

### **10A NCAC 13A .0203 DECLARATORY RULINGS**

(a) The Commission shall have the power to make declaratory rulings. All requests for declaratory rulings shall be written and submitted to: Chairman, Medical Care Commission, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(b) All requests for a declaratory ruling must include the following information:

- (1) name and address of the petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Commission believes for good cause that the issuance of a declaratory ruling will not serve the public interest, it may refuse to issue one. When good cause is deemed to exist, the Commission will notify the petitioner of the decision in writing stating reasons for the denial of a declaratory ruling.

(d) The Commission may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) unless the rulemaking record evidences a failure by the agency to consider specified relevant factors;
- (3) if there has been similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidence by the rulemaking record;
- (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(e) Where a declaratory ruling is deemed to be in the public interest, the Commission will issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be appropriate in a particular case.

(g) The Commission may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(h) A record of all declaratory ruling procedures will be maintained for as long as the ruling has validity. This record will contain:

- (1) the original request,
- (2) reasons for refusing to issue a ruling,
- (3) all written memoranda and information submitted,
- (4) any written minutes or audio tape or other record of the oral hearing, and
- (5) a statement of the ruling.

This record will be maintained in a file at the Director's office at Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701 and will be available for public inspection during regular office hours.

*History Note: Authority G.S. 143B-165; 150B-4;  
Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*