North Carolina Association Of County Directors of Social Services

SB 625 Advocacy Bullet Points Document

NCACDSS Position: Oppose. We are not in agreement with the pieces of the legislation listed below. At this time our goal is to advocate, inform and educate our DSS Boards, , County Managers , Board of County Commissioners and our State Representatives the feedback NCACDSS has with the PCS for S625 (CSCI-30 (v5)) and the PCS for 625 (CSSA-38 (v.1).

Targeted Audience: First and foremost, your DSS Board. It is best you discuss with them your intentions and share what you may present. Then your local Board of Commissioners, it may be best to go through your county manager prior to talking to the Board, and also your State Representatives (House and Senate). Work through their email and their legislative assistants. County Managers may also be able to help you reach them.

Talking Points with Local and State Legislators:

1. Changes to the Neglect and Dependency Statute § 7B-101

Dependency:
- Language in the latest PCS:

Dependency -A juvenile is dependent when the juvenile has mental health needs, has received mental health treatment in a hospital and remains in the hospital for more than 48 hours after it has been determined that hospitalization is not medically necessary, and a parent, guardian, or custodian participates in safe and appropriate discharge planning for the juvenile but is unable to provide the necessary placement for the juvenile.

Neglect - care, including a parent, guardian, custodian, or caretaker who (i) leaves a juvenile with mental health needs in a hospital for more than 48 hours after it has been determined that hospitalization is not medically necessary, (ii) does not attempt to contact or provide supervision to the juvenile, and (iii) fails to participate in safe and appropriate discharge planning.

- NCACDSS does not support this language changes for the dependency statute in 7B-101(9).

- This will significantly increase the number of children that local DSS agencies will have to take custody of without the resources and placement availability. To ensure the needs of the dependent juvenile are fully accessed we recommend that similar language contained in G.S. 7B-2502 be incorporated in any discharge and placement plan for the juvenile.
- Many times we see the inability for hospitals to appropriately discharge children due to a lack of appropriate and adequate mental health placements for these children.
- In the dependency statute it reads as if the parent, guardian, or custodian is not able to provide a necessary placement. In navigating our complex mental health system parents, guardians, and custodians are at the mercy of the LME/MCO's efforts and willingness of a provider to accept these children for placement.
- In both statute language hospitalization may not be "medically necessary" because the child has been chemically restrained by the healthcare provider. This is a temporary solution and likely does not appropriately address why the child was brought to the hospital.
    - Placing a child at a local DSS agency with staff who are not trained in the physical and mental health arena is a disservice to the child, the family, and the agency. Supports and services must be provided to the child and the family so that when the child returns home, the necessary services and supports will follow the child. There are multiple scenarios where children may have no appropriate treatment alternatives and the existing wording could be subjective and places the hospital in a position to determine whether parents are participating in appropriate discharge planning. Who at the hospital makes this decision? Is parental input considered? What is a parent's recourse if they disagree with the hospital's decision regarding their participation in safe and appropriate discharge planning? Counties can provide multiple examples of parents involved in care, there is a disagreement regarding an appropriate discharge plan, and then DSS is contacted to file for custody of the child. Many parents are desperate for services for their children but can't access the necessary services and the child is discharged home where it may be unsafe for them and the family.
    - The LME/MCO should have the primary responsibility in supporting, locating and arranging for the care and supervision of children/youth in need of behavioral health treatment. There has to be mandates for facilities to accept children if the clinical recommendation is that level of care. Substance Abuse inpatient treatment for youth must be established as we are seeing rise in these instances that results in hospitalizations.
    - Also, the term "discharge" is used and there are circumstances in which children are never admitted.

- Overall, we are very concerned that the current language will increase the number of children and youth with significant mental health problems and violent behaviors who are staying in DSS offices. The lack of mental health care is a burden laid inappropriately on local DSS agencies. Having these juveniles in DSS offices places other children housed in the DSS offices and DSS employees at higher risk of being physically harmed and increases the liability of employees and the agency if children are injured or if death occurs. This same language applies to inappropriately putting children back into the homes of parents or guardians without the appropriate mental health services.

A thought: Rep. Stevens has language in HB 647 that is in the rules committee in the Senate that states the following: Whose parent, guardian, custodian, or caretaker uses an illegal controlled substance or abuses alcohol or a controlled substance and is unable to care for and provide a safe and appropriate home for the juvenile. **Maybe this is put into this bill.**

2. Petitions

- We agree that petitions should be reviewed by the DSS attorney and would like to have flexibility in place to use other electronic means when appropriate. There are challenges in rural areas and multi-county districts with longer travel times and anything that could increase efficiency would be beneficial. *This language is better that is on the bottom of page 3 and the top of page 4 however it would be good to get electronic review language included.*

3. Notification to the GAL when there are conflicts of interest.

- We would ask that the term pending be changed to "in matters in which a Guardian Ad Litem has been appointed to a child through the court system".
- We would also like to state that the hearing created in this new legislation that will require additional court time will take away from time where cases are being heard for non-secure hearing, trial adjudications, adjudications, permanency planning reviews, and regular reviews that help cases move through the court system. We would ask that a fiscal note be added to create additional judges, clerks, etc to help with the addition of this court requirement. Having children languish in our court system requires counties and the state to prolong their financial resources (board payments, administrative costs, other needs) and this also results in caseloads increasing for county staff.
- We would also like to note that this is just adding additional responsibilities to county legal departments.

4. Hearing for the movement of children in custody, page 9 lines 30-50

- While not opposed to the language giving due process to other parties related to the removal of a child this does create another hearing for the courts.

- As stated earlier this creates another hearing that will take up already precious court time from trials and reviews that will further prolong families and children's involvement in DSS court.
- This not only delays permanence for children but also requires additional county and state resources (admin time and monetary means)
- A fiscal note to create more judges and DSS court time.

5. 7B-906.2 Permanent Plans; concurrent planning

- While not opposed to the language giving due process to other parties related to the removal of a child this does create another hearing for the courts.
- As stated earlier this creates another hearing that will take up already precious court time from trials and reviews that will further prolong families and children's involvement in DSS court.
- This not only delays permanence for children but also requires additional county and state resources (admin time and monetary means)
- A fiscal note to create more judges and DSS court time.

6. Presentation at a hospital for mental health treatment

- Accountability language should be added to ensure that assessments are not just scheduled but completed as quickly as possible when children are waiting in hospitals. The assessment should be performed within 48 hours of the notification under subsection (b).
- Clarification is needed with the new language regarding "a licensed level of care or services not requiring prior authorization"? Is this respite? There are some clinical, treatment, and services offered by LME/MCOs that do not require pre-authorization but may still not be available. The existing language provides 5 days regardless of availability. This could lead to a scenario where the LME/MCO directly or indirectly encourages CCA's that will allow them to shift the responsibility for mental health treatment care to DSS.

5. **Rapid Response Team- Presentation at a hospital for mental health treatment; assessment and placement upon discharge.** ***I don't see anything regarding RRT in the new PCS. I think this is still a good time to talk about RRT's to legislators and how this process is occurring at the local level. Advocacy has no issue with taking this entire section out.***

- We are supportive of leaving existing language and removing the addition of "to determine if action from the RRT is necessary." Additionally, we are supportive of leaving items 1-5 for plans to ensure that DHHS remains engaged in identifying solutions.

- When children/youth are referred to RRT, all other options have been exhausted. Alternative language could state that RRT will accept a referral based on the child's needs as well as being in the custody of DSS and create a plan that provides resources to meet the needs of the juvenile as identified by clinical assessments.

6. **Director's Failure to Immediately Remedy that was included in PCS (CSCI-30 (v5)**

This has been removed from the latest PCS, however we believe DHHS will still continue to push for this language in future bills.

- The section in the previous PCS appears to allow the Secretary of DHHS without due process to remove immunity from the County and Director in the performance of their duties if the issue is not resolved "immediately". "Qualified immunity protects a government actor or agent from liability only when certain conditions are in place, which are usually specified in case law or statutes." It is our understanding that this clause already exists if negligence is found of the county or director in court.
- DHHS can remove that same immunity with a simple letter or Corrective Action Plan (CAP), with no due process or appeal for any infraction cited in a CAP plan for failure to resolve any State Law or rule immediately (again this allows no time for any county feedback or due process). This language places the county, social workers, etc. as sole liability holders, as the State would review each case, find any established policy violation, no matter how large or trivial, and remove itself from accountability, even if the rule or resource that they were responsible for providing was not made available to the county.
- This would greatly deter recruitment in all levels in the provision of child welfare (Social Worker to Director) thus severely hindering this vital public service from protecting vulnerable youth from serious harm of death.
- This will have an impact on the county's current professional liability insurance, which would need to be addressed. This would most likely great increase a county's liability insurance policy.
- Counties have already been monetarily penalized in the court of law for child welfare decisions.
- Additionally, the Secretary already has the authority to take over operations in a county based on an established process in previous counties.
- It should be noted that the supervision responsibilities and performance in achieving these responsibilities of the state such as technical assistance, record reviews, timely, adequate and appropriate training along with their responsibilities to timely and successfully implement federal and state laws and initiatives throughout the state should not be lost when it comes to the county's performance in the provision of child welfare services.

Summary:

Please know that we want you to tell your story. If you need assistance or want to bounce ideas off of someone, we encourage you to call your mentor. If you don't' have one please feel free to call our advocacy co-chairs.

This issue is one that could have profound effects on the work we love so dearly.