

1431 Elizabeth Avenue, Charlotte, NC 28204
 Telephone: 704.971.2622 □ Fax: 704.376.8627
 www.lssp.org

Douglas Sea □ DougS@lssp.org □ direct dial 704.971.2593

Client Help Lines
 Mecklenburg County 704.376.1600
 Outside Mecklenburg County 800.438.1254
 Spanish Language Line 800.247.1931



NC Justice Center

224 S. Dawson St. / Raleigh, NC
 27611-8068 (919)856-2570 voice /
 (919)856-2175 fax
 www.ncjustice.org

October 14, 2014

Members of the N.C. Rules Review Commission
 1711 New Hope Church Road
 Raleigh, N.C. 27609

RE: **Proposed Temporary Rule 10A NCAC 71W .0905**

Dear Members of the Commission:

Legal Services of Southern Piedmont is a non-profit legal aid organization. The N.C. Justice Center is a non-profit advocacy organization. We both represent applicants for and recipients of Work First Family Assistance. On their behalf, this letter requests that you exercise your authority to require changes to the temporary rule found at 10A NCAC 71W .0905. This temporary rule should be modified for the following reasons:

- (1) The rule is not clear and unambiguous as required by G. S. 150B-21.9(a) (2);
- (2) The rule exceeds the agency's authority under the enabling statute. See G.S. 150B-9(a)(1).

Members of the N.C. Rules Review Commission
 October 14, 2014
 Page Two

Specific Concerns:

1. Section (a) of the rule states that "drug screening" will be required of "all applicants and recipients." However, G.S. 108A-29.1(a) permits the Department to "screen" only applicants and recipients whom the Department reasonably suspects to be engaged in illegal drug use. The rule thus exceeds the agency's authority under the enabling statute.
2. Section (b) of the rule states that reasonable suspicion shall be established through one of three different methods but is unclear and ambiguous as to at least three different issues:
 - (A) What result for any of the three methods is sufficient or mandated to establish reasonable suspicion;
 - (B) How to measure the likelihood, frequency, or recentness of drug use in determining whether there is reasonable suspicion of ongoing use; and
 - (C) Whether information from all three methods is required to be gathered and weighed together in determining whether there is reasonable suspicion of ongoing use.

Without clearer direction on the critical issue of how to determine reasonable suspicion, each county Department of Social Services (DSS) or even each individual DSS case worker will have unreasonably broad discretion to decide how to interpret this language, which causes the rule to fatally ambiguous.


3. The proposed rule provides direction only to county DSS directors, ignoring entirely the statutory directive that the provisions of the statute are to be administered by area Mental Health authorities. G.S. 108A-29.1(e). The rule thus exceeds the agency's authority under the enabling statute.

Conclusion:

The proposed rule is not clear and unambiguous. The proposed rule exceeds the agency's authority under the statute. For these reasons, the Commission should exercise its authority to oppose this proposed temporary rule.

Thank you in advance for your careful consideration of these comments. Please let us know if additional information is needed.

Sincerely,


 Douglas Sea
 Attorney
 Legal Services of Southern Piedmont


 William Rowe
 Attorney
 N.C. Justice Center

Cc; Abigail Hammond, Staff Counsel
 Glenda Pearce, Rules Coordinator, Division of Social Services