

## 2017 Social Services Legislation

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### S.L. [2017-41 \(H 630\)](#), as amended by S.L. [2017-102 \(H 229\)](#)

#### Rylan's Law/Family and Child Protection and Accountability Act

This session law is expansive in scope and addresses many different social services topics. Each topic is addressed separately below.

##### Part I. Regional Supervision and Collaboration

This part focuses primarily on the need to (1) enhance state supervision of the administration of social services programs by the counties and (2) improve collaboration between counties. The N.C. Department of Health and Human Services (DHHS) is required to submit a plan for establishing regional offices to the General Assembly by November 15, 2018, with the expectation that the system of regional supervision will be operational by March 1, 2020.

In developing the plan, DHHS must take into consideration recommendations from the *Social Services Regional Supervision and Collaboration Working Group* (Working Group). The Working Group will have 18 members representing different groups and stakeholders, including legislators, DHHS, judiciary, county commissioners, social services directors, and social services attorneys. There will be two co-chairs, one from the Senate and one from the House of Representatives. The UNC School of Government is required to convene the Working Group, facilitate the meetings, and provide administrative and technical support to the effort. The co-chairs are authorized to establish ad hoc subcommittees to gather information from various experts and stakeholder organizations.

The Working Group is required to prepare two reports. The first is due by April 15, 2018 and must include recommendations regarding:

- The size, number, and location of the regional state offices.
- The allocation of responsibility between central/Raleigh, regional, and local/county officials in supervising and administering social services programs.
- Methods for holding the regional offices accountable for performance and responsiveness.
- Information sharing between the regional offices and the boards of county commissioners regarding local department performance.
- Options for authorizing the board of county commissioners to intervene in program administration prior to the state assuming direct control of service delivery.

The second report is due by February 1, 2019 and must include:

- Recommendations regarding legislative and regulatory changes necessary to improve collaboration between counties. Specifically, the recommendations must address information sharing, conflicts of interest, and intercounty movement of clients.
- A vision for transitioning the State from a county-administered system to a regionally-administered system.

It is important to note that earlier versions of the legislation would have required the state to implement a regionally-administered social services system. The version of the law that was adopted requires regional *supervision*, and directs the working group to consider the issue of regional *administration*.

## **Part II. Reforming State Supervision and Accountability**

This part directs the Office of State Budget and Management (OSBM), in consultation with DHHS, to contract with an outside organization (contractor) to develop a plan to reform the State supervision and accountability for the social services system. It identifies two components of the plan: system reform and child welfare reform. These components are described in more detail below. The contractor is required to submit a preliminary report to the General Assembly 180 days after the contract is finalized. After that report, the contractor must submit bimonthly progress reports. DHHS is required to submit preliminary recommendations for legislative change by October 1, 2018 and may submit supplemental recommendations as necessary.

### ***System reform plan***

The contractor will be required to evaluate the role of the state, develop a new vision and strategic direction for the social services system, and develop a plan for reforming the overall system to improve outcomes, supervision, and accountability. It must also develop a plan related to data collection and use and create a Dashboard using data from the NC FAST system. The purpose of the Dashboard is to serve as a report card for the public to see how the local departments are performing. The contractor is also required to develop a plan for continuous quality improvement (CQI).

In the context of the system reform plan, the contractor will be required to review policies and procedures to identify changes necessary to support reform. It will also need to provide ongoing evaluation and oversight of DHHS's implementation of system reform.

### ***Child welfare reform plan***

As part of the system reform plan, the contractor is also required to develop a specific plan focused on child welfare reform. The plan must include recommendations regarding child protective services, preventive and in-home services, child fatality oversight, placement, permanency, health, mental health, and educational services for children and families, services for older youth and those who have aged out, and staff training and compensation. It must also address a long list of specific practice-related issues.

### **Part III. County Contract/Corrective Action/State Intervention**

This part amends G.S. 108A-74, which is a statute that authorizes the state to intervene in county child welfare programs in certain circumstances. The amendments expand the scope of the statute beyond child welfare and also provide additional mechanisms for oversight and intervention.

### ***Initial contracts (FY 2018-19 and FY 2019-20)***

Beginning next fiscal year (2018-19), counties will need to enter into a contract with the State that specifies (1) performance requirements and (2) administrative responsibilities. The contract will govern all social services programs other than medical assistance, which will include child welfare, adult protective services, public assistance, and child support enforcement. DHHS may develop a standardized contract for all 100 counties or it may develop contracts that are more tailored to the needs of individual counties.

The law does not include many details about the substance of the contract but it does require:

- When possible, the performance requirements must be “based upon standardized metrics utilizing reliable data.”
- The administrative responsibilities must address, at a minimum, staff training, data submission, and communication with DHHS.

The agreement may also authorize DHHS to withhold State or federal funds in the event of noncompliance.

### ***Contracts beginning FY 2020-21***

Beginning in FY 2020-21, there are some changes to the contract specifications and the consequences for noncompliance.

- The details described above are unchanged except that the performance requirements required in the contract must be based on data in the Dashboard developed by the contractor (see Part II, above) and other reliable data.
- If a department fails to comply with the contract or applicable law for 3 consecutive months or for 5 months within any consecutive 12-month period, DHHS and the department must enter into a corrective action plan.

- If the department fails to complete the corrective action plan, DHHS must direct the regional office to temporarily assume all or part of the department’s social services administration. Prior to doing so, DHHS must provide 30 days’ notice to the board of county commissioners, department, county manager, and board of social services.
- Once DHHS determines that the department is able to meet performance requirements, it must restore administrative responsibilities to the department. Prior to doing so, it must provide notice to county officials.

DHHS is required to submit various reports over time to the General Assembly regarding the contracts and corrective action.

#### **Part IV. Regional Social Services Departments**

As mentioned above, earlier versions of the legislation would have required a new system of regional social services departments. The version that was enacted directs the Working Group to broadly consider the idea of regionalization and also authorizes counties to create regional departments on their own initiative beginning in March 2019. Some highlights about regional departments:

- They may provide the full array of social services or limit the scope to one or more selected programs or services. For example, a group of counties could decide to create a regional department that focuses only on child support enforcement.
- They will be public authorities, which means they will be separate legal entities from the county. They will have independent authority related to budgeting, contracting, personnel, etc.
- Boards of county commissioners, together with the social services governing board, will have the authority to decide whether to create or join a regional department. The board or boards of county commissioners will have the exclusive authority to decide whether to withdraw from or dissolve a regional department. Withdrawals and dissolutions may be effective only at the end of a fiscal year.
- They must maintain a physical presence in each county.
- Participating counties are required to contribute financially to the regional department. The Social Services Commission is required to adopt rules governing financial contributions.
- They will have a governing board appointed by a combination of county commissioners, the Social Services Commission, and the sitting members.
- They will have a director who has the same powers and duties as a county social services director, as well as the authority to enter into contract.

The session law included several conforming amendments to other statutes to accommodate the concept of a multi-county social services agency. One of the most significant changes was to G.S. 7B-400(a), which was amended to provide that

(1) a proceeding may be commenced in the judicial district where the juvenile resides or is present *at the time the petition is filed* and

(2) if a regional department includes more than one judicial district, the department must file in the district where the child resides or was present *when the report was received*.

Like the other provisions in this Part, this amendment is effective March 1, 2019.

#### **Part V. Child Well-Being Transformation Council**

Effective immediately, the state is required to establish a new 17-member Child Well-Being Transformation Council that must focus on improving coordination, collaboration, and communication among agencies and organizations that provide public services to children. Membership of the group is prescribed in the law and includes representatives from different public and private stakeholders. The Legislative Services Commission will be responsible for staffing the Council.

The Council is required to focus initially on

- identifying the relevant child-serving agencies and organizations;
- identifying problems with coordination, collaboration, and communication in child welfare; and
- researching the role of entities like the Council in other states.

After March 1, 2020, the Council is charged with monitoring the reforms that will be underway, identifying gaps in coordination, collaboration, and communication, and recommending changes necessary to remedy the gaps.

#### **Part VI. Driver's License Pilot Project**

Part VI is effective July 1, 2017 and requires NC DHHS to establish a two-year pilot program that reimburses on a first-come, first served basis youth and caregivers' costs associated with the youth in care obtaining a driver's license. Expenses include driver's education, driver license fees, and automobile insurance. The Division of Social Services must report on the pilot to the Joint Legislative Oversight Committee on Health and Human Services by March 1, 2018.

#### **Part VII. Pilot Waiver for IAFT Foster Parents**

DHHS is required to establish a pilot program that waives the work requirement for foster parents of children who require Intensive Alternative Family Treatment (IAFT) in an effort to reduce placement disruptions for these children with high special needs. Participating LME/MCOs must submit a report of required measured outcomes to the Division of Social Services, comparing whether there is improved placement stability and compliance with threshold target measures for treatment goal achievement and the use of higher level hospital beds. The Division of Social Services must submit a report to the Joint Legislative Oversight Committee on Health and Human Services by December 1, 2018.

## **Part VIII. Termination of Parental Rights/Appeals**

Part VIII amends G.S. 7B-1001 and S.L. 2017-7. These changes are effective for appeals filed on or after January 1, 2019. G.S. 7B-1001(a1) is a new subsection that makes an appeal of the following orders directly to the North Carolina Supreme Court:

- an order granting or denying a termination of parental rights (TPR) and
- a G.S. 7B-906.2 order that eliminates reunification as a concurrent permanent plan when a TPR has been filed within 65 days of the entry and service of that order.

G.S. 7B-1001(a)(5) is amended to specify the written procedural requirements for an appeal of an order eliminating reunification as a concurrent permanent plan when a TPR has not been filed within 65 days (reducing the time from 180 days) from the entry and service of that order.

## **Part IX. Reducing the Time Period for Foster Care Licensure.**

Effective June 21, 2017, DHHS is required to grant or deny an application for a foster care license within three months from the date of application. The agency must also examine other time frames for processing foster care applications to reduce the time to approve or deny the application.

## **Part X. DSS Observation before Reunification (Rylan’s Law)**

Effective June 21, 2017, Part X amends G.S. 7B-903.1(c) requiring DSS to observe and provide documentation of at least two visits between the child and the removal parent, guardian, custodian, or caretaker before recommending to the court the child’s return of physical custody to such person.

## **S.L. 2017-161 ([H 362](#))**

### **Changes to the Juvenile Code.**

This bill makes various changes to G.S. Chapter 7B.

- **Jurisdiction and Extended Foster Care.** Section 1 amends G.S. 7B-200, granting jurisdiction to the court for review hearings of extended foster care placements required by G.S. 7B-910.1.
- **After Hours Filings.** Sections 2 and 3 amend G.S. 7B-404 and 7B-405 to change the language regarding a magistrate’s role when a petition must be filed at a time when the clerk’s office is closed from “draw, verify, and issue petitions” to “accept [a petition] for filing.” Language regarding authorization by the chief district court judge is removed.

- **Service.** Section 4 amends G.S. 7B-407 to refer to Rule 4 service generally and specifically Rule 4 subsections (j1) (service by publication) and (j3) (service in a foreign country). Section 11 amends G.S. 7B-1106(a) to refer to Rule 4 service generally and adds requirements regarding service by publication on a respondent parent in a termination of parental rights action that the court (1) finds the respondent cannot be otherwise served despite diligent efforts made by the petitioner and (2) approve the form of the notice before it is published.
- **Nonsecure Custody.** Section 7 adds G.S. 7B-506(g1), which explicitly references visitation under G.S. 7B-905.1 at continued nonsecure custody. Section 5 amends G.S. 7B-505(a)(3) by adding to specific placement options the home of the parent, nonrelative kin, or other person with the legal custody of the child’s sibling.
- **Consent for Medical Care.** Section 6 amends G.S. 7B-505.1(a)(1) to include treatment for common pediatric illnesses and injuries that require prompt attention to “routine” care. Section 12 amends G.S. 7B-2503(1)c. and 7B-2506(1)c. to remove the language in those statutes that address consent for medical treatment and evaluations of juveniles placed in DSS custody through delinquency or undisciplined dispositions. Section 13 amends G.S. 7B-3600 by replacing references to statutes that previously addressed consent to medical treatment for children in DSS custody and refers instead to the current statute addressing medical treatment for children in DSS custody: G.S. 7B-505.1.
- **Review and Permanency Planning Hearings.** Section 8 amends G.S. 7B-906.1(a) and (d). The court is required to conduct a review hearing within 90 days from the date of the initial dispositional hearing; there is no longer a condition that custody be removed from a parent, guardian, or custodian for this review hearing. A permanency planning hearing must be scheduled within thirty days of the court finding at a review hearing that reasonable efforts would be unsuccessful or inconsistent with the juvenile’s health and safety.
- **Post Termination of Parental Rights Review Hearings.** Section 8 adds G.S. 7B-906.1(o), stating that G.S. 7B-906.1 hearings and findings do not apply to post termination of parental rights (TPR) placement reviews. Section 9 amends G.S. 7B-908 to address when a post TPR review is required and refers to concurrent permanent plans.

## S.L. [2017-57 \(S 257\)](#)

### Appropriations Act of 2017

The budget included many provisions that impact social services programs and services. Below are summaries of a few that are noteworthy:

- **Child care subsidy (Sec. 11B.6).** The budget includes a new series of statutes specifically focused on the child care subsidy program. These new statutes, found at G.S. 143B-168.25- .27, codify provisions that were included in the 2015 budget ([S.L. 2015-241](#)). New statutes place limits on requiring local matching funds and restrictions on use of funds budgeted for the Child Care Revolving Loan Fund. In addition, a new statute allows county departments of social services to use up to 4% of the total child care subsidy funds (or \$80,000, whichever is greater) for administrative costs. In addition, counties may use up to 2% of subsidy funds for fraud detection an investigation.
- **Child care subsidy/cooperate with child support (Sec. 11B.7).** In 2015, the General Assembly directed the state DSS and the Division of Child Development and Early Education (DCDEE) to develop a plan for requiring child care subsidy recipients to participate in child support services programs. This year’s budget directs the state to implement a demonstration project in 3-6 counties that implements the provisions of that plan. Approval from the federal government will be required prior to initiating the demonstration.
- **Child support incentive payments (Sec. 11C.6).** Local child support enforcement programs receive some federal and state funding intended to incentivize or reward improved performance. A 2014 [report](#) from the legislature’s Program Evaluation Division concluded that state oversight of this incentive program was lacking and recommended legislative changes. In response, the legislature made several changes to the program in 2016. Section 11C.6 of this year’s budget extends and expands on some of those requirements, including provisions allocating 15% of the incentive payments to the state for centralized support and 85% to the local programs to improve effectiveness and efficiency using federal performance measures. The state is required to consult with county child support programs to evaluate the current methodology for distributing the funds and determine whether an alternative formula would be more appropriate.
- **State Indian Tribes (Sec. 11C.7(a)).** The budget allocates \$60,000 a year this biennium for a collaboration between the Division of Social Services and the NC State Commission on Indian Affairs to assist in (1) the recruitment of foster parents, (2) increasing the number of foster homes for children who are members of a NC state recognized tribe, and (3) providing training to county department staff regarding culturally appropriate services for children who are members of NC state recognized tribes.

## **S.L. 2017- 158 (H 236)**

### **NCAOC Omnibus Bill.**

This law makes various changes to laws related to the clerks of court including the maintenance of court records and makes changes to various mediation statutes.

- **Entry of Order.** Sections 1 and 2 amend Rules 5 and 58 of the North Carolina Rules of Civil Procedure (G.S. 1A-1) regarding entry of orders. The validity or enforceability of an order filed in a civil action or special or estate proceeding is not affected by the failure to affix a date or file stamp on that order if the clerk or court, after giving the parties adequate notice and an opportunity to be heard, enters the order nunc pro tunc (i.e., retroactive) to the date of filing.
- **Interim Guardianship.** Section 6 amends the statute governing interim guardianships for adults (G.S. 35A-1114) to authorize a guardian ad litem, in addition to the petitioner, to file a motion seeking the appointment of an interim guardian. It also adds a new subsection (c1) that (1) requires service of the motion and notice of the hearing as promptly as possible and (2) requires that the hearing be held as soon as possible but not later than 15 days after service on the respondent. Section 7 amends the statute governing adjudication hearings (G.S. 35A-1112) to authorize the clerk, on the clerk's own motion, to appoint an interim guardian at the hearing on the petition for adjudication if the clerk determines that it would be in the best interest of the respondent.
- **Clerk/Contempt.** Section 11 amends G.S. 5A-23(b) to provide the clerk of superior court with the authority to exercise civil contempt power in cases where the clerk has original subject matter jurisdiction and has issued the order. This includes adult guardianship proceedings. Previously, the law only authorized the clerk to exercise contempt powers when a statute specifically provided authority.
- **Juvenile Court Records.** Section 23 amends G.S. 7B-2901(a) to add that the recording of an abuse, neglect, or dependency hearing may be destroyed in accordance to the retention schedule approved by the AOC Director and Department of Natural and Cultural Resources.

## **S.L. 2017-184 ([H 657](#))**

### **Improve Adult Care Home Regulation**

#### ***Licenses***

The law amends G.S. 131D-2.3 to

- Revise and expand the list of prior violations that prevent a person from obtaining a new license to operate an adult care home.
- Provide that DHHS may issue a new license for change of ownership without the consent of the current licensee under limited circumstances.
- Provide that an applicant who is denied a license may appeal to the Office of Administrative Hearings.

#### ***County DSS/Informal Dispute Resolution***

Counties and the state Division of Health Service Regulation (DHSR) are now required to *jointly* offer adult care homes an opportunity for informal dispute resolution when the home has been cited for certain types of violations. DHSR and county departments must have procedures in place to implement this new option within 60 days after the bill becomes law. The bill had not been signed as of July 10, 2017.

#### ***Ratings***

The statute governing the rating system, G.S. 131D-10, was amended to provide that DHSR must issue the star rating within 45 days from the date the Division mails the inspection or survey report to the facility. If, however, the adult care home requests informal dispute resolution, the star rating must be issued 15 days after the dispute resolution decision is mailed to the regulated facility.

## **S.L. 2017-103 ([H 248](#))**

### **Ombudsman Changes and DHHS Study**

Counties are required to have adult care home and nursing home advisory committees, and may combine them into one committee in certain circumstances. In the past, boards of county commissioners appointed committee members and the Division of Aging provided oversight and training. This law shifts oversight and training responsibility for these advisory committees to the Office of the State Long-Term Care Ombudsman (LTC Ombudsman). In addition, the LTC Ombudsman also plays a role in appointment. The boards of county commissioners are still authorized to make appointments but the appointments must be approved by the LTC Ombudsman. The committee members are considered “representatives” of and are “directly accountable to” the LTC Ombudsman. The LTC Ombudsman may remove a committee member by withdrawing that person’s designation.