



TEMPORARY RULE-MAKING

FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

*1

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Social Services Commission			
2. Rule citation & name: 10A NCAC 71W .0905- Drug Testing			
3. Action:	Adoption	Amendment	Repeal
4. Was this an Emergency Rule: Yes		Effective date:	
No			
5. Provide dates for the following actions as applicable:			
a. Proposed Temporary Rule submitted to OAH: 08/22/2014			
b. Proposed Temporary Rule published on the OAH website: 08/29/2014			
c. Public Hearing date: 09/05/2014			
d. Comment Period: From 08/29/2014 to 09/22/2014			
e. Notice pursuant to G.S. 150B-21.1(a3)(2): The effective date of a recent act of the General Assembly.			
f. Adoption by agency on: 10/10/2014			
g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B-21.1(b) and G.S. 150B-21.3]: <u>Proposed effective date of temporary rule is within G.S. 150B- 21.1(b) and G.S. 150B-21.3 guidelines.</u>			
h. Rule approved by RRC as a permanent rule: Not at this time, permanent rule will promulgated following the adoption of the temporary rule.			
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.			
A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the <u>General Assembly</u> or of the U.S. Congress. Cite: NC GA Session Law <u>2014-115</u> Effective date:			
A recent change in federal or state budgetary policy. Effective date of change:			
A recent federal regulation. Cite: Effective date:			
A recent court order. Cite order: State Medical Facilities Plan. Other:			
Explain:			

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The Division of Social Services adhered to the notice and hearing requirements for the adoption of the rule. The rules were published to the Office of Administrative Hearings website on August 29, 2014. The Public Hearing was held on September 5, 2014. Comment period began August 29, 2014 and ended on September 22, 2014.

Session Law 2014-115 requires the adoption of rules for implementation of Session Law 2013-417, HB 392, Part II, Section 4 no later than October 31, 2014.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Glenda Pearce

Phone: 919-527-6425

E-Mail: Glenda.Pearce@dhhs.nc.gov

Agency contact, if any: **David Locklear**

Phone: 919-527-6311

E-Mail: David.Locklear@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: **Larry Potts**

Title: **Chair of the North Social Services Commission**

Action taken:

Submitted for RRC Review:

Date returned to agency:

Temporary Rule 0500 - 02/01/08

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC Social Services Commission

RULE CITATION: 10A NCAC 71W .0905

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

It is staff's recommendation that the Rules Review Commission object to the temporary rule filed by the Social Services Commission, as the rule adopted and filed by the Social Services Commission is a substantial restatement of Session Law 2013-417 and is therefore not reasonably necessary to implement or interpret an enactment of the General Assembly.

Standard of review for temporary rules:

G.S. 150B-21.1 states the following:

(b) Review. - When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff

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Commission Counsel

member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

Prong 1 for a Temporary Rule – Social Services Commission has the need for temporary rules:

The Social Services Commission's statement does meet the criteria listed in subsection (a) of G.S. 150B-21.1. Section 5 of Session Law 2013-417 states the following:

The Social Services Commission shall adopt rules implementing this act. The Social Services Commission may issue temporary rules, in addition to its permanent rule-making authority, to enforce this act. Rules for the implementation of Section 4 of this act shall be adopted no later than February 1, 2014.

Subsequent legislation extended the February 1, 2014 date. Section 66.(a) of Session Law 2014-115 states the following:

"SECTION 5. The Social Services Commission shall adopt rules implementing this act. The Social Services Commission ~~may~~shall issue temporary rules, in addition to its permanent rule-making authority, to enforce this act. Rules for the implementation of Section 4 of this act shall be adopted no later than ~~February 1, 2014~~October 31, 2014. The Department of Health and Human Services shall continue the substance abuse screening processes in place as of January 1, 2014, for applicants and recipients of Work First Program benefits until Section 4 of this act is fully implemented. The Department shall notify each county department of social services and the General Assembly of the date of full implementation of Section 4 of this act."

Pursuant to the recent legislative act, the Social Services Commission does meet the criteria listed in subsection (a) of G.S. 150B-21.1(a):

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(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

- (2) The effective date of a recent act of the General Assembly or the United States Congress.

...

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.

Prong 2 for a Temporary Rule – Rule adopted by Social Services Commission does not comply with G.S. 150B-21.9:

After it is determined that an agency satisfies the criteria set forth in G.S. 150B-21.1(a), the Rules Review Commission determines if the rule satisfies the standards set forth in G.S. 150B-21.9. G.S. 150B-21.9 states the following:

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

Under Prong 2 for a Temporary Rule, the Rule adopted by Social Services Commission is not reasonably necessary to implement or interpret an enactment of the General Assembly. See G.S. 150B-21.9(a)(3):

Staff has reviewed the Rule, 10A NCAC 71W .0905, and Session Law 2013-417. Based upon the review, staff is of the opinion that the Social Services Commission has adopted a rule that is a substantial restatement of the statute. Staff has prepared a document to help illustrate the duplicative content of the rule and the statute. The document is laid out as follows: (1) the rule language on the top of the page; (2) the corresponding statutory language in the middle of the page; and (3) a side-by-side comparison at the bottom of the page, and continuing onto the next page, as is necessary.

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Commission Counsel

Staff acknowledges that all language within the Rule is not a substantial restatement of the statute. The following language is unique to the Rule:

- (c) ...The drug test shall ~~will~~ identify the following illegal use and/or controlled substances:
- (a) cannabinoids;
 - (b) cocaine;
 - (c) methamphetamines/Amphetamines;
 - (d) opiates; and
 - (e) phencyclidine.

A significant portion of 10A NAC 71W .0905 is not reasonably necessary to implement or interpret an enactment of the General Assembly, and therefore the Rules Review Commission should find that this rule does not meet the standards in G.S. 150B-21.9(a)(3).

Under Prong 2 for a Temporary Rule, the Rule adopted by Social Services Commission is either not within the statutory authority of the agency or is unclear and ambiguous. See G.S. 150B-21.9(a)(2):

Paragraph (a) of the Rule states the following:

- (a) The county director shall require drug screening of all applicants and recipients, . and testing if there is reasonable suspicion that an applicant or recipient individual is engaged in the illegal use of controlled substances, ~~will be conducted~~ as a condition of eligibility for receiving Work First Program assistance, subject to the exemptions in G.S.108A-29.1(a) and (h).

This sentence of the Rule requires screening of all applicants and recipients of Work First Program assistance. The statutory mandate is as follows:

§ 108A-29.1. (Effective August 1, 2014) Drug screening and testing for Work First Program applicants and recipients.

- (a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances.

The first clause of the Rule, stating “[t]he county director shall require drug screening of all applicants and recipients” is a clear expansion of the statutory directive. The reminder of the sentence helps to clarify when the testing occurs, but the first clause appears to indicate that all applicants and recipients shall be screened. Staff counsel is uncertain of the distinction between “screening” and “testing,” but

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suggests that the Rules Review Commission should find that this Rule does not meet the standards in G.S. 150B-21.9(a)(2).

Summary:

It is staff's recommendation that the Rules Review Commission should object to the temporary rule filed by the Social Services Commission s.

Paragraph (a) of the rule says:

(a) The county director shall require drug screening of all applicants and recipients, and testing if there is reasonable suspicion that an applicant or recipient individual is engaged in the illegal use of controlled substances, will be conducted as a condition of eligibility for receiving Work First Program assistance, subject to the exemptions in G.S.108A-29.1(a) and (h). The county director shall require that each applicant or recipient shall receive a written notice, developed by the Division of Social Services, about drug screening and testing. ~~, when there is a reasonable suspicion is a condition of eligibility for Work First Program Assistance.~~

The statute says:

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement.

Comparison:

Rule Language	Statute Language
<u>The county director shall require drug screening of all applicants and recipients, and testing if there is reasonable suspicion that an applicant or recipient individual is engaged in the illegal use of controlled substances,</u>	(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances.
<u>The county director shall require that each applicant or recipient shall receive a written notice, developed by the Division of Social Services, about drug screening and testing.</u>	(a) ...The Department shall provide notice of drug testing to each applicant or recipient.

Paragraph (b) of the rule says:

(d) (b) Reasonable suspicion ~~may~~ shall only be established by utilizing the following methods:

- (1) A criminal record check conducted under G.S. 114-19.34; ~~that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.~~
- (2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine; ~~or that an individual is addicted to illegal controlled substances.~~
- (3) ~~A screening tool~~ The Drug Abuse Screening Test (DAST) relating to the abuse of ~~illegal controlled substances.~~ that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.
- (4) Other screening methods, as determined by the Department.

The statute says:

(g) For the purposes of this section, reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:

- (1) A criminal record check conducted under G.S. 114-19.34 that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.
- (2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.
- (3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.
- (4) Other screening methods, as determined by the Social Services Commission under subsection (d) of this section.

Comparison:

Rule Language	Statute Language
Reasonable suspicion may <u>shall only</u> be established by utilizing the following methods:	(g)...reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:
A criminal record check conducted under G.S. 114-	(1) A criminal record check conducted under G.S.

19.34;	114-19.34
A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine; <u>or</u>	(2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.
A screening tool <u>The Drug Abuse Screening Test (DAST)</u> relating to the abuse of illegal controlled substances.	(3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.

Paragraph (c) of the rule says:

~~(b)~~ (c) The county director shall require a basic five panel drug test for applicants and recipients of Work First Family Assistance where there is a reasonable suspicion the applicant or recipient individual is engaged in the illegal use of controlled substances. ~~will be required.~~ The drug test ~~shall~~ will identify the following illegal use and/or controlled substances:

- (a) cannabinoids;
- (b) cocaine;
- (c) methamphetamines/Amphetamines;
- (d) opiates; and
- (e) phencyclidine.

~~(2) The results of drug tests will remain confidential and will not be released to law enforcement.~~

~~(e) All applicants or recipients who are included in the financial assistance unit, including both parents in two-parent households and any teen parent who is emancipated pursuant to Article 35 of Chapter 7B, shall comply with the requirements of this rule. The following are exempt from drug testing and screening:~~

- ~~(1) Child Only cases~~
- ~~(2) Dependent children under the age of 18.~~

~~(e) Each applicant or recipient shall receive written notice that drug screening and testing is a condition of eligibility for Work First Program assistance.~~

The statute says:

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement.

Comparison:

Rule Language	Statute Language
drug test for applicants and recipients of Work First Family Assistance where there is a reasonable suspicion the applicant or recipient individual is engaged in the illegal use of controlled substances.	(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances.

Paragraphs (d) and (e) of the rule says:

~~(f)(g)(d)~~ The county director shall require that each applicant or recipient being tested shall sign a written acknowledgment that he or she has received and understood the drug testing notice in accordance with provisions 108-29.1A and advice developed by the Division of Social Services. The county director shall require that each applicant or recipient shall be advised before drug testing he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.

~~(h)(e)~~ The county director shall advise each applicant or recipient who tests positive for an illegal use of controlled substance or illegal use of a controlled substance shall be advised that he or she has the right to take one or more additional tests at the applicant's or recipient's expense.

~~(1) at;~~

~~———— (2) at a testing facility approved by the Department or county department of social services and~~

~~———— (3) within seven days of the applicant or recipient receiving notice of the results of the original drug test.~~

The statute says:

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances.

... The Department shall require the following:

...

(3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.

(5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.

...

Comparison:

Rule Language	Statute Language
The county director shall require that each applicant or recipient being tested shall sign a written acknowledgment that he or she has received and understood the drug testing notice in accordance with provisions 108-29.1A	(a)...The Department shall require the following: (4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.

<p><u>The county director shall require that</u> each applicant or recipient shall be advised before drug testing he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.</p>	<p>(a)...The Department shall require the following: (3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.</p>
<p><u>The county director shall advise</u> each applicant or recipient who tests positive for an illegal use of controlled substance or illegal use of a controlled substance shall be advised that he or she has the right to take one or more additional tests at the applicant's or recipient's expense.</p>	<p>(a)...The Department shall require the following: (5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.</p>

Paragraph (f) of the rule says:

~~(f)~~ The county director shall require that each applicant or recipient who tests positive for an illegal controlled substance or illegal use of a controlled substance shall:

~~(1) be provided with receive~~ information regarding substance abuse, substance abuse counseling and substance abuse treatment options; ~~including a list of substance abuse treatment programs that may be available to the individual.~~

~~(2) be ineligible to receive Work First benefits subject to the reinstatement provisions in G.S. 108A-29.1~~

~~(b) (b1) and (b2). for one year from the date of the positive drug test. The individual shall be eligible after one year.~~

The statute says:

(a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. ... The Department shall require the following:

...

(6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

(b) An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) or (b2) of this section.

Comparison:

Rule Language	Statute Language
The county director shall require that each applicant or recipient who tests positive for an illegal controlled substance or illegal use of a controlled substance shall: (1) be provided with receive information regarding substance abuse, substance abuse counseling and substance abuse treatment options;	(a)...The Department shall require the following: (6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

<p><u>The county director shall require that</u> each applicant or recipient who tests positive for an illegal controlled substance or illegal use of a controlled substance shall:</p> <p>...</p> <p><u>(2) be ineligible to receive Work First benefits subject to the reinstatement provisions in G.S. 108A-29.1 (b) (b1) and (b2).</u></p>	<p>(b) An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section.</p>
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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-417
HOUSE BILL 392**

AN ACT REQUIRING A COUNTY DEPARTMENT OF SOCIAL SERVICES (DSS) TO VERIFY WHETHER AN APPLICANT FOR OR RECIPIENT OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BENEFITS OR FOOD AND NUTRITION SERVICES (FNS) BENEFITS IS A FLEEING FELON OR A PROBATION OR PAROLE VIOLATOR, TO DIRECT INTERAGENCY COOPERATION AND INFORMATION SHARING IN ORDER TO VERIFY THE ELIGIBILITY STATUS OF AN APPLICANT OR RECIPIENT, TO DENY TANF OR FNS BENEFITS TO AN APPLICANT OR RECIPIENT WHO IS A FLEEING FELON OR A PROBATION OR PAROLE VIOLATOR, AND TO REQUIRE DRUG SCREENING AND TESTING FOR CERTAIN APPLICANTS AND RECIPIENTS OF WORK FIRST PROGRAM ASSISTANCE.

Whereas, federal law, specifically 42 U.S.C. § 601, et seq., requires that states receiving funds under certain federal grant programs shall not use any part of the grant to provide assistance to any individual who is (i) fleeing to avoid prosecution, custody, or confinement after conviction under the laws of the place from which the individual flees, for a crime or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or (ii) violating a condition of probation or parole imposed under federal or state law; and

Whereas, states receiving these federal grant funds are authorized under federal law to establish safeguards against the use or disclosure of information about applicants or recipients for assistance under the state program funded under federal law; and

Whereas, federal law expressly authorizes the state agency administering the program to furnish a federal, state, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the applicant or recipient under specified circumstances; and

Whereas, conducting a criminal background check on applicants for or recipients of public assistance benefits is necessary in order to ensure compliance with federal laws prohibiting a fleeing felon or probation or parole violator from receiving public assistance benefits; and

Whereas, the apprehension of individuals by law enforcement may be necessary to protect and safeguard the public; and

Whereas, state agencies administering the program may have or receive information that is necessary for a law enforcement agency to conduct the official duties of the agency, and the location or apprehension of the applicant or recipient is within a law enforcement agency's official duties; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHARE ARREST WARRANT STATUS OF APPLICANTS FOR PUBLIC ASSISTANCE

SECTION 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-26.1. Information sharing of outstanding arrest warrant of applicant for or recipient of program assistance.

(a) A county department of social services shall notify an applicant for program assistance under Part 2 or Part 5 of this Article that release of confidential information from the



applicant's records may not be protected if there exists an outstanding warrant for arrest against the applicant. A county department of social services shall notify a recipient under a program of public assistance under Part 2 or Part 5 of this Article at the time of renewal of the recipient's application for such program assistance that release of confidential information from the recipient's records may not be protected if there exists an outstanding warrant for arrest against the recipient.

(b) Notwithstanding G.S. 108A-80, and to the extent otherwise allowed by federal and State law, a county department of social services shall ensure that the criminal history of an applicant, or of a recipient at the time of benefits renewal, is checked in a manner and to the extent necessary to verify whether an applicant for or recipient of program assistance under Part 2 or Part 5 of this Article is (i) fleeing to avoid prosecution, custody, or confinement after conviction under the laws of the place from which the individual flees, for a crime or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or (ii) violating a condition of probation or parole imposed under federal or State law.

(1) A criminal history check utilizing currently accessible databases shall be conducted by the county department of social services, subject to G.S. 114-19.34 and to the extent permitted by allocated county and State resources.

(2) Nothing in this section requires fingerprints to be taken of every applicant for or recipient of a program of public assistance.

(3) Counties are not required to allocate funds to comply with this section but are authorized to make such allocations on a voluntary basis.

(c) Nothing in this section shall be construed to authorize the disclosure of any information otherwise protected by State or federal law or regulation.

(d) This section applies to applicants for or recipients of program assistance under Part 2 or Part 5 of this Article only.

(e) The Social Services Commission shall adopt any rules necessary to implement this section, including rules addressing the sharing of confidential information between county departments of social services and law enforcement agencies.

(f) The Secretary of the Department of Health and Human Services shall promote cooperation among State and local agencies to perform the functions described in this section. The Department of Health and Human Services shall cooperate and collaborate with the Office of the State Controller, the Administrative Office of the Courts, the Department of Justice, the State Bureau of Investigation, and the Department of Public Safety to develop protocols to implement this section.

(g) Annually on April 1, each county department of social services shall report to the Department of Health and Human Services on the number of individuals who are denied benefits under this section during the preceding calendar year.

(h) Annually on May 1, the Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Health and Human Services of the General Assembly on the number of individuals who are denied assistance under this section. The report shall include a breakdown by county."

SECTION 2. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-26.2. Fleeing felon or parole or probation violator; eligibility for program assistance; federal approval; review by department.

(a) Subject to subsection (b) of this section, a department of social services shall not grant public assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General Statutes if the department receives information described in G.S. 108A-26.1 that the applicant for or recipient of program assistance is subject to arrest under an outstanding warrant arising from a charge of violating conditions of parole or probation or from a felony charge against that applicant or recipient in any jurisdiction. This section does not affect the eligibility for assistance of other members of the applicant's or recipient's household. An applicant or recipient described in this section is eligible for program assistance if all other eligibility criteria of the law are met when the applicant or recipient is no longer subject to arrest under an outstanding warrant as described in this section.

(b) If federal approval is required in order to prevent the loss of federal reimbursement as a result of the application of this section to an applicant for or recipient of program

assistance, the Department of Health and Human Services shall promptly take any action necessary to obtain federal approval."

SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.34. Criminal record checks of applicants and recipients of programs of public assistance.

(a) Upon receipt of a request from a county department of social services pursuant to G.S. 108A-26.1, the Department of Justice shall, to the extent allowed by federal law, provide to the county department of social services the criminal history from the State or National Repositories of Criminal Histories of an applicant for, or recipient of, program assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General Statutes.

(b) The county department of social services shall provide to the Department of Justice, along with the request, any information required by the Department of Justice and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of any necessary identifying information required by the State or National Repositories. The county department of social services shall keep all information pursuant to this section confidential and privileged, except as provided in G.S. 108A-26.1.

(c) The Department of Justice may charge a reasonable fee only for conducting the checks of the criminal history records authorized by this section."

PART II. DRUG SCREENING AND TESTING FOR WORK FIRST PROGRAM ASSISTANCE

SECTION 4. G.S. 108A-29.1 reads as rewritten:

"§ 108A-29.1. Substance abuse treatment required; drug screening and testing for Work First Program applicants and recipients.

(a) Each applicant or current recipient of Work First Program benefits, determined by a Qualified Professional in Substance Abuse (QPSA) or by a physician certified by the American Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services shall be required, as part of the person's MRA and as a condition to receiving Work First Program benefits, to participate satisfactorily in an individualized plan of treatment in an appropriate treatment program. As a mandatory program component of participation in an addiction treatment program, each applicant or current recipient shall be required to submit to an approved, reliable, and professionally administered regimen of testing for presence of alcohol or drugs, without advance notice, during and after participation, in accordance with the addiction treatment program's individualized plan of treatment, follow-up, and continuing care services for the applicant or current recipient. The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement. Dependent children under the age of 18 are exempt from the requirements of this section. The Department shall require the following:

- (1) That for two-parent households, both parents comply with the requirements of this section.
- (2) That any teen parent who is emancipated pursuant to Article 35 of Chapter 7B of the General Statutes complies with the requirements of this section.
- (3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.
- (4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.
- (5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.

(6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

(b) An applicant or current recipient who fails to comply with any requirement imposed pursuant to this section shall not be eligible for benefits or shall be subject to the termination of benefits, but shall be considered to be receiving benefits for purposes of determining eligibility for medical assistance. An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) or (b2) of this section.

(b1) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if the individual can document either the successful completion of or the current satisfactory participation in a substance abuse treatment program offered by a provider under subsection (e) of this section and licensed by the Department. The applicant or recipient who reapplies for Work First Program assistance after successful completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program provided under this subsection shall be the responsibility of the individual being tested and receiving treatment. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(b2) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine determines a substance abuse program is not appropriate for the individual and that individual has passed a subsequent drug test. The cost of any drug testing provided under this subsection shall be the responsibility of the individual being tested. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(c) The children of any applicant or current recipient shall remain eligible for benefits, and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.

(d) ~~An applicant or current recipient shall not be regarded as failing to comply with the requirements of this section if an appropriate drug or alcohol treatment program is unavailable.~~ The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section. The Social Services Commission shall adopt rules pertaining to the successful completion of, or the satisfactory participation in, a substance abuse treatment program under subsection (b1) of this section, including rules regarding timely reporting of completion of or participation in the substance abuse treatment programs.

(e) Area mental health authorities organized pursuant to Article 4 of Chapter 122C of the General Statutes shall be responsible for administering the provisions of this section.

(f) ~~The requirements of this section may be waived or modified as necessary in the case of individual applicants or recipients to the degree necessary to comply with Medicaid eligibility provisions.~~

(g) For the purposes of this section, reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:

- (1) A criminal record check conducted under G.S. 114-19.34 that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.
- (2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.
- (3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.

(4) Other screening methods, as determined by the Social Services Commission under subsection (d) of this section.

(h) Child only cases shall be exempt from the requirements of this section."

SECTION 5. The Social Services Commission shall adopt rules implementing this act. The Social Services Commission may issue temporary rules, in addition to its permanent rule-making authority, to enforce this act. Rules for the implementation of Section 4 of this act shall be adopted no later than February 1, 2014.

SECTION 6. The Department of Health and Human Services shall report to the General Assembly no later than April 1, 2014, on the implementation of Section 4 of this act.

PART III. EFFECTIVE DATE AND SEVERABILITY

SECTION 7. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 8. Section 4 of this act becomes effective August 1, 2014. The remainder of this act becomes effective October 1, 2013.

In the General Assembly read three times and ratified this the 26th day of July, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

VETO Pat McCrory
Governor

Became law notwithstanding the objections of the Governor at 9:17 a.m. this 4th day of September, 2013.

s/ Sarah Lang
Senate Principal Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2014-115
HOUSE BILL 1133**

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AND THE SESSION LAWS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE ADDITIONAL TECHNICAL AND OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. Subsection (c) of G.S. 1A-1, Rule 59, is rewritten to read:

"(c) Time for serving affidavits. – When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 30 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits."

SECTION 2. G.S. 15-11.2 reads as rewritten:

"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

- (1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.
- (2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.
- (3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

(c) Repealed by Session Laws 2013-158, s. 2, effective September 1, 2013, and applicable to any firearm found or received by a local law enforcement agency on or after that date and to any judicial order for the disposition of any firearm on or after that date.

(d) Disposition of Unclaimed Firearm. – If the firearm remains unclaimed for a period of 30 days after the publication of the notice, then the head or chief of the law enforcement agency shall order the disposition of the firearm in one of the following ways:

- (1) By having the firearm destroyed if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification and will not be disposed of pursuant to subdivision (3) of this subsection. The head or chief of the law enforcement agency shall maintain a record of the destruction of the firearm.
- (2) By sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws or by



applicable school located within the participating school administrative unit shall diligently inquire into the matter and bring it to the attention of an appropriate court, depending on the age of the student. The court shall proceed to find whether as a matter of fact the student is unable to attend the school or such parents, or persons standing in loco parentis, are unable to send the student to school for the term of compulsory attendance for the reasons given. If the court finds, after careful investigation, that the student or the parents have made or are making a bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, the student is unable to attend school, then the court shall find and state what help is needed for the student or family to enable compliance with the attendance requirements under the pilot program.

"SECTION 8.49.(b) Each local school administrative unit may use any funds available to it to implement the pilot program in accordance with this section to (i) employ up to three additional teachers and (ii) fund additional student-related costs, such as transportation and technology costs, including additional computers, to serve a greater number of students as a result of the pilot program. Each local school administrative unit may also use any funds available to it to operate a night school program for students at risk of dropping out of high school. To the extent possible, the local school administrative units shall partner with Catawba Valley Community College in administering the pilot program.

"SECTION 8.49.(c) The local school administrative units, in collaboration with the State Board of Education, shall report to the Joint Legislative Education Oversight Committee, the House Appropriations Subcommittee on Education, and the Senate Appropriations Committee on Education/Higher Education on or before ~~January 1, 2016~~ January 15, 2016. The report shall include at least all of the following information:

- (1) An analysis of the graduation rate in each local school administrative unit and the impact of the pilot program on the graduation rate.
- (2) The teen crime statistics for Catawba County.
- (3) The number of reported cases of violations of compulsory attendance laws in Catawba County and the disposition of those cases.
- (3a) Implementation of enforcement mechanisms for violations of the compulsory attendance requirements of the pilot program, including the imposition of criminal penalties.
- (4) The number of at-risk students served in any night programs established as part of the pilot program and student graduation and performance outcomes for those students.
- (5) All relevant data to assist in determining the effectiveness of the program and specific legislative recommendations, including the continuation, modification, or expansion of the program statewide.

"SECTION 8.49.(d) The State Board of Education shall not authorize a pilot program under subsection (a) of this section except upon receipt of a copy of a joint resolution adopted by the boards of education for the Hickory Public Schools and the Newton-Conover City Schools setting forth a date to begin establishment and implementation of the pilot program."

SECTION 65. Section 9.6(k) of S.L. 2013-360 reads as rewritten:

"SECTION 9.6.(k) Subsections (c) and (d) of this section become effective July 1, 2014, and apply to all employees employed as of that date and employees hired or reemployed on or after that date."

SECTION 66.(a) Section 5 of S.L. 2013-417 reads as rewritten:

"SECTION 5. The Social Services Commission shall adopt rules implementing this act. The Social Services Commission may shall issue temporary rules, in addition to its permanent rule-making authority, to enforce this act. Rules for the implementation of Section 4 of this act shall be adopted no later than February 1, 2014. October 31, 2014. The Department of Health and Human Services shall continue the substance abuse screening processes in place as of January 1, 2014, for applicants and recipients of Work First Program benefits until Section 4 of this act is fully implemented. The Department shall notify each county department of social services and the General Assembly of the date of full implementation of Section 4 of this act."

SECTION 66.(b) Section 6 of S.L. 2013-417 reads as rewritten:

"SECTION 6. The Department of Health and Human Services shall report to the General Assembly no later than ~~April 1, 2014~~, the first of each calendar quarter beginning April 1, 2014, and ending December 1, 2015, on the implementation of Section 4 of this act. The reports

shall include a detailed timeline for implementation. Additionally, any changes to the timeline shall be included in the report with specific reasons for the timeline adjustment."

SECTION 66.(c) Section 8 of S.L. 2013-417 reads as rewritten:

"**SECTION 8.** Section 4 of this act becomes effective ~~August 1, 2014.~~ March 1, 2015. The remainder of this act becomes effective October 1, 2013."

SECTION 67. Section 8(c) of S.L. 2014-4 reads as rewritten:

"**SECTION 8.(c)** This section is effective when it becomes law, except that ~~113-391A(d), G.S. 113-391.1(d),~~ as enacted by Section 8(a) of this act, shall become effective December 1, 2014."

SECTION 68. The lead-in language for Section 7 of S.L. 2014-49 is amended by deleting the citation "Article 9 of Chapter 115 of the General Statutes" and replacing it with the citation "Article 9 of Chapter 115C of the General Statutes".

PART III. UNIFORM STATE BOARD OF EDUCATION REPORT DATES

SECTION 80. G.S. 115C-83.4(b) reads as rewritten:

"(b) The State Board of Education shall report biennially to the Joint Legislative Education Oversight Committee by ~~October 1~~ October 15 of each even-numbered year on the implementation, evaluation, and revisions to the comprehensive plan for reading achievement and shall include recommendations for legislative changes to enable implementation of current empirical research in reading development."

SECTION 81. G.S. 115C-83.10(c) reads as rewritten:

"(c) The State Board of Education shall establish a uniform format for local boards of education to report the required information listed in subsections (a) and (b) of this section and shall provide the format to local boards of education no later than 90 days prior to the annual due date. The State Board of Education shall compile annually this information and submit a State-level summary to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee by ~~October 1~~ October 15 of each year, beginning with the 2014-2015 school year."

SECTION 82. G.S. 115C-102.6B(b) reads as rewritten:

"(b) The Board shall submit the plan to the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4). At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.

The Board shall report annually by ~~February 1~~ February 15 of each year to the Joint Legislative Education Oversight Committee on the status of the State School Technology Plan."

SECTION 83. G.S. 115C-156.2(b) reads as rewritten:

"(b) Beginning in 2014, the State Board of Education shall report to the Joint Legislative Education Oversight Committee by ~~September 1~~ September 15 of each year on the number of students in career and technical education courses who earned (i) community college credit and (ii) related industry certifications and credentials."

SECTION 84. G.S. 115C-83.4A(h) reads as rewritten:

"(h) Beginning ~~October 1,~~ October 15, 2014, the State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on advanced courses in North Carolina. The report shall include, at a minimum, the following information:

....

SECTION 85. G.S. 115C-238.29I(c) reads as rewritten:

"(c) The State Board of Education shall review and evaluate the educational effectiveness of the charter schools authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located. The Board shall report annually no later than ~~January 1~~ January 15 to the Joint Legislative Education Oversight Committee on the following:

- (1) The current and projected impact of charter schools on the delivery of services by the public schools.
- (2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation.
- (3) Best practices resulting from charter school operations.
- (4) Other information the State Board considers appropriate."

"**SECTION 8.4.(i)** Reports. – For the 2013-2015 fiscal biennium, the State Board of Education shall report to the Fiscal Research Division prior to ~~May 1~~ May 15 of each fiscal year if it determines that counties have supplanted funds."

PART IV. EFFECTIVE DATE.

SECTION 94. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2014.

s/ Chad Barefoot
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 5:00 p.m. this 11th day of August, 2014

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 71W .0905

DEADLINE FOR RECEIPT: Wednesday, October 15, 2014

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

First, please consider the Section title for this Rule and consider future amendments. It presently is the following:

SECTION .0900 - TRANSITIONAL CHILD CARE

On the Temporary Rule-Making Finding of Need form, Box 5, line e., indicate the date that notice was provided to interested persons in accordance with G.S. 150B-21.1(a3)(2)

On the Temporary Rule-Making Finding of Need form, Box 5, line g., this field should only be completed by the agency if there is a request for a later effective date than the one automatically provided by statute, which is the following:

150B-21.3. Effective date of rules.

(a) Temporary and Emergency Rules. - A temporary rule or an emergency rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

On the Temporary Rule-Making Finding of Need form, Box 6, provide the effective date of S.L. 2014-115. Please note that what appears as a hyperlink on the form is not within the paper filling for the rule. Please provide copies of the authorizing statute for the rule record.

The following requests pertain to the rule:

For the line numbers, they should restart on each page. Please toggle that option within the line numbers option box.

Line 1, correct the rule citation to include the "A"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Monday, October 13, 2014

Line 4, what is the distinction between “drug screening” and “drug testing”? Are these terms defined somewhere?

Line 4, in light of the prior question, why is this rule requiring everyone to be screened, but testing to be conducted when there is reasonable suspicion? Please look at page 4 of the Staff Opinion for this Rule.

Line 8, what will be the content of the “written notice, developed by the Division”? Please clarify.

Line 16, what is the “Drug Abuse Screening Test”? Is this term or concept defined somewhere.

Line 22 thru 23, what is “following illegal use and/or controlled substance”? Consider re-writing as follows:

“identify the illegal use of the following controlled substances:”

Lines 24 thru 28, these lines should begin with numbers, not letters, as the list is within an lettered paragraph. See 26 NCAC 02C .0206(b)

Page 2, line 39, add a period after the statutory citation.

Page 2, line 43, the phrase “that he or she” should be left in the rule

Page 2, line 51, add an “and” after “options;”

Page 2, line 53, add “for one year” between “benefits subject”

Page 2, line 54, delete “(b),”

Page 3, format the history note in accordance with 26 NCAC 02C .0108(8)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Temporary Adoption for Publication in the NCAC

10 NCAC 71W.0905 is adopted under temporary procedures as follows:

10A NCAC 71W .0905 DRUG TESTING

(a) The county director shall require drug screening of all applicants and recipients, and testing if there is reasonable suspicion that an applicant or recipient individual is engaged in the illegal use of controlled substances, ~~will be conducted~~ as a condition of eligibility for receiving Work First Program assistance, subject to the exemptions in G.S.108A-29.1(a) and (h). The county director shall require that each applicant or recipient shall receive a written notice, developed by the Division of Social Services, about drug screening and testing. ~~, when there is a reasonable suspicion is a condition of eligibility for Work First Program Assistance.~~

~~(d)~~ (b) Reasonable suspicion ~~may~~ shall only be established by utilizing the following methods:

(1) A criminal record check conducted under G.S. 114-19.34; ~~that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.~~

(2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine; ~~or that an individual is addicted to illegal controlled substances.~~

(3) ~~A screening tool~~ The Drug Abuse Screening Test (DAST) relating to the abuse of ~~illegal~~ controlled substances, ~~that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.~~

(4) ~~Other screening methods, as determined by the Department.~~

~~(b)~~ (c) The county director shall require a basic five panel drug test for applicants and recipients of Work First Family Assistance where there is a reasonable suspicion the applicant or recipient individual is engaged in the illegal use of controlled substances. will be required. The drug test shall ~~will~~ identify the following illegal use and/or controlled substances:

- (a) cannabinoids;
- (b) cocaine;
- (c) methamphetamines/Amphetamines;
- (d) opiates; and
- (e) phencyclidine.

(2) ~~The results of drug tests will remain confidential and will not be released to law enforcement.~~

(e) ~~All applicants or recipients who are included in the financial assistance unit, including both parents in two parent households and any teen parent who is emancipated pursuant to Article 35 of Chapter 7B, shall comply with the requirements of this rule. The following are exempt from drug testing and screening:~~

- (1) ~~Child Only cases~~
- (2) ~~Dependent children under the age of 18.~~

~~(e) Each applicant or recipient shall receive written notice that drug screening and testing is a condition of eligibility for Work First Program assistance.~~

~~(f)(g)(d)~~ The county director shall require that each applicant or recipient being tested ~~shall~~ sign a written acknowledgment that he or she has received and understood the drug testing notice in accordance with provisions 108-29.1A and advice developed by the Division of Social Services. The county director shall require that each applicant or recipient ~~shall~~ be advised before drug testing he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.

~~(h)(e)~~ The county director shall advise each applicant or recipient who tests positive for an illegal use of controlled substance ~~or illegal use of a controlled substance shall be advised that he or she~~ has the right to take one or more additional tests at the applicant's or recipient's expense.

~~(1) at;~~

~~—— (2) at a testing facility approved by the Department or county department of social services and~~

~~—— (3) within seven days of the applicant or recipient receiving notice of the results of the original drug test.~~

~~(i)(f)~~ The county director shall require that each applicant or recipient who tests positive for an illegal controlled substance or illegal use of a controlled substance shall:

~~(1) be provided with receive~~ information regarding substance abuse, substance abuse counseling and substance abuse treatment options; ~~including a list of substance abuse treatment programs that may be available to the individual.~~

~~(2) be ineligible to receive Work First benefits subject to the reinstatement provisions in G.S. 108A-29.1~~

~~(b) (b1) and (b2). for one year from the date of the positive drug test. The individual shall be eligible after one year.~~

~~(3) be eligible prior to one year if one of the following applies:~~

~~(a) each applicant or recipient deemed ineligible may reapply after 30 days from the date of the positive drug test if the applicant or recipient can document successful completion of or current satisfactory participation in a substance abuse treatment program offered by a provider in (1) above and licensed by the Department. The applicant who reapplies after the successful completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program shall be the responsibility of the person being tested; or~~

~~(b) each applicant or recipient deemed ineligible may reapply after the expiration of 30 days from the date of the positive drug test if a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine determines substance abuse treatment is not appropriate, and the applicant or recipient has passed a subsequent drug test. The cost of any drug testing is the responsibility of the person being tested.~~

~~(c) An applicant or recipient who reapplies for Work First Program assistance under (a) or (b) above may reapply one time only.~~

~~(4) If the applicant or recipient has any subsequent positive drug tests, the individual shall be ineligible for Work First Program benefits for three years from the date of the subsequent positive drug tests unless the individual reapplies pursuant to subsection (i)(3) of this rule.~~

~~(j) The applicant or recipient shall be responsible for providing verification of the drug testing results from a testing facility approved by the Department or county department of social services.~~

~~(k) The Department shall cooperate with qualified professionals in substance abuse, a physician certified by the American Society of Addiction Medicine, drug testing facility or other area mental health authorities to determine:~~

~~(1) if a substance abuse program is not appropriate for the individual; or~~

~~(2) the individual has passed or failed a drug test; and/or~~

~~(3) a statewide listing of approved substance abuse treatment facilities~~

~~(4) the successful completion of or satisfactory participation in a substance abuse treatment program.~~

Authority G.S. 143B-153; 108A-29.1