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State Oversight of County Departments of Social Services: Changes in Session Law 2025-16

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Session Law 2025-16 (HB 612) was signed into law on June 26, 2025. It makes numerous changes related to child welfare, many of which are discussed by my colleague Sara DePasquale in this blog post. Section 1.17.(b) of the new law, entitled "Christal's Law," specifically addresses the relationship between the North Carolina Department of Health and Human Services (NCDHHS) and county departments of social services (DSS), including the extent to which NCDHHS may be held liable for the actions of a county DSS. This post focuses on those changes in the state's oversight authority regarding each county DSS.

Background on the State-County Relationship for Social Services

To understand the impact of Section 1.17.(b), one must first have some context about the unique relationship between state government and counties in North Carolina with respect to the provision of social services. Our state's social services system involves a complex interplay between federal, state, and county government with respect to social services funding, administration, and policymaking. North Carolina has a "county-administered, state-supervised" social services system under which social services programs are *administered* at the local level primarily by county departments of social services. NCDHHS is the state agency responsible for *supervising* the local administration of state and federally funded social services programs, including issuing policies, program manuals, guidance, and forms for use by local social services agencies. A state rulemaking body, the Social Services Commission, is responsible for developing rules for many different social services programs and functions. Both state rules and NCDHHS policies must align with federal requirements for federally funded social services programs. Federal and state funding for social services programs typically flows through NCDHHS to counties, which means NCDHHS is generally responsible for ensuring compliance with federal requirements associated with funding for social services programs.

Practically, this means that when an individual interacts with the social services system in North Carolina—for example, to apply for Food and Nutrition Services, apply to be a foster parent, or report abuse of a child—they are typically interacting with county employees administering programs and services at a county DSS. That county DSS is run by a county director of social

services, governed by a board at the county level, and staffed by county employees who are paid by the county. However, the county DSS receives a significant amount of federal and state funding that flows through NCDHHS, must follow policies and guidance documents developed by NCDHHS, and must report many different types of data about local activities and outcomes to NCDHHS.

The State/County MOU and the Corrective Action Process

One mechanism NCDHHS uses to assure each county DSS's compliance with federal and state requirements is a "Memorandum of Understanding" between the state and the county. Under G.S. 108A-74(a2), the Secretary of NCHHS (Secretary) must require all counties to enter into a written agreement (the MOU) each year, which mandates county performance requirements and administrative responsibilities regarding all social services programs other than Medicaid. The MOU authorizes NCDHHS to withhold state or federal funds if the county fails to satisfy mandated performance requirements or comply with the terms of the MOU or applicable law. The MOUs can be quite detailed and thorough—for example, one FY 2022-2024 MOU between NCDHHS and a county was 35 pages, including 25 pages of performance measures and explanations for those measures.

If a county DSS fails to comply with the terms of the MOU (including its mandated performance measures) or other applicable law, the Secretary and the county DSS must enter into a joint corrective action plan (CAP) within 60 working days. G.S. 108A-74(a2). A CAP is required if the county DSS fails to comply for

- three consecutive months, or
- five months within any consecutive 12-month period for those MOU terms or performance measures that are measured less than annually, or
- two consecutive 12-month periods for those MOU terms or performance measures that are measured on an annual basis.

The Secretary may require a county DSS to enter into a CAP "more quickly in urgent circumstances, regardless of whether the circumstances are directly related to a mandated performance requirement specified in [the MOU]." G.S. 108A-74(a3).

The county board of social services and the county manager must be notified of any joint CAP between NCDHHS and the county DSS. The required components of a CAP are listed at G.S. 108A-74(a4).

If NCDHHS determines that a county DSS has failed to successfully complete the joint CAP, then the Secretary, through the NCDHHS Division of Social Services, must temporarily assume all or part of the DSS's administration of social services, after giving at least 30 days' notice to the board of county commissioners, county DSS, county manager, and county board of social services. G.S. 108A-74(b)-(c). This is sometimes referred to as the state "takeover" process, in which the county DSS director is temporarily divested of service delivery powers for select programs or services and NCDHHS directly takes over operation of those services or programs in the county. G.S. 108A-74(c), (i).

If the county DSS's failure to complete a CAP or comply with applicable law involves child welfare services, NCDHHS can, in some cases, forego the 30 days' notice to the county and act on an emergency basis to assume administration of certain child welfare programs or services in the county. Specifically, if the Secretary determines that (1) a county DSS is not providing child protective, foster care, or adoption services in accordance with state law or fails to demonstrate reasonable efforts to do so, and (2) the failure to provide the services *poses a substantial threat to the safety and welfare of children in the county* who receive or are eligible to receive the services, then the Secretary must ensure the provision of these services through direct local operation by NCDHHS or through contracts with other agencies. G.S. 108A-74(h). Before "taking over" the operation of child welfare services, the Secretary must provide written notification of NCDHHS's intent to assume responsibility for those services to the chair of the county board of commissioners, chair of the county board of social services, and county director of social services, and provide them all with an opportunity to be heard. To date, a NCDHHS "takeover" of child welfare services has happened in four North Carolina counties (Cherokee, Bertie, Nash, and Vance). Joint CAPs have been imposed in other counties where a takeover has not been required.

How Does Section 1.17.(b) Affect the State's Oversight Authority in G.S. 108A-74?

S.L. 2025-16 makes two changes with respect to the NCDHHS-county relationship through a new subsection, G.S. 108A-74(a5), effective June 26, 2025. The new law (1) establishes NCDHHS's right of access to certain county DSS information and (2) effectively limits NCDHHS's potential liability for a county's failure to comply with certain state directives.

Access to Records and Information

The new subsection (a5) clarifies that, except where prohibited by federal law, the NCDHHS Secretary has authority to access all records and information pertaining to any open or closed child welfare case of a county DSS, to inquire into and review any county social work practice, or to inquire into and review the legal practice of a county DSS as it pertains to the delivery of child welfare services for a particular child welfare case or all child welfare cases of a DSS.

This authority may be exercised as part of NCDHHS's regular monitoring of a DSS's performance, or in response to complaints received by NCDHHS. If NCDHHS exercises this authority in response to a complaint, the complaint must regard (1) a juvenile who has been the subject of a report of abuse, neglect, or dependency pursuant to G.S. 7B-301 within the previous 12 months; or (2) a case in which the juvenile or the juvenile's family was a recipient of child welfare services within the previous 12 months. There is no time limitation on access to DSS records or information about cases (relative to when a report or services occurred) if NCDHHS is exercising this authority as part of its routine monitoring of a DSS's performance.

In many situations, county departments already had authority to disclose confidential child welfare information to NCDHHS pursuant to G.S. 7B-302(a1)(1) and 10A NCAC 70A .0113. However, this new statutory subsection more explicitly clarifies that a county DSS must (1) disclose such information upon request to NCDHHS, unless prohibited by federal law, and (2) provide information upon request to NCDHHS regarding its social work practices and legal practices with respect to child welfare cases.

Limitation on State Liability for County Actions

The new G.S. 108A-74(a5) establishes that if the Secretary finds violations of state law or applicable rules occurring in any specific social services case or cases, the Secretary must provide the county DSS director with (1) written notice of the violations, (2) a directive to remedy the violations in accordance with applicable statutes or rules, and (3) the timeframe in which the violations must be remedied. If the violations are not remedied by the county DSS director within the timeframe specified in the notice, the Secretary must notify the board of county commissioners, county manager, and board of social services of the violations, while also directing the DSS director to "remedy the violation by taking immediate action in a manner prescribed by the Secretary that is consistent with State law and applicable rules." This might happen during a CAP process or may occur independent of a CAP process (for example, in response to an individual complaint or something NCDHHS discovers during routine monitoring of the county DSS).

The new subsection (a5) then goes on to state that if a county DSS director fails to comply with a directive of the Secretary made pursuant to (a5), such failure "falls outside the scope of the county department's agency relationship with [NCDHHS]." Accordingly, the statute provides that NCDHHS "shall not be liable for any claim that may arise from the county DSS director's failure to comply with any law or rule identified by the Secretary pursuant to [subsection (a5)]."

Some readers may wonder, "How could a state agency (NCDHHS) be liable for the actions of a county DSS?" The answer is through the State Tort Claims Act (STCA). The STCA (G.S. Chapter 143, Article 31) allows individuals to bring lawsuits based on claims that "arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where

the State of North Carolina, if a private person, would be liable to the claimant." G.S. 143-291(a). Without the STCA, state agencies would generally be immune from such negligence lawsuits. Under the doctrine of sovereign immunity, the state of North Carolina is protected from liability for torts committed by state employees and officers, except to the extent that the state intentionally waives immunity or consents to be sued.

Through enacting the STCA, the North Carolina General Assembly has "partially waived [the State's] sovereign immunity by consenting to direct suits brought as a result of negligent acts committed by its employees in the course of their employment." *Cedarbrook Residential Ctr., Inc. v. N.C. Dep't of Health & Hum. Servs.*, 383 N.C. 31, 45 (2022). Lawsuits brought under the STCA must be filed with the North Carolina Industrial Commission. G.S. 143-291. The maximum amount the state may pay out based on injury and damages to any one person arising out of any one occurrence is capped at $1 million. G.S. 143-299.2.

County DSS directors and staff are not state employees. They are not employed by NCDHHS. However, by law, each county DSS director acts as an "agent of the Social Services Commission and Department of Health and Human Services in relation to work required by the Social Services Commission and Department of Health and Human Services in the county." G.S. 108A-14(a)(5). In other words, where state law mandates that a county DSS deliver certain programs and services, the DSS director acts as an agent of NCDHHS when carrying out that mandated work in the county. The DSS director also has authority to delegate duties involved in this mandated work to DSS employees. G.S. 108A-14(b). This agency relationship means that an individual who is harmed by the alleged negligence of a county DSS may bring a claim against NCDHHS in the Industrial Commission under the STCA, *even if* NCDHHS was not involved in causing the alleged harm. As a result of this agency relationship, NCDHHS can be held liable (up to $1 million) under the STCA based solely on actions taken by a county DSS.

A plaintiff can sue a county directly in state superior court or federal district court (depending on the claims involved) for the negligent actions of a county DSS. So why, with respect to that same negligence claim, would a plaintiff choose to sue NCDHHS under the STCA instead? One key reason is that if a plaintiff sues the county for alleged negligence, the county may be shielded from liability by governmental immunity, unless it has waived such immunity (for example, through the purchase of insurance). *See* G.S. 153A-435. This means that in many cases, a plaintiff harmed by the actions of a county DSS may not be able to recover anything from a county on a negligence claim, unless the plaintiff can bring *other* claims against the county that are not blocked by governmental immunity (e.g. violations of statutory or constitutional rights). If the same plaintiff were to sue NCDHHS in the Industrial Commission under the STCA, the state has waived its immunity to such negligence claims and authorized a potential recovery of up to $1 million, so long as the plaintiff can show that the DSS director and/or staff were acting as agents of the state when performing the actions underlying the lawsuit.

Now, under the new G.S. 108A-74(a5), if NCDHHS notifies a county DSS director that DSS is violating the law and the DSS director fails to correct those violations within the timeframe set by NCDHHS, then NCDHHS will not be liable for legal claims under the STCA based on those violations because the DSS director is acting outside of the county DSS's agency relationship with the state.

What Does This Change Mean for Counties?

Does this change to the law have any impact on the potential liability of a county or a county DSS director? Arguably no. G.S. 108A-74(a5) explicitly states that it "shall not be construed to waive, modify, or eliminate any immunity or other legal defenses that would otherwise be available to the county, director, or any other county official or employee." In other words, even if a DSS director is acting outside of the scope of the county DSS's agency relationship with NCDHHS, such that it relieves NCDHHS of liability for the county's actions under the new law, that does not automatically eliminate any affirmative defense of governmental immunity available to the county or public official immunity available to the DSS director or other DSS staff.

Nonetheless, counties should be aware that if a DSS director continues to violate state or federal law *after being explicitly warned to correct such violations*, that behavior (independent of these new changes to G.S. 108A-74) may constitute grounds for a claim that would not qualify for governmental immunity for the county or public official immunity for the director. For example, governmental immunity may protect a county from tort claims alleging negligence but would not shield the county from claims alleging a willful violation of statutory or constitutional rights. A DSS director will not qualify for public official immunity (for claims brought against the director in her individual capacity) if the director's conduct was malicious, corrupt, or outside the scope of the director's official authority. See *Hunter v. Transylvania Cty. Dep't of Soc. Servs*., 207 N.C. App. 735, 737 (2010). Moreover, for a Section 1983 claim alleging that DSS violated a plaintiff's rights under the U.S. Constitution, the director and their staff will not be protected by qualified immunity if they violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity does not protect "the plainly incompetent or *those who knowingly violate the law*." *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (emphasis added). And if the violations of law at issue rise to the level of criminal conduct, there is no immunity available that shields the DSS director or staff if faced with a criminal charge.

Whether or not a county (or individual county official or employee) will be shielded by some type of immunity will depend on the nature of the claim and the facts of the case. But the availability of that immunity—and any other defenses available to the county or its employees—should not be altered by NCDHHS's new protection against liability in G.S. 108A-74(a5).

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