Social Services Legislative Update
Adult Services, Public Assistance, and Confidentiality

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Public Guardianship

Status Reports – Increased Oversight by the Clerk and DHHS
S.L. 2014-100; Sec. 12D.4. (S 744)

- Under current law, disinterested public agent guardians and corporations are required to submit status reports to the clerk (initially and then annually thereafter). G.S. 35A-1242.
- Section 12D.4 of S.L. 2014-100 would clarify the content required in the status report and add the following items:
    - A report on the ward's residence, education, employment, and rehabilitation or habilitation;
    - A report of the guardian's efforts to restore competency;
    - A report of the guardian's efforts to seek alternatives to guardianship;
    - A report of the efforts to identify alternative guardians; and
    - The guardian's recommendations for implementing a more limited guardianship.
- Adds language explaining that the clerk or any interested party may file a motion in the cause to request modification of the order based on information in the status report. This new language is consistent with current authority in G.S. 35A-1207.
- When a status report is filed, it must be done so "under the guardian's oath or affirmation that the report is complete and accurate…." The revisions to G.S. 35A-1242 establish an alternative: the status report may be filed "with the signature of a disinterested competent witness to a statement by the guardian that the report is complete and accurate…."
- Adds language requiring the clerk to make status reports available to DHHS Division of Aging and Adult Services and requires the Division to review the reports in connection with its regular program of oversight.
- Effective October 1, 2014.

Study re: Conflicts of Interest

S.L. 2014-100; Sec. 12C.1.(g). (S 744)

- Directs DHHS to study conflicts of interest when a county DSS is involved in a child welfare case and is also appointed to serve as a parent's guardian. Options to consider include:
    - Firewalls within the department;
    - Buddy system for guardianship;
    - Corporate guardian assumes responsibility for guardianship;
    - State assumes responsibility for one of the cases;
    - Legislation identifying another public official or agency who could be appointed guardian.
- Final report due by February 1, 2015.

Improvements/Study re: Public Guardianship System

S.L. 2014-100; Sec. 12D.3. (S 744)

- Directs DHHS Division of Aging and Adult Services to work with the NC Administrative Office of the Courts to develop plan regarding evaluation of complaints related to public guardians.
- Directs DHHS, in consultation with clerks of court, LME/MCOs, and the NC Bar Association, to develop a plan for transitioning a ward to an alternative guardianship arrangement when a guardian is no longer willing or able to serve. The plan should focus on ways to prevent the appointment of a public guardian.
- Directs DHHS to study whether utilization of care coordination services would provide oversight needed to safeguard against conflicts of interest that may arise when the guardian serves as a paid provider.
- Final report due by October 1, 2014.

Adult Protective Services

Financial Exploitation

S.L. 2014-115; Sec. 44 (H 1133)

In 2013, legislation amended G.S. Chapter 108A to add a new Article 6A related to financial exploitation of disabled and older adults. S.L. 2013-337. The stated intent of the new Article is to "facilitate the collection of records needed to investigate and prosecute such incidents." One key component of this legislation is a clear reporting mandate: financial institutions that have reasonable cause to believe that a disabled or older adult is the victim or target of exploitation must report it to law enforcement and, if the adult is disabled, to the county DSS.

Another key component of this legislation is authority for law enforcement and DSS (in the case of a disabled adult) to request and obtain a subpoena directing financial institutions to produce records. After the legislation was enacted, it became clear that there was a problem with the drafting of this subpoena authority. Under Rule 45 of the Rules of Civil Procedure, a court may issue a subpoena only when there is an "action" pending. Because the investigatory subpoena envisioned by the 2013 legislation would not have required a petition for a case to be filed, the court would not have been able to connect the subpoena to an existing action. Thus, the court had no authority under the 2013 legislation to issue a valid subpoena.

In 2014, the General Assembly addressed this issue in the "technical corrections" bill. It amended new G.S. 108A-116 to allow law enforcement or DSS to file a petition in district court for a subpoena and authorizes the district court to treat the request as a "special proceeding" pursuant to G.S. 7A-246. The revised law requires that the petition be filed in the county of residence of the adult customer whose records are being requested and directs the court to hear the case within two business days of the filing. It also allows financial institutions to challenge the subpoena by filing a motion to quash or modify.

If the court issues a subpoena pursuant to G.S. 108A-116, the financial institution is required to locate and prepare the subpoenaed records. G.S. 53B-9. In addition, that same statute, found in the financial privacy laws, directs the government authority requesting the records to pay the institution "a fee for costs directly incurred in assembling and delivering the financial records," unless the institution waives the fee.

The petition and all of the court's records related to this special proceeding are confidential and may be examined only by an order of the court.

The N.C. Administrative Office of the Courts is in the process of developing forms and training related to this legislation.

These revisions went into effect immediately so they apply to petitions for subpoenas filed on or after August 11, 2014.

Public Assistance

Medicaid County of Origin

S.L. 2014-100; Sec. 12H.35. (S 744)

- An individual may initiate an application for Medicaid in any county but, if the application is approved, it is the county of residence that will assume responsibility for that individual's case. Sometimes an individual is enrolled in the Medicaid program in County A, which is the county of residence, and then is placed in an institution in County B. This shift can create some confusion and administrative challenges for the counties involved, any LME/MCOs that may be involved, as well as the individual and the health care providers.

- Section 12H.35(a) of the budget bill directs DHHS to take action to address "issues that arise" when Medicaid recipients move from one county to another. The agency must:
    - Reduce administrative burden for certain providers that contract with more than one LME/MCO; and
    - Work with counties to create a plan to resolve issues related to the county of origin for social services and public assistance programs. The plan must provide for uniform statewide policies for determining county of residence for Medicaid as well as other programs.
    - Report back to the General Assembly by February 1, 2015.

Child Care Subsidy Program

S.L. 2014-100; Sec. 12B.3. (S 744)

- Changes the eligibility and program requirements for the child care subsidy program. Lowers the income threshold, increases co-payments for some families, and makes other administrative changes.
- According to the conference committee report, total funding (state + federal) for the program is unchanged. (Pages G-5 to G-7)
    - Some of the state funding is being replaced by federal funding.
    - While some families who are now eligible will become ineligible because of the changes, other families from the waiting list will now be able to receive subsidies so total number of children or families served should not go down.

State-County Special Assistance

S.L. 2014-100; Sec. 12D.2. (S 744)

- Changes eligibility requirements for the State-County Special Assistance program for anyone applying for assistance after 11/1/2014. In order to be eligible, an applicant will need to meet both of the following requirements:
    - (NEW) Have income at or below 100% of the federal poverty level and
    - (EXISTING) Have insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulation of the Social Services Commission.

  These eligibility changes will only go into effect if the federal government approves the state's request to modify Medicaid eligibility consistent with these State-County Special Assistance eligibility changes. If the federal government approves of the changes, they will go into effect 30 days after the approval.
- Eliminates language that makes a person potentially eligible if he or she moves to the state to be with a close relative who is a resident (resided for 180 consecutive days). This change is effective 11/1/2014 and applies only to individuals applying for assistance after that date.
- Deletes language in G.S. 143B-139.5 that imposed a maintenance of effort requirement for both the state and the county for the program.

Funding for Drug Testing Requirement

S.L. 2014-100 (S 744; Conference Committee Report, page G-10); S.L. 2014-115; Sec. 66 (H 1133)

- The Conference Committee Report provides $344,288 to DHHS to implement the Work First drug testing requirement passed last year in S.L. 2013-417 The total appropriation is $218,538 in recurring funds and $125,750 in nonrecurring funds.
- The bill enacted last year (S.L. 2013-417) directed the DHHS to require a drug test for all applicants for and recipients of Work First benefits if DHHS "reasonably suspects" that the person is "engaged in the illegal use of controlled substances." If a person tests positive for a controlled substance, he or she is ineligible to receive Work First assistance for one year (unless the person seeks treatment, passes a drug test, and reapplies after 30 days). If the person reapplies after one year and tests positive again, he or she is ineligible for three more years. The legislation does not require the person being tested to pay for the cost of the initial test.
- The drug testing requirement was originally scheduled to go into effect August 1, 2014 but the technical corrections bill (S.L. 2014-115) changed the effective date to March 1, 2015.
- In the bill enacted last year, the Social Services Commission was directed to issue regulations implementing the drug testing requirement by February 1, 2014. Those regulations have not yet been issued. The technical corrections bill (S.L. 2014-115) amends that language to:
    - Direct the Social Services Commission to adopt temporary regulations implementing the requirement by October 31, 2014;
    - Direct DHHS (and implicitly counties) to continue using the substance abuse screening protocol in place until the new drug testing law is fully implemented;
    - Directs DHHS to notify county DSSs and the General Assembly when the law is fully implemented.

Eastern Band of Cherokees

S.L. 2014-100; Sec. 12.C.3. (S 744)

- Authorizes the Eastern Band of Cherokee Indians to assume responsibility for administering the Supplemental Nutrition and Assistance Program (SNAP) beginning 10/1/14, or upon federal approval. Beginning 10/1/15, the Eastern Band would be authorized to assume responsibility for other public assistance programs, except for special assistance, childcare, and adult care homes.
- Authorizes DHHS to ask the federal government for approval to delegate authority to the Eastern Band for Medicaid and Health Choice if, and only if, the changes will be federally funded.
- Once responsibility for a program is assumed, "the county shall be relieved of the legal responsibility related to the tribe's assumption of those services."
- Once responsibility for a program is assumed, state funds that would have gone to Jackson and Swain counties will go to the Eastern Band. The Eastern Band becomes responsible for any matching funds and administrative costs that would have been paid by the county.

Confidentiality

Information Sharing with Schools
S.L. 2014-100; Sec. 8.39 (S 744)

One section of the budget focused on amending various statutes in order to ensure that children living in private psychiatric residential treatment facilities (PRTFs) would receive appropriate educational services. One of the statutes amended is the primary social services confidentiality law, G.S. 108A-80. The legislation adds language to the statute that allows DHHS to share confidential information with local school administrative units and with the NC Department of Public Instruction. This new provision:

- Applies to confidential information about a person receiving either public assistance (e.g., Medicaid) or social services (e.g., child protective services);
- Allows, but does not require, information sharing;
- Allows the state (DHHS) to share information with local school administrative units but does not expressly allow the county DSSs to do so;
- Limits the disclosure to only the information necessary to establish, coordinate, or maintain appropriate educational services for the person receiving public assistance or social services.

This provision went into effect July 1, 2014.