

SUBCHAPTER 27I – AREA AUTHORITY OR COUNTY PROGRAM REQUIREMENTS

SECTION .0100 – (RESERVED)

10A NCAC 27I .0101 RESERVED FOR FUTURE CODIFICATION

SECTION .0200 – (RESERVED)

10A NCAC 27I .0201 – RESERVED FOR FUTURE CODIFICATION

SECTION .0300 – (RESERVED)

10A NCAC 27I .0301 – RESERVED FOR FUTURE CODIFICATION

SECTION .0400 - SECRETARY APPROVAL OF LME SERVICE DELIVERY

10A NCAC 27I .0401 SCOPE

(a) This Section governs the procedures for Local Management Entities (LME) to seek approval from the Secretary to directly deliver mental health, developmental disabilities and substance abuse services.

(b) These Rules are applicable to all LMEs seeking approval to directly deliver any of the services set forth in the Division of Medical Assistance (DMA) Clinical Policy Numbers 8A, 8C, 8D1 and 8D2 including subsequent amendments and editions, services under the CAP-MR/DD waiver as approved by the Centers for Medicare and Medicaid Services, and state funded only services. Copies of Clinical Policy Numbers 8A, 8C, 8D1 and 8D2 are available at no cost from the DMA website at <http://www.ncdhhs.gov/dma/>. Copies of the CAP-MR/DD waiver and the service definitions for state funded only services are available at no cost from the Division of Mental Health, Developmental Disabilities and Substance Abuse Services website at <http://www.ncdhhs.gov/dmhddsas/>.

History Note: Authority G.S. 122C-112.1(a)(26);
 Eff. July 1, 2008;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.

10A NCAC 27I .0402 DEFINITIONS

As used in the rules of this Section, the following terms have the meanings specified:

- (1) "Local Management Entity (LME)" means the same as defined in G.S. 122C-3(20b).
- (2) "Request for Application (RFA)" means a procurement strategy through which a LME solicits applications from public and private providers of mental health, developmental disabilities, and substance abuse services to provide one or more specific service(s) to clients in the LME's catchment area.
- (3) "Request for Information (RFI)" means a procurement strategy through which a LME solicits information from public and private providers of mental health, developmental disabilities and substance abuse services regarding the providers' interest in providing one or more specific services to clients in the LME's catchment area.
- (4) "Request for Proposal (RFP)" means a procurement strategy through which a LME solicits proposals from public and private providers of mental health, developmental disabilities and substance abuse services interested in providing one or more specific services to clients in the LME's catchment area.

History Note: Authority G.S. 122C-112.1(a)(26);
 Eff. July 1, 2008;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.

10A NCAC 27I .0403 INFORMATION INCLUDED IN REQUEST

A LME seeking approval from the Secretary to directly deliver services in accordance with the rules of this section shall submit the following information:

- (1) the name(s) of the service(s) for which approval is sought;
- (2) the period of time for which approval is sought;

- (3) the number of existing providers in the catchment area, by service, and the number of clients existing providers have the capacity to serve, for any service for which approval is sought;
- (4) the estimated number of clients in the catchment area or relevant geographic territory, if the LME is requesting to deliver services in only a portion of the catchment area, in need of the service for which approval is sought and the estimated number of clients to be served directly by the LME and the estimated number of clients to be served by the providers;
- (5) information on the actions the LME has taken to seek to attract sufficient numbers of providers for the service for which approval is sought to the catchment area such that it is not necessary for the LME to directly deliver services, including copies of Request for Application (RFA), Request for Information (RFI) and Request for Proposals (RFP), copies of all applications, information and proposals received in response to such activities, and the number of providers attracted through such efforts;
- (6) a description of the LME's organizational structure detailing how service delivery staff and staff performing LME functions are separately managed;
- (7) a description of how clients will be given a choice of service provider for the service(s) for which approval is sought;
- (8) documentation that the LME Board has approved the LME's request to deliver services; and
- (9) documentation that the local Consumer and Family Advisory Committee (CFAC) has approved the LME's request to deliver services.

*History Note: Authority G.S. 122C-112.1(a)(26);
Eff. July 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.*

10A NCAC 27I .0404 PROCESS

- (a) A LME seeking approval to directly deliver services shall submit a request in writing containing all required information at least 60 days in advance of the date on which the LME wishes to begin service delivery or the expiration date of a previous approval if the LME wishes to continue service delivery.
- (b) The request shall be submitted to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 3001 Mail Service Center, Raleigh, NC 27699-3001.
- (c) The Director of DMH/DD/SAS or designee shall review the submitted documentation and request additional information, if necessary. If the service the LME wishes to deliver is a Medicaid payable service, DMH/DD/SAS shall also consult with the Division of Medical Assistance.
- (d) The Secretary shall make a decision regarding the request within 15 business days of receipt of the recommendation from the Director of DMH/DD/SAS or designee.
- (e) The Secretary's decision shall be based upon the following:
 - (1) access;
 - (2) availability of qualified public or private providers;
 - (3) client choice; and
 - (4) fair competition.
- (f) The Director of DMH/DD/SAS or his designee shall communicate the Secretary's decision to the LME in writing within 15 business days of the decision.
- (g) In the event that a LME requests to deliver services on a temporary basis as a result of an unanticipated closure of a private or public provider in the LME catchment area, the LME may request an expedited review of its service delivery request.

*History Note: Authority G.S. 122C-112.1(a)(26);
Eff. July 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.*

SECTION .0500 – CONTENT, FORMAT, SUBMISSION, REVIEW AND APPROVAL OF LOCAL MANAGEMENT ENTITY BUSINESS PLAN

- 10A NCAC 27I .0501 SCOPE**
10A NCAC 27I .0502 LME BUSINESS PLAN CONTENT AND FORMAT REQUIREMENTS
10A NCAC 27I .0503 LME BUSINESS PLAN SIGNATURE REQUIREMENTS

10A NCAC 27I .0504 PLAN OF CORRECTION

History Note: Authority G.S. 122C-112.1(a)(4)(5); 122C-115.2;
Eff. July 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Repealed Eff. October 3, 2023 pursuant to G.S. 150B-21.7.

SECTION .0600 - NON-MEDICAID APPEAL PROCESS

10A NCAC 27I .0601 SCOPE

- (a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or county program affecting a non-Medicaid eligible client.
- (b) A non-Medicaid eligible client, or the client's legally responsible person, may appeal to the Division Director the clinical review decision of an LME-MCO, area authority or county program to deny, reduce, suspend, or terminate a non-Medicaid state funded service.
- (c) Nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal decisions of third party payers to the Division.
- (d) Non-Medicaid services shall be provided in accordance with G.S. 122C-2. As set forth in G.S. 143B-147(a)(9), nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings of the Division by requesting a contested case hearing pursuant to G.S. 150B.
- (e) There shall be no reprisal or retaliation to anyone who is a party to an appeal.
- (f) The LME-MCO, area authority or county program may authorize interim services until the final written decision as set forth in Rule .0609 of this Section is reached.

History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.

10A NCAC 27I .0602 DEFINITIONS

As used in the rules in this Section, the following terms shall have the meanings specified:

- (1) "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Use Services.
- (2) "Division" means the Division of Mental Health, Developmental Disabilities and Substance Use Services.
- (3) "Legally Responsible Person" means the same as defined in G.S. 122C-3.
- (4) "Within Available Resources" means the same as defined in G.S. 122C-2.

History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.

10A NCAC 27I .0603 FILING REQUIREMENTS

- (a) An appeal shall be filed with the Division no later than 11 calendar days from the date of the area authority or county program written review decision.
- (b) The appeal shall include a copy of the area authority or county program review decision and a request for appeal on a form provided by the Division.
- (c) A verbal appeal shall not be accepted.

History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.

10A NCAC 27I .0604 CHANGE IN CLIENT CONDITION

If the client's medical condition changes relative to the service under appeal, the appeal shall be returned to the area authority or county program for review.

*History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017.*

10A NCAC 27I .0605 DIVISION'S INITIAL RESPONSE TO A NON-MEDICAID APPEAL

- (a) The Director shall screen the request for appeal to the Division to determine:
- (1) if the appeal was reviewed by the LME-MCO, area authority or county program according to the area authority or county program policy and procedures;
 - (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state funded service;
 - (3) if the appeal falls within the scope of Rule .0601 of this Section; and
 - (4) if the appeal was filed in accordance with the requirements of Rule .0603 of this Section.
- (b) The Director shall send an acknowledgement letter to the client, or the client's legally responsible person, and the LME-MCO, area authority or county program within 5 business days of receipt of the request for appeal to the Division.
- (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.
- (d) The Director shall notify the LME-MCO, area authority or county program and the client, or the client's legally responsible person, whose appeal is accepted for review, to submit all documentation considered during the LME-MCO, area authority or county program review to the Division no later than 10 calendar days from the date of the acknowledgement letter. Documentation shall be submitted to the DMHDDSUS Hearing Office, 3001 Mail Service Center, Raleigh, NC 27699-3001 or via fax at (984) 777-9264. The acknowledgment letter shall advise the parties that a Hearing Officer will conduct a hearing.
- (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as denied with an explanation of the basis for denial.
- (f) If the appeal is denied on the basis of Subparagraph (a)(1) of this Rule, the LME-MCO, area authority or county program shall review the appeal in accordance with the requirements of Rule 10A NCAC 27G .7004.
- (g) The client, or the client's legally responsible person, shall have 11 calendar days from the date of the LME-MCO, area authority or county program clinical review decision to resubmit the appeal to the Division.

*History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.*

10A NCAC 27I .0606 HEARING SCHEDULE

- (a) The Director shall ensure the Hearing Officer conducts an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.
- (b) The Hearing Officer shall be an employee of the Division.
- (c) The Director shall forward the record on appeal and all supplemental documentation to the Hearing Officer within five calendar days of receipt thereof.
- (d) The Director shall provide a copy of applicable law and rules to the Hearing Officer.
- (e) The Hearing Officer shall schedule a hearing including designation of a time and place.
- (f) The Hearing Officer shall notify the client, or the client's legally responsible person, and the area authority or county program of the time and place no less than 15 calendar days prior to the date of the hearing.
- (g) The hearing may be conducted in person or virtually taking into account reasonable accommodations, including but not limited to, the following:
- (1) compliance with HIPAA requirements;
 - (2) accommodation needs of the client; and
 - (3) State mandated travel restrictions.

*History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.*

10A NCAC 27I .0607 HEARING PROCEDURES

- (a) The Hearing Officer:
 - (1) shall convene the hearing at the prearranged time and place;
 - (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties; and
 - (3) shall conduct proceedings in an orderly manner.
- (b) The Hearing Officer:
 - (1) may limit the total number of persons presenting for the client and area authority or county program; and
 - (2) may impose time limits for presentations.
- (c) Either party may be represented by a person or attorney of their choice.
- (d) Prior to the hearing, the client, or the client's legally responsible person, and the area authority or county program shall:
 - (1) specify by name and position all individuals who will be present for the hearing;
 - (2) provide the Hearing Officer with requested information; and
 - (3) when applicable, ensure that representatives of the parties shall be present at the hearing.
- (e) The Hearing Officer may address questions to either party.
- (f) The Hearing Officer may obtain any form of technical assistance or consultation relevant to the appeal.
- (g) No transcript shall be made and no party shall be allowed to record the proceeding. The Hearing Officer may choose to record the proceeding for his or her own use. A tape so made shall be destroyed after the Hearing Officer issues the Hearing decision.
- (h) Witnesses shall not be sworn before testifying.

*History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.*

10A NCAC 27I .0608 HEARING OFFICER FINDINGS AND DECISION

- (a) The Hearing Officer's findings and decisions are based on the record and any new evidence that would be material to the issues on appeal.
- (b) The standard of review for the Hearing Officer is whether the decision of the LME-MCO, area authority or county program is supported by the evidence presented.
- (c) The Hearing Officer shall consider all issues under appeal.
- (d) Any decision may be rescheduled for a subsequent meeting if the Hearing Officer determines that he or she lacks sufficient information to render a decision at the initial hearing.
- (e) The Hearing Officer's findings and decisions shall be reached and sent in writing to the client, or the client's legally responsible person, and to the LME-MCO, area authority or county program Director within 60 calendar days of the written request for an appeal.

*History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.*

10A NCAC 27I .0609 FINAL WRITTEN DECISION

- (a) Upon receipt of the Hearing Officer's findings and decisions, the LME-MCO, area authority or county program shall issue a final decision based on those findings within 10 business days of receipt of the Hearing Officer's findings and decisions.
- (b) Neither the Hearing Officer's findings and decisions nor the LME-MCO, area authority or county program final decision shall be interpreted as an agency decision granting a non-Medicaid eligible client the right to appeal by requesting a contested case hearing pursuant to G.S. 150B.

(c) The Division shall report annually to the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services the number of appeals filed and conducted.

History Note: Authority G.S. 143B-147;
Eff. October 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. May 1, 2024.