

## CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

### SUBCHAPTER 14A – RULEMAKING

#### SECTION .0100 - RULEMAKING

##### 10A NCAC 14A .0101 PETITIONS

- (a) Any person wishing to submit a written petition requesting the adoption, amendment, or repeal of a rule by the Director of the Division of Health Service Regulation shall submit the petition addressed to the Director, Division of Health Service Regulation, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.
- (b) The petition shall contain the following information:
- (1) the text of the proposed rule(s) for adoption or amendment and the statutory authority for the agency to promulgate the rule(s);
  - (2) a statement of the effect on existing rules or orders;
  - (3) a statement of the effect of the proposed rule(s) on existing practices in the area involved, if known; and
  - (4) the name(s) and address(es) of the petitioner(s).
- (c) The petitioner may include the following information within the request:
- (1) documents and any data supporting the petition;
  - (2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an existing rule(s);
  - (3) a statement explaining the costs and computation of the cost factors, if known; and
  - (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).
- (d) The Director, based on a review of the facts stated in the petition, shall consider the following in his or her determination to grant the petition:
- (1) whether he or she has authority to adopt the rule(s);
  - (2) the effect of the proposed rule(s) on existing rules, programs and practices;
  - (3) probable costs and cost factors of the proposed rule(s);
  - (4) the impact of the rule on the public and the regulated entities; and
  - (5) whether the public interest will be served by granting the petition.
- (e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director of Division of Health Service Regulation.

*History Note:* Authority G.S. 150B-20;  
Eff. June 10, 1977;  
Readopted Eff. December 1, 1977;  
Amended Eff. November 1, 1989;  
Readopted Eff. July 1, 2019.

##### 10A NCAC 14A .0102 RULEMAKING PROCEDURES

*History Note:* Authority G.S. 150B-20;  
Eff. November 1, 1989;  
Repealed Eff. July 1, 2019.

##### 10A NCAC 14A .0103 DECLARATORY RULINGS

- (a) The Director of the Division of Health Service Regulation may issue declaratory rulings. All requests for declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.
- (b) All requests for a declaratory ruling shall include the following information:
- (1) the name and address of the petitioner;
  - (2) a statement of all relevant facts if the person aggrieved requests a declaratory ruling as to the applicability to a statute, rule, or order of the Division;
  - (3) the statute or rule to which the petition relates;

- (4) a statement regarding the petitioner's opinion as to any conflict or inconsistencies, if any, within the Division regarding an interpretation of the law or a rule adopted by the Division to which the petition relates;
  - (5) a statement of the manner in which the petitioner is aggrieved by the rule or statute, or its potential application to him or her;
  - (6) the consequences of a failure to issue a declaratory ruling; and
  - (7) the petitioner's opinion as to the potential impact of the declaratory ruling on the public.
- (c) Whenever the Director finds good cause exists to deny the request for declaratory ruling, he or she may deny the request to issue a declaratory ruling. In such a case, the Director shall notify the petitioner in writing of the decision to deny the request for declaratory ruling and shall state the reason for the denial.
- (d) Good cause for the denial of a declaratory ruling request may include one of the following:
- (1) the person submitting the request is not a person aggrieved;
  - (2) there is no conflict or inconsistency within the Division regarding an interpretation of the law or a rule adopted by the Division;
  - (3) a situation where there has been similar controlling factual determination in a contested case;
  - (4) if the request for declaratory ruling involves a factual context that was considered upon adoption of the rule being questioned as evidenced by the rulemaking record;
  - (5) the factual representations are not specific to the statute or rule being questioned;
  - (6) issuing the declaratory ruling will not serve the public interest; or
  - (7) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would be appropriate.
- (e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as the Director may select in a particular case if additional information may assist in determining whether to grant or deny the petition.
- (f) The Director 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 if the Director finds such comments or presentations may provide additional information that will assist in determining whether to grant or deny the petition.

*History Note:* Authority G.S. 150B-4;  
 Eff. November 1, 1989;  
 Amended Eff. November 1, 2010;  
 Readopted Eff. July 1, 2019.

## **SECTION .0200 – CONTESTED CASES**

- 10A NCAC 14A .0201    DEFINITIONS**  
**10A NCAC 14A .0202    REQUEST FOR DETERMINATION**  
**10A NCAC 14A .0203    RECORD**  
**10A NCAC 14A .0204    EXCEPTIONS TO RECOMMENDED DECISION**

*History Note:* Authority G.S. 143B-10; 143B-10(j)(3); 150B-11; 150B-22; 150B-23; 150B-23(e); 150B-29(b); 150B-36; 150B-37;  
 Eff. November 1, 1989;  
 Repealed Eff. April 1, 2016.

## **SECTION .0300 - HEARINGS: TRANSFERS AND DISCHARGES**

### **10A NCAC 14A .0301    DEFINITIONS**

The following definitions apply throughout this Section:

- (1) "Facility" is defined in 42 CFR 483.5, which is herein incorporated by reference, including subsequent amendments and editions. The Code of Federal Regulations may be accessed free of charge at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/42cfr483\\_08](http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08).
- (2) "Hearing Officer" means the person at the Hearing Unit designated to preside over hearings between residents and nursing facility providers regarding transfers and discharges.
- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance of the Department of Health and Human Services.

- (4) "Notice" means a written notification of transfer or discharge, as required by 42 CFR 483.15 (c), by the facility to the resident and the resident's representative as defined in 42 CFR 483.5.
- (5) "Request for a Hearing" means a written expression by the resident, family member, or legal representative, that he or she wants the opportunity to present his or her case to the Hearing Officer.
- (6) "Resident" means any person who is receiving treatment or long-term care in a facility.
- (7) "Serve" means personal delivery, delivery by first class or certified United States Postal Service mail, or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address.

*History Note:* Authority G.S. 143B-165(10); 42 U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 CFR 483.15(c);  
Eff. August 3, 1992;  
Readopted Eff. January 1, 2019.

#### **10A NCAC 14A .0302 TRANSFER OR DISCHARGE HEARING REQUEST**

Any resident who has been advised of the date of a transfer or discharge in writing may request that the Hearing Officer set a date for a hearing in accordance with these Rules. Hearing procedures shall be in accordance with rules in 10A NCAC 22H .0200, which are herein incorporated by reference, including subsequent amendments and editions. These Rules may be accessed free of charge at <http://reports.oah.state.nc.us/ncac.asp>.

*History Note:* Authority G.S. 143B-165(10); 42 U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 CFR 483.15(c);  
Eff. August 3, 1992;  
Readopted Eff. January 1, 2019.

#### **10A NCAC 14A .0303 FILING A REQUEST FOR HEARING**

In order to initiate a hearing, a resident must first have been served by the facility administrator with a written notice and shall file a Request for Hearing in accordance with rules in 10A NCAC 22H .0200.

*History Note:* Authority G.S. 143B-165(10); 42 U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 CFR 483.15(c);  
Eff. August 3, 1992;  
Readopted Eff. January 1, 2019.

#### **10A NCAC 14A .0304 NOTICE OF HEARING**

#### **10A NCAC 14A .0305 DOCUMENTS**

#### **10A NCAC 14A .0306 HEARING OFFICER'S FINAL DECISION**

*History Note:* Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10);  
Eff. August 3, 1992;  
Expired Eff. February 1, 2018 pursuant to G.S. 150B-21.3A.