

## Juveniles in DSS Custody Presenting at Hospital ED for Mental Health Treatment: New Laws and New Court Hearing Possible

Perhaps it is not surprising that juveniles who experience abuse, neglect, or dependency have a higher risk of suffering from mental health issues. These children have experienced trauma, and when they are removed from their homes and families, they further experience loss, separation, and disruption. **The National Conference of State Legislatures reports that “[u]p to [80 percent](#) of children in foster care have significant mental health issues, compared to approximately [18-22 percent](#) of the general population.”\*** **According to the American Academy of Pediatrics, “[m]ental and behavioral health is the largest unmet health need for children and teens in foster care.”\*\***

Some North Carolina laws set forth in the Juvenile Code address the issue of children in DSS custody who experience mental health issues. For example, G.S. 7B-505.1(c) addresses the need for DSS to obtain a court order to consent to non-routine and non-emergency medical treatment for a juvenile in its custody – such treatment includes mental health treatment requiring informed consent. And, G.S. 7B-903(d) authorizes the court to order a juvenile to receive a psychological or other necessary examination to determine the juvenile’s needs. Other laws, such as those in G.S. Chapter 122C, address mental health treatment generally and include provisions specific to juveniles. **Laws specifically addressing treatment and the coordination of services between a DSS with a juvenile in its custody and managed care organization (MCO) or prepaid health plans (PHP) were lacking, until the enactment of S.L. 2021-132.**

**This post focuses on two new laws** that were included in [S.L. 2021-132](#) that specifically address situations where a juvenile who is in DSS custody presents to a hospital emergency department for mental health treatment. **Effective October 1, 2021**, a new statute in G.S. Chapter 122C was enacted to address care coordination for the juvenile by DSS, the LME/MCO or prepaid health plan (PHP), the hospital, and the North Carolina Department of Human Services (DHHS): **G.S. 122C-142.2. Effective January 1, 2022**, a new statute in the Juvenile Code, **G.S. 7B-903.2**, was enacted to authorize an emergency motion and hearing to address compliance with the requirements of G.S. 122C-142.2.

**Juvenile presenting at hospital for mental health treatment.** When a juvenile who is in DSS custody presents to a hospital emergency department for mental health treatment and it is determined that the juvenile should not remain at the hospital and there is no immediately available appropriate placement for the juvenile, the DSS director must contact the appropriate LME/MCO or PHP within twenty-four hours of that determination. The director requests an assessment of the juvenile. G.S. 122C-142.2(b). Within five business days of the director’s request, the LME/MCO or PHP must, when applicable or required by their contract with DHHS, arrange for an assessment of the juvenile by the juvenile’s clinical home provider, the hospital (if able or willing), or another

qualified clinician. G.S. 122C-142.2(c). Depending on the level of care recommended by the assessment, DSS and the LME/MCO or PHP must act as provided for in the following table. G.S. 122C-142.2(d).

**Recommendation**

**DSS**

**LME/MCO or PHP**