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Social Services

The 2005 session of the General Assembly brought several significant changes in the child welfare area. The General Assembly provided for statewide implementation of the Multiple Response system of responding to reports of child abuse, neglect, and dependency and amended the Juvenile Code to reflect that the initial response to such a report is an “assessment,” rather than an “investigation.” Another new law creates a state-level “Responsible Individuals List” of persons determined by county social services departments to have caused a child’s condition of abuse or neglect. Because this information will be made available to specified agencies and employers, the legislation provides a means by which an individual may appeal the placement of his or her name on the list.

Counties again failed to obtain the relief they sought from the growing financial burden of Medicaid costs, although other changes were made in the Medicaid program. The state is prohibited from imposing a waiting period for Medicaid eligibility for people who move into the state; and a new law sets out the means a Medicaid applicant may use to establish that he or she actually is a resident of the state. Other new provisions enhance the state’s ability to recover Medicaid costs through the use of liens in specified circumstances.

This chapter discusses these and other enactments related to social services. Other chapters that may cover related topics include Chapter 4, “Children, Families, and Juvenile Law,” Chapter 6, “Courts and Civil Procedure,” Chapter 7, “Criminal Law and Procedure,” Chapter 10, “Elementary and Secondary Education,” Chapter 12, “Health,” Chapter 13, “Higher Education,” and Chapter 16, “Mental Health.”

Medicaid

County Funding

State law requires North Carolina counties to pay 15 percent of the nonfederal share of the cost of Medicaid services provided to county residents (about 6 percent of the total cost of Medicaid services and approximately \$450 million annually). As in past years, legislators introduced several bills (H 132, H 149, H 316, H 1721, S 105, and S 117) to reduce or eliminate counties’ fiscal responsibility for the state’s Medicaid program, but none of these bills was reported out of committee.

A provision in the House committee substitute for the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), would have appropriated \$15 million in state funding to offset a fraction of the counties' fiscal responsibility for Medicaid, but this provision was eliminated in the conference report and was not enacted. Section 10.11(b) of S.L. 2005-276 requires counties to pay 15 percent of the nonfederal share of the cost of Medicaid services and 15 percent of the state's Medicare Part D "clawback" payments to the federal government.

Eligibility

Elderly or disabled persons. The General Assembly considered, but rejected, a proposed budget cut that would have eliminated or limited the Medicaid eligibility of approximately 65,000 elderly or disabled persons with incomes between the Supplemental Security Income (SSI) income limit (\$579 per month for an individual) and the federal poverty level (\$798 per month for an individual). Section 10.11(e) of S.L. 2005-276 directs the Department of Health and Human Services (DHHS) to provide Medicaid coverage to all elderly, blind, or disabled persons with incomes that do not exceed the federal poverty level.

Children in low-income families. North Carolina's Medicaid program currently covers children under the age of one year who live in families whose incomes do not exceed 185 percent of the federal poverty level, children aged one through five who live in families whose incomes do not exceed 133 percent of the federal poverty level, and children aged six through eighteen who live in families whose incomes do not exceed the federal poverty level. Effective January 1, 2006, Section 10.11(m) of S.L. 2005-276 extends Medicaid eligibility to all children who are under the age of six years and live in families whose incomes do not exceed 200 percent of the federal poverty level. Extending Medicaid coverage for all low-income children under the age of six allows children who previously were covered under the Health Choice insurance program for uninsured children rather than Medicaid to be "shifted" from Health Choice to Medicaid.

"Ticket to Work" program for working disabled persons. Section 10.18 of S.L. 2005-276 establishes a Medicaid "Ticket to Work" demonstration program that will allow disabled people who work and are not otherwise eligible for Medicaid to enroll in the state's Medicaid program. Individuals whose countable incomes do not exceed 150 percent of the federal poverty level are not required to pay an enrollment fee or premiums. Individuals whose countable incomes exceed 150 percent of the federal poverty level must pay an annual enrollment fee of \$50. Individuals whose countable incomes are at least 200 percent of the federal poverty level must pay a monthly premium. If an individual's income is at least 450 percent of the federal poverty level, he or she must pay the full cost of the premium based on the experience of all individuals participating in the Medicaid program. If an individual's income is at least 200 percent of the federal poverty level but less than 450 percent of the federal poverty level, his or her monthly premium will be based on a sliding scale established by DHHS. Individuals enrolled in the "Ticket to Work" program must pay co-payments equal to those under the North Carolina Health Choice program. The "Ticket to Work" program is codified in G.S. 108A-54.1, which becomes effective on January 1, 2007, or within thirty days after the date on which the Medicaid Management Information System becomes operational, whichever is later. Enrollment in the program must begin within six months of the program's effective date.

Verification of residency. Effective January 1, 2006, Section 10.21A of S.L. 2005-276 enacts a new statute, G.S. 108A-55.3, regarding verification of state residency of persons who apply for Medicaid. The new statute specifies fifteen types of documents that may be used to prove an individual's residency in North Carolina. These documents include a valid North Carolina driver's license or identification card issued by the Division of Motor Vehicles, a current utility bill or mortgage or rent receipt, a valid North Carolina motor vehicle registration card, any document showing that the applicant is employed in North Carolina, any document showing that the applicant's child is enrolled in a North Carolina school or child care facility, a current North Carolina voter registration card, etc. Under the new statute, a person's residency in North Carolina may be proved by providing at least two of the specified documents. In the case of applicants—including those who are homeless or migrant laborers—who declare under penalty of perjury that they do not have two of the specified documents, any other evidence that verifies residency may be considered. But, except in the

case of persons applying for emergency Medicaid coverage, a declaration, affidavit, or other statement from an applicant or other person that the applicant is a North Carolina resident is insufficient in the absence of other credible evidence. The statute also states that, unless otherwise provided under the federal Medicaid law, a minor child is deemed to be a resident of the state in which the child's parent or legal guardian is domiciled.

Transfer of assets penalty. Federal and state law (G.S. 108A-53) restrict the Medicaid eligibility of certain persons who attempt to qualify for Medicaid by transferring their property, resources, or assets for less than market value. Section 10.11(t) of S.L. 2005-276 reenacts the Medicaid transfer of assets rules that apply to income-producing property and tenancy-in-common interests in real property. Effective not earlier than October 1, 2005, it also extends the transfer of assets rules to life estates that are purchased by or on behalf of a Medicaid applicant or recipient with the exception of a life estate in property that is the applicant's or recipient's home, is measured by the applicant's or recipient's life, and is the result of a transfer of a remainder interest in the property.

Liens and Estate Recovery

Section 10.21C of S.L. 2005-276 amends G.S. 108A-70.5 to allow DHHS to impose a lien against the real property of a person prior to the person's death for the cost of Medicaid services that are provided while the person is an inpatient in a nursing home, intermediate care facility for the mentally retarded, or medical institution, if the person is required to spend for the cost of medical care all but a minimal amount of his or her income required for personal needs. A lien may not be imposed under the statute unless DHHS determines, after notice and an opportunity for hearing, that the person cannot reasonably be expected to be discharged to return home. A lien imposed under the statute dissolves if the person is discharged from the nursing home, facility, or medical institution and returns home. A lien may not be imposed on the person's home if the home is lawfully occupied by the person's (1) spouse, (2) child under the age of twenty-one years, (3) blind or disabled child, or (4) sibling, if the sibling has an equity interest in the home and resides in the home for at least one year immediately before the person is admitted to the nursing home or medical institution. Under the federal Medicaid law, a lien imposed against a Medicaid recipient's property may be enforced only when the property is sold or via the Medicaid estate recovery plan after the recipient dies. *See also* 42 U.S.C. 1396p(a); 42 U.S.C. 1396p(b); 42 C.F.R. 433.36.

Section 10.21C of S.L. 2005-276 also revises the Medicaid estate recovery program established under G.S. 108A-70.5. The amended statute allows DHHS to file a claim against the estate of a Medicaid recipient to recover the cost of Medicaid services provided to the recipient if (1) the Medicaid services were provided to the recipient as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and DHHS has determined, after notice and an opportunity for hearing, that the recipient cannot reasonably be expected to be discharged to return home; or (2) the Medicaid services were provided to a recipient who is at least 55 years old and are for nursing home care, home and community-based services, hospital care, or prescription drugs related to nursing home care or home and community-based services, personal care services, payment of Medicare premiums, private duty nursing, home health aide services, home health therapy, or speech pathology services.

Section 10.21C of S.L. 2005-276 also enacts two new statutes, G.S. 108A-70.6 and 108A-70.7, establishing criteria for the waiver or postponement of lien attachment or estate recovery if assertion of the lien or claim would result in undue hardship or would not be cost effective. This section also repeals the authority of DHHS to adopt rules governing waiver or postponement of estate recovery.

G.S. 108A-70.6, as added by S.L. 2005-276, provides that an "undue hardship" exists if the property subject to a lien has a tax value that does not exceed \$30,000; if the property subject to a claim is the sole source of income for a surviving heir or beneficiary and loss of the property would impoverish the heir or beneficiary; or if sale of the recipient's home would be required to satisfy the claim, the surviving heir or beneficiary lived in the recipient's home on a continual basis for at least twenty-four months immediately before the recipient's death, the heir or beneficiary used the property as his or her principal place of residence on the date of the recipient's death, the heir's or beneficiary's income does not exceed 150 percent of the federal poverty level, the heir or beneficiary does not own

other real property or agrees to sell other real property in partial payment of the claim, and the net value of the heir's or beneficiary's other assets does not exceed \$30,000. An heir or beneficiary must file a claim of undue hardship within 30 days after receipt of notice of a Medicaid lien or estate recovery claim. New G.S. 108A-70.8 requires that Medicaid applicants receive notice regarding Medicaid liens and estate recovery but does not address notice of Medicaid liens or estate recovery given to heirs or beneficiaries of deceased Medicaid recipients.

G.S. 108A-70.7, as added by S.L. 2005-276, requires DHHS to waive a lien or claim if the amount of payments for Medicaid services subject to recovery is less than \$8,000 or the value of the assets subject to the claim or lien is less than \$5,000.

G.S. 108A-70.9, as added by S.L. 2005-276, requires county social services departments to provide DHHS with information and administrative and legal assistance needed to recover the cost of Medicaid services under G.S. 108A-70.5, requires DHHS to pay county social services departments 20 percent of the nonfederal share of recovered payments, and allows DHHS to withhold these payments if a county social services department fails to provide assistance as required by G.S. 108A-70.9.

Section 10.21C is effective July 1, 2006, and applies to persons receiving Medicaid on or after that date.

Services, Payment, and Administration

Medicaid provider rates and recipient co-payments. S.L. 2005-276 freezes the rates paid to most Medicaid providers, provides funding to increase the Medicaid rates for dental services, and, effective October 1, 2005, increases to \$3.00 the Medicaid co-payments for chiropractic services, optical services, podiatry services, hospital outpatient services, nonemergency emergency room visits, and generic prescription drugs.

Prescription drug utilization. S.L. 2005-276 expands the authority of the state Division of Medical Assistance regarding prescription drug utilization. Section 10.11(y) of S.L. 2005-276 requires the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to provide an opportunity for interested advocacy organizations to comment on proposed Medicaid prescription drug restrictions. The committee is authorized to report its findings or recommendations based on these comments by April 30, 2006, to the General Assembly's Fiscal Research Division and the legislative appropriations committees on health and human services.

Prior authorization exemption for antihemophilic drugs. S.L. 2005-83 (H 916) extends until July 1, 2009, the provisions of S.L. 2003-179 exempting antihemophilic drugs prescribed for the treatment of hemophilia and blood disorders from the Medicaid prior authorization requirements for prescription drugs.

Prescription management program. Section 10.19B of S.L. 2005-276 requires DHHS to implement an electronic quality prescription management program for prescription drugs using personal data assistance technology.

Personal care services. Section 10.19 of S.L. 2005-276 requires DHHS to reduce the cost of providing personal care services for Medicaid recipients by \$13.7 million in state fiscal year 2005-06 and \$16.1 million in state fiscal year 2006-07 by implementing a utilization management system. The system may include reducing the limit on personal care services to fifty hours. The DHHS Division of Medical Assistance must study the implementation of additional utilization or prior authorization systems for personal care services and other home- and community-based services and, by May 1, 2006, report a plan for implementing these systems to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services. Effective October 1, 2006, S.L. 2005-276 provides funding to increase the number of hours of adult care home personal care services for residents of special care units from 1.1 hours per day to 4.07 hours per day.

Community Care of North Carolina. Section 10.17 of S.L. 2005-276 expands the scope of Community Care of North Carolina (a Medicaid managed care program) to include elderly, blind, or disabled Medicaid recipients who are dually eligible for Medicare and Medicaid. DHHS must submit a report regarding implementation of this section to the General Assembly's Fiscal Research Division and the legislative appropriations committees on health and human services by March 1, 2007.

Community Alternatives Program. Section 10.20 of S.L. 2005-276 requires DHHS to develop a new system for reimbursement for services provided under the Medicaid Community Alternatives Program. The new system must use a case-mix reimbursement system, incorporate home environment and social support systems into the case-mix system, and use Resource Utilization Groups-III (RUG-III) to determine the level of need for services other than those for the Community Alternatives Program for the Mentally Retarded or Developmentally Disabled. DHHS must submit a report on the new system by May 1, 2006, to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services and must implement the new system by January 1, 2007.

Medicaid services for persons who are dually eligible for Medicare and Medicaid. Section 10.21E of S.L. 2005-276 requires DHHS to study Medicaid services for persons who are dually eligible for Medicaid and Medicare, the impact of Medicare Part D on Medicaid services, the financial impact of Medicare "clawback" provisions, and efficiencies that may be realized in services for this population. DHHS must report the results of its study to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services by May 1, 2006.

Fraud and abuse. Section 10.11(x) of S.L. 2005-276 requires the state Division of Medical Assistance (DMA) to require Medicaid recipients to sign an authorization allowing the release to DMA of their medical records for a period of three years immediately preceding their application for Medicaid benefits. DMA may use these records for the purpose of investigating and reducing recipient fraud and abuse or for any other purpose permitted by the federal medical privacy rules under the Health Insurance Portability and Accountability Act and required or authorized by other applicable federal or state law. DMA may not implement this requirement if it is prohibited by federal law. Section 10.11(o) of S.L. 2005-276 continues DMA's authority to provide financial incentives to counties that successfully recover fraudulently spent Medicaid funds. Part II of S.L. 2005-424 (H 646) provides that if the Department of Insurance receives grant funding from the Federal Administration on Aging, the department may establish a full-time, federally funded position for a Medicare Lookout Program Coordinator for the State Health Insurance Information Program, whose purpose is to reduce fraud in the Medicare and Medicaid programs.

Other Public Assistance and Social Services Programs

Child Day Care

Subsidized child care. Section 10.60 of S.L. 2005-276 (S 622), the appropriations act, provides that DHHS may not require local matching funds for the receipt of funds appropriated by the act for child care unless federal law requires a match. Section 10.61 sets out the allocation formula for child care subsidy voucher funds and authorizes the department to reallocate unused funds. It requires DHHS to allocate up to \$22 million in federal block grant funds and state funds appropriated for fiscal years 2004-05 and 2005-06 to prevent the termination of child care services. Section 10.62 establishes the maximum gross annual income for initial eligibility for subsidized child care services at 75 percent of the state median income, adjusted for family size, and includes other detailed provisions relating to eligibility and payment requirements. Section 10.66 requires the Division of Child Development in DHHS to analyze the child care subsidy reimbursement system and to develop strategies to implement market rate equity among counties. The division must report its findings and recommendations by April 30, 2006, to the General Assembly's Fiscal Research Division and the legislative appropriations committees on health and human services. The act appropriates an additional \$3.6 million to reduce child care subsidy waiting lists.

Star-rated licensure of child care facilities. S.L. 2005-36 (H 707) rewrites G.S. 110-90(4) regarding star-rated licensure of child care facilities. Current law provides that ratings are based on program standards, staff education levels, and a facility's compliance history. Effective January 1, 2006, new licenses issued for child care facilities with a rating of two to five stars will be based on program standards and staff education levels, and DHHS may issue a provisional license or Notice of

Compliance to a facility that fails to maintain a compliance history of at least 75 percent for the past eighteen months or during the length of time it has operated, whichever is less. For facilities already holding licenses of two to five stars on January 1, 2006, this change does not take effect until January 1, 2008. The act requires DHHS to give child care providers additional opportunities to earn points for program standards and staff education levels.

Short-term and drop-in child care. Effective September 22, 2005, S.L. 2005-416 (H 1517) rewrites the definition of “child care” in G.S. 110-86(2) to make clear that it does not include drop-in or short-term care provided by an employer for its part-time employees where (1) the child is not provided care for more than two and a half hours in a day, (2) the parents are on the premises, and (3) no more than twenty-five children are in any one group in any one room. Both these providers and the short-term and drop-in care providers already clearly excluded from the definition must register with DHHS the fact that they are providing this type of care and post a notice that the care is not licensed or regulated by DHHS. The act requires the Director of the Division of Child Development to report to the General Assembly

- by May 1, 2006, the number of facilities that have registered pursuant to this provision.
- by April 30, 2006, findings and recommendations based on a study of current policies, practices, and laws related to drop-in and short-term care and baby sitting services.

Babysitting services. S.L. 2005-416 also enacts G.S. 14-321.1, making it unlawful for an adult to provide or offer to provide a babysitting service (1) in a home in which a resident is a registered sex offender, or (2) if a provider of care for the babysitting service is a registered sex offender. For purposes of the section, “baby sitting service” means providing, for profit, supervision or care for a child younger than thirteen who is not related to the provider by blood, marriage, or adoption, for more than two hours per day while the child’s parent or guardian is not on the premises. A first offense is a Class 1 misdemeanor. A second or subsequent offense is a Class H felony. These provisions apply to offenses committed on or after December 1, 2005.

Child Support Enforcement

Attachment of bank accounts to collect past-due child support. G.S. 110-139.2(b1) allows the state’s child support enforcement agency to collect past-due child support by attaching a bank account (or other account in a financial institution) maintained by a person who owes past-due child support. Effective December 13, 2005, S.L. 2005-389 (H 1375) amends this statute (1) to make it applicable to persons who owe past-due child support but are not “delinquent” (*see Davis v. Dep’t. of Human Resources*, 126 N.C. App. 383, 485 S.E.2d 342 (1997), *aff’d in part and rev’d in part*, 349 N.C. 208, 505 S.E.2d 77 (1998)); (2) to require that notice of the attachment be served pursuant to G.S. 1A-1, Rule 4, on any nonliable owner of an account held jointly with the person who owes past-due child support; (3) to allow a nonliable owner to contest the attachment to the extent that the funds in the account belong to the nonliable owner rather than to the person who owes past-due child support; (4) to require that the notice of attachment be served on the financial institution pursuant to G.S. 1A-1, Rule 5; (5) to allow this procedure to be used by the child support programs of other states without the involvement of North Carolina’s child support enforcement agency; and (6) to make it clear that use of this procedure does not preclude the use of other child support enforcement remedies.

Performance standards for state and local child support enforcement agencies. Section 10.43 of S.L. 2005-276 requires DHHS to develop and implement performance standards for state and local child support enforcement (IV-D) agencies; to monitor the performance of state and local IV-D agencies; to publish an annual performance report; and to report its compliance with this section to the Fiscal Research Division and designated legislative committees by May 1, 2006.

Federal Block Grants

Section 5.1(e) of S.L. 2005-276 requires DHHS to develop a monitoring and oversight plan for all public and private recipients and subrecipients of federal block grant funding. The plan must include performance standards for recipients, financial audit standards for nonstate entities, and mechanisms

for collecting performance data from recipients. DHHS must provide the plan to the General Assembly's Fiscal Research Division by December 1, 2005.

Health Choice Program for Uninsured Children

Effective January 1, 2006, Section 10.22 of S.L. 2005-276 amends G.S. 108A-70.21 to limit eligibility for Health Choice to children between the ages of six through eighteen (low-income children aged five and under will be covered under North Carolina's Medicaid program). Effective July 1, 2006, payments under the Health Choice program will be equivalent to those provided under the state's Medicaid program (between January 1, 2006, and June 30, 2006, Health Choice payments will be 115 percent of the Medicaid rate). Effective January 1, 2006, Health Choice services will be provided through Community Care of North Carolina (a managed care program). Effective January 1, 2006, enrollment growth in Health Choice will be limited to 3 percent every six months.

Noncustodial Parent's Debt for Work First and Aid to Families with Dependent Children

Effective December 12, 2005 (ninety days after it became law), S.L. 2005-389 amends G.S. 110-135 to provide that the debt owed by a noncustodial parent for public assistance (Work First or Aid to Families with Dependent Children) paid for the parent's dependent child will be reduced by two-thirds if

- the debt is at least \$15,000;
- the state and the parent enter into an agreement regarding the debt;
- a court approves the agreement after inquiring into the parent's financial status; and
- the parent makes timely payment of all court-ordered child support—including payments on child support arrearages—for a period of twenty-four consecutive months.

State-County Special Assistance for Adult Care Home Residents

S.L. 2005-276 increases the maximum monthly payment for State-County Special Assistance for elderly or disabled residents of adult care homes from \$1,084 to \$1,118 (\$1,515 for residents of special care units), effective October 1, 2005. This rate increase will require North Carolina counties to provide an additional \$1.7 million in local funding for the State-County Special Assistance program in state fiscal year 2005-06 and an additional \$1.8 million in 2006-07.

State-County Special Assistance for In-Home Care

Effective October 1, 2005, S.L. 2005-276 continues, revises, and expands a demonstration project allowing payment of State-County Special Assistance benefits to individuals who do not live in adult care homes but otherwise are eligible for assistance. The maximum payment under the demonstration project may not exceed 75 percent of the State-County Special Assistance payment the individual would receive if he or she moved to an adult care home.

Temporary Assistance for Needy Families

Section 10.51 of S.L. 2005-276 approves the state's Temporary Assistance for Needy Families (TANF) plan for October 1, 2005, through September 30, 2007, and designates the following counties as "electing" counties: Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, and Stokes.

Foster Care and Adoption Assistance

Section 10.46 of S.L. 2005-276 sets the maximum rates for state participation in the foster care and adoption assistance programs as follows:

Foster Care Assistance

1. \$390 per child per month for children aged birth through five,
2. \$440 per child per month for children aged six through twelve, and
3. \$490 per child per month for children aged thirteen through eighteen.

Of these amounts, \$15 is a special-needs allowance for the child.

Adoption Assistance

1. \$390 per child per month for children aged birth through five,
2. \$440 per child per month for children aged six through twelve, and
3. \$490 per child per month for children aged thirteen through eighteen.

HIV Foster Care and Adoption Assistance

1. \$800 per child per month with indeterminate HIV status,
2. \$1,000 per child per month confirmed HIV-infected, asymptomatic,
3. \$1,200 per child per month confirmed HIV-infected, symptomatic, and
4. \$1,600 per child per month terminally ill with complex care needs.

Adoption of Special Children

Section 10.48 of S.L. 2005-276 allocates \$100,000 to support the Special Children Adoption Fund for the 2005-06 fiscal year and directs the Division of Social Services, in consultation with others, to develop guidelines for awarding funds to licensed public and private adoption agencies to enhance adoption services. It directs the division to monitor fund expenditures, redistribute unspent funds, and report to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services on program expenditures and activities by December 1, 2005, and June 30, 2006.

Section 10.49 directs DHHS to study potential incentives for the adoption of children who are difficult to place and to report by October 1, 2005, to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services.

Child Abuse, Neglect, Dependency**Assessment Response to Reports of Abuse, Neglect, and Dependency**

S.L. 2005-55 (H 277) codifies and makes statewide the multiple response approach to responding to reports of abuse, neglect, and dependency. This approach began as a pilot program and is already in place in many counties. Where the Juvenile Code previously required a county social services department to conduct an investigation after receiving a report of suspected abuse, neglect, or dependency, S.L. 2005-55 requires the department to conduct either a family assessment or an investigative assessment, depending on the nature of the report. The county social services director determines which response is appropriate in a particular case. An investigative assessment response involves a formal information gathering process to determine whether a child is abused, neglected, or dependent. A family assessment response, which may not be used in abuse cases, uses a "family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile." The act makes a number of technical and conforming amendments to Subchapter I of the Juvenile Code, G.S. Chapter 7B. It also rewrites G.S. 7B-302(a) to provide that an assessment following a report that a child is abused or neglected in a child care facility does not require a visit to the place where the child lives, as other assessments do. Finally, it rewrites G.S. 7B-303(a) to require a department of social services, when it files a petition alleging interference with or obstruction of an assessment, to include in the petition a concise statement of the basis for initiating the assessment. The act became effective October 1, 2005.

Section 10.45 of S.L. 2005-276, the appropriations act, requires the DHHS Division of Social Services to continue working with local social services departments to implement the multiple

response system, which includes these assessment responses. The multiple response system also includes establishing a system of care with child and family teams.

Responsible Individuals List, Appeal, and Expunction Procedures

When a county department of social services receives a report of suspected child abuse or neglect, the department conducts an assessment to determine whether the child has been abused or neglected and submits information about the report and assessment to the Central Registry maintained by DHHS. The registry is a confidential collection of information used both to generate statewide statistics and to enable social services departments to identify children who are the subject of more than one report. Effective October 1, 2005, S.L. 2005-399 (H 661) provides that when the county social services director's assessment determines that a child has been abused or seriously neglected—a determination primarily about the child's status, not the parent or other adult's conduct—the director also must identify the person(s) responsible for the child's status and report that information to DHHS for inclusion on a responsible individuals list.

The act authorizes DHHS to release information from this list to child caring institutions, child placing agencies, group homes, and other providers of foster care, child care, or adoption services, to assist in determining whether individuals are fit to care for or adopt children. The act also directs the state Social Services Commission to adopt rules defining "serious neglect" and addressing various procedures relating to the list. It is a Class 3 misdemeanor for a public official or employee knowingly to release information from the list or the central registry to an unauthorized person, for an authorized person who receives the information to release it to an unauthorized person, or for an unauthorized person to access or attempt to access the information.

Because information released from the responsible individuals list may affect a person's employment, potential employment, or opportunity to provide foster care or to adopt a child, it is essential that the information be accurate, that an individual know that his or her name is being put on the list, and that procedures exist for contesting, correcting, or expunging information on the list. If the county department of social services initiates a juvenile court proceeding alleging that the child is abused or neglected, the person determined by the director to be a responsible individual has a judicial forum for contesting the department's allegations. (The precise issue of whether the individual is a "responsible individual" whose name should be placed on the list is not before the court, although the court may make findings of fact about individuals' responsibility for a child's condition.) In most cases, the individual will have a right to appeal the court's order to the court of appeals. (A "caretaker," who is not a parent, guardian, or custodian, does not have a right to appeal. *See* G.S. 7B-1002.) In many cases, however, after determining that a child is abused or neglected, a county social services department works with the family to ensure the child's safety without the necessity of initiating a court action.

S.L. 2005-399 adds to the Juvenile Code, G.S. Chapter 7B, a new Article 3A, establishing notification requirements and expunction procedures for the responsible individuals list. Within five days after completing an investigative assessment, the social services director must notify DHHS and give "personal written notice" of the results of the assessment to anyone determined to be a responsible individual. If personal notice cannot be given within fifteen days, the director must send notice by registered or certified mail, restricted delivery, to the individual's last known address. The notice must

1. inform the individual of the nature of the assessment response and whether the director determined abuse or serious neglect or both.
2. summarize "substantial evidence" supporting the director's determination, without identifying the reporter or collateral contacts.
3. inform the individual that his or her name is being placed on the responsible individuals list and of the extent to which DHHS may release information from the list.
4. clearly describe procedures the individual must follow to seek removal of his or her name from the list.

The first step for a person seeking removal of his or her name from the responsible individuals list is to make a written request for expunction to the social services director. The request must be delivered in person or by certified mail within thirty days after receipt of the notice described above.

Within fifteen working days after receiving the request, the director must review all relevant agency records and information to determine whether substantial evidence supported placement of the individual's name on the list. Within the same time frame, the director must either

1. notify DHHS to expunge the person's name from the list, or
2. uphold or modify the initial determination and refuse the expunction request.

In either case, the director must send a written statement of the decision to the individual by personal delivery or first-class mail. If the decision is to deny the expunction request, the director also must send the individual a written statement of the reasons for the decision; a statement that the decision is final; information about the time within which the individual may seek review of the decision by the district attorney or the court; a second notice like the one sent to the individual initially; and a copy of a petition for expunction form. Within thirty days after receiving notification that a request for expunction has been denied, the individual may request review of the director's decision by the district attorney or file a petition for expunction in the district court. A director's failure to send a written notice within fifteen days operates as a denial of the expunction request, and the individual may seek review by the district attorney or file a petition for expunction.

A request for review by the district attorney (or the district attorney's designee) is made by letter to the attention of the district attorney. The social services director must provide the district attorney with all of the information that was used in reaching the decision to deny the expunction request. The district attorney conducts a review and within thirty days after receiving the request for review must either agree or disagree with the director's determination that substantial evidence supported the director's initial decision. The district attorney must notify the individual and the director of the decision in writing. Failure to make a timely request for review by the district attorney is a waiver of the right to that form of review but does not affect the individual's right to petition the court for expunction.

A person may petition the district court for expunction of his or her name from the responsible individuals list either within thirty days after receiving the director's review decision or within thirty days after the district attorney's decision agreeing with the director's determination, whichever is later. The petition must contain information specified in the statute, and a copy must be delivered in person or by certified mail to the social services director. Failure to file a timely petition constitutes a waiver of the right to file a petition for expunction. Nevertheless, a district court may review a determination of abuse or serious neglect any time, if the review serves the interest of justice or in the case of extraordinary circumstances.

The clerk of superior court is required to maintain a separate docket for expunction actions, to schedule the cases for hearing in a session of district court hearing juvenile cases, and to send the director and the petitioner a notice of hearing. At the request of a party, the court is required to close the hearing to everyone except parties, witnesses, and officers of the court.

At the hearing the social services director has the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or serious neglect and identifying the petitioner as a responsible individual. The rules of evidence in civil cases apply; however, the court has discretion to admit any evidence that is reliable and relevant if doing so will best serve the general purposes of the rules of evidence and the interests of justice. The parties have the right to

- present sworn evidence, law, or rules;
- represent themselves or obtain representation by an attorney at their own expense; and
- subpoena witnesses, cross-examine witnesses, and make closing arguments.

The court must enter its order, making findings of fact and conclusions of law, within thirty days after the hearing. The order may uphold the director's decision or reverse or modify it and order that DHHS be notified to make appropriate changes in the responsible individuals list. A party may appeal the court's decision to the court of appeals.

A person is not entitled to challenge the placement of his or her name on the responsible individuals list if the person

1. is convicted criminally as a result of the same incident. The district attorney must notify the director of the result of the criminal proceeding, and the director must notify DHHS, which must consider the information when determining whether the person's name should remain on

or be expunged from the list. It is not altogether clear how the district attorney is to identify the cases in which he or she must notify the social services director.

2. is a respondent in a juvenile proceeding involving abuse or serious neglect from the same incident. The director must notify DHHS, which must consider the information when determining whether the person's name should remain on or be expunged from the list.
3. fails to make a timely request for expunction to the county social services director.
4. fails to file a timely petition for expunction with the court.
5. fails to keep the department of social services informed of his or her current address during a request for expunction so that the individual may receive notification of the director's decisions.

If before or during an expunction proceeding the individual seeking expunction is named as a respondent in a juvenile proceeding based on the same incident, the expunction proceeding—whether before the director, the district attorney, the district court, or the court of appeals—is stayed until the juvenile proceeding is completed or dismissed. If the juvenile proceeding is dismissed or concluded either without an adjudication or with an adjudication different from the director's determination (for example, neglect instead of abuse), the director must notify DHHS to expunge the individual's name or modify information on the list as appropriate.

The act applies to investigative assessment responses initiated by county social services departments on or after October 1, 2005.

Intensive Family Preservation Services

Section 10.51A of S.L. 2005-276 provides that the Intensive Family Preservation Services (IFPS) Program must provide intensive services to children and families in

1. cases of abuse, neglect, and dependency, where a child is at imminent risk of removal from the home; and
2. cases of abuse, where a child is not at imminent risk of removal.

The program is to be implemented statewide, on a regional basis, and is to use standardized criteria for determining when "imminent risk" of removal exists. The section sets out information and data that DHHS must ensure that participating entities provide. The department must report on the program's implementation by February 1, 2006, to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services.

Other Legislation of Interest to Social Services Agencies and Employees

Certification and Licensure of Social Workers

House Bill 1087 passed the House before the crossover deadline and remains eligible for consideration during the 2006 legislative session. If enacted, this bill would

- define a social worker as a person who is a licensed or certified social worker, who has attained a doctorate in social work or has received a bachelor's or master's degree in social work from an accredited school of social work;
- prohibit persons who are not social workers from holding themselves out to the public as social workers;
- exempt social workers who are not licensed or certified social workers from the academic qualifications of G.S. Chapter 90B if they remain continuously employed in the field of social work in North Carolina; and
- allow a person to hold himself or herself out to the public as a social worker if the person is engaged in the practice of social work while employed by a North Carolina county and is designated as a "county agency social worker."

Criminal Offenses against Social Workers

S.L. 2005-101 (S 507) amends G.S. 15A-1340.16(d)(6) to provide that the commission of an offense that is directed against or that proximately causes serious injury to a social worker is an aggravating factor that may be considered in sentencing an individual who is convicted of that offense. The act applies to offenses committed on or after December 1, 2005.

Department of Health and Human Services Office of Policy and Planning

Section 10.2 of S.L. 2005-276 codifies as G.S. 143B-216.70 previous legislative provisions requiring the DHHS Secretary to establish an Office of Policy and Planning that must coordinate the development of departmental policies, plans, and rules; develop a process for the review and coordination of existing policies, plans, and rules and the development, coordination, and implementation of new policies, plans, and rules; and implement ongoing strategic planning that integrates budget, personnel, and resources with the department's mission and operational goals.

Financial Exploitation of Elderly or Disabled Persons

Effective December 1, 2005, S.L. 2005-272 (H 1466) revises the criminal penalty for financial exploitation of elderly or disabled adults, repealing G.S. 14-32.3(c) and replacing it with G.S. 14-112.2. S.L. 2005-272 is summarized in Chapter 22, "Senior Citizens."

Licensure and Inspection of Adult Care Homes

Section 10.40A(j) of S.L. 2005-276 rewrites the adult care home inspection requirements of G.S. 131D-2(b)(1a). Effective July 1, 2007, adult care homes must be inspected every two years to determine compliance with physical plant and life-safety requirements, in addition to being inspected annually for all other requirements. Effective August 13, 2005, county departments of social services must document in a written report all on-site visits, monitoring visits, and complaint investigations and submit these reports to the DHHS Division of Facility Services (DFS) within twenty working days after each visit. The Division of Facility Services must conduct an annual review of the county departments' performance of their inspection and monitoring responsibilities and provide technical assistance, take corrective action, or, if necessary, assume a county's regulatory responsibilities if a county fails to conduct timely monitoring or fails to identify or document noncompliance with licensure requirements.

Effective July 1, 2006, Section 10.40A(j) of S.L. 2005-276 amends G.S. 131D-2(b)(1a) to require adult care home specialists and supervisors employed by county departments of social services to complete eight hours of prebasic training within 60 days of employment; thirty-two hours of basic training and at least eight hours of complaint investigation training within six months of employment; twenty-four hours of postbasic training within six months of completing basic training; and at least sixteen hours of statewide DFS training annually. Adult care home specialists and supervisors employed on or before July 1, 2006, must complete the required training components by June 1, 2007.

Section 10.40A(p) of S.L. 2005-276 requires the DHHS Division of Aging and Adult Services (DAAS), in consultation with adult care homes, county social services departments, consumer advocates, and other interested stakeholders, to develop a quality improvement consultation program for adult care homes and to submit a progress report regarding the program to the North Carolina Study Commission on Aging and the legislative appropriations committees for health and human services by April 1, 2006. County social services departments will be responsible for implementing the program. The Division of Aging and Adult Services must conduct a pilot of the program in no more than four counties. If DAAS concludes that the pilot program is effective and should be expanded, it must submit its report and recommendations regarding expansion of the program, a proposed timetable for expanding the program, the estimated cost of an expanded program, and necessary statutory and administrative rule changes to the North Carolina Study Commission on Aging and the legislative appropriations committees for health and human services.

Additional provisions of S.L. 2005-276 regarding the licensure and inspection of adult care homes are summarized in Chapter 22, "Senior Citizens."

Child Caring Institutions

Section 10.47 of S.L. 2005-276 requires the Office of the State Auditor to conduct an audit to evaluate overhead rates and reimbursements for child caring institutions that receive state funding and allocates \$150,000 for that purpose. The audit must include, among other things,

1. an evaluation of each institution's cost allocation processes,
2. an examination of other states' rate-setting methodologies,
3. recommendations about how to develop equitable and reasonable rates, and
4. an assessment of the feasibility of allowing child caring institutions to compete based on providing the best service at the least cost.

The Office of the State Auditor must report by May 1, 2006, to the General Assembly's Fiscal Research Division and the legislative appropriations committees for health and human services.

The section also directs DHHS to establish standardized rates for child caring institutions, which would become effective July 1, 2006, and be updated annually on July 1. The rate-setting methodology must incorporate the recommendations of the Office of the State Auditor. Until the standardized rates are set, maximum reimbursements may not exceed the rate established for the specific institution by the DHHS controller.

Smoking Restrictions in County Department of Social Services Offices

Effective July 7, 2005, S.L. 2005-168 (H 1482) allows the adoption of a local ordinance, law, or rule that establishes smoking restrictions that exceed those otherwise allowed under Article 64 of G.S. Chapter 143 with respect to areas in and around the buildings in which county departments of social services are located.

Janet Mason

John L. Saxon

