

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 612  
Senate Health Care Committee Substitute Adopted 6/3/20  
Proposed Conference Committee Substitute H612-PCCS40690-TR-1

Short Title: DSS Review of Procedures/Criminal History/OAH.

(Public)

Sponsors:

Referred to:

April 8, 2019

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THE SOCIAL SERVICES COMMISSION OF THE DIVISION OF  
2 SOCIAL SERVICES TO REVIEW POLICIES, GUIDELINES, AND OTHER  
3 INTERPRETIVE STATEMENTS AND SUBMIT A REPORT TO THE OFFICE OF  
4 ADMINISTRATIVE HEARINGS; CLARIFY THE AUTHORITY OF BOARDS TO  
5 REQUIRE CRIMINAL HISTORY RECORDS; PROHIBIT AGENCIES FROM  
6 IMPLEMENTING OR ENFORCING POLICIES, GUIDELINES, OR OTHER  
7 INTERPRETIVE STATEMENTS THAT SHOULD BE ADOPTED AS RULES UNDER  
8 THE ADMINISTRATIVE PROCEDURE ACT; AND UPDATE THE PROCESS FOR  
9 LEGISLATIVE REVIEW OF RULES.  
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** No later than May 31, 2021, the North Carolina Division of Social  
13 Services (Division), by and through the Division's Social Services Commission (Commission),  
14 shall prepare and submit for review to the Office of Administrative Hearings (OAH) a  
15 comprehensive report of all its policies, guidelines, and other interpretive statements. This  
16 includes all policies, guidelines, and other interpretive statements that the Division or any of its  
17 subdivisions has sought to implement or enforce that may directly or substantially affect the  
18 procedural or substantive rights or duties of persons not employed by the Division or any of its  
19 subdivisions. The report shall include an explanation for any policies, guidelines, and other  
20 interpretive statements not adopted as a rule the Commission believes are not in violation of  
21 G.S. 150B-18. The report shall not include any emergency, temporary, or permanent rules  
22 adopted by the Division in accordance with Article 2A of Chapter 150B of the General Statutes.

23 **SECTION 2.** Upon submission of its report to the OAH, the Commission shall  
24 jointly review the report with the OAH to identify any policies, guidelines, and other interpretive  
25 statements that are in violation of G.S. 150B-18. If there is disagreement between the  
26 Commission and the OAH regarding any policies, guidelines, or other interpretive statements  
27 identified in the report as being in violation of G.S. 150B-18, then the OAH shall refer the policy,  
28 guideline, or other interpretive statement in disagreement to the Rules Review Commission  
29 (RRC). Upon referral from the OAH, the RRC shall review the policy, guideline, or other  
30 interpretive statement in disagreement, and make a determination as to whether it is in violation  
31 of G.S. 150B-18. If the Commission disagrees with a determination by the RRC as to whether  
32 any policy, guideline, or other interpretive statement is in violation of G.S. 150B-18, the  
33 Commission may file an action for declaratory judgment in Wake County Superior Court  
34 pursuant to Article 26 of Chapter 1 of the General Statutes.



1           **SECTION 3.** To ensure that administration of the Division shall continue without  
2 interruption, any policies, guidelines, or other interpretive statements identified through joint  
3 review by the Commission and the OAH, or determined by the RRC in Section 2 as being in  
4 violation of G.S. 150B-18, shall be deemed interim rules so long as they do not conflict with any  
5 provisions of the General Statutes. Any interim rule authorized by this section shall become void  
6 July 1, 2022, if the Commission has failed to adopt that interim rule as a permanent rule by that  
7 date in accordance with Article 2A of Chapter 150B of the General Statutes. A reviewing court  
8 may extend the interim rule period pending the outcome of its review, if the Commission has  
9 filed an action for declaratory judgment under Section 2. Any policy, guideline, or other  
10 interpretive statement issued by the Division after this act becomes effective shall become void  
11 one year after it is issued; however, prior to that deadline, the Secretary of Health and Human  
12 Services may reissue the policy, guideline, or other interpretive statement for an additional period  
13 of one year.

14           **SECTION 4.** G.S. 93B-8.1(a)(1) reads as rewritten:

15           "(1) Applicant. – A person who makes application for licensure from an  
16 occupational licensing ~~board~~ board or a State agency licensing board."

17           **SECTION 5.** G.S. 93B-8.1 is amended by adding a new subsection to read:

18           "(c1) Nothing in this section or in G.S. 93B-1 shall be construed as authorizing an  
19 occupational licensing board or a State agency licensing board to require an applicant to consent  
20 to a criminal history record check or use of fingerprints or other identifying information required  
21 by the State or National Repositories of Criminal Histories as a condition of granting or renewing  
22 a license."

23           **SECTION 6.** G.S. 150B-23(a) reads as rewritten:

24           "(a) A contested case shall be commenced by paying a fee in an amount established in  
25 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except  
26 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files  
27 the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a  
28 license, the person who holds the license. A party who files a petition shall file a certificate of  
29 service together with the petition. A petition shall be signed by a party, an attorney representing  
30 a party, or other representative of the party as may specifically be authorized by law, and, if filed  
31 by a party other than an agency, shall state facts tending to establish that the agency named as  
32 the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or  
33 civil penalty, has sought to implement or enforce against the petitioner a policy, guideline, or  
34 other interpretive statement in violation of G.S. 150B-18, or has otherwise substantially  
35 prejudiced the petitioner's rights and that the agency:

- 36           (1) Exceeded its authority or jurisdiction;
- 37           (2) Acted erroneously;
- 38           (3) Failed to use proper procedure;
- 39           (4) Acted arbitrarily or capriciously; or
- 40           (5) Failed to act as required by law or rule.

41           The parties in a contested case shall be given an opportunity for a hearing without undue  
42 delay. Any person aggrieved may commence a contested case hereunder.

43           A local government employee, applicant for employment, or former employee to whom  
44 Chapter 126 of the General Statutes applies may commence a contested case under this Article  
45 in the same manner as any other petitioner. The case shall be conducted in the same manner as  
46 other contested cases under this Article.

47           A business entity may represent itself using a nonattorney representative who is one or more  
48 of the following of the business entity: (i) officer, (ii) manager or member-manager, if the  
49 business entity is a limited liability company, (iii) employee whose income is reported on IRS  
50 Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the  
51 business entity, if the business entity authorizes the representation in writing and if the owner's

1 interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice  
2 of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on  
3 a form provided by the Office."

4 **SECTION 7.** G.S. 150B-33 reads as rewritten:

5 **"§ 150B-33. Powers of administrative law judge.**

6 ...

- 7 (b) An administrative law judge may:
- 8 (1) Administer oaths and affirmations;
  - 9 (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and  
10 G.S. 1A-1, Rule 45;
  - 11 (3) Provide for the taking of testimony by deposition and rule on all objections to  
12 discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;
  - 13 (3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of  
14 Civil Procedure;
  - 15 (4) Regulate the course of the hearings, including discovery, set the time and  
16 place for continued hearings, and fix the time for filing of briefs and other  
17 documents;
  - 18 (5) Direct the parties to appear and confer to consider simplification of the issues  
19 by consent of the parties;
  - 20 (6) Stay the contested action by the agency pending the outcome of the case, upon  
21 such terms as ~~he~~the administrative law judge deems proper, and subject to the  
22 provisions of G.S. 1A-1, Rule 65;
  - 23 (7) Determine whether the hearing shall be recorded by a stenographer or by an  
24 electronic device; and
  - 25 (8) Enter an order returnable in the General Court of Justice, Superior Court  
26 Division, to show cause why the person should not be held in contempt. The  
27 Court shall have the power to impose punishment as for contempt for any act  
28 which would constitute direct or indirect contempt if the act occurred in an  
29 action pending in Superior Court.
  - 30 (9) Determine that a rule as applied in a particular case is void because (1) it is  
31 not within the statutory authority of the agency, (2) is not clear and  
32 unambiguous to persons it is intended to direct, guide, or assist, or (3) is not  
33 reasonably necessary to enable the agency to fulfill a duty delegated to it by  
34 the General Assembly.
  - 35 (9a) Determine that a policy, guideline, or other interpretive statement that a State  
36 agency has sought to implement or enforce is unenforceable because it is in  
37 violation of G.S. 150B-18. The administrative law judge may order the refund  
38 of any payments or receipts of any kind collected pursuant to a policy,  
39 guideline, or other interpretive statement determined to be unenforceable  
40 pursuant to this subdivision. The administrative law judge may stay the  
41 determination of unenforceability in order to allow the agency to adopt the  
42 policy, guideline, or other interpretive statement as a rule.
  - 43 (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the  
44 North Carolina Administrative Code for noncompliance with applicable  
45 procedural rules.
  - 46 (11) Order the assessment of reasonable attorneys' fees and witnesses' fees against  
47 the State agency involved in contested cases decided under this Article where  
48 the administrative law judge finds that the State agency named as respondent  
49 has substantially prejudiced the petitioner's rights and has acted arbitrarily or  
50 capriciously or under Chapter 126 where the administrative law judge finds  
51 discrimination, harassment, or orders reinstatement or back ~~pay~~pay, or where

1                   the administrative law judge finds that the State agency has sought to  
2                   implement or enforce a policy, guideline, or other interpretive statement that  
3                   is in violation of G.S. 150B-18, except as provided in subsection (c) of this  
4                   section.

5           (12) Repealed by Session Laws 2011-398, s. 17. For effective date and  
6           applicability, see editor's note.

7           (c) An administrative law judge shall not have the authority to order the assessment of  
8           reasonable attorneys' fees and witnesses' fees upon a finding that the State agency has sought to  
9           implement or enforce a policy, guideline, or other interpretive statement related to the State  
10           Medicaid or NC Health Choice program in violation of G.S. 150B-18."

11           **SECTION 8.** G.S. 150B-21.3 reads as rewritten:

12           **"§ 150B-21.3. Effective date of rules.**

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

16           (b) Permanent Rule. – A permanent rule approved by the Commission becomes effective  
17           on the first day of the month following the month the rule is approved by the Commission, unless  
18           the Commission received written objections to the rule in accordance with subsection (b2) of this  
19           section, or unless subsection (b) of G.S. 150B-21.3B or the agency that adopted the rule specifies  
20           a later effective date.

21           ~~(b1) Delayed Effective Dates.— Except as provided in G.S. 14 4.1, if the Commission~~  
22           ~~received written objections to the rule in accordance with subsection (b2) of this section, the rule~~  
23           ~~becomes effective on the earlier of the thirty first legislative day or the day of adjournment of~~  
24           ~~the next regular session of the General Assembly that begins at least 25 days after the date the~~  
25           ~~Commission approved the rule, unless a different effective date applies under this section. If a~~  
26           ~~bill that specifically disapproves the rule is introduced in either house of the General Assembly~~  
27           ~~before the thirty first legislative day of that session, the rule becomes effective on the earlier of~~  
28           ~~either the day an unfavorable final action is taken on the bill or the day that session of the General~~  
29           ~~Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency~~  
30           ~~adopting the rule specifies a later effective date than the date that would otherwise apply under~~  
31           ~~this subsection, the later date applies. A permanent rule that is not approved by the Commission~~  
32           ~~or that is specifically disapproved by a bill enacted into law before it becomes effective does not~~  
33           ~~become effective.~~

34           ~~A bill specifically disapproves a rule if it contains a provision that refers to the rule by~~  
35           ~~appropriate North Carolina Administrative Code citation and states that the rule is disapproved.~~  
36           ~~Notwithstanding any rule of either house of the General Assembly, any member of the General~~  
37           ~~Assembly may introduce a bill during the first 30 legislative days of any regular session to~~  
38           ~~disapprove a rule that has been approved by the Commission and that either has not become~~  
39           ~~effective or has become effective by executive order under subsection (c) of this section.~~

40           ~~(b2) Objection.— Any person who objects to the adoption of a permanent rule may submit~~  
41           ~~written comments to the agency. If the objection is not resolved prior to adoption of the rule, a~~  
42           ~~person may submit written objections to the Commission. If the Commission receives written~~  
43           ~~objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the~~  
44           ~~Commission approves the rule, clearly requesting review by the legislature in accordance with~~  
45           ~~instructions posted on the agency's Web site pursuant to G.S. 150B-19.1(c)(4), and the~~  
46           ~~Commission approves the rule, the rule will become effective as provided in subsection (b1) of~~  
47           ~~this section. The Commission shall notify the agency that the rule is subject to legislative~~  
48           ~~disapproval on the day following the day it receives 10 or more written objections. When the~~  
49           ~~requirements of this subsection have been met and a rule is subject to legislative disapproval, the~~  
50           ~~agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in~~  
51           ~~G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North~~

1 ~~Carolina Register. If the Commission receives objections from 10 or more persons clearly~~  
2 ~~requesting review by the legislature, and the rule objected to is one of a group of related rules~~  
3 ~~adopted by the agency at the same time, the agency that adopted the rule may cause any of the~~  
4 ~~other rules in the group to become effective as provided in subsection (b1) of this section by~~  
5 ~~submitting a written statement to that effect to the Commission before the other rules become~~  
6 ~~effective.~~

7 ~~(e) Executive Order Exception. — The Governor may, by executive order, make effective~~  
8 ~~a permanent rule that has been approved by the Commission but the effective date of which has~~  
9 ~~been delayed in accordance with subsection (b1) of this section upon finding that it is necessary~~  
10 ~~that the rule become effective in order to protect public health, safety, or welfare. A rule made~~  
11 ~~effective by executive order becomes effective on the date the order is issued or at a later date~~  
12 ~~specified in the order. When the Codifier of Rules enters in the North Carolina Administrative~~  
13 ~~Code a rule made effective by executive order, the entry must reflect this action.~~

14 ~~A rule that is made effective by executive order remains in effect unless it is specifically~~  
15 ~~disapproved by the General Assembly in a bill enacted into law on or before the day of~~  
16 ~~adjournment of the regular session of the General Assembly that begins at least 25 days after the~~  
17 ~~date the executive order is issued. A rule that is made effective by executive order and that is~~  
18 ~~specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill.~~  
19 ~~If a rule that is made effective by executive order is not specifically disapproved by a bill enacted~~  
20 ~~into law within the time set by this subsection, the Codifier of Rules must note this in the North~~  
21 ~~Carolina Administrative Code.~~

22 ~~(c1) Fees. — Notwithstanding any other provision of this section, a rule that establishes a~~  
23 ~~new fee or increases an existing fee shall not become effective until the agency has complied~~  
24 ~~with the requirements of G.S. 12-3.1.~~

25 ~~(d) Legislative Day and Day of Adjournment. — As used in this section:~~

26 ~~(1) A "legislative day" is a day on which either house of the General Assembly~~  
27 ~~convenes in regular session.~~

28 ~~(2) The "day of adjournment" of a regular session held in an odd-numbered year~~  
29 ~~is the day the General Assembly adjourns by joint resolution or by operation~~  
30 ~~of law for more than 30 days.~~

31 ~~(3) The "day of adjournment" of a regular session held in an even-numbered year~~  
32 ~~is the day the General Assembly adjourns sine die.~~

33 ~~(e) OSHA Standard. — A permanent rule concerning an occupational safety and health~~  
34 ~~standard that is adopted by the Occupational Safety and Health Division of the Department of~~  
35 ~~Labor and is identical to a federal regulation promulgated by the Secretary of the United States~~  
36 ~~Department of Labor becomes effective on the date the Division delivers the rule to the Codifier~~  
37 ~~of Rules, unless the Division specifies a later effective date. If the Division specifies a later~~  
38 ~~effective date, the rule becomes effective on that date.~~

39 ~~(f) Technical Change. — A permanent rule for which no notice or hearing is required~~  
40 ~~under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first~~  
41 ~~day of the month following the month the rule is approved by the Rules Review~~  
42 ~~Commission. Commission or Codifier of Rules, as applicable."~~

43 **SECTION 9.** Article 2A of Chapter 150B of the General Statutes is amended by  
44 adding a new section to read:

45 **"§ 150B-21.3B. Legislative review of rules.**

46 ~~(a) Definitions. — As used in this section, "legislative day" means a day on which either~~  
47 ~~house of the General Assembly convenes in regular session.~~

48 ~~(b) Objection to Rule. — Any person who objects to the adoption of a permanent rule may~~  
49 ~~submit written comments to the agency. If the objection is not resolved prior to adoption of the~~  
50 ~~rule, a person may submit written objections to the Commission requesting review of the rule by~~  
51 ~~the General Assembly. The written objections must clearly request review by the General~~

1 Assembly in accordance with instructions posted on the agency's Web site pursuant to  
2 G.S. 150B-19.1(c)(4). If the Commission receives such written objections from 10 or more  
3 persons no later than 5:00 P.M. of the day following the day the Commission approves the rule,  
4 the rule will become effective as provided in subsection (e) of this section. The Commission shall  
5 notify the agency that the rule is subject to review by the General Assembly on the day following  
6 the day it receives 10 or more written objections.

7 (c) Agency Action. – If a rule is subject to review by the General Assembly pursuant to  
8 this section, the agency may adopt the rule as a temporary rule if the rule would have met the  
9 criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was  
10 published in the North Carolina Register. If a rule that is subject to review by the General  
11 Assembly is one of a group of related rules adopted by the agency at the same time, the agency  
12 may cause any of the other rules in the group to become effective as provided in subsection (e)  
13 of this section by submitting a written statement to that effect to the Commission before the other  
14 rules become effective.

15 (d) Disapproval Bills. – Notwithstanding any rule of either house of the General  
16 Assembly, any member of the General Assembly may introduce a bill during the first 30  
17 legislative days of the regular session of any given calendar year to specifically disapprove a rule  
18 that has been approved by the Commission and that has not become effective or has become  
19 effective by executive order under subsection (f) of this section. A bill specifically disapproves  
20 a rule if it contains a provision that refers to the rule by the appropriate North Carolina  
21 Administrative Code citation and states that the rule is disapproved.

22 (e) Delayed Effective Dates. – A rule that is subject to review by the General Assembly  
23 pursuant to this section shall become effective as provided in this subsection. A rule that is  
24 approved by the Commission on or before December 31 of a given calendar year becomes  
25 effective on the thirty-first legislative day of the regular session of the following calendar year  
26 unless a bill that specifically disapproves the rule is introduced in either house of the General  
27 Assembly before the thirty-first legislative day of that session. If a bill that specifically  
28 disapproves the rule is introduced in either house of the General Assembly before the thirty-first  
29 legislative day of that session, the rule becomes effective on the earlier of the day an unfavorable  
30 final action is taken on the bill or August 1 of the calendar year following the calendar year the  
31 Commission approved the rule. If the agency adopting the rule specifies a later effective date  
32 than the date that would otherwise apply under this subsection, the later date applies. A  
33 permanent rule that is not approved by the Commission or that is specifically disapproved by a  
34 bill enacted into law before it becomes effective does not become effective.

35 (f) Executive Order Exception. – The Governor may, by executive order, make effective  
36 a permanent rule that has been approved by the Commission but the effective date of which has  
37 been delayed in accordance with subsection (e) of this section upon finding that it is necessary  
38 that the rule become effective in order to protect public health, safety, or welfare. A rule made  
39 effective by executive order becomes effective on the date the order is issued or at a later date  
40 specified in the order. When the Codifier of Rules enters in the North Carolina Administrative  
41 Code a rule made effective by executive order, the entry must reflect this action. A rule that is  
42 made effective by executive order remains in effect unless it is specifically disapproved by the  
43 General Assembly in a bill enacted into law before August 1 of the calendar year following the  
44 calendar year the executive order is issued. A rule that is made effective by executive order and  
45 that is specifically disapproved by a bill enacted into law is repealed as of the date specified in  
46 the bill. If a rule that is made effective by executive order is not specifically disapproved by a  
47 bill enacted into law within the time set by this subsection, the Codifier of Rules must note this  
48 in the North Carolina Administrative Code."

49 **SECTION 10.** Sections 8 and 9 of this act are effective January 1, 2021. The  
50 remainder of this act is effective when it becomes law.