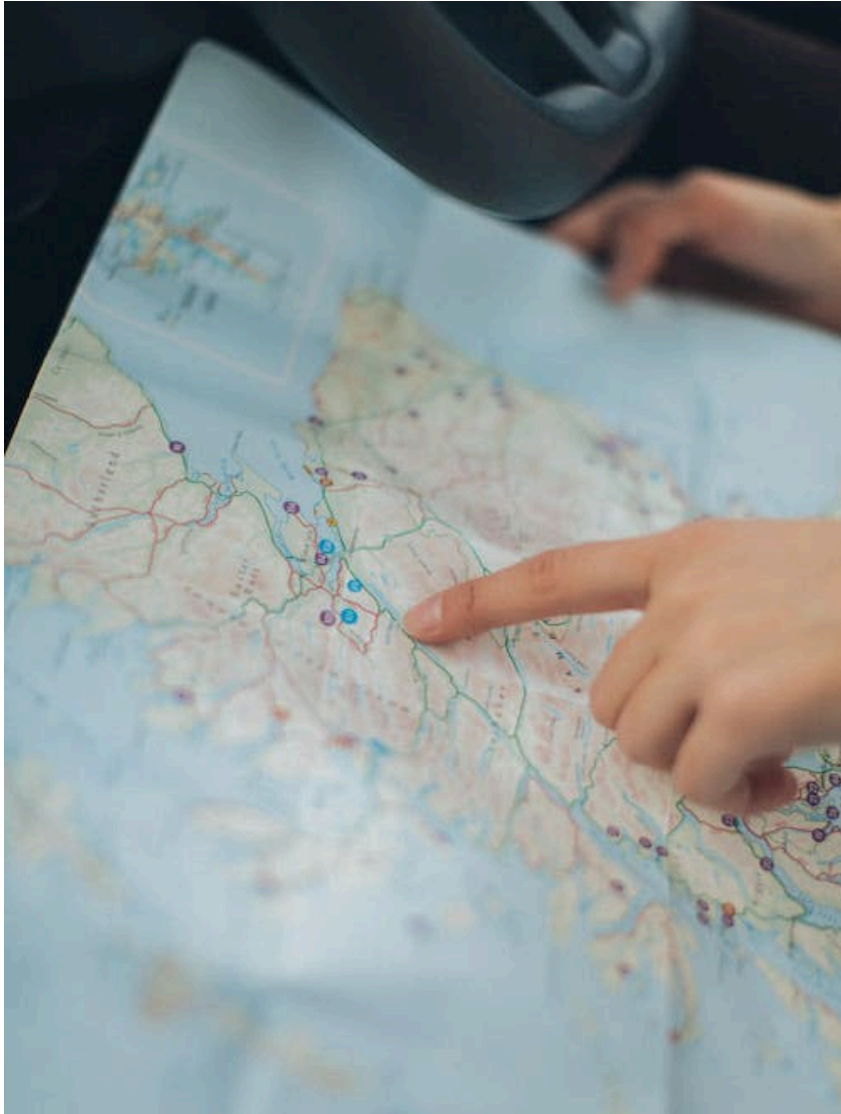


Legislative Update

Kirsten E. Leloudis
September 2023





Presentation Roadmap

COVID-19 Vaccines

- “Budget bill” (H 259)

Gender Transition Care for Minors

- Session Law (S.L.) 2023-111 (H 808)

Parental Authorization for Treatment of Minors

- S.L. 2023-106, Part 3 (S 49)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

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HOUSE BILL 259
Committee Substitute Favorable 4/3/23
Third Edition Engrossed 4/6/23
Senate Appropriations/Base Budget Committee Substitute Adopted with unengrossed amendments 5/16/23
Senate Finance Committee Favorable with unengrossed amendments 5/16/23
Senate Pensions and Retirement and Aging Committee Substitute Adopted 5/16/23
Fifth Edition Engrossed 5/18/23
Proposed Conference Committee Substitute H259-PCCS50044-MHxr-6

Short Title: 2023 Appropriations Act. (Public)

Sponsors:

Referred to:

March 6, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS
3 OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.
4 The General Assembly of North Carolina enacts:
5
6 **PART I. TITLE AND INTRODUCTION**
7
8 **TITLE OF ACT**
9 **SECTION 1.1.** This act shall be known as the "Current Operations Appropriations
10 Act of 2023."
11
12 **INTRODUCTION**
13 **SECTION 1.2.** The appropriations made in this act are for maximum amounts
14 necessary to provide the services and accomplish the purposes described in the budget in
15 accordance with the State Budget Act. Savings shall be effected where the total amounts
16 appropriated are not required to perform these services and accomplish these purposes, and the
17 savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise

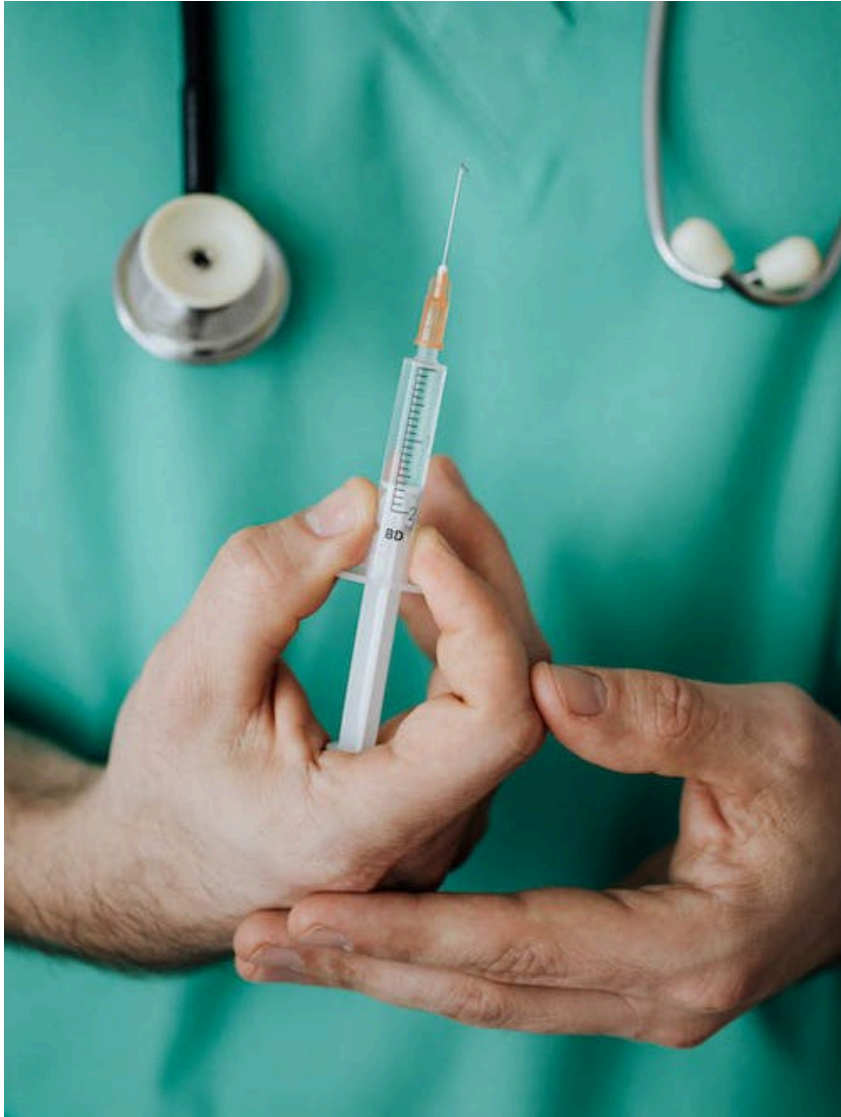
H 259: COVID-19 Vaccines

H 259 is the “budget bill”

- Ratified and sent to the Governor on September 22, 2023
- Governor expected to allow it to become law within 10 days (but will not sign)

COVID-19 provisions found at Section 5.8,
“Medical Freedom/COVID-19 Vaccinations”

- This section effective January 1, 2024



H 259: COVID-19 Vaccines

State and local governments

- Cannot deny someone employment because they refused to provide proof of vaccination
- No discrimination/retaliation for filing/threatening a complaint

State/local public health officials/agencies and counties/cities

- Cannot require vaccination or proof of vaccination of “any person”

Exceptions for certain employees of...

- NCDHHS Division of State Operated Healthcare Facilities
- An entity that receives federal funding (if funding would be lost due to non-vaccination of employees)
- Facilities certified by CMS

H 259: COVID-19 Vaccines

Budget bill also amends **G.S. 130A-152** by creating a new paragraph (f) that prohibits:

- NC Commission for Public Health
- Public schools
- Community colleges
- University of North Carolina
- Any private college/university receiving state funds

... from requiring **students** to be vaccinated or provide proof of vaccination

Exceptions: if vaccination is required for an educational program that involves working at a CMS certified facility



S.L. 2023-111 (H 808): Gender Transition Care (GTC) for Minors

Prohibits initiating GTC for minors after August 1, 2023

- Includes surgeries, puberty-blocking drugs, and “cross-sex hormones” when provided for purpose of facilitating transition
- Minors “actively” receiving GTC before Aug. 1, 2023 may continue care with consent of parents

Other provisions

- Penalties: loss of licensure/liability for “medical professionals”
- Immunity for refusing to provide GTC
- Cannot use state funds for GTC (exception for State Health Plan)

For more, see Coates’ Canons blog:

<https://canons.sog.unc.edu/2023/08/gender-transition-minors-h808/>



S.L. 2023-106 (S49): Overview

Part 1

- Creates a “Parent’s Bill of Rights”
- Effective August 16, 2023

Part 2

- Outlines requirements related to parents’ involvement in their child’s education
- Effective date was August 16, 2023- budget bill changed to various 2024 effective dates

Part 3

- Codifies standard for obtaining parental consent before providing “treatment” to a minor
- Effective December 1, 2023

S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

Amends G.S. Chapter 90, Article 1A- laws governing provision of care to minors

New definitions (that apply throughout G.S. Chapter 90, Article 1A)

- **Health care facility**- facility licensed under G.S. Chapter 131E (hospitals, public hospital authorities) and G.S. 122C (behavioral and mental health facilities)
- **Health care practitioner**- anyone licensed under G.S. Chapter 90, 90B, 90C, or 115C to provide health care services in the ordinary course of business/practice
 - Includes physicians, PAs, NPs, other nurses, teachers, and other public school employees
- **Parent**- a minor's parent, guardian, or person standing *in loco parentis* (PILP)

Also includes a definition of “**treatment**”- we'll come back to this in a moment!

S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

How is “**treatment**” defined?

“Any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child.”



S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

What does S.L. 2023-106, Part 3 say?

- Health care practitioners/health care facilities must obtain prior “written or documented consent” of a parent before providing treatment to a minor
- Penalty: disciplinary action (TBD) by licensing, certifying, or authorizing board and fine of *up to* \$5,000

Caveat: “Except as otherwise provided in this Article [1A} or by a court order...”

- This means minor’s consent law, G.S. 90-21.5- which is also found in G.S. Chapter 90, Article 1A- is intact and unchanged by new law

S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

New law was in tension with
G.S. Chapter 115C, Article 25A

- Would teachers, school nurses, etc. need to obtain parental consent *before* providing first aid or emergency care (e.g., EpiPen)?

Resolved in budget bill (H 259)



S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

Outstanding questions:

What care does (or does not) meet the definition of “treatment?”

How must “written or documented consent” be obtained?



S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

“Any **medical procedure or treatment**, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the **standards of medical practice** normally employed in the community where the health care practitioner administers treatment to the minor child.”



S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors

“Written or documented consent”

- Consent must be given by a “parent” (parent, guardian, PILP)
- “Documented” might include, for example, verbal consent that is documented in the EHR
- “Documented” consent not an option when a law specifically requires *written* consent
 - Example: G.S. 90-21.5(a1) requiring written consent to administer an EUA vaccine to a minor

S.L. 2023-106, Part 3 (S 49): Parental Authorization for Treatment of Minors



Under the new law, **who** must obtain consent?

- Health care practitioners
- Health care facilities

A physician obtains consent for her to perform a surgery on a minor. The surgery will involve other health care practitioners (not mentioned in the consent) and will take place at a health care facility. Is this permissible under the law?

- Perhaps not- law seems to say each practitioner and facility involved needs to get consent
- Solution: comprehensive consent forms

References

Images

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Bills and Session Laws

- “Budget bill” (H 529): <https://www.ncleg.gov/BillLookup/2023/H259>
- S.L. 2023-111 (H 808): <https://www.ncleg.gov/BillLookup/2023/H808>
- S.L. 2023-106 (S 49): <https://www.ncleg.gov/BillLookUp/2023/S49>

Other Laws

- G.S. Chapter 90: https://www.ncleg.gov/enactedlegislation/statutes/html/bychapter/chapter_90.html
- G.S. Chapter 115C: https://www.ncleg.gov/enactedlegislation/statutes/html/bychapter/chapter_115c.html



Contact Information

Thank you for your time.

If you have additional questions at a later date, please send me an email or give me a call.

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