

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40088-MRp-46

Short Title: State Benefits/Pension Revisions.-AB (Public)

Sponsors: Representatives Goodwin and McNeill (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPROVE THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT  
3 SYSTEM'S AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT  
4 SYSTEM'S ABILITIES TO COLLECT REIMBURSEMENTS FOR OVERPAYMENTS  
5 MADE TO REEMPLOYED BENEFICIARIES, TO EXTEND THE LEGISLATIVE  
6 ENACTMENT IMPLEMENTATION ARRANGEMENT UNDER THE TEACHERS' AND  
7 STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL  
8 EMPLOYEES' RETIREMENT SYSTEM, TO ALLOW THE STATE TREASURER TO  
9 PERFORM CRIMINAL BACKGROUND CHECKS, AND TO MAKE CHANGES  
10 RELATED TO THE NORTH CAROLINA STATE HEALTH PLAN.

11 The General Assembly of North Carolina enacts:

12 SECTION 1.(a) G.S. 135-3(8)c1 reads as rewritten:

13 "c1. Within 90 days of the end of each month in which a beneficiary is  
14 reemployed under the provisions of sub subdivision c. of this  
15 subdivision, each employer shall provide a report for that month on  
16 each reemployed beneficiary, including the terms of the  
17 reemployment, the date of the reemployment, and the amount of the  
18 monthly compensation. If ~~such a~~ the required report is not received  
19 within the required 90 days, the Board may ~~assess~~ do any or all of the  
20 following:

- 21 1. Assess the employer with a penalty of ten percent (10%) of the  
22 compensation of the unreported reemployed beneficiaries  
23 during the months for which the employer did not report the  
24 reemployed beneficiaries, with a minimum penalty of twenty  
25 five dollars (\$25.00). If after being assessed a penalty, an  
26 employer provides clear and convincing evidence that the  
27 failure to report resulted from a lack of oversight or some other  
28 event beyond the employer's control and was not a deliberate  
29 attempt to omit the reporting of reemployed beneficiaries, the  
30 Board may reduce the penalty to not less than two percent (2%)  
31 of the compensation of the unreported reemployed  
32 beneficiaries during the months for which the employer failed  
33 to report, with a minimum penalty of twenty five dollars  
34 (\$25.00).
- 35 2. Require the employer to reimburse the Retirement System for  
36 any retirement allowance paid to the beneficiary during a



1 period when the allowance would have been suspended under  
 2 sub-subdivision c. of this subdivision had the report been  
 3 received within the required 90 days.

- 4 3. Require the employer to pay any amounts that the beneficiary  
 5 would have been required to pay to the Retirement System  
 6 under sub-subdivision f. of this subdivision had the report been  
 7 received within the required 90 days.

8 Upon receipt by the employer of notice that ~~a penalty has been~~  
 9 ~~assessed under this sub-subdivision, any payment is due to the~~  
 10 Retirement System under this sub-subdivision, the employer shall  
 11 remit the payment of the ~~penalty amount due~~ to the Retirement  
 12 System, in one lump sum, no later than 90 days from the date of the  
 13 notice.

14 If an employer is required to make payments to the Retirement System  
 15 under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this  
 16 sub-subdivision, then (i) the beneficiary shall have no obligation to  
 17 reimburse the Retirement System for related amounts under  
 18 sub-subdivisions c. or f. of this subdivision, (ii) the provisions of  
 19 G.S. 135-9(b) relating to offsetting overpayments against payments  
 20 made from the Retirement System to the member or beneficiary shall  
 21 not apply, (iii) the Retirement System shall have no duty under  
 22 G.S. 143-64.80 to pursue repayment of overpayments from the  
 23 beneficiary, (iv) the overpayments shall not be considered a debt of  
 24 the beneficiary under Chapter 105A of the General Statutes, and (v)  
 25 the beneficiary's effective date of retirement shall be adjusted if the  
 26 adjustment is required under sub-subdivision f. of this subdivision."

27 **SECTION 1.(b)** G.S. 128-24(5)c1 reads as rewritten:

28 "c1. Within 90 days of the end of each month in which a beneficiary is  
 29 reemployed under the provisions of sub-subdivision c. of this  
 30 subdivision, each employer shall provide a report for that month on  
 31 each reemployed beneficiary, including the terms of the  
 32 reemployment, the date of the reemployment, and the amount of the  
 33 monthly compensation. ~~If such a the required~~ report is not received  
 34 within the required 90 days, the Board may ~~assess~~ do any or all of the  
 35 following:

- 36 1. Assess the employer with a penalty of ten percent (10%) of the  
 37 compensation of the unreported reemployed beneficiaries  
 38 during the months for which the employer did not report the  
 39 reemployed beneficiaries, with a minimum penalty of  
 40 twenty-five dollars (\$25.00). If after being assessed a penalty,  
 41 an employer provides clear and convincing evidence that the  
 42 failure to report resulted from a lack of oversight or some other  
 43 event beyond the employer's control and was not a deliberate  
 44 attempt to omit the reporting of reemployed beneficiaries, the  
 45 Board may reduce the penalty to not less than two percent (2%)  
 46 of the compensation of the unreported reemployed  
 47 beneficiaries during the months for which the employer failed  
 48 to report, with a minimum penalty of twenty-five dollars  
 49 (\$25.00).  
 50 2. Require the employer to reimburse the Retirement System for  
 51 any retirement allowance paid to the beneficiary during a

1 period when the allowance would have been suspended under  
 2 sub-subdivision c. of this subdivision had the report been  
 3 received within the required 90 days.

4 3. Require the employer to pay any amounts that the beneficiary  
 5 would have been required to pay to the Retirement System  
 6 under sub-subdivision f. of this subdivision had the report been  
 7 received within the required 90 days.

8 Upon receipt by the employer of notice that a ~~penalty has been~~  
 9 ~~assessed under this sub-subdivision,~~ any payment is due to the  
 10 Retirement System under this sub-subdivision, the employer shall  
 11 remit the payment of the ~~penalty amount due~~ to the Retirement  
 12 System, in one lump sum, no later than 90 days from the date of the  
 13 notice.

14 If an employer is required to make payments to the Retirement System  
 15 under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this  
 16 sub-subdivision, then (i) the beneficiary shall have no obligation to  
 17 reimburse the Retirement System for related amounts under  
 18 sub-subdivisions c. or e. of this subdivision, (ii) the provisions of  
 19 G.S. 128-31(b) relating to offsetting overpayments against payments  
 20 made from the Retirement System to the member or beneficiary shall  
 21 not apply, (iii) the Retirement System shall have no duty under  
 22 G.S. 143-64.80 to pursue repayment of overpayments from the  
 23 beneficiary, (iv) the overpayments shall not be considered a debt of  
 24 the beneficiary under Chapter 105A of the General Statutes, and (v)  
 25 the beneficiary's effective date of retirement shall be adjusted if the  
 26 adjustment is required under sub-subdivision e. of this subdivision."

27 **SECTION 1.(c)** This section is effective July 1, 2020, and applies to reports required  
 28 to be made on or after that date.

29 **SECTION 2.(a)** G.S. 135-7(h) reads rewritten:

30 "(h) Legislative Enactment Implementation Arrangement. – The Legislative Enactment  
 31 Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under  
 32 the management of the Board of Trustees. The purpose of the LEIA is to provide for timely  
 33 administrative implementation of legislative provisions regarding the retirement of, or payment  
 34 of retirement benefits to, public officers or public employees. The LEIA shall have the following  
 35 parameters:

36 ...  
 37 (2) Funding of the LEIA. – In the event that the General Assembly creates or  
 38 modifies any provision for the retirement of, or payment of retirement benefits  
 39 to, public officers or public employees that has a cost savings as measured by  
 40 actuarial note required by Article 15 of Chapter 120 of the General Statutes,  
 41 the Board of Trustees may direct up to one hundredth percent (0.01%) of the  
 42 required contributions to fund the LEIA. These funds must be deposited in a  
 43 separate fund from the fund into which regular employer contributions are  
 44 deposited for the Retirement System. The Board of Trustees shall not direct  
 45 any employer contributions into the LEIA after November 1, ~~2021-2026.~~

46 ...."

47 **SECTION 2.(b)** G.S. 128-29(g) reads as rewritten:

48 "(g) Legislative Enactment Implementation Arrangement. – The Legislative Enactment  
 49 Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under  
 50 the management of the Board of Trustees. The purpose of the LEIA is to provide for timely  
 51 administrative implementation of legislative provisions regarding the retirement of, or payment

1 of retirement benefits to, public officers or public employees. The LEIA shall have the following  
2 parameters:

3 ...

- 4 (2) Funding of the LEIA. – In the event that the General Assembly creates or  
5 modifies any provision for the retirement of, or payment of retirement benefits  
6 to, public officers or public employees that has a cost savings as measured by  
7 actuarial note required by Article 15 of Chapter 120 of the General Statutes,  
8 the Board of Trustees may direct up to one hundredth percent (0.01%) of the  
9 required contributions to fund the LEIA. These funds must be deposited in a  
10 separate fund from the fund into which regular employer contributions are  
11 deposited for the Retirement System. The Board of Trustees shall not direct  
12 any employer contributions into the LEIA after November 1, ~~2021~~2026.

13 ...."

14 **SECTION 3.** Article 6 of Chapter 147 of the General Statutes is amended by adding  
15 a new section to read:

16 "**§ 147-75.1. Criminal record checks for the Department of State Treasurer.**

17 (a) The Department of State Treasurer may obtain from the State and National  
18 Repositories of Criminal Histories or from any other lawful source the criminal history of any of  
19 the following individuals:

- 20 (1) A current or prospective permanent or temporary employee of the Department  
21 of State Treasurer.  
22 (2) A contractor with the Department of State Treasurer.  
23 (3) An employee or agent of a contractor with the Department of State Treasurer  
24 who is performing or will perform work for the Department of State Treasurer.  
25 (4) A volunteer of the Department of State Treasurer.  
26 (5) Any other individual otherwise engaged by the Department of State Treasurer  
27 who will have access to health or financial information or data maintained by  
28 the Department of State Treasurer that is confidential or otherwise nonpublic.

29 (b) The Department of State Treasurer may deny employment to or dismiss any  
30 individual identified under subdivisions (1), (2), (4), and (5) of subsection (a) of this section who  
31 refuses to consent to a criminal history record check or to the use of fingerprints or other  
32 identifying information required by the State or National Repositories of Criminal Histories. Any  
33 refusal shall constitute just cause for the employment denial or the dismissal from employment.

34 (c) The Department of State Treasurer may extend a conditional offer of employment  
35 pending the results of a criminal history record check authorized by this section."

36 **SECTION 4.(a)** Part 3 of Article 3B of Chapter 135 of the General Statutes is  
37 amended by adding a new section to read:

38 "**§ 135-48.37B. Attachment and garnishment of overpayments and unpaid premiums from**  
39 **individuals no longer employed by employing units.**

40 (a) Applicability. – This section applies to an individual who is no longer employed by  
41 an employing unit and to whom any of the following circumstances apply:

- 42 (1) An overpayment or erroneous payment of benefits, claims, or other amounts  
43 has been paid on behalf of the individual or individual's dependent by the Plan  
44 and the amount owed had not been repaid to the Plan.  
45 (2) Unpaid premiums are owed by the individual for coverage provided by the  
46 Plan to the individual or the individual's dependent.

47 (b) Notice of Amount Due. – The Plan shall provide notice to an individual of the  
48 amounts owed and provide the individual with at least 30 calendar days to respond to the notice  
49 and either (i) repay the amount owed in full or (ii) enter into a payment plan approved by the  
50 Plan for the amount owed.

1       (c) Attachment and Garnishment. – Intangible property that belongs to an individual, is  
2 owed to an individual, or has been transferred by an individual under circumstances that would  
3 permit it to be levied upon if it were tangible property is subject to attachment and garnishment  
4 in payment of an overpayment or erroneous payment or unpaid premium that is due from the  
5 individual and is collectible under this Article. Intangible personal property includes bank  
6 deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property  
7 incapable of manual levy or delivery.

8       A person who is in possession of intangible property that is subject to attachment and  
9 garnishment is the garnishee and is liable for the amount the individual owes. The liability applies  
10 only to the amount of the individual's property in the garnishee's possession, reduced by any  
11 amount the individual owes the garnishee.

12       Provided any amount due remains unpaid and provided the individual has not entered into a  
13 payment plan approved by the Plan, upon the expiration of the 30 calendar days required by  
14 subsection (b) of this section, the Plan may submit to a financial institution, as defined in  
15 G.S. 53B-2, information that identifies an individual who owes an overpayment or erroneous  
16 payment or an unpaid premium that is collectible under this section and the amount due. The  
17 Plan may submit the information on a quarterly basis or, with the agreement of the financial  
18 institution, on a more frequent basis. A financial institution that receives the information must  
19 determine the amount, if any, of intangible property it holds that belongs to the individual and  
20 must inform the Plan of its determination. The Plan must reimburse a financial institution for its  
21 costs in providing the information, not to exceed the amount payable to the financial institution  
22 under G.S. 110-139 for providing information for use in locating a noncustodial parent.

23       No more than ten percent (10%) of an individual's wages or salary is subject to attachment  
24 and garnishment. The wages or salary of an employee of the United States, the State, or a political  
25 subdivision of the State are subject to attachment and garnishment.

26       (d) Notice to Garnishee. – Before the Plan attaches and garnishes intangible property in  
27 payment of an overpayment or erroneous payment or unpaid premium, the Plan must send the  
28 garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with  
29 a return receipt requested, or, with the agreement of the garnishee, by electronic means. The  
30 notice must contain all of the following information:

31           (1) The individual's name.

32           (2) The individual's social security number or federal identification number.

33           (3) The amount of money the individual owes the Plan.

34           (4) An explanation of the liability of a garnishee for the amounts owed.

35           (5) An explanation of the garnishee's responsibility concerning the notice.

36       (e) Action. – A garnishee must comply with a notice of garnishment or file a written  
37 response to the notice within the time set in this subsection. A garnishee that is a financial  
38 institution must comply or file a response within 20 days after receiving a notice of garnishment.  
39 All other garnishees must comply or file a response within 30 days after receiving a notice of  
40 garnishment. A written response must explain why the garnishee is not subject to garnishment  
41 and attachment.

42       Upon receipt of a written response, the Plan must contact the garnishee and schedule a  
43 conference to discuss the response or inform the garnishee of the Plan's position concerning the  
44 response. If the Plan does not agree with the garnishee on the garnishee's liability, the Plan may  
45 proceed to enforce the garnishee's liability any amounts owed under this section by civil action.

46       (f) Limitations. – Nothing in this Part shall be construed to limit the Plan's ability to  
47 pursue alternative judicial remedies against an individual, including the pursuit of a judgment  
48 and lien against real property."

49       **SECTION 4.(b)** This section is effective October 1, 2019, and applies to notices of  
50 amounts due sent by the Plan on or after that date.

51       **SECTION 5.(a)** G.S. 135-48.1(9) reads as rewritten:

"(9) Dependent child. – Subject to the eligibility requirements of subsections (a) and ~~(b)-(c)~~ of G.S. 135-48.41, and except as provided in subsection (b) of G.S. 135-48.41, any of the following individuals, up to the first month following the dependent child's individual's 26th birthday:

- a. A natural or legally adopted child or children of the employee, whether or not the child is living with the employee.
- b. A foster child or children of the employee, whether or not the child is living with the employee.
- c. A child for which an employee is a court-appointed guardian.
- d. A stepchild of a member who is married to the stepchild's natural parent.
- e. Repealed by Session Laws 2011-96, s. 3(a), effective July 1, 2011."

**SECTION 5.(b)** G.S. 135-48.41 read as rewritten:

**"§ 135-48.41. Additional eligibility provisions.**

...

(b) ~~A dependent child shall not be eligible for coverage under the Plan if the dependent child is eligible for employer based health care outside of the State Health Plan for Teachers and State Employees, other than a parent's claim. Coverage~~ Notwithstanding the age requirement under G.S. 135-48.1(9), coverage of a dependent child may be extended-continued beyond the dependent child's 26th birthday if the dependent child is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday disabled and if the dependent child was covered by the Plan in accordance with G.S. 135-48.40(d)(7)-on the dependent child's 26th birthday. Verification of the dependent child's disability must be provided to the Plan no later than 60 days after the dependent child's 26th birthday.

(c) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory ~~basis.~~ basis or when the person is a dependent child. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

...."

**SECTION 5.(c)** This section is effective when it becomes law and applies to all new enrollment or reenrollment in the State Health Plan on and after that date.

**SECTION 6.(a)** G.S. 135-48.37 reads as rewritten:

**"§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.**

(a) ~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan.~~ Notwithstanding any other provisions of law to the contrary, the Plan shall be subrogated to all Plan member rights of recovery, contractual or otherwise, including first-party underinsured or MedPay coverage or third-party insurance coverage, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are the recovery is related to an injury caused by a liable third party. A personal injury or wrongful death claim brought by a Plan member or a Plan member's representative or estate against a third party shall include a claim for all medical assistance payments for health care items or services furnished to the Plan member as a result of the injury. Any personal injury or wrongful death claim brought by a Plan member or Plan member's representative or estate against a third party that does not include the Plan's claim shall be deemed to include the Plan's claim. The Plan's claim shall be a lien upon any recovery that a Plan member or Plan member's representative or estate obtains.

(a1) ~~The Plan member shall do nothing to prejudice these rights.~~ the Plan's rights under this section. The Plan has the right to first ~~recovery~~ recovery over all nongovernmental liens and rights, on any amounts so recovered, recovered that are related to an injury caused by a liable

1 third party regardless of (i) whether the nongovernmental liens and rights arose prior to or arise  
2 subsequent to the Plan's lien, (ii) whether the amount was recovered by the Plan or Plan, the Plan  
3 member, or the Plan member's representative or estate, and (iii) whether the amount was  
4 recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any  
5 other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall  
6 not apply to the Plan's right of subrogation of Plan members.

7 (b) If the Plan is precluded from exercising its right of subrogation, it may exercise its  
8 rights of recovery against any third party who was overpaid. If the Plan recovers damages from  
9 a liable third party in excess of the claims paid, any excess will be paid to the member, less a  
10 proportionate share of the costs of collection.

11 (c) In the event a Plan member or a Plan member's representative or estate recovers any  
12 amounts from a liable third party to which the Plan is entitled under this section, the Plan may  
13 recover the amounts directly from the Plan ~~member~~ member, the Plan member's representative  
14 or estate, or the insurance company. If, prior to the Plan exercising its rights under this section, a  
15 Plan member or the Plan member's representative or estate utilizes or otherwise disposes of any  
16 amounts that were recovered from a liable third party to which the Plan is entitled under this  
17 section, then the Plan may pursue alternative judicial remedies against the Plan member or Plan  
18 member's representative or estate to recover the amount to which the Plan is entitled, including  
19 the pursuit of a judgment and lien against real property.

20 (c1) The Plan has a lien, for not more than the value of claims paid related to the liability  
21 of the third party, on any damages subsequently recovered by a Plan member or a Plan member's  
22 representative or estate against any liable third party. If the Plan member or Plan member's  
23 representative or estate fails to pursue the remedy against a liable third party, the Plan is  
24 subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own  
25 name or in the name of the Plan member for the amount paid by the Plan.

26 (c2) Within 14 days of receipt of the proceeds of a settlement or judgment related to a  
27 claim under this section, the Plan member, the Plan member's representative or estate, or the  
28 insurance company shall notify the Plan of the receipt of proceeds.

29 (c3) Within 30 days of receipt of the proceeds of a settlement or judgment related to a  
30 claim under this section, the Plan member, the Plan member's representative or estate, or the  
31 insurance company shall distribute to the Plan an amount sufficient to fully satisfy the Plan's lien  
32 as required by this section. If that amount is not distributed to the Plan member within 30 days,  
33 then the Plan may recover the amount directly from the Plan member or the Plan member's estate  
34 or Plan member's representative through any remedy available to the Plan.

35 (d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages  
36 recovered by the Plan member, exclusive of the Plan member's reasonable and proportionate  
37 costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the  
38 Plan as to the reasonable ~~cost~~ and proportionate costs of collection is conclusive and is not a  
39 "final agency decision" for purposes of a contested case under Chapter 150B of the General  
40 Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is  
41 represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

42 (e) ~~The priority of any lien held by the State Health Plan for Teachers and State~~  
43 ~~Employees shall be superior to all nongovernmental liens and rights, whether such liens and~~  
44 ~~rights are prior or subsequent to the lien.~~

45 (f) Any governmental liens having priority over the Plan's right to first recovery shall be  
46 deducted from the total damages recovered by the Plan member or Plan member's representative  
47 or estate before satisfying the Plan's lien. In no event shall other liens be deducted from the Plan's  
48 right to recovery under this section. If insufficient funds remain to fully satisfy the Plan's lien  
49 after deducting the Plan member's or the Plan member's representative's or estate's costs of  
50 collection and any priority liens from the total damages recovered, then the Plan shall be entitled

1 to receive the remaining balance of the total damages recovered by the Plan member or Plan  
2 member's representative or estate."

3 **SECTION 6.(b)** This section is effective when it becomes law and applies to claims  
4 brought by Plan members or Plan members' representatives or estates on or after that date, as  
5 well as liens arising on or after that date.

6 **SECTION 7.(a)** G.S. 135-48.41 is amended by adding a new subsection to read:

7 "(l) If an employee or retiree withdraws his or her accumulated contributions and then  
8 later is reemployed as an employee, then the date of reemployment will be considered the first  
9 hired date for purposes of membership eligibility in the Plan. Any rights granted under this  
10 Article relating to the hire date associated with the withdrawn contributions shall be void ab initio  
11 as a matter of law."

12 **SECTION 8.** G.S. 135-48.33(a) reads as rewritten:

13 "(a) The Board of Trustees must approve all Plan contracts in excess of ~~five hundred~~  
14 ~~thousand dollars (\$500,000), one million dollars (\$1,000,000)~~ including contracts with an initial  
15 cost of less than ~~five hundred thousand dollars (\$500,000), one million dollars (\$1,000,000),~~ but  
16 that may exceed ~~five hundred thousand dollars (\$500,000) one million dollars (\$1,000,000)~~  
17 during the term of the contract."

18 **SECTION 9.** G.S. 135-48.25 reads as rewritten:

19 "**§ 135-48.25. Rules.**

20 (a) The State Treasurer, in consultation with the Board of Trustees, may adopt rules to  
21 implement this Article. ~~The State Treasurer shall provide to all employing units, all health benefit~~  
22 ~~representatives, all relevant health care providers affected by a rule, and to any other persons~~  
23 ~~requesting a written description and approved by the State Treasurer written notice and an~~  
24 ~~opportunity to comment not later than 30 days prior to adopting, amending, or rescinding a rule,~~  
25 ~~unless immediate adoption of the rule without notice is necessary in order to fully effectuate the~~  
26 ~~purpose of the rule. Rules of the Board of Trustees shall remain in effect until amended or~~  
27 ~~repealed by the State Treasurer. The State Treasurer shall provide a written description of the~~  
28 ~~rules adopted under this section to all employing units, all health benefit representatives, all~~  
29 ~~relevant health care providers affected by a rule, and to any other persons requesting a written~~  
30 ~~description and approved by the State Treasurer on a timely basis. Rules adopted by the State~~  
31 ~~Treasurer to implement this Article are not subject to Article 2A of Chapter 150B of the General~~  
32 ~~Statutes.~~

33 (b) The State Treasurer shall provide at least 30 calendar days for interested parties to  
34 comment prior to adopting, amending, or repealing a rule, unless immediate adoption,  
35 amendment, or repealing of the rule without notice is necessary in order to fully effectuate the  
36 purpose of the rule. A rule remains in effect until amended or repealed by the State Treasurer.  
37 Upon request and in a timely manner, the State Treasurer shall provide a written description of a  
38 rule adopted under this section.

39 (c) Benefit booklets published by the Department of State Treasurer on its Web site shall  
40 have the force and effect of rules for the applicable benefit year. This subsection applies, but is  
41 not limited in its application, to contested cases brought by employees, retired employees,  
42 dependents of employees, and dependents of retired employees under Article 3 of Chapter 150B  
43 of the General Statutes regarding (i) an eligibility, premium credit, or other enrollment-related  
44 determination made by the Plan or (ii) the administration of Plan benefit offerings and  
45 exclusions."

46 **SECTION 9.(b)** This section is effective when it becomes law and applies to rules  
47 adopted on or after that date and contested cases brought on or after that date.

48 **SECTION 10.(a)** G.S. 135-48.22(3) is repealed.

49 **SECTION 10.(b)** G.S. 135-48.24 reads as rewritten:

50 "**§ 135-48.24. Administrative review.**



1 (a) If, after exhaustion of internal appeal handling as outlined in the contract with the  
 2 Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the  
 3 attention of the Executive Administrator ~~and Board of Trustees, which who~~ shall promptly decide  
 4 whether the subject matter of the appeal is a determination subject to external review under Part  
 5 4 of Article 50 of Chapter 58 of the General Statutes. The Executive Administrator ~~and Board of~~  
 6 ~~Trustees~~ shall inform the aggrieved person and the aggrieved person's provider of the decision  
 7 and shall provide the aggrieved person notice of the aggrieved person's right to appeal that  
 8 decision as provided in this subsection. If the Executive Administrator ~~and Board of Trustees~~  
 9 ~~decide~~ finds that the subject matter of the appeal is not a determination subject to external review,  
 10 then the Executive Administrator ~~and Board of Trustees~~ may make a binding decision on the  
 11 matter in accordance with procedures established by the Executive ~~Administrator and Board of~~  
 12 ~~Trustees~~. ~~The Executive Administrator and Board of Trustees shall provide a written summary~~  
 13 ~~of the decisions made pursuant to this section to all employing units, all health benefit~~  
 14 ~~representatives, all relevant health care providers affected by a decision, and to any other parties~~  
 15 ~~requesting a written summary and approved by the Executive Administrator and Board of~~  
 16 ~~Trustees to receive a summary immediately following the issuance of a decision.~~ Administrator.  
 17 A decision by the Executive Administrator ~~and Board of Trustees~~ that a matter raised on internal  
 18 appeal is a determination subject to external review as provided in subsection (b) of this section  
 19 may be contested by the aggrieved person under Chapter 150B of the General Statutes. The  
 20 person contesting the decision may proceed with external review pending a decision in the  
 21 contested case under Chapter 150B of the General Statutes.

22 (b) The State Treasurer, in consultation with the Board of Trustees, shall adopt and  
 23 implement utilization review and internal grievance procedures that are substantially equivalent  
 24 to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations  
 25 shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes.  
 26 As used in this section, "determination" is a decision by the State Treasurer, or the Plan's  
 27 designated utilization review organization administrated by or under contract with the Plan that  
 28 an admission, availability of care, continued stay, or other health care service has been reviewed  
 29 and, based upon information provided, does not meet the Plan's benefit offerings or requirements  
 30 for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and  
 31 the requested service is therefore denied, reduced, or terminated."

32 **SECTION 10.(c)** G.S. 150B-1(e) reads as rewritten:

33 "(e) Exemptions From Contested Case Provisions. – The contested case provisions of this  
 34 Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The  
 35 contested case provisions of this Chapter do not apply to the following:

36 ...

37 (13) The State Health Plan for Teachers and State Employees with respect to  
 38 determinations by the Executive Administrator ~~and or the~~ Board of Trustees,  
 39 the Plan's designated utilization review organization, or a self-funded health  
 40 maintenance organization under contract with the Plan that an admission,  
 41 availability of care, continued stay, or other health care service has been  
 42 reviewed and, based upon the information provided, does not meet the Plan's  
 43 benefit offering or requirements for medical necessity, appropriateness, health  
 44 care setting, or level of care or effectiveness, and the requested service is  
 45 therefore denied, reduced, or terminated.

46 ...."

47 **SECTION 10.(d)** This section is effective when it becomes law and applies to  
 48 administrative reviews and appeals requested or filed on or after that date.

49 **SECTION 11.(a)** G.S. 135-48.2(a) reads as rewritten:

50 "§ 135-48.2. Undertaking.

1 (a) The State of North Carolina undertakes to make available a State Health Plan  
2 (~~hereinafter called the "Plan"~~)-exclusively for the benefit of eligible employees, eligible retired  
3 employees, and certain of their eligible dependents, ~~which that~~ will pay benefits in accordance  
4 with the terms of this Article. The Plan shall have all the powers and privileges of a corporation  
5 and shall be known as the State Health Plan for Teachers and State Employees. The State  
6 Treasurer, Executive Administrator, and Board of Trustees shall carry out their duties and  
7 responsibilities as fiduciaries for the Plan. The Plan shall administer one or more group health  
8 plans that are comprehensive in coverage. The State Treasurer may operate group plans as a  
9 preferred provider option, or health maintenance, point-of-service, or other organizational  
10 arrangement. The State Treasurer may also operate a flexible compensation plan for eligible  
11 employees, eligible retired employees, and certain of their eligible dependents, including dental  
12 and vision health benefit offerings paid for at full contribution by employees and retired  
13 employees."

14 **SECTION 11.(b)** G.S. 135-48.1(2b) reads as rewritten:

15 "(2b) Claim Payment Data. – Data fields within a Claims Data Feed that reflect the  
16 provider and the amount the provider billed for services provided to a Plan  
17 member, the allowed amount applied to the claim by the Claims Processor,  
18 ~~and~~ the amount paid by the Plan on the claim, claim, and the rate negotiated  
19 with or agreed to by the provider. The term "Claim Payment Data" includes  
20 any document, material, or other work, whether tangible or electronic, that is  
21 derived from, is based on, or reflects any of the foregoing data fields or  
22 information contained therein. If the Claims Processor designates Claim  
23 Payment Data as a trade secret, the Claim Payment Data shall be treated as a  
24 trade secret as defined in G.S. 66-152(3)."

25 **SECTION 11.(c)** G.S. 135-48.32 reads as rewritten:

26 **"§ 135-48.32. Contracts to provide benefits.**

27 (a) The Plan benefits shall be provided under contracts between the Plan and the claims  
28 processors selected by the Plan. The contracts necessarily will conform to applicable State law.

29 (b) Unless otherwise directed by the Plan, each Claims Processor shall provide the Plan  
30 with a Claims Data Feed, which includes all Claim Payment Data, at a frequency agreed to by  
31 the Plan and the Claims Processor. The frequency shall be no less than monthly. The Claims  
32 Processor is ~~not~~ required to disclose Claim Payment Data that reflects rates negotiated with or  
33 agreed to by a ~~noncontracted third party but, upon request, shall provide to the Plan sufficient~~  
34 ~~documentation to support the payment of claims for which Claim Payment Data is withheld on~~  
35 ~~such basis.provider.~~

36 (c) Any provision of any contract between a Claims Processor and a health care provider,  
37 subcontractor, or third party that would prevent or prohibit the Claims Processor from disclosing  
38 Claim Payment Data to the Plan, in accordance with this section, shall be void and unenforceable,  
39 but only to the extent the provision prevents and prohibits disclosure to the Plan.

40 (d) The Plan may use and disclose Claim Payment Data solely for the purpose of  
41 administering and operating the State Health Plan for Teachers and State Employees in  
42 accordance with G.S. 135-48.2 and the provisions of this Article. The Plan shall not make any  
43 use or disclosure of Claim Payment Data that would compromise the proprietary nature of the  
44 data or, as applicable, its status as a trade secret, or otherwise misappropriate the data.

45 (e) ~~The Plan may not use a provider's Claim Payment Data to negotiate rates, fee~~  
46 ~~schedules, or other master charges with that provider or any other provider.~~

47 (f) The Plan may disclose Claim Payment Data to a third party to use on the Plan's behalf  
48 as agreed upon between the Plan and the Claims Processor. The Plan must ~~obtain the agreement~~  
49 ~~of~~ provide notice to the Claims Processor for each third party to whom the Plan seeks to disclose  
50 Claim Payment Data and for each use the third party will make of the data. The Plan may not  
51 disclose Claim Payment Data to any third party without first entering into a contract with the

1 third party that contains restrictions on the use and disclosure of the Claim Payment Data by the  
2 third party that are at least as restrictive as the provisions of this section.

3 (g) A Claims Processor who discloses Claim Payment Data in accordance with this  
4 section shall not incur any civil liability and shall not be subject to equitable relief in connection  
5 for the disclosure."

6 **SECTION 12.** If any provision of this act or its application is held invalid, the  
7 invalidity does not affect other provisions or applications of this act that can be given effect  
8 without the invalid provisions or application, and to this end the provisions of this act are  
9 severable.

10 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes  
11 law.