

NORTH CAROLINA GENERAL ASSEMBLY  
1981 SESSION

CHAPTER 275  
SENATE BILL 153

AN ACT TO RECODIFY THE SOCIAL SERVICES LAWS IN G.S. CHAPTER 108.

Whereas, the Social Services Study Commission was created by Chapter 992 of the 1979 Session Laws; and

Whereas, the Study Commission was directed to study "Federal and State Statutes and Regulations governing and relating to Social Services and Public Assistance in North Carolina"; and

Whereas, the Study Commission has reviewed the main body of social services laws as presently codified in G.S. Chapter 108; and

Whereas, the Social Services Study Commission has decided to recommend a Recodification Act that rewrites and reorganizes some provisions, while retaining the basic concepts and requirements of existing law and practice in Chapter 108; Now, therefore,

The General Assembly of North Carolina enacts:

**Section 1.** G.S. Chapter 108 is hereby repealed and a new Chapter 108A substituted in lieu thereof, to read as follows:

"Chapter 108A.

"Social Services.

"ARTICLE 1.

"County Administration.

"Part 1. County Boards of Social Services.

**"§ 108A-1. Creation.** — Every county shall have a board of social services which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. Provided, however, county policies for the program of medical assistance shall be established in conformity with the rules and regulations of the Department of Human Resources.

**"§ 108A-2. Size.** — The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the Department of Human Resources.

**"§ 108A-3. Method of appointment; residential qualifications; fee or compensation for services.** — (a) Three-member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member. If the four are

unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108A-8.

**"§ 108A-4. Term of appointment.** — Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms.

**"§ 108A-5. Order of appointment.** — (a) Three-member Board: The term of the member appointed by the Social Services Commission shall expire on June 30, 1981, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1983, and every three years thereafter; and the term of the third member shall expire on June 30, 1982, and every three years thereafter.

(b) Five-member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the Social Services Commission shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the Social Services Commission. The change to a five-member board shall become effective at the time when the additional members shall have been appointed by both the county board of commissioners and the Social Services Commission. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-member to Three-member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

- (1) The seat held by the member appointed by the Social Services Commission whose term would have expired on June 30, 1983, or triennially thereafter; and
- (2) The seat held by the member appointed by the board of commissioners whose term would have expired June 30, 1981, or triennially thereafter.

**"§ 108A-6. Vacancies.** — Appointments to fill vacancies shall be made in the manner set out in G.S. 108A-3. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108A-4.

**"§ 108A-7. Meetings.** — The board of social services of each county shall meet at least once per month, or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board.

**"§ 108A-8. Compensation of members.** — Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners.

**"§ 108A-9. Duties and responsibilities.** — The county board of social services shall have the following duties and responsibilities:

- (1) To select the county director of social services according to the merit system rules of the State Personnel Commission;
- (2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community;

- (3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services;
- (4) To transmit or present the budgets of the county department of social services for public assistance, social services, and administration to the board of county commissioners;
- (5) To have such other duties and responsibilities as the General Assembly, the Department of Human Resources or the Social Services Commission or the board of county commissioners may assign to it.

**"§ 108A-10. Fees.** — The county board of social services is authorized to enter into contracts with any governmental or private agency, or with any person, whereby the board of social services agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, but shall not apply where the charging of a fee for a particular service is specifically prohibited by statute or regulation. The fees to be charged under the authority of this section are to be based upon a plan recommended by the county director of social services and approved by the local board of social services and the board of county commissioners. In no event is the fee charged to exceed the cost to the board of social services. Fee policies may not conflict with rules and regulations adopted by the Social Services Commission or Department of Human Resources regarding fees.

The fees collected under the authority of this section are to be deposited to the account of the social services department so that they may be expended for social services purposes in accordance with the provisions of Article 3 of G.S. Chapter 159, the Local Government Budget and Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged.

The county board of social services shall annually report to the county commissioners receipts received under this section. Fees collected under this section shall not be used to replace any other funds, either State or local, for the program for which the fees were collected.

**"§ 108A-11. Inspection of records by members.** — Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and provision of public assistance and social services authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records.

**"§ 108A-12 through 108A-16.** Reserved for future codification purposes.

"Part 2. County Director of Social Services.

**"§ 108A-17. Appointment.** — (a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Commission. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by Part 1 of Article 20 of Chapter 160A. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay.

**"§ 108A-18. Salary.** — The board of social services of every county, with the approval of the board of county commissioners, shall determine the salary of the director in accordance with the classification plan of the State Personnel Commission, and such salary shall be paid by the county from the federal, State and county funds available for this purpose.

**"§ 108A-19. Duties and responsibilities.** — The director of social services shall have the following duties and responsibilities:

- (1) To serve as executive officer of the board of social services and act as its secretary;
- (2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Commission;
- (3) To administer the programs of public assistance and social services established by this Chapter under pertinent rules and regulations;
- (4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services;
- (5) To act as agent of the Social Services Commission and Department of Human Resources in relation to work required by the Social Services Commission and Department of Human Resources in the county;
- (6) To investigate cases for adoption and to supervise adoptive placements;
- (7) To issue employment certificates to children under the regulations of the State Department of Labor;
- (8) To supervise boarding homes, rest homes and convalescent homes for aged or infirm persons, under the rules and regulations of the Social Services Commission;
- (9) To assist and cooperate with the Department of Correction and their representatives;
- (10) To act in conformity with the provisions of Article 7, Chapter 35 of the General Statutes with regard to sterilization of mentally ill and mentally retarded persons;
- (11) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 44 of G.S. Chapter 7A; and
- (12) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care.

**"§ 108A-20. Social services officials and employees as public guardians.** — The director and assistant directors of social services of each county are authorized to serve as guardians for adults adjudicated incompetent under the provisions of G.S. Chapter 35, Article 1A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article.

"Part 3. Special County Attorneys for Social Service Matters.

**"§ 108A-21. Appointment.** — With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters.

**"§ 108A-22. Compensation.** — The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county department of social services.

**"§ 108A-23. Duties and responsibilities.** — (a) The special county attorney shall have the following duties and responsibilities:

- (1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters;
- (2) To represent the county, the plaintiff, or the obligee in all proceedings brought under G.S. Chapter 52A, the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act;

- (3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals;
- (4) To assist the district attorney with the preparation and prosecution of criminal cases under Article 40 of G.S. Chapter 14, entitled 'Protection of the Family';
- (5) To assist the district attorney with the preparation and prosecution of proceedings authorized by G.S. Chapter 49, entitled 'Bastardy';
- (6) To perform such other duties as may be assigned to him by the board of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the Department of Human Resources for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties.

"§ 108A-24 through 108A-27. Reserved for future codification purposes.

"ARTICLE 2.

"Programs of Public Assistance.

"§ 108A-28. **Creation of programs.** — (a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services or the Department of Human Resources under federal regulations or under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

- (1) Aid to families with dependent children;
- (2) State-county special assistance for adults;
- (3) Food stamp program;
- (4) Foster care and adoption assistance payments;
- (5) Low income energy assistance program.

(b) The program of medical assistance is hereby established as a program of public assistance and shall be administered by the county departments of social services under rules and regulations adopted by the Department of Human Resources.

(c) The Department of Human Resources is hereby authorized to accept all grants-in-aid for programs of public assistance which may be available to the State by the federal government. The provisions of this Article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid.

"§ 108A-29. **Definitions.** — As used in Chapter 108A:

- (1) 'Applicant' is any person who requests assistance or on whose behalf assistance is requested.
- (2) 'Department' is the Department of Human Resources, unless the context clearly indicates otherwise.
- (3) 'Dependent child' is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care; it shall also include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution; it shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.
- (4) 'Permanently and totally disabled' is a person who has a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

- (5) 'Recipient' is a person to whom, or on whose behalf, assistance is granted under this Article.
- (6) 'Resident', unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.
- (7) 'Secretary' is the Secretary of Human Resources, unless the context clearly indicates otherwise.

**"§ 108A-30. Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108A and 111.** — Financial assistance and in-kind goods or services received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid any person under Chapters 108A and 111 of the General Statutes provided that such financial assistance and in-kind goods and services are incorporated in the rehabilitation plan of such person being assisted by the Division of Vocational Rehabilitation Services or the Division of Services for the Blind of the Department of Human Resources, except where such goods and services are required to be considered by federal law or regulations.

**"§ 108A-31 through 108A-36.** Reserved for future codification purposes.

"Part 1. Aid to Families with Dependent Children.

**"§ 108A-37. Authorization of Aid to Families with Dependent Children Program.** — The Department is authorized to establish and supervise an Aid to Families with Dependent Children Program. This program is to be administered by county departments of social services under federal regulations and rules and regulations of the Social Services Commission.

**"§ 108A-38. Eligibility requirements; certain contributions to be disregarded.** — (a) Assistance shall be granted to any dependent child, as defined in G.S. 108A-29(3), who:

- (1) Is a resident of the State or whose mother was a resident when the child was born;
- (2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;
- (3) Has no adequate means of support.

(b) Assistance shall be granted to a parent or relative, as specified in G.S. 108A-29(3), with whom a dependent child lives who:

- (1) Is assuming responsibility for the child's ongoing care;
- (2) Is a resident of the State;
- (3) Has no adequate means of support.

**"§ 108A-39. Limitations on eligibility.** — (a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for aid to families with dependent children in order to be in compliance with federal regulations, but such rules shall not be more restrictive than the work requirements applicable to the work incentive program provided for in G.S. 108A-40.

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for aid to families with dependent children assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining manpower services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

**"§ 108A-40. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments.** — (a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid

to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this Article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this Article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that it is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission.

**"§ 108A-41. Application for assistance.** — Any person or his representative who believes that he or another person is eligible to receive aid to families with dependent children may apply for assistance to the county department of social services in the county in which the applicant resides. It shall be made in such form and shall contain such information as the Social Services Commission and federal regulations may require.

**"§ 108A-42. Investigation of applicant.** — Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for assistance and to obtain such other information as the Department may require.

**"§ 108A-43. Granting or denial of assistance.** — (a) The county director of social services shall submit his findings and recommendations on each application for aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case; but the board of social services may delegate to the director the authority to consider, process and approve or reject all applications for assistance, in which event the director shall not be required to report his actions to the board.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any final action of the county board of social services or the county director of social services with regard to any application for assistance or modifying or terminating any public assistance previously made. The recipient of disputed assistance shall receive notice of the time and place of such review. If the board of commissioners deems that assistance was improperly allowed or denied under federal regulations and policies of the Social Services Commission or the Department, it may order that proper action be taken, with notice thereof given to the recipient and a copy to the county board of social services and the Secretary. Any modification made by the board of county commissioners shall be subject to review by the Secretary.

(d) All rules and regulations of the Social Services Commission or the Department which govern eligibility for public assistance from State appropriations or the amount of public assistance shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission.

**"§ 108A-44. Reconsideration of public assistance.** — All public assistance shall be considered as frequently as required by the rules of the Social Services Commission or the Department in the case of medical assistance. Whenever the condition of any recipient has changed to the extent that his assistance must be modified or terminated, the county director may make the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting, but the board may waive the requirement that the director submit his actions to the board for its approval.

**"§ 108A-45. Removal to another county.** — Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which the recipient has moved shall pay such assistance.

**"§ 108A-46. Assistance not assignable: checks payable to decedents.** — The assistance granted by this Article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law.

In the event of the death of a public assistance recipient during or after the first day of the month for which assistance was previously authorized by the county social services board, or county director if waived, any public assistance check or checks payable to such recipient not endorsed prior to such recipient's death shall be delivered to the clerk of superior court and by him administered under the provisions of G.S. 28A-25-6.

**"§ 108A-47. Personal representative for mismanaged public assistance.** — (a) Whenever a county director of social services shall determine that a recipient of assistance is unwilling or unable to manage such assistance to the extent that deprivation or hazard to himself or others results, the director shall file a petition before a district court or the clerk of superior court in the county alleging such facts and requesting the appointment of a personal representative to be responsible for receiving such assistance and to use it for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing de novo without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative.

**"§ 108A-48. Protective and vendor payments.** — Instead of the use of personal representatives provided for by G.S. 108A-47, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission or the Department, which rules and regulations shall be subject to applicable federal laws and regulations.



**"§ 108A-49. Fraudulent misrepresentation.** — (a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in the amount of not more than four hundred dollars (\$400.00) is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(b) Any person, whether provider or recipient, or person representing himself as such who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact, obtains for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in an amount of more than four hundred dollars (\$400.00) is guilty of a Class I felony.

(c) As used in this section the word 'person' means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization.

**"§ 108A-50 through 108A-53. Reserved for future codification purposes.**

"Part 2. State-County Special Assistance for Adults.

**"§ 108A-54. Authorization of State-County Special Assistance for Adults Program.** — The Department is authorized to establish and supervise a State-County Special Assistance for Adults Program. This program is to be administered by county departments of social services under rules and regulations of the Social Services Commission.

**"§ 108A-55. Eligibility.** — (a) Assistance shall be granted under this Part to all persons in domiciliary facilities for care found to be essential in accordance with the rules and regulations adopted by the Social Services Commission.

(b) Assistance shall be granted to any person who:

- (1) is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and
- (2) has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and
- (3) is a resident of North Carolina.

(c) The county shall also have the option of granting assistance to Certain Disabled persons as defined in the rules and regulations adopted by the Social Services Commission. Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds.

**"§ 108A-56. Determination of disability.** — (a) An applicant between the ages of 18 and 65 seeking assistance under this Part must be found to be permanently and totally disabled as defined in G.S. 108A-29(4) by a physician or by a medical review board; such physician or board must submit any findings of disability to the county department of social services for transmittal to the Department.

(b) All applications for assistance as a permanently and totally disabled person under this Part shall be reviewed by medical consultants employed by the Department. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the Social Services Commission.

**"§ 108A-57. Application procedure.** — (a) Applications under this Part shall be made to the county director of social services who, with the approval of the county board of social services and in conformity with the rules and regulations of the Social Services Commission, shall determine whether assistance shall be granted and the amount of such assistance; but the county board of social services may delegate to the county director the authority to approve or reject

all applications for assistance under this Part, in which event the county director shall not be required to report his actions to the board.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the Social Services Commission.

**"§ 108A-58. State funds to counties.** — (a) Appropriations made under this Part by the General Assembly to the Department, together with grants of the federal government (when such grants are made available to the State) shall be used exclusively for assistance to needy persons eligible under this Part.

(b) Allotments shall be made annually by the Department to the counties participating in the program established by this Part.

(c) No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures.

**"§ 108A-59. Participation.** — The State-County Special Assistance for Adults Program established by this Part shall be administered by all the county departments of social services under rules and regulations adopted by the Social Services Commission and under the supervision of the Department. Provided that, assistance for Certain Disabled persons shall be provided solely at the option of the county.

**"§ 108A-60. Transfer of real property for purposes of qualifying for State-county special assistance for adults; periods of ineligibility.** — Any person applying for State-county special assistance for adults who has conveyed, transferred or disposed of any real property within one year prior to the date of making application and any person applying for or receiving State-county special assistance for adults who conveys, transfers or disposes of any real property during the application process or during any period of continuing eligibility without receiving consideration equivalent to the latest tax value of said property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes, shall, unless shown to the contrary, be presumed to have made such transfer, conveyance or disposition in order to qualify or continue to qualify for State-county special assistance for adults and shall be ineligible to receive such benefits thereafter until an amount equivalent to the latest tax value of such property shall have been expended by or in behalf of such person for his maintenance need, including needs for medical care, or in accordance with the following schedule, whichever is sooner:

- (1) Property tax value of ten thousand dollars (\$10,000) or more – three-year period of ineligibility from date of transfer;
- (2) Property tax value of less than ten thousand dollars (\$10,000) but more than five thousand dollars (\$5,000) – two-year period of ineligibility from date of transfer;
- (3) Property tax value of five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000) – one-year period of ineligibility from date of transfer.

Any State-county special assistance for adults applicant or recipient shall have a right to appeal, in accordance with the provisions of G.S. 108A-120, the decision denying or terminating such assistance.

**"§ 108A-61. Limitations on payments.** — No payment of assistance under this Part shall be made for the care of any person in a domiciliary facility which is owned or operated in whole or in part by any of the following:

- (1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;
- (2) An official or employee of the Department or of any county department of social services;
- (3) A spouse of a person designated in subdivisions (1) and (2).

"§ 108A-62 through 108A-64. Reserved for future codification purposes.

"Part 3. Foster Care and Adoption Assistance Payments.

"§ 108A-65. **State Foster Care Benefits Program.** — (a) The Department is authorized to establish a State Foster Care Benefits Program with appropriations by the General Assembly for the purpose of providing assistance to children who are placed in foster care facilities by county departments of social services in accordance with the rules and regulations of the Social Services Commission. Such appropriations, together with county contributions for this purpose, shall be expended to provide for the costs of keeping children in foster care facilities.

(b) No benefits provided by this section shall be granted to any individual who has passed his eighteenth birthday unless he is less than 21 years of age and is a full-time student or has been accepted for enrollment as a full-time student for the next school term pursuing a high school diploma or its equivalent; a course of study at the college level; or a course of vocational or technical training designed to fit him for gainful employment.

"§ 108A-66. **Foster Care and Adoption Assistance Payments.** — (a) Benefits in the form of Foster Care Assistance shall be granted in accordance with the rules and regulations of the Social Services Commission to any dependent child who is eligible to receive AFDC but for his or her removal from the home of a specified relative for placement in a foster care facility; provided, that the child's placement and care is the responsibility of a county department of social services.

(b) Adoption assistance payments for Certain Adoptive Children shall be granted in accordance with the rules and regulations of the Social Services Commission to adoptive parents who adopt a child eligible to receive Foster Care Maintenance payments or Supplemental Security Income benefits; provided, that the child cannot be returned to his or her parents and provided that the child has special needs which create a financial barrier to adoption.

(c) The Department is authorized to use available federal payments to states under Title IV-E of the Social Security Act for Foster Care and Adoption Assistance payments.

"§ 108A-67. **State Benefits For Certain Adoptive Children.** — (a) The Department is authorized to establish a program of State Benefits for Certain Adoptive Children from appropriations made by the General Assembly and from grants available from the federal government to the State. This program shall be used exclusively for the purpose of meeting the needs of adoptive children who are physically or mentally handicapped, older, or otherwise hard to place for adoption.

(b) The purpose of this program is to encourage, within the limits of available funds, the adoption of certain hard-to-place children in order to make it possible for children living in, or likely to be placed in foster homes or institutions, to benefit from the stability and security of permanent homes where such children can receive continuous care, guidance, protection and love to reduce the number of such children who might be placed or remain in foster homes or institutions until they become adults.

(c) Eligibility for an adoptive child to receive assistance shall be determined by the Department under the rules and regulations of the Social Services Commission.

(d) Financial assistance under this program shall not be provided when the needed services are available free of cost to the adoptive child; or are covered by an insurance policy of the adoptive parents; or are available to the child under the Adoption Assistance Program specified in G S. 108A-66.

"§ 108A-68 through 108A-69. Reserved for future codification purposes.

"Part 4. Food Stamp Program.

"§ 108A-70. **Authorization for Food Stamp Program.** — The Department is authorized to establish a statewide food stamp program as authorized by the Congress of the United States. The Department of Human Resources is designated as the State agency responsible for the supervision of such programs. The boards of county commissioners through the county

departments of social services are held responsible for the administration and operation of the programs.

**"§ 108A-71. Determination of eligibility.** — Any person who believes that he or another person is eligible to receive food stamps may apply for such assistance to the county department of social services in the county in which the applicant resides. The application shall be made in such form and shall contain such information as the Social Services Commission may require. Upon receipt of an application for food stamps, the county department of social services shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for such assistance and to obtain such other information as the Department may require. Upon the completion of such investigation, the county department of social services shall, within a reasonable period of time, determine eligibility.

**"§ 108A-72. Fraudulent misrepresentation.** — (a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in the amount of four hundred dollars (\$400.00) or less shall be guilty of a misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than four hundred dollars (\$400.00) shall be guilty of a felony and shall be punished as in cases of larceny.

(b) Whoever presents, or causes to be presented, food stamps or authorization cards for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(c) Whoever receives any food stamps for any consumable item knowing that such food stamps were procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(d) Whoever receives any food stamps for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

**"§ 108A-73 through 108A-75.** Reserved for future codification purposes.

"Part 5. Medical Assistance Program.

**"§ 108A-76. Authorization of Medical Assistance Program.** — The Department is authorized and empowered to establish a Medical Assistance Program from federal, State and county appropriations and to adopt rules and regulations under which payments are to be made in accordance with the provisions of this Part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this Part, in an amount sufficient to cover each county's share of such assistance.

**"§ 108A-77. Payments.** — The Department may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to such prepaid health service contractors as may be authorized by the Department.

Provided, no payments shall be made for the care of any person in a nursing home or intermediate care home which is owned or operated in whole or in part by a member of the Social Services Commission, of any county board of social services, or of any board of county commissioners, or by an official or employee of the Department or of any county department of social services or by a spouse of any such person.

**"§ 108A-78. Acceptance of federal grants.** — All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this Part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this Part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this Part within the provisions of the federal Social Security Act.

**"§ 108A-79. Subrogation rights; withholding of information a misdemeanor.** — (a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of such assistance, or of his personal representative, his heirs, or the administrator or executor of his estate, against any person. It shall be the responsibility of the county attorney or an attorney retained by the county and/or the State to enforce this section, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department. The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It shall be a misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise.

**"§ 108A-80. Transfer of real property for purposes of qualifying for medical assistance; periods of ineligibility.** — Any person applying for medical assistance only under the Aid to the Aged, Blind, or Disabled categories who has, either by himself or through a legal representative, conveyed, transferred or disposed of any real property within one year prior to the date of making application and any person applying for or receiving medical assistance only under the Aid to the Aged, Blind, or Disabled categories who, either by himself or through a legal representative, conveys, transfers or disposes of any real property during the application process or during any period of continuing eligibility without receiving consideration equivalent to the latest tax value of said property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes, shall, unless shown to the contrary, be presumed to have made such transfer, conveyance or disposition with the intent to qualify or continue to qualify for medical assistance benefits and shall be ineligible to receive such benefits thereafter in accordance with the following schedule or until an amount equivalent to the latest tax value of

such property shall have been expended by or in behalf of such person for his maintenance need, including needs for medical care, whichever is sooner:

- (1) Property tax value of ten thousand dollars (\$10,000) or more — three-year period of ineligibility from date of transfer;
- (2) Property tax value of less than ten thousand dollars (\$10,000) but more than five thousand dollars (\$5,000) – two-year period of ineligibility from date of transfer;
- (3) Property tax value of five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000) – one-year period of ineligibility from date of transfer.

Any medical assistance applicant or recipient shall have a right to appeal, in accordance with the provisions of G.S. 108A-120, the decision denying or terminating such assistance.

The provisions of this section pertain to persons applying, or on whose behalf application is made, for medical assistance only under the Aid to the Aged, Blind, or Disabled categories.

**"§ 108A-81. Acceptance of medical assistance constitutes assignment to the State of right to third party benefits; recovery procedure.** — (a) Notwithstanding any other provisions of the law, by accepting medical assistance, the recipient shall be deemed to have made an assignment to the State of the right to third party benefits, contractual or otherwise, to which he may be entitled.

It shall be the responsibility of the county attorney of the county from which the medical assistance benefits are received or an attorney retained by that county and/or the State to enforce this subsection, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department of Human Resources.

(b) The responsible State agency will establish a third party resources collection unit that is adequate to assure maximum collection of third party resources.

**"§ 108A-82. Protection of patient property.** — (a) It shall be unlawful for any person:

- (1) To willfully commingle or cause or solicit the commingling of the personal funds or moneys of a recipient resident of a provider health care facility with the funds or moneys of such facility; or
- (2) To willfully embezzle, convert, or appropriate or cause or solicit the embezzlement, conversion or appropriation of recipient personal funds or property to his own use or to the use of any provider or other person or entity.

(b) A violation of subdivision (a)(1) of this section shall be a misdemeanor punishable by a fine of not more than two thousand dollars (\$2,000) or imprisonment for not more than two years, or both, in the discretion of the court. A violation of subdivision (a)(2) of this section shall be a Class I felony.

(c) For purposes of this section:

- (1) 'Health care facility' shall include skilled nursing facilities, intermediate care facilities, rest homes, or any other residential health care facility; and
- (2) 'Person' includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity or organization; and
- (3) 'Recipient' shall include current resident recipients, deceased recipients and recipients who no longer reside at such facility.

**"§ 108A-83. Financial responsibility of spouse for long-term care patient.** — The income and financial resources of the spouse of a person who is admitted after June 30, 1979, as a long-term care patient in a certified public or private intermediate care or skilled nursing facility shall be counted only for 180 consecutive days in determining eligibility for that person for medical assistance under this Part and Title XIX of the Social Security Act.

**"§ 108A-84. Therapeutic leave for medical assistance patients.** — Patients at an intermediate care facility or skilled nursing facility may take up to 18 days of therapeutic leave

in any 12-month period without the facility losing reimbursement under the medical assistance program.

**"§ 108A-85. Medical assistance provider fraud.** — (a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

- (1) In any application for payment under this Part, or for use in determining entitlement to such payment; or
- (2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

- (1) His initial or continued entitlement to payment under this Part; or
- (2) The amount of payment to which such person is or may be entitled.

(c) Any person who violates a provision of this section shall be guilty of a Class I felony.

(d) 'Provider' shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

**"§ 108A-86. Medical assistance recipient fraud.** — (a) It shall be unlawful for any person to knowingly and willfully and with intent to defraud make or cause to be made a false statement or representation of a material fact in an application for assistance under this Part, or intended for use in determining entitlement to such assistance.

(b) It shall be unlawful for any applicant, recipient or person acting on behalf of such applicant or recipient to knowingly and willfully and with intent to defraud, conceal or fail to disclose any condition, fact or event affecting such applicant's or recipient's initial or continued entitlement to receive assistance under this Part.

- (c)
  - (i) A person who violates a provision of this section shall be guilty of a Class I felony if the value of the assistance wrongfully obtained is more than four hundred dollars (\$400.00).
  - (ii) A person who violates a provision of this section shall be guilty of a misdemeanor if the value of the assistance wrongfully obtained is four hundred dollars (\$400.00) or less, and shall be punished by a term of imprisonment of not more than two years or a fine of not more than five hundred dollars (\$500.00), or both, at the discretion of the court.

(d) For purposes of this section the word 'person' includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity or organization.

**"§ 108A-87 through 108A-99.** Reserved for future codification purposes.

#### "ARTICLE 3.

#### "Social Services Programs.

**"§ 108A-100. Authorization of social services programs.** — The Department is hereby authorized to accept all grants-in-aid available for programs of social services under the Social Security Act, other federal laws or regulations, State appropriations and other non-federal sources. The Department is designated as the single State agency responsible for administering or supervising the administration of such programs. It is the intent of this Article that programs of social services be administered so that the State and its citizens may benefit fully from any grants-in-aid.

**"§ 108A-101. Social services checks payable to decedents.** — In the event of the death of a recipient of a cash payment service, any check or checks payable to such recipient but not endorsed prior to such recipient's death shall be returned to the issuing agency, made void, and reissued to the provider of the service.

"§ 108A-102. **Services Appeals and Confidentiality of Records.** — The provisions of Article 4 on public assistance and social services appeals and confidentiality of records shall be applicable to social services programs authorized under this Article.

"§ 108A-103 through 108A-119. Reserved for future codification purposes.

"ARTICLE 4.

"Public Assistance and Social Services

"Appeals and Access to Records.

"§ 108A-103. **Appeals.** — (a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services, county department of social services, or the board of county commissioners granting, denying, terminating, or modifying assistance, or the failure of the county board of social services or county department of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department. Each applicant or recipient shall be notified in writing of his right to appeal upon denial of his application for assistance and at the time of any subsequent action on his case.

(b) In cases involving termination or modification of assistance, no action shall become effective until 10 work days after notice of this action and of the right to appeal is mailed to the recipient.

(c) The notice of action and the right to appeal shall comply with all applicable federal and State law and regulations; provided, such notice shall, at a minimum contain a clear statement of:

- (1) The action which was or is to be taken;
- (2) The reasons for which this action was or is to be taken;
- (3) The regulations supporting this action;
- (4) The applicant's or recipient's right to both a local and State level hearing, or to a State level hearing in the case of the food stamp program, on the decision to take this action and the method for obtaining these hearings;
- (5) The right to be represented at the hearings by a personal representative, including an attorney obtained at the applicant's or recipient's expense;
- (6) In cases involving termination or modification of assistance, the recipient's right upon timely request to continue receiving assistance at the present level pending an appeal hearing and decision on that hearing.

An applicant or recipient may give notice of appeal by written or oral statement to the county department of social services, which shall record such notice by completing a form developed by the Department.

Such notice of appeal must be given within 60 days from the date of the action, or 90 days from the date of notification in the case of the food stamp program. Failure to give timely notice of appeal constitutes a waiver of the right to a hearing. However, it shall not affect the right to reapply for benefits.

(d) If there is such timely appeal, in the first instance the hearing shall consist of a local appeal hearing before the county director or a designated representative of the county director, provided whoever hears the local appeal shall not have been involved directly in the initial decision giving rise to the appeal. In cases involving termination or modification of assistance, the recipient shall continue to receive assistance at the present level pending the local appeal hearing decision, provided the recipient requests a hearing on or before the effective date of the termination or modification of assistance.

(e) The local appeal hearing shall be held not more than five days after the request for it is received. The recipient may, for good cause shown as defined by rule or regulation of the Social Services Commission or the Department, petition the county department of social services, in writing, for a delay, but in no event shall the local appeal hearing be held more than 15 days after the receipt of the request for hearing. At the local appeal hearing:



- (1) The appellant and the county department may be represented by personal representatives, including attorneys, obtained at their expense.
- (2) The appellant or his personal representative and the county department shall present such sworn evidence and law or regulations as bear upon the case. The hearing need not be recorded or transcribed, but the director or his representative shall summarize in writing the substance of the hearing.
- (3) The appellant or his personal representative and the county department may cross-examine witnesses and present closing arguments summarizing their views of the case and the law.
- (4) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.

(f) The director or his designated representative shall make the decision based upon the evidence presented at the hearing and all applicable regulations, and shall prepare a written statement of his decision citing the regulations and evidence to support it. This written statement of the decision will be served by certified mail on the appellant within five days of the local appeal hearing. If the decision terminating or modifying the appellant's benefits is affirmed, the assistance shall be terminated or modified, not earlier than the date the decision is mailed, and any assistance received during the time of the appeal is subject to recovery.

(g) If the appellant is dissatisfied with the decision of the local appeal hearing, he may within 15 days of the mailing notification of the decision take a further appeal to the Department. However, assistance may not be received pending this further appeal. Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department, but shall not affect the right to reapply for benefits.

(h) Subsections (d)-(g) of this section shall not apply to the food stamp program. The first appeal for a food stamp recipient or his representative shall be to the Department. Pending hearing, the recipient's assistance shall be continued at the present level upon timely request.

(i) If there is an appeal from the local appeal hearing decision, or from a food stamp recipient or his representative where there is no local hearing, the county director shall notify the Department according to its rules and regulations. The Department shall designate a hearing officer who shall promptly hold a de novo administrative hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services. Such hearing shall be conducted according to applicable federal law and regulations and Article 3, Chapter 150A, of the General Statutes of North Carolina; provided the Department shall adopt rules and regulations to ensure the following:

- (1) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.
- (2) At the appeal hearing, the appellant and personnel of the county department of social services may present such sworn evidence, law and regulations as bear upon the case.
- (3) The appellant and county department shall have the right to be represented by the person of his choice, including an attorney obtained at his own expense.
- (4) The appellant and county department shall have the right to cross-examine the other party as well as make a closing argument summarizing his view of the case and the law.
- (5) The appeal hearing shall be recorded; however, no transcript will be prepared unless a petition for judicial review is filed pursuant to subsection

(k) herein, in which case, the transcript will be made a part of the official record. In the absence of the filing of a petition for a judicial review, the recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed.

- (6) Notwithstanding G.S. 150A-28 or any other provision of State law, discovery shall be no more extensive or formal than that required by federal law and regulations applicable to such hearings.

(j) After the administrative hearing, the hearing officer shall prepare a proposal for decision, citing pertinent law, regulations, and evidence, which shall be served upon the appellant and the county department of social services or their personal representatives. The appellant and the county department of social services shall have the opportunity to present oral and written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who is to make the final decision. The final decision shall be based on, conform to, and set forth in detail the relevant evidence, pertinent State and federal law and regulations, and matters officially noticed. The decision shall be rendered not more than 90 days, or 45 days in the case of the food stamp program, from the date of request for the hearing, unless the hearing was delayed at the request of the appellant. If the hearing was delayed at the appellant's request, the decision may only be delayed for the length of time the appellant requested a delay. The final decision shall be served upon the appellant and upon the county department of social services by certified mail, with a copy furnished to either party's attorney of record. In the absence of a petition for judicial review filed pursuant to subsection (k) herein, the final decision shall be binding upon the appellant, the county department of social services, the county board of social services, and the board of county commissioners.

(k) Any appellant or county board of social services or board of county commissioners in the case of the food stamp program who is dissatisfied with the final decision of the Department may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in Superior Court of the county from which the case arose. The hearing shall be conducted according to the provisions of Article 4, Chapter 150A, of the North Carolina General Statutes. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance or social services under federal and State law, and under the rules and regulations of the Social Services Commission and Department. Furthermore, the court shall set the matter for hearing within 30 days after the receipt of a petition for review and after reasonable written notice to the Department, the county board of social services, the board of county commissioners, and the appellant.

(1) In the event of conflict between federal law or regulations and State law or regulations, the federal law or regulations shall control.

**"§ 108A-121. Confidentiality of records.** — (a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of Aid To Families with Dependent Children and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the

regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a general misdemeanor.

"§ 108A-122 through 108A-139. Reserved for future codification purposes.

"ARTICLE 5.

"Financing of Programs of Public Assistance and Social Services.

"§ 108A-140. **Financial transactions between the State and counties.** — The Secretary shall have the power to promulgate rules and regulations establishing procedures for the counties to follow in financing programs of public assistance and social services under Article 2 and Article 3.

"§ 108A-141. **Allocation of nonfederal shares.** — (a) The nonfederal share of the annual cost of each public assistance and social services program and related administrative costs may be divided between the State and counties as determined by the General Assembly and in a manner consistent with federal laws and regulations.

(b) The nonfederal share of the annual cost of public assistance and social services programs and related administrative costs provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State.

"§ 108A-142. **Determination of State and county financial participation.** — Before February 15 of each year, the Secretary shall notify the director of social services of each county of the amount of State and federal monies estimated to be available, as best can be determined, to that county for programs of public assistance, social services and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year. In odd-numbered years, in making such notification, the Secretary shall notify the counties of any changes in funding levels, formulas, or programs relating to public assistance proposed by the Governor to the General Assembly in the proposed budget and budget report submitted under the Executive Budget Act. Counties shall be notified of additional changes in the proposed budget of the Governor and the Advisory Budget Commission that are made by the General Assembly or the United States Congress subsequent to the February 15 estimates.

"§ 108A-143. **State Public Assistance Contingency Loan Program.** — (a) The Department is authorized and empowered to establish a program known as the 'State Public Assistance Contingency Loan Program'. The purpose of this program shall be to make loans available to counties whose actual expenditures, excluding related administrative costs, exceed the estimates for public assistance programs only provided by the Department under G.S. 108A-142.

(b) Loans shall be made to the counties at any time during the fiscal year by the Department, when satisfied of the county's need for such loan under this Part.

(c) A loan provided under this section shall be used by a county only to pay the county share of public assistance costs that exceeds the estimate provided by the Department under G.S. 108A-142 in order to sustain an adequate program of public assistance in that county.

(d) Any amount borrowed by a county from the 'State Public Assistance Contingency Fund' during one fiscal year shall be repaid to said fund within the next two fiscal years.

**"§ 108A-144. Counties to levy taxes.** — (a) Whenever the Secretary or his representative assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the Social Services Commission or the Department, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) The board of county commissioners may combine any or all of the separate special taxes for each program of public assistance and for the related administrative costs of such programs in place of levying separate special taxes for each item. This consolidated tax shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of county income and revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance programs, and the related administrative costs of each program. The appropriations and expenditures for each of the several programs and for related administrative costs shall be separately stated and accounted for.

**"§ 108A-145. Appropriations not to revert.** — County appropriations for public assistance expenses or related administrative costs shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another and between programs of public assistance and administration if such action appears to be both necessary and feasible, provided the county secures the approval of the Secretary or his representative.

**"§ 108A-146. State Public Assistance Equalization Program.** — The Secretary is authorized and directed to reserve from State appropriations for the programs of public assistance an amount found to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved shall be distributed among the counties according to their needs under a formula approved by the Social Services Commission so as to produce a fair and just distribution.

**"§ 108A-147 through 108A-149.** Reserved for future codification purposes.

#### "ARTICLE 6.

"Protection of the Abused, Neglected or Exploited Disabled Adult Act.

**"§ 108A-150. Short title.** — This Article may be cited as the Protection of the Abused, Neglected, or Exploited Disabled Adult Act.

**"§ 108A-151. Legislative intent and purpose.** — Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons.

**"§ 108A-152. Definitions.** — (a) The word 'abuse' means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word 'caretaker' shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word 'director' shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.

(d) The words 'disabled adult' shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(e) A 'disabled adult' shall be 'in need of protective services' if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for him essential services.

(f) The words 'district court' shall mean the judge of that court.

(g) The word 'emergency' refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-156.

(h) The words 'emergency services' refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

(i) The words 'essential services' shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include but not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words 'essential services' shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-157 and in Chapter 122 of the General Statutes.

(j) The word 'exploitation' means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(k) The word 'indigent' shall mean indigent as defined in G.S. 7A-450.

(l) The words 'lacks the capacity to consent' shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

(m) The word 'neglect' refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving the services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 33, Chapter 35, or guardian as defined in G.S. 122-36(n), and he needs medical treatment.

(n) The words 'protective services' shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult.

**"§ 108A-153. Duty to report; content of report; immunity.** — (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose.

**"§ 108A-154. Duty of director upon receiving report.** — (a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, mental health clinics, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.

**"§ 108A-155. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.** — (a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided.

**"§ 108A-156. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.** — (a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or

obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter.

**"§ 108A-157. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.** — (a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

- (1) A disabled adult lacks capacity to consent and that he is in need of protective service;
- (2) An emergency exists; and
- (3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-156.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition, and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-157(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time within 20 days thereafter and show cause, if any exist, for the dissolution or modification of the said order, otherwise same to remain in effect; and copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

- (f) (1) Upon petition by the director, a court may order that:

- (i) The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
  - (ii) The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.
- (2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:
  - (i) A disabled adult lacks the capacity to consent and that he is in need of protective services;
  - (ii) The disabled adult is being financially exploited by his caretaker; and
  - (iii) No other person is able or willing to arrange for protective services.
- (3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith.

**"§ 108A-158. Motion in the cause.** — Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article.

**"§ 108A-159. Payment for essential services.** — At the time the director, in accordance with the provisions of G.S. 108A 154 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services.

**"§ 108A-160. Reporting abuse.** — Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney.

**"§ 108A-161. Funding of protective services.** — Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services.

**"§ 108A-162. Adoption of standards.** — The Department and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article."

**Sec. 2.** Article 3 of Chapter 108 of the General Statutes is hereby recodified as a new Chapter 131C of the General Statutes.

**Sec. 3.** Article 6 of Chapter 108 of the General Statutes is hereby recodified as a new Part 26 of Article 7 of Chapter 143B of the General Statutes.

**Sec. 4.** The following provisions are hereby repealed: G.S. 48-39, G.S. 48-39.1, and G.S. 48-39.2.

**Sec. 5.** G.S. 143B-153 is amended by renumbering the existing subsection (3) to be number (4), renumbering all subsequent subsections, and substituting therefor a new subsection (3) to read as follows:



- "(3) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
- a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
  - b. For implementation of Title XX of the Social Security Act by promulgating rules and regulations in the following areas:
    1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
    2. Standards to implement all services established under the Comprehensive Annual Services Plan;
    3. Maximum rates of payment for provision of social services;
    4. Fees for services to be paid by recipients of social services;
    5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
    6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

    1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
    2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
    3. Contracting for and purchasing services; and
    4. Monitoring for effectiveness and compliance with State and federal law and regulations."

**Sec. 6.** G.S. 48-38 is hereby amended by rewriting the first sentence thereof to read as follows:

"No person, agency, association, corporation, society or other organization, except a licensed child placing agency as defined in G.S. 48-2, a county department of social services, or the Department of Human Resources, shall publish, transmit, broadcast, or otherwise distribute any advertisement of any type whatsoever which solicits the receiving or placing of children for adoption, or which solicits the custody of children."

**Sec. 7.** Article 9 of Chapter 110 of the General Statutes is hereby amended by adding a new section to read as follows:

**"§ 110-136.1. Assignment of Wages for Child Support.** — Pursuant to G.S. 50-13.4(f)(1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court."

**Sec. 8.** G.S. 110-132(a) as it appears in the 1979 Cumulative Supplement to Volume 3A of the General Statutes is hereby amended by deleting all words coming after the word "court" in line 8 and substituting therefor the following:

"and a written agreement to support said child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Such written affirmations, acknowledgements and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or

corresponding person of the state, territory, or foreign country where the affirmation, acknowledgement, or agreement is made, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

**Sec. 9.** Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**Sec. 10.** The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108.

**Sec. 11.** This act shall become effective October 1, 1981.

In the General Assembly read three times and ratified, this the 27th day of April, 1981.