

FY 18-19 NC DHHS/County DSS Agreements Overview

5/18/2018

Session Law 2017-41 requires all counties to enter into an annual agreement with the Department of Health and Human Services for all social services programs excluding medical assistance (Medicaid). The law requires the agreement to contain certain performance requirements and administrative responsibilities related to the social services programs.

The Department issued three previous drafts of this agreement to the NC Association of County Commissioners and the DSS Directors Association, as well as all county DSS directors. In response, these groups, along with other county representatives from across the state, provided lengthy and detailed feedback on the agreement and proposed performance requirements.

The Department considered every comment received in developing this final draft of the agreement. Highlights of comments and subsequent changes made to the agreement in response to the feedback include:

- **Nature of Agreement:** Throughout the drafting process, many counties expressed concern over the formalistic nature of the written agreement. In an effort to compromise with counties on the format of this agreement, we have changed the name of the document from “Annual Written Agreement” to a “Memorandum of Understanding”. While this change does not alter the binding nature of the agreement as is required by HB 630, we hope this change reflects the Department’s commitment to working collaboratively with counties in providing social services the people of North Carolinians.
- **Withholding of Funds:** Multiple commenters also expressed concern on the provision which authorizes the Department to withhold state or federal funding in the event the County fails to satisfy mandated performance requirements or comply with the terms of the agreement. This is a provision mandated by the law (HB630) to be included in these annual agreements. However, in response to the comments received, the Department has drafted a corrective action policy that will govern when a County fails to satisfy a performance requirement or otherwise comply with the terms of the agreement. The corrective action policy (Attachment XI) is based on recommendations from the Social Services Working Group Stage One Report, dated March 28, 2018 and from NCGS 108A-74(a4). The policy includes an opportunity for the county to present its potential disagreement with any non-compliance identified by the Department. The policy also outlines the steps the parties can take before any funds are withheld. The policy does not however, diminish the Secretary’s authority to assume control of a county under 108A-74 in urgent circumstances.
- **Ensuring Performance Measure Validity:** The Department recognizes that these agreements, and specifically the required performance measurements, represent a new dynamic to the administration of social services in North Carolina. To that end, the Department has inserted language under Section 2.0 to indicate that no performance improvement plans or corrective action plans related to the performance measurements will be initiated until after January 1, 2019. During the first six months of this agreement,

from July 1, 2018 until December 31, 2018, the Department will be providing counties with the results of the performance measurements. However, as stated, no steps will be taken against counties who are not meeting the prescribed levels until January 1, 2019. This will provide both the Counties and the Department with six months to work through any issues related to data collection, data entry and the operation of the technology systems utilized in the process. It will also allow the counties to have six months to work towards compliance of the performance measurements.

- **Performance Measure Content:** Numerous commenters expressed concern over the breadth of performance measures in earlier drafts of the agreement. The total number of performance agreements were reduced significantly and focus primarily on federally required measures. Performance measures for items explicitly requiring collaboration with other systems (such as the Courts or LME/MCOs) have been pulled out and shown as growth measures. The county agreements will be the same for all counties in FY 18-19 with a few exceptions: each county has its own performance measures for child support and three system performance growth measures in foster care, so the attachments for child support and foster care will be individualized.
 - The three growth measures in foster care are designed to show progress over time. DHHS considered similar feedback for two of the child support measures, however, these measures were not changed for a number of reasons:
 - Counties have been provided annual performance measures for Child Support Enforcement for a number of years. These county-specific performance measures are based on the counties prior years' performance.
 - The State of North Carolina draws down incentive dollars from the federal government based on performance in these five federal performance measures. 85% of those incentive dollars are sent to the counties based on their individual performance.
 - All Performance Measurements will be tracked monthly and a report will be sent out to counties each month. More information will be forthcoming on the process, including specific dates on which the monthly report will be run and dispersed to counties.
- **Roles and Responsibilities of NC DHHS:** Many commenters requested that changes be made to the section on the Department's roles and responsibilities. The Department recognizes the critical role it plays in providing support and oversight the Counties in the delivery of social services. In response to suggestions from commenters, the following Department roles and responsibilities have been added, clarified or strengthened:
 - The Department has included a provision noting its responsibility for the maintenance and functionality of the NC FAST and other information systems utilized for the administration of social services programs and its responsibility in producing reliable data (contingent on correct data entry at the county level) (Section 13.0(3c)).

- The Department has made the following changes to the training of personnel sections:
 - The Department will publish an annual list of both required and recommended trainings for all county personnel administering social services programs
 - The Department will also provide counties with guidance on adequate staffing patterns.
 - The Department has also inserted language in Section 13.0(4)(a)(ii) stating that not only will training be provided statewide, but that the Department will provide “timely and adequate” training to county personnel. We recognize that staff training is a critical component to the administration of social services and the Department is committed to working to increase the opportunities to counties across the state.
 - The Department will make the commitment to publish a system-wide training calendar quarterly, not just semi-annually.
 - We have also removed the provision under Section 14.0 related to the qualifications of county personnel. We recognize that addressing staff qualifications is an HR matters more appropriately addressed outside of this agreement.
- The Department recognizes the need to provide leadership with other state-level and system-level partners to work towards improving the delivery of social services. To reflect this concept, under Section 13.0, the Department has added the following language: “The Department shall provide leadership and coordination for developing strategies that address system-level barriers to the effective delivery of social services programs, including but not limited to: the Administrative Office of Courts, the LME/MCO, Department of Public Instruction, and the Department of Public Safety.”
- **Subcontracting:** Multiple commenters expressed concern with the provision requiring the County to provide the name of any subcontractors within 30 days of execution of a contract. We have clarified that the subcontractors the Department wants to be notified about are ones the county contracts with for the provision of an entire social services program. For example, several counties sub-contract with a third party to administer the county’s child support program. The Department wants to know this information. In contrast, If a county sub-contracts with a third party to perform Employment and Training services related to the FNS Program, the Department does not need to know this information, because the entirety of the FNS program has not been subcontracted. Please also note that all that is required to be disclosed to the Department is the name of the subcontractor.
- **Corrective Action:** Several updates have been made to Attachment XI, Corrective Action. The Department has included a specific process by which the relevant Division Director will review any disagreement submitted to the Department regarding a notice of non-compliance. In the event the Division Director sides with the County, the notice of non-compliance will be rescinded. If the Division Director makes a decision to proceed with the performance

improvement plan, the parties shall work collaboratively to address the issues raised in the disagreement letter in the performance improvement plan.

- **Authorized Signatory:** Several commenters expressed confusion about who is required to sign the agreement. HB630 requires the County to enter into a written agreement with the Department. The agreement is between the Department and the County, not the County DSS. Each county shall decide who the appropriate authorized signatory should be. In some counties, it may be appropriate for that person to be the County DSS Director, and in others it may be the County Manager. However, it should be noted that the individual signing the agreement is providing a warranty that he or she has the authority to sign and bind the parties to the agreement (Section 16.0).

It is important to note that the FY 18-19 performance measures are not intended to remain the only performance measures in future year agreements. Commenters on early drafts noted that the current performance measures do not adequately address the child or adult outcomes, but rather focus on process indicators. DHHS looks forward to working collaboratively with counties to consider future outcome-based measures.