

CHAPTER 63 - SERVICES FOR THE BLIND

SUBCHAPTER 63A - ORGANIZATION

SECTION .0100 - RIGHTS

10A NCAC 63A .0101 NON-DISCRIMINATION

No individual seeking or receiving services through any program administered by the Division of Services for the Blind shall be discriminated against on the basis of race, national origin, gender, religion, or disabling condition.

History Note: Authority G.S. 143B-157;
Eff. August 1, 2002;
Readopted Eff. October 1, 2018.

SECTION .0200 - DEFINITIONS

10A NCAC 63A .0201 DEFINITIONS

The following definitions apply throughout this Chapter. Where there are definitions that apply to only one program, they will be identified in the appropriate Subchapter.

- (1) "Blind" is defined in G.S. 111-11(1).
- (2) "Visually Impaired" is defined in G.S. 111-11(2).
- (3) "Division" means the Division of Services for the Blind.
- (4) "Consumer" means an individual who is seeking, is receiving, or has received services from at least one of the Division programs.
- (5) "Agency" means the Division of Services for the Blind.

History Note: Authority G.S. 111-11; 143B-157; 143B-158; 143B-159; 143B-160;
Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SUBCHAPTER 63B – PROCEDURAL RULES

SECTION .0100 – RULE-MAKING PROCEDURES

10A NCAC 63B .0101 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission for the Blind shall make his request in a petition addressed to:

Director
Division of Services for the Blind
309 Ashe Avenue
2601 Mail Service Center
Raleigh, North Carolina 27699-2601

(b) The petition shall contain the following information:

- (1) a draft of the proposed rule or a summary of its contents;
- (2) the statutory authority for the agency to promulgate the rule;
- (3) the reasons for the proposal;
- (4) its effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices, including cost factors;
- (7) the names and addresses, if known, of those most likely to be affected by the proposed rule; and
- (8) the name and address of the petitioner.

(c) The Commission for the Blind shall determine whether the public interest will be served by granting the petition. The Commission shall consider all of the contents of the submitted petition and any additional information it deems relevant.

(d) Within 120 days of submission of the petition, the Commission shall render a decision to deny the petition or to initiate rule-making proceedings, in accordance with G.S. 150B-20. If the decision is to approve the petition, the Commission shall initiate a rule-making proceeding by issuing notice, as provided in G.S. 150B-21.2.

History Note: Authority G.S. 143B-157; 150B-20; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63B .0102 NOTICE

(a) Any person or agency desiring to be on the list for rule-making notices may file a written request, furnishing the name and mailing address, with the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a). The request must state the subject areas for which notice is requested. The Commission shall review the mailing list periodically and may write to any person on the list to inquire whether he wishes to remain on the list. If no response is received, that person may be removed from the list.

(b) Any person desiring information in addition to that provided in a particular notice of rule-making proceeding or notice of text may contact the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

History Note: Authority G.S. 143B-157; 150B-21.2; 150B-21.6;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63B .0103 HEARING OFFICER

The Commission for the Blind, or one or more members of the Commission, or one or more hearing officers designated and authorized by the Commission, shall be hearing officers in a rule making hearing.

History Note: Authority G.S. 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63B .0104 HEARINGS

(a) Written comments must clearly state the rule to which the comments are addressed and the name and address of the submitting person. Written comments must be sent to the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

(b) The hearing officer shall promptly acknowledge receipt of all written submissions.

(c) The presiding officer at the hearing shall have complete control over the proceedings, including:

- (1) the responsibility of having a record made in accordance with G.S. 150B-21.2;
- (2) extension of any time allotments;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearings.

The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present information, views, and arguments.

History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63B .0105 DECISION

(a) Any person who desires a written statement of the Commission's reasons for the decision to adopt or reject a rule may, within 30 days after the decision, submit a request to the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

(b) The Commission for the Blind shall issue the statement of reasons within 30 days after receipt of the request.

*History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; August 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63B .0106 RECORD OF PROCEEDINGS

A record of all rule-making proceedings, including any petitions received by the Division of Services for the Blind APA Coordinator's office, shall be maintained by the APA Coordinator's office and shall be available for public inspection during regular office hours. This record shall be kept in accordance with G.S. 150B-21.2.

*History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63B .0107 FEES

*History Note: Authority G.S. 143B-157; 150B-19;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*

10A NCAC 63B .0108 DECLARATORY RULINGS

(a) The director of the Division shall have the power to make declaratory rulings. All requests for declaratory rulings shall be made by written petition and shall be submitted to the Division at the address shown in 10A NCAC 63B .0101(a).

(b) Every request for a declaratory ruling must include the following information:

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

(c) Whenever the director believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. The director shall then notify the petitioner and the hearing office in writing of his decision, stating the reasons for the denial. The director may 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) if there has been a similar controlling factual determination in a contested case, or if the question being raised was specifically considered upon adoption of the rule being questioned as evidenced by the rule-making record; or
- (3) if the circumstances show that a contested case hearing would be appropriate.

(d) Where a declaratory ruling is appropriate, the director of the Division shall issue the ruling within 60 days of the receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate by the director in that particular case.

(f) The director of the Division 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.

(g) A record of all declaratory ruling proceedings shall be maintained by the hearing office and shall be available for public inspection during regular business hours. This record shall include:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling, if applicable;
- (3) all written memoranda and information submitted;
- (4) any transcript or recording of an oral hearing; and
- (5) a statement of the ruling.

History Note: Authority G.S. 143B-157; 150B-4;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0200 – CONTESTED CASES

10A NCAC 63B .0201 HEARING OFFICERS

All contested cases arising under the rules contained in Subchapters 63F, 63E and 63G of this Chapter shall be heard by an Administrative Law Judge from the Office of Administrative Hearings and conducted according to G.S. 150B. Contested cases arising under the Business Enterprises Program or the Vocational Rehabilitation Program shall be heard in accordance with the rules of Subchapter 63C or 63G as appropriate.

History Note: Authority G.S. 111-16; 143B-157; 150B-23; 34 C.F.R. 361; 34 C.F.R. 395; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM

SECTION .0100 – BUSINESS ENTERPRISES PROGRAM

10A NCAC 63C .0101 PURPOSE AND DEFINITIONS

As used in this Subchapter:

- (1) "Blind person" or "legally blind" means a person who meets the criteria defined in 34 CFR 395.1(c) and G.S. 111-11.
- (2) "Division" or "DSB" means Division of Services for the Blind.
- (3) "Blind licensee" or "licensee" means a blind person licensed by the Division to operate a Business Enterprises facility on federal, State, or other property.
- (4) "Blind operator" or "operator" means a blind licensee who is operating a Business Enterprises facility on federal, State, or other property.
- (5) The "Business Enterprises Program (BEP)" means a program that provides training and the opportunity for blind individuals to achieve self-employment through the operation of vending and food service facilities on federal, State, and other properties.
- (6) "Business Enterprises facility" "or facility" means any vending and food service facility operated by the North Carolina Business Enterprises Program as defined in 34 CFR 395.1.
- (7) "Elected Committee of Blind Vendors (ECBV)" means a committee as defined in 34 CFR 395.14 whose members are elected by the Business Enterprises operators.

- (8) "Active participation" means communications and negotiations between the Elected Committee of Blind Vendors and the Division in matters pertaining to major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprises Program prior to implementation.
- (9) "Host facility" means the sponsor or owner of a site upon which a Business Enterprises facility is located.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; February 1, 1986; October 1, 1978; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. October 1, 2018.

10A NCAC 63C .0102 RESPONSIBILITY

(a) The Division shall assure that:

- (1) each operator is provided access to all program and financial data of the Division relevant to the operation of the Business Enterprises Program, including quarterly and annual financial reports, to the extent that such disclosure does not violate applicable federal and state laws pertaining to the disclosure of confidential information;
- (2) insofar as practicable such data shall be made available on tape, disk, large print, and Braille; and
- (3) at the request of an operator, the Division will arrange a convenient time to assist in the interpretation of such data.

(b) The Division shall furnish to each operator copies of documents relevant to the operation of the Business Enterprises facility, including the rules, regulations and program manuals, a written description of the arrangements for providing services, and the agreement and permit covering the operation of the Business Enterprises facility, and shall, upon request, explain these documents to each operator. Documents shall be made available in the requested accessible format.

(c) The Division shall supervise and manage each Business Enterprises facility in accordance with the rules and regulations governing the Business Enterprises Program.

(d) The Division shall assist the Elected Committee of Blind Vendors in planning meetings and instructional conferences upon request.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; October 1, 1978; Readopted Eff. October 1, 2018.

10A NCAC 63C .0103 BUSINESS ENTERPRISES FACILITY EQUIPMENT: MERCHANDISE: AND SUPPLIES

(a) The Division shall furnish each Business Enterprises facility with the equipment, initial stock, and initial supplies that are necessary to operate the unit.

(b) Except as set forth in Paragraph (c) of this Rule, the right, title to, and interest in Business Enterprises equipment, merchandise, petty cash, and all other assets used in the program shall be vested in the Division only and may be used and disposed of by the Division for program purposes only, and in accordance with state and federal law.

(c) If the Division and operator agree in writing that the right, title to, and interest in Business Enterprises stock will be vested in the operator, then the Division shall retain a first option to repurchase such stock and, in the event the operator dies, for any other reason ceases to be an operator, or transfers to another vending facility, the ownership of such stock shall become vested in the Division for transfer to a successor operator subject to an obligation of the Division to pay to such operator or the operator's heirs the fair value of the stock. The Division's obligation to pay the fair value of the stock to the operator or the operator's heirs under this Rule shall be reduced by the amount of any outstanding debt owed by the operator to the Division.

(d) The Division shall maintain all Business Enterprises equipment in good repair and in attractive condition, and shall replace worn-out or obsolete equipment as required to assure the continued successful operation of the facility. The licensed operator of a facility shall take the initiative in identifying needed equipment repairs and replacement.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. October 1, 2018.

10A NCAC 63C .0104 TRAINING PROGRAM

The Division shall provide for the training of legally blind individuals according to the requirements of 34 CFR 395.11 and for the training and retraining of blind operators with assistance from the Elected Committee of Blind Vendors.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. October 1, 2018.

SECTION .0200 - LICENSING AND PLACEMENT

10A NCAC 63C .0201 ISSUANCE OF LICENSES

The Division, through the Business Enterprises Program, shall license blind individuals who meet eligibility requirements for the Business Enterprises Program. The licensee shall signify acceptance of the licensing by placing their signature or mark on the license. This license shall be issued for an indefinite period but shall be subject to suspension or termination if, after affording the operator or licensee an opportunity for a full evidentiary hearing, the Business Enterprises facility is not being operated in accordance with the rules in this Subchapter, the terms and conditions of the facility permit, contract or agreement and the terms and conditions of the operator agreement.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. October 1, 2018.

10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING

(a) The Division shall interview prospective licensees as referred by the vocational rehabilitation program and shall make written recommendations to the Chief of the Business Enterprises Program concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) To be considered for training and licensure, the prospective licensee shall:

- (1) meet the definition of legally blind in 34 CFR 395.1(c) and G.S. 111-11;
- (2) be at least 21 years of age;
- (3) be physically able to perform all the duties as further detailed in this Subchapter;
- (4) be evaluated for and demonstrate proficiency of skill in basic mobility, mathematics, basic computer skills, verbal and written communications, reading comprehension, and basic food service practices;
- (5) be familiar with the rules and regulations for Business Enterprises Program, successfully complete the Business Enterprises training program sponsored by the Division, and be certified by the Division as capable of operating a Business Enterprises facility;
- (6) be a citizen of the United States and reside in North Carolina;

- (7) not have previous convictions of misdemeanors involving crimes of dishonesty or of any felony; and
- (8) submit to and pass a drug and alcohol screening provided by the Division.

History Note: Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157; Eff. October 1, 1978; Amended Eff. January 1, 2009; August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1982; Readopted Eff. October 1, 2018.

10A NCAC 63C .0203 SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity to appeal the decision as set forth in Section .0400.

(b) Licenses to licensees and operators shall be terminated if the licensee or operator:

- (1) no longer meets the definition of legally blind pursuant to Rule .0101 of this Subchapter;
- (2) withdraws from the program and sends written notification to the Division;
- (3) is convicted of a misdemeanor involving crimes of dishonesty or any felony;
- (4) provides false information to the Division pertaining to eligibility requirements set forth pursuant to Rule .0202 of this Subchapter;
- (5) unlawfully possesses firearms or lethal weapons on the job;
- (6) uses Business Enterprises equipment purchased with program funds or a Business Enterprises facility to operate another business; or
- (7) if an operator's license is suspended 3 times within a consecutive 24-month period in accordance with Paragraph (c) of this Rule, regardless of the reason for suspension.

(c) Licenses to operators shall be suspended if the operator:

- (1) fails to operate the Business Enterprises facility in accordance with the operator agreement for three or more consecutive months;
- (2) commits willful acts in the Business Enterprises facility or on the grounds of the facility to create a threat to the health and safety of facility staff, customers or the general public;
- (3) reports to a Business Enterprises facility under the influence of alcohol or any controlled substance or partakes of such on the job. This shall not include unanticipated effects from the ingestion of prescription medications taken in accordance with the directions of a doctor;
- (4) fails to personally operate the awarded facility, as set forth in the operator agreement, unless prior written approval to operate the facility in another manner has been obtained from the Division. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;
- (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month following the month in which the business was transacted;
- (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises facility as required by Rule .0601(a)(8) of this Subchapter;
- (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or federal law, as required by this Subchapter;
- (8) fails to maintain liability and workers compensation insurance coverage as required by law and by Rule .0607 of this Subchapter;
- (9) removes Business Enterprises equipment purchased with program funds from the facility without written authorization from the Division;
- (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to customers;
- (11) fails to comply with federal or State tax laws for individuals who are self-employed if this violation relates to the Business Enterprises facility. This suspension shall only occur if there has been a final adjudication of the violation by State and federal authorities; or
- (12) fails to comply with the operator's responsibilities as required by Rule .0601 of this Subchapter.

(d) Prior to the suspension of an operator's license, the Division shall provide the operator with a written corrective action plan. The Division and the operator shall both sign the corrective action plan. The corrective action plan shall include:

- (1) the specific provision in Paragraph (c) of this Rule that the operator has violated, the specific provision contained in the operator's agreement that has been violated, or the specific provision otherwise contained in this Subchapter that has not been complied with;
 - (2) the specific corrective actions that the operator must take to cure the violation identified in Subparagraph (d)(1) of this Rule, including participation in training or receipt of technical assistance provided by the Division, if necessary; and
 - (3) the time frame in which the operator must cure the violation, which shall not exceed 90 days. The time frame in which to cure the violation may be extended if actions are being taken to resolve the violations pursuant to a written agreement between the operator and Division.
- (e) If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of the operator. The length of a suspension shall not exceed 60 days.
- (f) During the time period in which an operator's license is suspended, the Division shall identify another operator to assume responsibility for the locations of the suspended operator.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Readopted Eff. August 1, 2020.

10A NCAC 63C .0204 FILLING OF VACANCIES

- (a) The Division shall send a notice of vacant facilities to all operators and licensees within the last 10 business days of the month. The notice shall provide a description of the vacancy, who to contact for more information, the address where the application may be submitted, and the deadline for receipt of application. The deadline specified in the notice shall be no earlier than that 10th day of the following month, or the first business day thereafter. In the event of an emergency vacancy, including death or illness of an operator, the schedule for sending notices of vacant facilities, conducting interviews, and awarding vacancies set forth in this Rule may be changed as determined by the Chief of Business Enterprises and the chairman of the Elected Committee of Blind Vendors or his or her designee.
- (b) An individual shall be eligible to apply for a vacancy if the individual currently possesses the license level required by the vacant facility or, if the training is not currently provided by the Division or otherwise available for the license level required for the vacant facility, the individual shall be eligible to apply if the applicant holds the next lower license level.
- (c) An individual who has received written notice from the Division that the individual owes money to the Business Enterprises Program and still owes that money is only eligible to apply for a vacancy if:
- (1) the individual has a repayment plan in place to repay the money he or she owes and is in compliance with that repayment plan; or
 - (2) there is a pending grievance as set forth in Section .0400 in this Chapter.
- (d) An individual shall not be eligible to apply for a vacancy if the individual has failed to appear for a scheduled interview twice during the preceding 12 months. In this instance, the individual will not be eligible to apply for a vacancy for 24 months from the date of the last scheduled interview. This provision shall not apply if the applicant withdrew from the interview by providing notice to the Division 48 hours prior to the scheduled appearance or if prior to the interview, the individual provides information to the Division documenting that the individual is unable to attend due to health reasons.
- (e) Operators and licensees who wish to apply for any vacancy shall submit an application to the address contained in the notice or to office of the Chief of Business Enterprises via electronic mail, personal delivery, the United States Postal Service, or commercial delivery services.
- (f) The application shall include the applicant's name, address, telephone number, the name of the current BEP facility assigned to the applicant if applicable, the name of the facility that the applicant is applying for, the applicant's signature, and the date the application is signed.
- (g) All applications shall be received by the Division no later than the deadline date identified in the notice. "Received" for the purpose of this Paragraph means that the application is in the possession of the Division. If the application is not received by the Division by the deadline, the applicant shall not be eligible to interview for the vacancy. However, if the Division does not receive the application by the deadline, an applicant may demonstrate compliance with this Paragraph by demonstrating he or she submitted the application in compliance with Paragraph (d) and any failure or delay in the delivery was due to causes beyond the applicant's control.

(h) At least 10 business days prior to the interview, the Business Enterprises Consultant who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial performance as set forth in Subparagraphs (i)(1), (2), and (3) of this Rule and inform the applicant of his or her point total in writing and shall include with that communication a description of any ways in which the Business Enterprises Consultant noted that the applicant failed to provide the information required by Subparagraphs (i)(1), (2), and (3) of this Rule. The applicant shall have five business days from his or her receipt of the notice from the Business Enterprises Consultant to request any adjustments to the point total. As part of the request, the applicant must provide to the Business Enterprise Consultant all supporting information with the request, including documents required to complete a new financial analysis and operation standard tool (FAOS) if another FAOS is requested by the applicant. The applicant's points for sanitation, seniority, and FAOS shall be shared with all members of the interview committee.

(i) The Business Enterprises Consultant shall assign points to each applicant for sanitation, seniority, and financial performance as follows:

- (1) Five sanitation points may be awarded based on the sanitation grades for the Business Enterprises facilities that were operated by an applicant, as follows:
 - (A) The applicant shall verify with the Business Enterprises Consultant that he or she has copies of every sanitation inspection form from the specified period so that the points can be calculated.
 - (B) One point shall be awarded for each sanitation grade point above 90, which shall be determined by averaging all sanitation scores received during the previous 24 months.
 - (C) Any points deducted on the sanitation review reports for deficiencies that are the responsibility of facility management, pertaining to the condition of bathrooms, floors, ceilings and walls, shall be added in the calculations by the Business Enterprises Consultant.
 - (D) An applicant who is a licensee with a score of 90 percent or greater on his or her most recent National Restaurant Association's ServSafe exam shall be assigned three sanitation points.
- (2) A maximum of five seniority points may be awarded based on the number of years an applicant has worked as an operator in the Business Enterprises Program. The applicant shall be awarded 0.2 points for each 12 months worked as an operator in the Business Enterprises Program. The cutoff date for accruing time in the facility shall be the end of the month when the vacancy is advertised.
- (3) A maximum of 50 financial performance points may be awarded. Financial performance for applicants who are operators shall be based on the facilities assigned to the operator. Financial performance shall be calculated by analyzing the average monthly sales and average gross profit percentage for sales during the 12-month period ending with the last day of the month preceding the month in which the vacancy is advertised. The cut-off date for calculating financial performance shall be the 12-month period ending with the last day of the month in which the vacancy is advertised. The FAOS shall be utilized to help determine the financial performance of the facility. A FAOS shall be completed by the Business Enterprises Consultant for a facility every two years to determine the optimum sales percentage and optimum gross profit percentage without consideration for theft or waste. Eighty-five percent of the optimum sales percentage and optimum gross profit percentage shall be the standard for each Business Enterprises facility.
 - (A) If an applicant who is not currently operating a Business Enterprises facility applies for a vacancy within 12 months of leaving a facility, the FAOS for the applicant's prior facility shall be used for the calculations in this Subparagraph if the FAOS was completed within the required two-year period.
 - (B) The applicant's Business Enterprises Consultant shall determine the FAOS points by tabulating all the invoices for purchases for resale for that facility for the 12-month period ending with the last day of the preceding month in which the vacancy is advertised. The Business Enterprises Consultant shall calculate the month sales average for each of the 12 months for the numbers identified in the following Subparts and using those monthly averages, determine the three months that are closest to the monthly average to allocate points as follows:
 - (i) applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;

- (ii) applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;
- (iii) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum sales percentage;
- (iv) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum gross profit percentage;
- (v) applicants who are operators of a Business Enterprises military facility at the time of application shall be assigned 50 FAOS points;
- (vi) applicants who are licensees at the time of application shall be assigned 40 FAOS points; and
- (vii) applicants who have operated a Business Enterprises facility for less than 6 months prior to the cut-off date for calculating financial performance shall be assigned 40 FAOS points.

(j) The Interview Committee shall consist of:

- (1) the Chief of the Business Enterprises Program or his or her designee;
- (2) a Business Enterprises Program Consultant or Business Enterprises Program designee;
- (3) the vice-chair of the Elected Committee of Vendors (ECBV) or ECBV designee; and
- (4) the chair of the ECBV transfer and promotion subcommittee or ECBV designee.

(k) The Interview Committee shall interview all eligible applicants who present for the scheduled interview. The Interview Committee shall select 15 questions developed by the Interview Committee prior to the interview. A maximum of two points per question may be awarded for a maximum total of 30 points by each Interview Committee member participating in the interview. The interview questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. There shall be at least two math questions. A calculator shall be provided by the Interview Committee, although applicants may bring their own calculator.

(l) An applicant shall not sit on the Interview Committee for a location where he or she is applying or if a member of his or her immediate family has applied for a vacant facility. For the purpose of this Rule, "immediate family" means a spouse, parent, or child, as well as siblings, and step, half and in-law relationships. If the vice-chair of the ECBV or the chair of the ECBV transfer and promotions committee are disqualified from serving as a result of this Rule, the vice-chair of the ECBV and the chair of the ECBV transfer and promotions committee shall jointly select two members of the Elected Committee of Blind Vendors to sit on the Interview Committee.

(m) The interview shall be conducted and evaluated as follows:

- (1) all applicants shall be notified in writing of the date, time, and place of their interview;
- (2) the interview shall be face-to-face. For the purposes of this Rule, a conference call shall not be considered face-to-face; and
- (3) each member of the Interview Committee shall evaluate the applicant's response to each interview question. The applicant shall receive up to two points per question as determined by committee members.

(n) The Interview Committee shall calculate the point total under this Rule for each applicant, which shall equal the sum of the points awarded to the applicant for sanitation, seniority, FAOS, the interview score pursuant to Paragraphs (i) and (k) of this Rule. The applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total. In the case of an exact tie, the Division shall award the location to the applicant that has worked the longest period of time as an operator in a Business Enterprises facility.

(o) The Division shall notify each applicant by telephone after the conclusion of interviews whether the applicant was awarded the location and shall confirm the notification in writing.

(p) The location shall not be filled for 10 business days following the Division's providing notice to all applicants pursuant to G.S. 150B-23(f) of the results of the award process, in order to allow time for administrative appeals to be filed. If an appeal is filed, the location shall be filled on a conditional basis until the appeal is resolved. For the purposes of this Rule, "conditional basis" means that the operator may manage the location until the appeal has been resolved. If there is only one applicant for a location, the 20 business days waiting period shall not apply.

(q) Upon being awarded a location, the applicant shall have 20 business days to assume the responsibilities for the operation of the vacant facility. The Division shall agree to a different time frame if adhering to the 20 business days' timeframe would cause a hardship to the applicant awarded the facility.

(r) Applicants shall be reimbursed for their expenses to come to the interview at the State's per diem rates. Applicants who are receiving vocational rehabilitation services shall be reimbursed through the vocational

rehabilitation program. The Business Enterprises Program shall only reimburse an applicant for three interviews per year. After three interviews, applicants shall bear their own expenses.

(s) Applicants not selected may file an administrative appeal as provided for in Section .0400 of this Subchapter. The time limit to file an appeal shall be 10 business days from the date that the applicant receives a notice of the results of the award process that conforms to the requirements of G.S. 150B-23(f).

History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986; February 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Amended Eff. August 1, 2020.

10A NCAC 63C .0205 CONTRACTUAL AGREEMENT BETWEEN DIVISION AND OPERATOR

(a) Each licensee or operator who accepts a Business Enterprises assignment shall enter into an operating agreement with the Division upon initial placement and upon subsequent reassignment.

(b) When a permit or contract with a host facility is developed, it shall become a part of the operator agreement and the operator shall conduct the business in accordance with the provisions of that permit or contract.

(c) The operator agreement shall include provisions which specify:

- (1) responsibilities of the licensed operator required by the rules in this Subchapter;
- (2) responsibilities of the Division required by the rules in this Subchapter;
- (3) the licensed operator will receive the net proceeds in accordance with 34 CFR 395.9 from the Business Enterprises facility he or she operates in accordance with Section .0700 of this Subchapter;
- (4) the operator's right to terminate the agreement at any time;
- (5) the agreement will terminate upon termination of the permit or contract with the host facility;
- (6) that the agreement will terminate upon failure of the licensed operator to operate the Business Enterprises facility in accordance with the agreement or the rules in this Subchapter or applicable federal, State, or local laws or regulations;
- (7) the agreement will terminate upon the closing of a facility that offers no possibility of being profitable.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.1; 34 C.F.R. 395.3; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1984; February 1, 1983;
Readopted Eff. October 1, 2018.

10A NCAC 63C .0206 CONFIDENTIAL INFORMATION

All information and records pertaining to participants in the Business Enterprises Program shall be confidential and may not be revealed except in the administration of the program, by the consent of the participant, or as otherwise required by law.

History Note: Authority G.S. 111-27; 34 C.F.R. 361.49; 20 U.S.C. Sec. 107a et seq., as amended;
Eff. October 1, 1978;
Recodified from .0409(f) effective May 30, 1984;
Amended Eff. February 1, 1986;
Readopted Eff. October 1, 2018.

SECTION .0300 - SPECIAL PROVISIONS

10A NCAC 63C .0301 HEALTH INSURANCE

History Note: Authority G.S. 111-27; 20 U.S.C. sec. 107a et seq., as amended;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;

*Amended Eff. April 1, 1990; October 1, 1978;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*

10A NCAC 63C .0302 TEMPORARY CLOSING

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November
23, 2015;
Repealed Eff. October 1, 2018.*

10A NCAC 63C .0303 MOVING EXPENSES

*History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.*

SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE

10A NCAC 63C .0401 PURPOSE

*History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984;
Repealed Eff. October 1, 2018.*

10A NCAC 63C .0402 POLICY

- (a) Every operator or licensee or the ECBV has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This Rule shall be covered fully during orientation procedures for new operators or licensees.
- (b) When presenting an appeal, an operator or licensee or the ECBV may be accompanied by a person or persons of his or her choice.

*History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107;
Eff. October 1, 1978;
Amended Eff. February 1, 1984, February 1, 1981;
Recodified Paragraph (f) to Rule .0212 Eff. May 30, 1984;
Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1986;
Readopted Eff. October 1, 2018.*

10A NCAC 63C .0403 PROCEDURE

(a) A licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request an informal review by the Operator Relations Committee. Participation in an informal review is not required to obtain a full evidentiary hearing, nor does participation in an informal review waive any right to obtain a full evidentiary hearing.

- (1) When a licensee, operator, or the ECBV wishes to request an informal review by the Operator Relations Committee, the licensee, operator, or ECBV shall submit a written request to the Business Enterprises Program Chief. The licensee, operator, or the ECBV shall have 20 business days after the action or inaction taken by the Division that they are dissatisfied with to request an informal review.
- (2) The written request of the licensee, operator, or ECBV shall include:
 - (A) their name, address, and preferred means of receiving written communication with the Division;

- (B) a statement that they are requesting an informal review;
- (C) a statement explaining the actions or inactions with which they are dissatisfied; and
- (D) a statement explaining the resolution sought by the licensee, operator, or ECBV.

This request shall be transmitted to the Business Enterprises Program Chief personally, electronically, or by certified mail, return receipt requested.

- (3) The licensee, operator, or the ECBV shall be notified of the date and location of the informal review at least five business days in advance of the informal review. The informal review shall be conducted within 25 business days of receipt of the request. The Operator Relations Committee shall issue a written decision within 10 business days after the informal review is conducted and mail the decision to the licensee, operator, or ECBV and the Division.
 - (4) The Division shall review the decision of the Operator Relations Committee and shall notify the licensee, operator, or ECBV in writing whether the Division affirms or overrules the decision within five business days of receipt of the decision.
 - (5) A request for an informal review under this Rule shall have the effect of suspending the time limitation for filing a petition for contested case hearing pursuant to G.S. 150B-23 and other provisions of Chapter 150B, Article 3 until the later of the following:
 - (A) the licensee, operator, or the ECBV receives written notice of the Division's final decision regarding the informal review; or
 - (B) the licensee, operator, or the ECBV withdraws its request for informal review
- (b) Notwithstanding any other provision in this Rule, a licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request a full evidentiary hearing by filing a petition for contested case hearing with the Office of Administrative Hearings. Such a request for a full evidentiary hearing shall be filed within the time limitation contained in G.S. 150B-23(f).
- (1) This hearing shall be held in accordance with G.S. 150B, Article 3.
 - (2) If the dispute(s) is not resolved to the satisfaction of the licensee, operator, or the ECBV after the conclusion of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel in accordance with 34 C.F.R. 395.13.

History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 150B-23; 20 U.S.C. 107b-1; 20 U.S.C. 107d-1; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983; December 1, 1981; Readopted Eff. August 1, 2020.

SECTION .0500 - ELECTION: ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE STAND PROGRAM

10A NCAC 63C .0501 ELECTION

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1986; Repealed Eff. October 1, 2018.

- 10A NCAC 63C .0502 COMMITTEE SIZE**
- 10A NCAC 63C .0503 NOMINATIONS AND ELECTIONS**
- 10A NCAC 63C .0504 TERM OF MEMBERSHIP**
- 10A NCAC 63C .0505 CONSECUTIVE TERMS**

History Note: Authority G.S. 111-13; 111-27; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978; Amended Eff. August 1, 2002; April 1, 1990; July 1, 1987; June 1, 1983; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0506 ORGANIZATION AND OPERATION

- (a) The Division shall provide for the biennial election of a State Elected Committee of Blind Vendors (ECBV) that, to the extent possible, shall be fully representative of all blind licensees and operators in the Business Enterprises Program on the basis of such factors as geography and vending facility type, with a goal of providing for proportional representation of blind vendors on federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.
- (b) The ECBV membership shall be composed of operators who represent all licensees and operators in the Business Enterprises Program, as elected based on the four geographic regions and the one federal region that encompasses all federal facilities. Two representatives shall be elected from each designated ECBV region.
- (c) The term of office for ECBV members shall be two years beginning on April 1 following the election. Each region shall have one term expire in even-numbered years and one term expire in odd-numbered years. The ECBV members may serve unlimited terms.
- (d) Unexpired terms in the elective offices shall be filled by majority vote of the ECBV. Filling an unexpired term on the ECBV shall not be considered countable time toward the two-year term of office.
- (e) The officers of the ECBV shall be a chair and a vice-chair, as elected by the ECBV from among ECBV members.
- (f) The ECBV chair and vice-chair may serve unlimited terms.
- (g) The ECBV shall hold quarterly business meetings and at other times upon the call of the chair with majority approval of the ECBV. The chair shall provide the Business Enterprises Program with a written meeting agenda ten business days before each meeting.
- (1) The chair shall preside over all business meetings of the ECBV.
 - (2) The chair shall conduct meetings according to Roberts Rules of Order.
 - (3) A majority shall constitute a quorum.
 - (4) The chair shall create subcommittees as the business of the ECBV warrants, excluding those subcommittees specifically required in Paragraph (h) of this Rule.
 - (5) In the absence or disability of the chair, the vice-chair shall assume all the duties of the chair.
- (h) The ECBV chair shall serve as a non-voting ex-officio member of all subcommittees. The ECBV shall maintain the following standing subcommittees: Operator Relations Subcommittee, Transfer and Promotion Subcommittee and the Training and Retraining Subcommittee.
- (1) Operator Relations Subcommittee, whose function is to receive and transmit appeals at the verbal or written request of an operator or licensee.
 - (A) This subcommittee shall be elected by the ECBV from its members.
 - (B) The ECBV chair shall appoint temporary replacements to this subcommittee to fill vacancies until a new member is elected.
 - (C) The ECBV chair shall appoint a temporary replacement for an Operator Relations Subcommittee member who has filed an appeal and whose appeal is pending before the Operator Relations Subcommittee.
 - (2) Transfer and Promotion Subcommittee, whose function is to actively participate with the Division in the development and administration of a system for the transfer and promotion of operators; and
 - (3) Training and Retraining Subcommittee, whose function is to actively participate with the Division in the development of training and retraining programs and to assist the Division in sponsoring meetings and instructional conferences for the operators and licensees.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; February 1, 1983; Readopted Eff. October 1, 2018.

10A NCAC 63C .0507 MEETINGS

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978; Amended Eff. May 1, 1996; February 1, 1983; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0508 FUNCTIONS

(a) The ECBV shall actively participate with the Division in major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprises Program. The Division and the ECBV shall comply with 34 C.F.R. 395.14.

(b) The ECBV shall participate in drafting Business Enterprises Program rules. The Division and ECBV shall work together in good-faith effort to come to agreement in matters related to Business Enterprises Program rule and policy changes.

(c) ECBV relationship to operators and licensees.

- (1) Operators and licensees who elect the members of the ECBV shall ensure that those elected represent all operators and licensees.
- (2) The ECBV shall act as advocates for operators and licensees.
- (3) The ECBV, ECBV officers, ECBV members, operators, employees of an operator, or licensees shall not be employees of the Division.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; Readopted Eff. October 1, 2018.

10A NCAC 63C .0509 SUBCOMMITTEES

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; Repealed Eff. October 1, 2108.

10A NCAC 63C .0510 COMMUNICATION AND NOTICE

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended; Eff. October 1, 1978; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0511 COMMITTEE INITIATIVE

The committee may initiate matters for consideration and its views and positions shall be considered by the Division.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Readopted Eff. October 1, 2018.

10A NCAC 63C .0512 DIVISION RESPONSIBILITY AND RELATIONSHIP WITH COMMITTEE

The Division shall be responsible for the administration of the Business Enterprises Program. It shall consider all recommendations forthcoming from the Elected Committee of Blind Vendors. If the Division does not adopt the views and positions of the Elected Committee of Blind Vendors on a particular issue, it shall give written notice to the committee of the decision reached, the actions taken, and the reasons therefore.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; Readopted Eff. October 1, 2018.

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

(a) A Business Enterprises operator shall:

- (1) ensure the operation of a Business Enterprises facility in accordance with the rules of the Commission for the Blind, the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the host facility including any amendments if provided to the operator. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;
- (2) operate the facility in accordance with all applicable public health laws and Rules;
- (3) purchase merchandise, price goods for sale as set forth in Rule .0608 of this Subchapter, purchase supplies for the facility, rotate stock, and control inventory in the Business Enterprises facility;
- (4) open and maintain a business bank account for the management of funds derived from the Business Enterprises facility;
- (5) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting month. Assistance shall be provided with the electronic submission of the report by the Business Enterprises Consultant upon request from the operator;
- (6) submit payment of all monthly fees, including set-aside and liability fees, health insurance premiums, and phone bill payments, if applicable, to the Controller's Office by the 15th of the month following the month in which the business was transacted;
- (7) keep all records supporting the monthly profit and loss report (D-sheet) for three calendar years;
- (8) provide records for the assigned facility to the Division upon request for reviews as required by this Subchapter. That may include cash sales deposit receipts, cash register tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses, weekly or monthly card reader reports, and payroll records;
- (9) be available for all appointments with the Division staff members, which will be scheduled at the convenience of both parties;
- (10) not subcontract management of the Business Enterprises facility except as approved in writing by the Division;
- (11) take actions to correct deficiencies noted on Business Enterprises facility audits or reviews within 15 business days after receiving notification of the deficiencies and a description of the corrective actions to be taken, unless an extension to this time frame has been agreed to by the Division and operator in writing; and
- (12) notify the Division of changes to the following no later than 10 business days after the change occurs:
 - (A) the facility telephone number;
 - (B) the address to which Business Enterprises correspondence is delivered; and
 - (C) emergency contact information.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility and shall handle the proceeds as set forth in Section .0700 of the Subchapter.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; Readopted Eff. August 1, 2020.

10A NCAC 63C .0602 HOURS OF OPERATION

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984; October 1, 1978; Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0603 SECURITY

The operator shall ensure that security and safety measures are carried out in accordance with good business practice and the requirements of each location.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107a et seq., as amended;

Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1984; October 1, 1978;
Readopted Eff. October 1, 2018.

10A NCAC 63C .0604 REPORTS

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Amended Eff. August 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; February 1, 1996; February 1, 1984; October 1, 1978;
Repealed Eff. October 1, 2018.

10A NCAC 63C .0605 REPAIRS

- (a) Operators shall secure repairs to equipment not to exceed a dollar amount as determined by the Division on an annual basis.
- (b) If the repair rate exceeds the amount as determined by the Division, bids must be obtained and submitted to the Division for approval. The Division shall apply state purchasing procedures as found in 01 NCAC 05 under the State Division of Purchase and Contract.
- (c) If the operator is unable to secure bids, he shall contact the Division for assistance.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Amended Eff. August 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63C .0606 EQUIPMENT: MERCHANDISE: SUPPLIES: CASH

- (a) Each operator shall sign a receipt for all equipment, merchandise, supplies, and cash for which he is entrusted when initially placed in a Business Enterprises facility, and shall be held accountable for those assets.
- (b) Each operator shall maintain the equipment assigned to him, and shall ensure that the equipment is used only for the purposes of operating the business.
- (c) All assets vested in the Division shall be safeguarded and protected.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63C .0607 INSURANCE

- (a) Each operator must maintain adequate bodily injury, property damage, and food products liability insurance as will protect the operator, anyone employed by the operator, and the Division against losses and claims arising out of the conduct of the business of the Business Enterprises facility. Each operator must also carry worker's compensation and unemployment insurance as required by state and federal law. Adequate coverage for liability insurance will be determined by the Business Enterprises Program Chief in consultation with the Elected Committee of Vendors and changes in limits shall be conveyed to the operators in writing with a 30-day advance notice.
- (b) The costs of such insurance shall be a cost of operating the business of the Business Enterprises facility and taken into account as such in determining the net proceeds of the business.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;

Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63C .0608 PRICING OF MERCHANDISE

- (a) Each operator shall determine his own pricing structure commensurate with prevailing pricing of local competitors and shall not take advantage of customers through unfair pricing practices.
- (b) Notwithstanding Paragraph (a) of this Rule, in Business Enterprises facilities where prices are determined in some manner by the contract between the Division and the location, the operator must comply with the terms of that contract.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS

10A NCAC 63C .0701 MINIMUM FAIR RETURN AND DEFINITIONS

History Note: Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; October 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015;
Repealed Eff. October 1, 2018.

10A NCAC 63C .0702 SET-ASIDE

- (a) "Set-aside" and "Net Proceeds" are used as defined in 34 CFR 395.1.
- (b) The Division shall set aside funds from the net proceeds of each business enterprises facility to be used for the purposes outlined in 34 C.F.R. 395.9.
- (c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration, as set forth in 34 C.F.R. 395.9.
- (d) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis shall be refunded on a pro rata basis.
- (e) Set-aside rates may be adjusted based on the set-aside fund balance and program goals and objectives and shall be determined by the Division after consultation with the operators and the NC Commission for the Blind.
- (f) The Division shall, with the active participation of the ECBV, develop an annual set-aside authorized budget for the Business Enterprises Program subject to Office of State Budget Management approval.
- (g) The Division shall provide to the operators an annual report with full and complete disclosure of all set-aside expenditures of the Business Enterprises Program.

History Note: Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157; 34 C.F.R. 395.8; 34 C.F.R. 395.9;
20 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; January 1, 1990; July 1, 1987; February 1, 1986;
July 1, 1980;
Readopted Eff. October 1, 2018.

10A NCAC 63C .0703 DISTRIBUTION OF PROCEEDS

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107;

Eff. February 1, 1976;
Amended Eff. December 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; April 1, 1990; October 1, 1978;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

10A NCAC 63C .0704 INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY

34 C.F.R. 395.8 is incorporated by reference with subsequent amendments and editions, and may be found at no cost at <https://www.govinfo.gov/content/pkg/CFR-2018-title34-vol2/pdf/CFR-2018-title34-vol2-sec395-8.pdf>.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1986;
Readopted Eff. October 1, 2018.

SUBCHAPTER 63D – SPECIAL ASSISTANCE FOR THE BLIND

SECTION .0100 – ELIGIBILITY REQUIREMENTS

- 10A NCAC 63D .0101 ELIGIBILITY**
- 10A NCAC 63D .0102 MOVING FROM NORTH CAROLINA: TEMPORARY ABSENCE**
- 10A NCAC 63D .0103 MOVING AMONG COUNTIES**
- 10A NCAC 63D .0104 INSTITUTION: MENTAL HEALTH GROUP HOMES**
- 10A NCAC 63D .0105 REPORT OF EYE EXAMINATION**
- 10A NCAC 63D .0106 APPLICATIONS**

History Note: Authority G.S. 111-11; 111-13; 111-14; 111-15; 111-15(4),(5); 111-16; 111-19; 111-20; 111-21;
143B-157;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; June 1, 1984; February 1, 1982;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0200 - PAYMENTS

- 10A NCAC 63D .0201 PAYMENT STANDARDS**
- 10A NCAC 63D .0202 DOMICILIARY CARE**
- 10A NCAC 63D .0203 MEDICAL CARE: PAYMENTS**

History Note: Authority G.S. 111-13; 111-14; 111-17; 143B-157;
Eff. February 1, 1976;
Amended Eff. May 1, 1977;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986; February 1, 1982; December 1, 1977;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0300 – RESOURCES

- 10A NCAC 63D .0301 DEFINITION OF RESOURCES**
- 10A NCAC 63D .0302 SUPPLEMENTAL SECURITY INCOME**
- 10A NCAC 63D .0303 DISREGARDED INCOME**
- 10A NCAC 63D .0304 UNEARNED INCOME**
- 10A NCAC 63D .0305 NET INCOME FROM BOARDERS**
- 10A NCAC 63D .0306 NET INCOME FROM REAL ESTATE**

10A NCAC 63D .0307 NET FARM INCOME
10A NCAC 63D .0308 EARNED INCOME
10A NCAC 63D .0309 RESOURCES FOR RESERVE
10A NCAC 63D .0310 REAL PROPERTY
10A NCAC 63D .0311 SALE OR TRANSFER OF REAL PROPERTY

History Note: Authority G.S. 111-13; 111-14; 111-17; 143B-157;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; February 1, 1982; December 1, 1977;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0400 – ASSISTANCE PAYMENT PROCEDURE

10A NCAC 63D .0401 ACCRUED PAYMENTS
10A NCAC 63D .0402 MINIMUM PAYMENTS: PAYMENTS MADE IN DOLLAR UNITS
10A NCAC 63D .0403 PAYMENTS TO OTHERS
10A NCAC 63D .0404 PAYMENT TO RECIPIENT'S ESTATE
10A NCAC 63D .0405 RETROACTIVE PAYMENTS

History Note: Authority G.S. 111-13; 111-16; 111-17; 111-18; 111-30; 111-31; 111-32; 111-33; 143B-157;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; November 1, 1980; May 1, 1980;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0500 – PROCEDURE FOR PAYMENT

10A NCAC 63D .0501 CHECKS
10A NCAC 63D .0502 EXCEPTION TO DELIVERY
10A NCAC 63D .0503 ENDORSEMENT OF CHECKS
10A NCAC 63D .0504 LOST CHECKS: DUPLICATE CHECKS

History Note: Authority G.S. 111-13; 111-15(4),(5); 111-17; 111-18; 143B-157;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; February 1, 1982;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0600 – INDIVIDUAL RIGHTS

10A NCAC 63D .0601 RESPONSIBILITIES OF AGENCY
10A NCAC 63D .0602 FRAUD
10A NCAC 63D .0603 SAFEGUARDING INFORMATION
10A NCAC 63D .0604 GUARDIANS

History Note: Authority G.S. 111-13; 111-23; 111-27.1; 111-28; 143B-157;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; February 1, 1982;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0700 – CONTESTED CASES

10A NCAC 63D .0701 APPEAL OF DIVISION ACTION 10A NCAC 63D .0702 SUMMARY OF INFORMAL CONFERENCE

History Note: Authority G.S. 111-16; 143B-157; 150B-23;
Eff. February 1, 1976;
Amended Eff. December 16, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SECTION .0800 - DISTRIBUTION OF EQUALIZATION FUNDS FOR SAB CASES BY COUNTIES

10A NCAC 63D .0801 PURPOSE AND METHOD 10A NCAC 63D .0802 NOTIFICATION OF DISTRIBUTION

History Note: Authority G. S. 111-29;
Eff. September 1, 1980;
Amended Eff. August 1, 2002; February 1, 1986;
Expired Eff. December 1, 2015 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 63E - INDEPENDENT LIVING SERVICES

SECTION .0100 - ELIGIBILITY FOR SERVICES

10A NCAC 63E .0101 BASIC ELIGIBILITY CRITERIA

(a) In addition to the requirements of 10A NCAC 71R .0600, where applicable, an individual must be determined eligible to receive services under the Social Services Block Grant (Title XX) on the basis of:

- (1) need, with regard to income for In-Home Aide Services;
- (2) need without regard to income for all other services.

(b) For purposes of determining and redetermining eligibility for services provided by the Division of Services for the Blind in this Subchapter, the rules in Subchapter 10A NCAC 71Q shall apply.

(c) Individuals are eligible for these services at the following income levels:

- (1) Adjustment services are provided without regard to income-these are services provided in any combination as needed and appropriate to enable blind and visually impaired individuals to attain and maintain the highest level of functioning possible;
- (2) In-Home Aide Services: Chore Services for the Blind are provided to individuals whose monthly gross family income is less than 100 percent of the state's established income. State's established income is 150% of the federal poverty level.

History Note: Authority G.S. 111-28; 143B-157; 42 U.S.C. 1397;
Eff. February 1, 1976;
Amended Eff. October 12, 1977; August 24, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; January 1, 1992; February 1, 1986; August 1, 1983; December 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63E .0102 ELIGIBILITY BASED ON VISION LOSS

The following categories show the level of vision loss which must exist in order for a person to meet the definition of visually impaired or blind for the purpose of being served by the social worker for the blind:

- (1) legally blind; or

- (2) persons with best corrected central visual acuity of 20/70 or less in the better eye; or
- (3) persons with one or both of the following conditions:
 - (a) the presence of chronic, progressive eye pathology;
 - (b) visual acuity better than 20/70 which nevertheless results in a vocational or functional handicap.

History Note: Authority G.S. 111-11; 111-28; 42 U.S.C. 1397;
 Eff. February 1, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0200 – GOALS AND SERVICES

10A NCAC 63E .0201 GOALS

All services provided to consumers of the Division of Services for the Blind Independent Living Services Program shall be directed towards the three goals of:

- (1) achieving and maintaining self-sufficiency, including reduction or prevention of dependency;
- (2) preventing or reducing institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and
- (3) preventing and remedying neglect, abuse, or exploitation of persons unable to protect their own interests, or preserving, rehabilitating, or reuniting families.

History Note: Authority G.S. 111-28; 42 U.C.S. 1397;
 Eff. February 1, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002; February 1, 1986; July 1, 1979;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63E .0202 SERVICES

(a) The following services are provided by the Division of Services for the Blind under this Section:

- (1) In-Home Aide Services: Chore Services for the Blind. In-Home Aide Services are those services which assist the individual or family with essential home management tasks necessary to enable the individual and family to remain and function effectively at home for as long as possible.
- (2) Adjustment Services for the Blind and Visually Impaired. These are services provided in any combination as needed and appropriate to enable blind and visually impaired individuals to attain or maintain the highest level of functioning possible, to promote their well-being, and to prevent or reduce dependency. This is achieved through a focused regimen of counseling and casework assistance to individuals and their families to help individuals choose, obtain, and use needed resources, services, and mechanisms of support. Within this context one or more of the following service components or resource items may be provided as part of the Adjustment Services for the Blind and Visually Impaired category.
 - (A) Assistance with the demands of daily living may be provided through training in areas such as grooming skills; manipulative skills such as the use of household appliances; money identification and communication skills such as braille, typing, and use of the telephone;
 - (B) The teaching of orientation and mobility skills;
 - (C) Therapeutic experiences aimed at helping the individual to adjust to and accept his visual limitations through camping experiences, recreational programs, adjustment training at rehabilitation centers, and individual and group counseling sessions;
 - (D) The following services/items may be provided: reader services, interpreter services for the deaf/blind, braille, large print and taped material, low vision optical aids, travel aids and devices, community sponsored recreational activities, devices to support independence such as talking clocks, talking calculators, and braille watches.

- (3) Individual and Family Adjustment Services. These services are designed to assist the consumer and his or her family in adjusting to the consumer's vision loss, making necessary accommodations and modifications to the environment after vision loss, and identifying community supports. Activities may include counseling to assist the consumer to recognize, understand, and cope with problems in such areas as household management, consumer affairs, family life education, and other disabling conditions.
- (4) Health Support Services. These services provide help to individuals and families to recognize health needs including those related to alcohol and drug abuse and to secure needed health services available under medicaid, medicare, or other agency health services programs and from other public or private agencies or providers of health services; counseling and planning with individuals, families, and health providers to help assure continuity of treatment and the carrying out of health recommendations; and helping individuals to secure admission to medical institutions and other health-related facilities as needed.
- (5) Housing and Home Improvement Services. These services provide assistance to individuals and families in obtaining and retaining housing and basic furnishings. Services include helping to improve landlord-tenant relations, to identify housing, to secure correction of housing code violations, to obtain or retain ownership of own home, and to find and relocate to more suitable housing.
- (6) Information and Referral. This means giving information about services provided under the state's social services program and other service programs, both public and private; brief assessment to determine the most appropriate resource to meet the stated needs of the person requesting services; and referral to and follow-up with those community resources which provide or make available such services.

(b) The following services are mandated in all parts of the state; the responsibility for the provision of these services rests with the Division of Services for the Blind.

- (1) In-Home Aide Services;
- (2) adjustment services for the blind and visually impaired.

*History Note: Authority G.S. 111-28; 143B-10;
Eff. February 1, 1976;
Amended Eff. October 12, 1977; August 24, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; January 1, 1992; April 1, 1990; February 1, 1986; August 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

SECTION .0300 - DELIVERY OF SERVICES

10A NCAC 63E .0301 AUTHORIZATION: INDEPENDENT LIVING SERVICES

The Authorization for Services is needed to authorize purchase of any Title XX services and components. This form is completed by the social worker for the blind.

*History Note: Authority G.S. 111-28; 143B-157;
Eff. February 1, 1976;
Amended Eff. August 24, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. December 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

SECTION .0400 – INDIVIDUAL RIGHTS

10A NCAC 63E .0401 CONFIDENTIALITY

All information contained in the consumer files of the agency is confidential and shall not be released to anyone except upon the written consent of the consumer or in compliance with other state or federal laws or regulations.

History Note: Authority G.S. 111-28; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63E .0402 APPEAL TO DESIGNATED AGENCY REPRESENTATIVE

- (a) If a consumer is dissatisfied with an action taken by or service delivered by the independent living service program, that consumer may request a conference with the designated agency representative.
- (b) A conference shall be held within 30 calendar days from the receipt of the original request.
- (c) If the conference solves the grievance or dissatisfaction, this shall be stated in writing and signed by the consumer.
- (d) The agency representative shall prepare a written report of the conference within 15 calendar days of the conference.

History Note: Authority G.S. 111-16; 143B-157;
Eff. February 1, 1976;
Amended Eff. October 12, 1977;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; December 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63E .0403 REQUEST FOR CONTESTED CASE HEARING

- (a) If the results of the conference are unsatisfactory, the consumer shall be informed by the designated agency representative of his or her right to a contested case hearing.
- (b) All petitions for review of agency decisions (G.S. 150B) shall be heard by the Office of Administrative Hearings. The agency shall notify the consumer in writing that he has the right to petition the Office of Administrative Hearings and request a contested case hearing. The consumer shall be instructed to contact OAH and request the specific forms to be completed.
- (c) In this same written notice the consumer shall be instructed that he or she has 60 calendar days from the date of receipt of the agency notice to request a contested case hearing through OAH. Any request for a contested case hearing must be returned by the consumer directly to the Office of Administrative Hearings.
- (d) The Office of Administrative Hearings issues, as appropriate, either a final decision or a recommended decision which will be sent to the Director of the Division of Services for the Blind. The agency shall provide the consumer a written copy of the final decision. A copy shall also be placed in the consumer's file.

History Note: Authority G.S. 143B-157; 150B-3;
Eff. December 1, 1990;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SUBCHAPTER 63F - VOCATIONAL REHABILITATION

SECTION .0100 - SERVICES

10A NCAC 63F .0101 ELIGIBILITY FOR AND AUTHORIZATION OF SERVICES

- (a) An Individualized Plan for Employment shall be developed to provide services to applicants to the vocational rehabilitation program who meet the following criteria:
 - (1) the applicant for services has a physical or mental impairment;
 - (2) the physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

- (3) the applicant requires vocational rehabilitation services in order to prepare for, secure, retain, advance in, or regain employment.
- (b) It shall be presumed that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless it can be demonstrated through clear and convincing evidence that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability.
- (c) Applicants who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be presumed eligible for vocational rehabilitation services; however, the applicant shall intend to achieve an employment outcome.
- (d) Authorization of Services:
 - (1) The Division shall issue a written authorization for services prior to or simultaneously with the provision of the service. A copy of the authorization shall be retained in the case file.
 - (2) The Division shall authorize services that are required for a consumer to participate in an assessment to determine eligibility for services. The Division shall also authorize services required for a consumer to complete the goals identified on his or her Individualized Plan for Employment (IPE).
 - (3) Authorizations shall be issued based on availability of funds.

*History Note: Authority G.S. 134B-157; 34 C.F.R. 361.1; 34 C.F.R. 361.3; 34 C.F.R. 361.42(a); 34 C.F.R. 361.45;
Eff. February 1, 1976;
Amended Eff. November 8, 1976; June 25, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Readopted Eff. October 1, 2018.*

10A NCAC 63F .0102 TRAINING AND TRAINING MATERIALS

- (a) The Division shall furnish training to all eligible individuals to the extent necessary to achieve their vocational rehabilitation outcome and to the extent that entry level qualifications of the job, profession, or employment are achieved.
- (b) Training provided by the Division shall include vocational, prevocational, personal adjustment training, and other rehabilitation training that contributes to the determination of the rehabilitation potential or to the individual's personal and vocational adjustment and it shall cover training provided directly by the Division or procured from other public or private training facilities, including community rehabilitation programs.
- (c) The Division shall provide necessary books and other training materials to applicants accepted for evaluation of the rehabilitation potential and to financially eligible consumers.
- (d) The Division shall provide financial support for post-secondary education of consumers under the following terms and conditions:
 - (1) Financial support for consumers attending institutions of higher learning shall not exceed the maximum rate for tuition and fees established at State-supported colleges and universities in North Carolina.
 - (2) Requests for support shall be considered only when the consumer has applied for grants and scholarships at the accepting institution. The Division shall deduct the grant amount from the consumer's training allotment.
 - (3) Consumers who are sponsored for an undergraduate degree shall not receive more than 10 semesters or 15 quarters of sponsorship to complete their undergraduate degree or five semesters/eight quarters to complete a community college program. The Division may grant an exception to the semester or quarter requirements when necessary to accommodate the special training needs of consumers with severe disabilities.
 - (4) Consumers who are sponsored for undergraduate programs shall maintain a grade point average (GPA) of 2.0. Agency sponsorship shall be withdrawn from any consumer in an undergraduate program whose GPA falls below 2.0 for two consecutive semesters or quarters. If the consumer continues in the educational institution under his or her own sponsorship and brings his or her cumulative GPA to 2.0, the consumer may again be considered for sponsorship through the VR Program of the agency. Consumers under agency sponsorship for graduate or professional programs shall maintain a grade point average commensurate with the standards established by the

educational institution they are attending for degree requirements. Agency sponsorship shall be withdrawn from any consumer in graduate or professional programs whose GPA falls below the standards established by the educational institution for degree requirements for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative GPA to the standard established by the educational institution, the consumer may again be considered for sponsorship through the VR Program of the agency. Consumers may receive agency sponsorship for vocational training or on-the-job training outside of programs offered in undergraduate, graduate, and professional schools. A consumer who is participating in such a program shall maintain grades or standards of performance commensurate with the standards established by the institution or trainer for satisfactory completion of the training program within an established time frame. The agency shall not sponsor a consumer in a vocational training or on-the-job training program for more than one additional unit of time as defined by the particular institution or trainer in order to complete the program. The Division may grant an exception to the length of training sponsorship when necessary to accommodate the special training needs of consumers with severe disabilities.

- (5) The Division may provide graduate training for consumers when the training is required to enter a position. The consumer's case file shall contain a letter from an official of the appropriate graduate school of higher learning designating the number of semesters or quarters required to achieve the graduate degree. The Division shall not sponsor consumers in excess of one quarter or one semester above that specified in the letter as a time required to receive the graduate degree. The Division may grant an exception to the length of training when necessary to accommodate the special training needs of consumers with severe disabilities.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; C.F.R. 361.48(f);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Readopted Eff. October 1, 2018.

10A NCAC 63F .0103 PHYSICAL AND MENTAL RESTORATION SERVICES

(a) The following physical and mental restoration services may be provided to consumers if required in order to complete an assessment for the purposes of determining eligibility or as part of an Individualized Plan for Employment for consumers determined eligible for vocational rehabilitation services:

- (1) surgery or treatment;
- (2) psychological and psychiatric treatment;
- (3) dental treatment;
- (4) nursing services;
- (5) hospitalization (either in-patient or out-patient care) and clinic services;
- (6) drugs and supplies;
- (7) prosthetic devices essential to obtaining or retaining employment;
- (8) physical therapy;
- (9) occupational therapy;
- (10) medically directed speech or hearing therapy;
- (11) eyeglasses, lenses, and visual aids including the services necessary to prescribe and train in the use of specialized visual aids;
- (12) treatment of medical complications and emergencies, either acute or chronic, which are associated with or arise out of the provision of physical restoration services, or are inherent in the condition under treatment; and
- (13) other medical or medically related rehabilitation services.

(b) The Division may furnish physical restoration services to eligible individuals if the following criteria are met:

- (1) The clinical status of the individual's condition is stable or slowly progressive (i.e., the condition must not be acute or transitory); and
- (2) Physical restoration services are likely to eliminate or substantially reduce the impairment that constitutes an impediment to employment within a reasonable period of time.

*History Note: Authority G.S. 111-28; 34 C.F.R. 361.5(b)(40);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63F .0104 TRANSPORTATION

(a) The Division shall furnish transportation to eligible individuals and to members of their family, in connection with the provision of diagnostic and other services when such transportation is necessary to the individual's vocational rehabilitation.

(b) Such transportation includes:

- (1) costs of travel and subsistence during travel (or per diem allowance in lieu of subsistence) for eligible consumers and their attendants or escorts, where such assistance is needed; and
- (2) relocation and moving expenses necessary for the achievement of a job after it is determined that the eligible consumer has adjusted to the employment situation and the job is permanent.

(c) The Division shall pay an amount representing the down payment of the purchase price of an automobile for an eligible consumer who has been determined to be rehabilitated when the employment goal requires the individual to travel in the performance of his responsibilities and the employment goal is at or above the substantial gainful activity level as defined by the Social Security Administration. The Division shall not:

- (1) make monthly automobile payments; or
- (2) retain title to the automobile.

*History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(h) and 361.5(b)35;
Eff. February 1, 1976;
Amended Eff. August 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63F .0105 MAINTENANCE

(a) Maintenance shall be provided by the Division only in order to enable an applicant or eligible consumer to derive the full benefit of other vocational rehabilitation services being provided. Service costs shall be limited to the amount of increased costs that are in excess of the normal expenses that are necessitated by the applicant or the eligible consumer's participation in a rehabilitation program.

(b) The major types of living expenses covered by maintenance payments are as follows:

- (1) board;
- (2) room;
- (3) laundry;
- (4) clothing; and
- (5) other subsistence expenses necessary to achieve the eligible consumer's vocational rehabilitation outcome.

(c) The Division may provide maintenance or partial maintenance following placement only until the eligible consumer receives his first full minimum remuneration. In case of a self-employed person, maintenance may not exceed a period of 30 days.

*History Note: Authority G.S. 111-28; 34 C.F.R. 361.41(a)(5); 34 C.F.R. 361.48(g); 34 C.F.R. 361.5(b)(35);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63F .0106 JOB PLACEMENT

(a) Successful employment in a competitive integrated setting is the ultimate goal of the vocational rehabilitation program and the goal toward which all services are directed. Division staff shall assist eligible consumers pursue employment in a job that is, to the greatest extent possible, consistent with that consumers skills, interests, needs, and informed choice. Job seeking skills training, job development, job placement, on-the-job training, supported employment, follow-up after placement, and employer education about vision loss and other employment-related incentives shall be used by staff in providing job placement service.

(b) The case file shall be closed for a consumer who has achieved a successful employment outcome when the following requirements have been met:

- (1) The consumer has achieved the employment outcome as stated on his or her Individualized Plan for Employment consistent with that consumer's skills, abilities, interests, and informed choice, and the consumer is employed in the most integrated setting possible consistent with his or her informed choice;
- (2) The consumer has maintained the job for period of time sufficient to demonstrate the stability of the employment outcome and that the consumer no longer needs vocational rehabilitation services. The job must be maintained for at least 90 days; and
- (3) At the time of case closure the consumer and the Division's rehabilitation counselor must agree that the employment outcome is satisfactory and that the consumer is performing well in the job.

(c) The Division shall advise the consumer of the availability of post-employment services. These services shall be provided consistent with the following:

- (1) The service is provided subsequent to the achievement of an employment outcome;
- (2) The service is necessary in order for the consumer to maintain, regain, or advance in employment; and
- (3) The services are designed to meet rehabilitation needs that do not require a complex or comprehensive program of services and are limited in scope and duration.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.47(a)(7),(8),(9),(10),(14),(15); 34 C.F.R. 361.48(l),(m)(o); 34 C.F.R. 361.5(b)(42); 34 C.F.R. 361.56; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0107 ESTABLISHMENT OF SMALL BUSINESS OPERATIONS

(a) The Division shall provide technical assistance and other services to eligible individuals for whom it has been determined that self-employment through a small business operation is the employment outcome to be achieved through services outlined on the Individualized Plan for Employment. These services include market analyses, development of a business plan, and provision of funds that will in full or in part support the business operation as outlined on the IPE at a level agreed upon by the consumer and the Division's counselor. The employment outcome must allow the eligible individual to become a successful entrepreneur with projected income equivalent to, or above, the level of Substantial Gainful Activity (SGA) as established by the Social Security Administration annually. Outside resources, such as the University of North Carolina's Small Business and Technology Development Centers, shall be used to develop a proposal for the establishment or expansion of a small business. The proposal shall consist of a business plan with the following data:

- (1) A summary of product/service or the proposed business;
- (2) Company background information;
- (3) Detailed description of product/service;
- (4) Market information specific to the proposed business location;
- (5) Competition information specific to the proposed business location;
- (6) Marketing strategies;
- (7) Location of the small business with specific details;
- (8) Management and operation plans, to include the eligible individual's role;
- (9) Financial information including a projection of anticipated income per month (or per completed task) and the anticipated expenses of operating the business (If the consumer is unable to establish

this independently, an accountant or CPA may be hired to conduct an independent objective assessment; and

- (10) Specific costs of the establishment, including information of the eligible individual's contributions.
- (b) All proposals must contain written approval by the Rehabilitation Counselor, the Area Rehabilitation Supervisor, and the Chief of Rehabilitation Field Services for sponsorship by the Division. The feasibility of the venture and the eligible individual's skills, knowledge, experience, competency and contribution of time and money are factors that shall be considered in the review of the proposals.
- (c) Review and written approval by the Division's Projects Review Committee is required for the following and shall consider the feasibility of a business plan to include a summary, company background, product/service, competition, marketing of product/service, location, personnel management, and financial information:
 - (1) Proposals requesting Division sponsorship of less than under five thousand dollars (\$5,000) as requested by the Chief of Rehabilitation Field Services when feasibility of the proposal is not clear, and
 - (2) All proposals requesting Division sponsorship of five thousand dollars (\$5,000) or above.
- (d) The Division shall set thirty thousand dollars (\$30,000) as the maximum amount of Division contribution for the establishment of small business ventures by eligible individuals. The Division may modify the maximum level based on availability of funds. The Division may exceed the maximum level on a case-by-case basis when all of the following conditions are met:
 - (1) The business plan as described in Paragraph (a) of this Rule contains evidence that:
 - (A) Funds in excess of thirty thousand dollars (\$30,000) are required in order to establish or expand the proposed small business; and
 - (B) All other sources of funding have been researched by the consumer;
 - (2) The projected annual income is above the Substantial Gainful Activity (SGA) level established by the Social Security Administration; and
 - (3) Funds are available.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(s); 34 C.F.R. 361.50(c)
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0108 READER SERVICES

- (a) Reader service may be provided in order to assist a consumer in completing an assessment or as part of the services required under a consumer's Individualized Plan for Employment in order to achieve the stated employment outcome.
- (b) When reader service is provided, the consumer shall employ and manage the reader and shall report to the Division any and all information necessary for the Division to reimburse the reader for services rendered as submitted by the consumer.
- (c) Reader services shall be provided at a hiring rate not to exceed the State minimum wage or the university or college work-study rate, whichever is higher.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(k);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0109 INTERPRETER SERVICES

The Division shall provide sign language interpreter services for deaf and hard of hearing consumers and foreign language interpreter services for consumers for whom English is not their native language as follows:

- (1) Interpreter service shall be provided to consumers to enable them to participate in an assessment or as part of the services identified on the Individualized Plan for Employment as required for the consumer to achieve the stated employment outcome.

- (2) The authorization for services shall be issued by the Division to the interpreter and the interpreter will bill the Division for services rendered based upon an agreed to number of hours, competence, and certification.
- (3) The Division shall obtain the services of interpreters who can meet the needs of the consumer.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(j);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0110 SERVICES TO FAMILY MEMBERS

- (a) For purposes of this Subchapter, "family members" is used as defined in 34 C.F.R. 361.5(b)(23).
- (b) Services may be provided to family members of applicants or consumers receiving services under an Individualized Plan for Employment if the services are necessary for the applicants or eligible consumer to participate in an assessment or to achieve the employment outcome stated on the consumer's Individualized Plan for Employment.
- (c) Such services shall include only those services which may be expected to contribute to the determination of rehabilitation potential or to the rehabilitation of the applicant or eligible individual.

History Note: Authority G.S. 111-28 34; C.F.R. 361.48(l);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0111 SERVICES TO GROUPS OF INDIVIDUALS

- (a) Consistent with the provision of 34 C.F.R. 361.49 the Division may provide vocational rehabilitation services to groups of individuals including construction of a facility for community rehabilitation purposes as contained in 34 C.F.R. 361.60 and 361.61.
- (b) Such facilities and services may include, but are not limited to, the removal of architectural barriers from buildings to be used for the training or employment of people with disabilities, the provision of instructional materials or services for a group of blind or visually impaired individuals, or the provision of a special bus or other vehicle for the transportation of individuals with disabilities.
- (c) All such services shall be provided based upon the availability of federal rehabilitation funds and non-federal matching funds as stated in 34 C.F.R. 361.60.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.49; 34 C.F.R. 361.60; 34 C.F.R. 361.61;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0112 OTHER SERVICES: MEDICAL CARE

- (a) The Division shall provide to eligible consumers other goods and services available as provided in 34 C.F.R. 361.48(t), when such services are necessary to determine the rehabilitation potential of the client or to render him fit for gainful employment.
- (b) The Division shall furnish medical care for up to 30 days for acute conditions arising in the course of vocational rehabilitation, which, if not cared for, would constitute a hazard to the achievement of the vocational rehabilitation objective, or the completion of the extended evaluation to determine rehabilitation potential.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(d)(t); 34 C.F.R. 361.5(b)(40);
Eff. February 1, 1976;

Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0113 RATES OF PAYMENT

Vendors providing any services authorized by the state agency must agree not to make any charge to or accept any payment from the consumer or his family for services unless the amount of the charge or payment is previously known and approved by the state Division consistent with the consumer's Individualized Plan for Employment.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.46;
Eff. December 1, 1981;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0200 - CONSTRUCTION OF REHABILITATION FACILITY

10A NCAC 63F .0201 PURPOSE

The primary purpose of the construction of any rehabilitation facility is to provide vocational rehabilitation services to individuals with disabilities that include work evaluation and training that will lead to competitive employment in an integrated setting.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.49(a)(1);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0202 DEFINITIONS

The Division shall comply with definitions and guidelines as specified for "Construction of a public or nonprofit community rehabilitation program" as found in 34 C.F.R. 361.5(b)(12).

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5(b)(12);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0300 - STANDARDS FOR FACILITIES

10A NCAC 63F .0301 TYPES OF FACILITIES

(a) The Division shall use whenever feasible facilities that are accredited by a public authority or professional organization to provide medical care, education, and other services. Facilities shall be selected for use in providing the eligible consumer's rehabilitation program based on the individualized rehabilitation needs of the consumer. Facilities may include hospitals, convalescent and nursing homes, rehabilitation centers, colleges, universities, community colleges and technical schools, community rehabilitation program or other facilities as needed by the eligible consumer.

(b) Students shall receive their training in schools and colleges accredited by the Southern Association of Secondary Schools and Colleges or state accrediting agencies.

(c) Any facility in which vocational rehabilitation services are provided and any provider of vocational rehabilitation services shall meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51.

History Note: Authority G.S. 111-6; 111-6.1; 111-28; 34 C.F.R. 361.51; 34 C.F.R. 361.52; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0400 – ECONOMIC NEED

10A NCAC 63F .0401 BENEFITS

- (a) The Division of Services for the Blind shall give consideration to all other benefits available to the consumer with a visual disability by way of pension, compensation, or insurance to meet, in whole or in part, the cost of any vocational rehabilitation services provided to the consumer except the following:
- (1) assessment for determining eligibility and vocational rehabilitation needs;
 - (2) counseling and guidance, including information and support services to assist the applicant or consumer in exercising informed choice;
 - (3) referral and other services to secure needed services from other agencies if those services are not available;
 - (4) job-related services, including job search and placement assistance, job retention services, and follow-up services;
 - (5) rehabilitation technology, including telecommunications, sensory, and other technological aids; and
 - (6) post-employment services listed in Subparagraphs (1) through (5) of this Paragraph.
- (b) When and to the extent that a consumer is eligible for such benefits, such benefits shall be utilized unless such a determination would interrupt or delay:
- (1) the progress of the consumer toward achieving the employment outcome in the individualized plan for employment;
 - (2) an immediate job placement; or
 - (3) the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided by a medical professional.
- (c) If benefits exist, but are not available at the time needed to achieve the consumer's rehabilitation outcome, the services shall be provided until those benefits become available. Such benefits include but need not be limited to:
- (1) medicare, medicaid hospital and physician's services plans in relation to physical restoration services; and
 - (2) workmen's compensation, veterans' benefits, private insurance benefits, old age and survivors disability insurance benefits and unemployment compensation in relation to basic maintenance.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.53; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; April 1, 1990; February 1, 1982; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES

- (a) The Division of Services for the Blind shall establish the economic need of each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, (SSA), the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.
- (b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services, except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;
- (2) an assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- (3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice; and
- (4) tuition and supplies for Community Rehabilitation Program training;
- (5) tuition and fees for:
 - (A) community college and university educational and vocational programs up to the catalog rate; and
 - (B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;

- (6) interpreter services, including sign language and oral interpreter services for applicants or consumers who are deaf or hard of hearing, and tactile interpreting services for applicants or consumers who are deaf-blind;
- (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- (8) job-related services, including job search, job placement employment assistance, and job retention services;
- (9) DSB Rehabilitation Center services or fundamental independent living rehabilitation adjustment services, including transportation and training supplies, contingent on a consumer's participation in the program;
- (10) diagnostic transportation;
- (11) on-the-job training;
- (12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- (15) supported employment services;
- (16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;
- (17) referral and other services designed to assist applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of Rehabilitation Act Amendments (the Act, P.L. 102-569), if such services are not available under this Act, and to advise those individuals about client assistance programs established under the Act;
- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment, except for those services based on economic need;
- (19) technical assistance and other consultation services to consumers who are pursuing self-employment, telecommuting, or establishing a business operation as an employment outcome; and
- (20) provision of pre-employment transition services to students with disabilities who are 14-21 years of age, whether they are presently a VR client or a potentially eligible individual.

(c) The following services shall be provided by the Division of Services for the Blind and shall be conditioned on economic need:

- (1) physical and mental restoration services that are medical services other than diagnostic;
- (2) maintenance for additional costs incurred while participating in rehabilitation;

- (3) transportation in connection with rendering any vocational rehabilitation service except where necessary in connection with determination of eligibility or nature and scope of services;
 - (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;
 - (5) post-employment services necessary to assist consumers with visual disabilities to maintain, regain, or advance in employment, except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;
 - (6) fees necessary to obtain occupational licenses;
 - (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;
 - (8) expenditures for short periods, not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation that if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective; and
 - (9) other goods and services not prohibited by the Act (P.L. 102-569) that can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.
- (d) Notwithstanding Paragraph (c) of this Rule, the following services shall not be subject to economic need for individuals being served through the Vocational Rehabilitation Program:
- (1) books and other training materials required for post-secondary training; and
 - (2) rehabilitation technology, including telecommunications, sensory aids, and other technological aids and devices for consumers who have an Individualized Plan for Employment (IPE) who are working toward an employment goal that requires specified technology to attain, regain, or maintain employment and who have the capability to use the equipment.
- (e) The Division of Services for the Blind shall publish the standard for measuring the financial need of consumers with respect to normal living requirements, for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.48; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475; Eff. February 1, 1976; Amended Eff. August 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Emergency Amendment Eff. September 23, 2009; Temporary Amendment Eff. November 16, 2009 to expire on June 30, 2012(See G.S. 150B-21.1B); Amended Eff. July 1, 2012; Readopted Eff. October 1, 2018.

10A NCAC 63F .0403 ECONOMIC NEEDS SCHEDULE

- (a) The Division of Services for the Blind shall determine a consumer's financial eligibility for services subject to a financial needs test by application of the financial eligibility scale established by the General Assembly. Copies of the economic needs schedule can be found at any Division office.
- (b) The Division shall obtain financial information from consumers to determine their financial eligibility to receive services listed in Rule .0402(c) of this Section. Financial information obtained may include wage and earning statement, State and Federal income tax forms, W2 form, bank statements and other information to document income or other financial resources. If the consumer does not have documents to verify income, the consumer shall complete a verification form provided by the agency and signed by the consumer's last employer, the individual who financially supports the consumer, or the agency representative who processes the consumer's public support. For the purpose of this Rule, "public support" means economic payment provided by state or federal government to someone in economic need.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.54; Eff. February 1, 1976;

Readopted Eff. November 16, 1977
Amended Eff. April 1, 1990; February 1, 1986; February 1, 1982; July 1, 1979;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. September 1, 2012; August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0500 - APPLICANTS

10A NCAC 63F .0501 REFERRALS

Applicants for services shall be assigned to a rehabilitation counselor. The rehabilitation counselor shall contact all referrals as promptly as possible. The counselor must make a decision regarding eligibility of the applicant within 60 days of completion of application for services or, unless exceptional and unforeseen circumstances beyond the control of the Division preclude making an eligibility decision, the counselor must obtain the signature of the applicant agreeing to extend the time frame for making the eligibility determination. The counselor shall use all existing information available from other sources in order to assure that an eligibility decision is made as promptly as possible.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.41;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0502 ORDER OF SELECTION FOR SERVICES

All vocational rehabilitation services shall be provided without delay to all individuals determined to be eligible for services; however, if a situation should develop under which vocational rehabilitation services cannot be extended without delay to all eligible individuals, because the Division does not have the financial or staff resources to serve all eligible individuals who apply for services, an order of selection for provision of services shall be implemented. Rules .0504, .0505, and .0506 in this Section set out the order of selection for services that shall be followed by the Division of Services for the Blind Rehabilitation Program. The Rules in this Section do not apply to the Independent Living Rehabilitation Program. As used in this order of selection, the following terms have the meaning specified:

- (1) "Division" means the Division of Services of the Blind of the Department of Health and Human Services.
- (2) "Division Director" or "Director" means the Director of the Division of Services for the Blind.
- (3) "Eligible individual" means an applicant whom the Division has determined meets the eligibility criteria as stated in Rule .0101 of this Subchapter.
- (4) "Individual with a significant disability" has the meaning specified in P.L. 105-220, Title IV, Section 7(21) which is incorporated by reference.
- (5) "Individual with the most significant disability" means an individual with a significant disability whose impairment seriously limits two or more functional capacities in terms of an employment outcome.
- (6) "Functional capacity" means the ability to perform in the following areas:
 - (a) mobility;
 - (b) communication;
 - (c) self-care;
 - (d) self-direction;
 - (e) interpersonal skills;
 - (f) work skills; and
 - (g) work tolerance.

The Section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the Section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 111-28; 150B-21.6; 34 C.F.R. 361.36; P.L. 105-220, Title IV, Section 7(21) and Section 101(a)(5)(A);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0503 CASE RECORDS AND CONFIDENTIALITY OF INFORMATION

The Division shall carry out provisions relative to case records and confidentiality of information as indicated in 34 C.F.R. 361.38 and 361.47.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.39; 34 C.F.R. 361.49;
Eff. February 1, 1976;
Amended Eff. November 8, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986; February 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0504 IMPLEMENTATION OF ORDER OF SELECTION

(a) The Director of the Division shall make a determination of the necessity for implementing the order of selection specified in Rule .0502 of this Section.

(b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis; and the Director shall determine the priority categories which can be served within available resources.

(c) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services affected by the decision. This notification shall inform the programs and vendors of the decision to implement an order of selection.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A);
Eff. January 1, 1996;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0505 DETERMINATION OF ORDER OF SELECTION PRIORITY

(a) The Division shall provide written notification to all applicants for services at the time of application of either:

- (1) the existing order of selection as set out in this Section; or
- (2) that an order of selection will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.

(b) When an Order of Selection has been implemented, the Division shall determine each individual's priority category at the time the individual is determined eligible for service. The individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

(c) The Division shall notify in writing each eligible individual of his/her priority classification at the same time the eligibility notification is provided.

(d) The Division shall change an individual's priority classification immediately if there are changes in the individual's circumstances that warrant a change. The Division shall notify the individual in writing of any change in priority classification.

(e) The individual's case file shall contain documentation of the rationale for the priority category assignment.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV; P.L. 102-569, Section 101(a)(5)(A);
Eff. January 1, 1996;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0506 PRIORITY CATEGORIES

(a) The priority categories for the order of selection for services for eligible individuals are as follows:

- (1) Category One - Individuals with the most significant disabilities;
- (2) Category Two - Individuals with a significant disability; and
- (3) Category Three - Individuals with a non-significant disability.

(b) An individual's priority category is determined when eligibility is determined as outlined in Rule .0505 of this Section.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A); Eff. January 1, 1996; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0507 PROCEDURES

(a) Eligible individuals who are already receiving services under an Individualized Plan for Employment (IPE) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs shall continue until their records of service are closed.

(b) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order from Priority Category Two down through Priority Category Three according to the availability of resources.

(c) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories approved for service shall be placed in a "waiting" status. They shall remain in the "waiting" status until their priority category is opened for services.

(d) When the order of selection is implemented, all individuals whose classification will mean they will be placed in a "waiting" status shall be notified in writing of their status. When services are made available to any category in which individuals have been in a "waiting" status, the Division shall notify all persons in that priority category that their rehabilitation plan can be developed.

(e) Individuals determined eligible after the order of selection for service is implemented shall receive services if they are classified in the categories being served or shall be placed in a "waiting" status if their classification places them in a category not currently being served.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A); Eff. January 1, 1996; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0508 POST EMPLOYMENT SERVICES

When a former recipient of services requires post-employment services and is otherwise eligible for such services, the services shall be provided without regard for the order of selection.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV; Eff. January 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0509 CASE FINDING AND REFERRAL

Case finding efforts shall not be modified because of an order of selection. The Division shall make the public and referral sources aware of the services it has to offer eligible individuals with disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV;

Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0510 THIRD-PARTY FUNDING ARRANGEMENTS

The Division shall ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection.

History Note: Authority G.S. 143-545.1; P.L. 102-220, Title IV;
Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0600 – HEARING PROCEDURE

10A NCAC 63F .0601 APPLICABILITY OF RULES

(a) The Rules in this Section apply to contested cases of applicants for and consumers receiving vocational rehabilitation services or independent living rehabilitation services from the Division of Services for the Blind.

(b) "Consumer" means a person eligible for vocational rehabilitation services or independent living rehabilitation services.

History Note: Authority G.S. 111-28; 143-546.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.58;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. December 1, 1990; June 1, 1983; February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0602 WRITTEN INFORMATION FOR APPLICANTS AND CONSUMERS

(a) The Division shall inform all applicants for and consumers receiving vocational rehabilitation or independent living rehabilitation services of the opportunities for an administrative review, mediation, and impartial due process hearing available under 34 C.F.R. 361.57 and the Rules of this Section.

(b) The Division shall provide written information to all applicants and consumers informing them:

- (1) of their right to an impartial due process hearing when they are dissatisfied with any determinations made by the Division concerning the furnishing or denial of services;
- (2) that they may seek resolution of the issue through an administrative review and mediation prior to an impartial due process hearing;
- (3) that the rehabilitation counselor or other designated staff of the Division will inform them of the name and address of the area rehabilitation supervisor to whom the request shall be submitted and of the manner in which a mediator or impartial hearing officer is selected; and that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) The Division shall inform all applicants and consumers in writing of the rights established in Paragraph (b) of this Rule at the time of application for vocational rehabilitation services, at the time of assignment to a category in the State's order or selection, if established, at the time of development of the Individualized Plan for Employment (IPE), and whenever vocational rehabilitation services are reduced, suspended, or terminated.

History Note: Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.30;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. December 1, 1990; June 1, 1983;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0603 REQUEST FOR ADMINISTRATIVE REVIEW, MEDIATION, AND IMPARTIAL DUE PROCESS HEARING

- (a) When any applicant for or consumer receiving vocational rehabilitation or independent living rehabilitation services wishes to request an administrative review, mediation, or an impartial due process hearing, the individual shall submit a written request to the area rehabilitation supervisor of the Division designated pursuant to Rule .0602 of this Section.
- (b) The request shall indicate if the individual is requesting:
- (1) An administrative review, mediation, and an impartial due process hearing to be scheduled concurrently; or
 - (2) An administrative review and an impartial due process hearing to be scheduled concurrently; or
 - (3) Mediation and impartial due process hearing to be scheduled concurrently; or
 - (4) only an impartial due process hearing.
- (c) The request shall contain the following information:
- (1) the name, address, and telephone number of the applicant or consumer and the individual's representative, if one has been designated; and
 - (2) a concise statement of the determination made by the rehabilitation staff for which an administrative review, mediation, or impartial due process hearing is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).
- (d) The Division shall not suspend, reduce, or terminate vocational rehabilitation or independent living rehabilitation services being provided an applicant or consumer for evaluation and assessment, for development of an Individualized Plan for Employment (IPE) or Independent Living Plan (ILP), and as provided for under an IPE or ILP pending final resolution of the issue through either an administrative review, mediation, or impartial due process hearing unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.
- (e) Participation in the mediation is voluntary on the part of all parties.

History Note: Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 102-569, Section 102(d); Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0604 DIVISION ACTIONS IN RESPONSE TO REQUEST

- (a) Upon receipt of a request for an impartial due process hearing, the area rehabilitation supervisor shall immediately forward the original request to the Division Director for appointment of a hearing officer to conduct the impartial due process hearing. If the individual requests mediation in addition to an impartial due process hearing, the Division Director shall arrange for the appointment of an impartial mediator to conduct the mediation session.
- (b) If the individual has requested an administrative review in addition to an impartial due process hearing, the area rehabilitation supervisor shall:
- (1) make a decision to conduct the administrative review or with the concurrence of the Division Director appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in the controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's rules and the State Plan for Vocational Rehabilitation Services State Plan for Independent Living Services, hereinafter referred to as the "State Plans;" and
 - (2) proceed with, or direct the designee to proceed with, an administrative review according to the provision of Rules .0605, .0608 and .0609 of this Section.

- (c) The area rehabilitation supervisor shall send the applicant or consumer written acknowledgement of receipt of the request and inform the individual that additional information will be sent regarding the administrative review, mediation, or impartial due process hearing.
- (d) The area rehabilitation supervisor shall provide the Client Assistance Program with a copy of the request and the response to the request.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.20; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0605 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- (1) If an administrative review is to be conducted, the area rehabilitation supervisor or his designee shall:
 - (A) set a date, time and place for the administrative review;
 - (B) send written notification by certified mail to the applicant or consumer and the individual's parent or guardian if the individual is a minor, or his or her representative if one has been designated, with a statement of the date, time and place for the administrative review;
 - (C) advise the applicant or consumer in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review (or mediation, if requested) and that the applicant or consumer will also receive a written notice from the hearing officer regarding the impartial due process hearing which will be held after the administrative review; and
 - (D) notify the Director of the Client Assistance Program (CAP) and the parties to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.
- (2) Prior to the administrative review, the area rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or consumer and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director if deemed necessary.

(b) Mediation

- (1) Upon receipt of the applicant's or the consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator who is mutually agreed upon by the Director and the individual or individual's representative. The appointment shall come from an Agency-maintained pool of qualified mediators who are:
 - (A) certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina, and
 - (B) knowledgeable of Federal and State law and policies governing vocational rehabilitation and independent living rehabilitation programs.
- (2) The mediator shall arrange a mediation session at a date, time and location that is convenient for the applicant or consumer and the individual's representative, if one has been designated, and the agency representative, and to the impartial due process hearing. The mediation process shall not be used to deny or delay a due process hearing.
- (3) The mediator shall provide the applicant or consumer and the individual's representative, the Division, and the Client Assistance Program written notice of the mediation session. The written notice shall:
 - (A) Identify the agreed date, time and place for the mediation session.
 - (B) Advise the applicant or consumer that the hearing officer will be appointed by the Director to conduct an impartial due process hearing if the matter is not resolved in mediation (or in an administrative review, if conducted) and that the applicant or consumer will receive a written notice from the hearing officer regarding the impartial

due process hearing, which will be after the mediation session (and administrative review, if applicable).

History Note: Authority G.S. 143B-157; 150B-(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0606 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

Upon receipt of the applicant's or consumer's request for an impartial due process hearing from the area rehabilitation supervisor, the Director shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative, if one has been designated.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.5; 34 C.F.R. 361.57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0607 SCHEDULING AND NOTICE OF IMPARTIAL DUE PROCESS HEARING

(a) The hearing officer shall schedule the impartial due process hearing to be held within 60 days of the original request by the applicant or consumer as described in Rule .0603 of this Section.

(b) The hearing officer shall provide the parties written notice of the date, time and place of the hearing and the issue to be considered at least 10 days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program.

(c) The notice shall inform the parties of the following:

- (1) the procedures to be followed in the hearing;
- (2) the particular sections of the statutes, federal regulations, state rules, and state plan involved;
- (3) the rights of the applicant or consumer as specified in 34 C.F.R. 361.57;
- (4) that the hearing officer shall extend the time for the hearing for up to 30 days if the parties jointly agree to a delay and submit a written statement to that effect to the hearing officer; and
- (5) that the hearing shall be cancelled if the matter is resolved in an administrative review or in mediation.

(d) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S.; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0608 ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- (1) Within 15 days of the original request for an administrative review by the applicant or consumer, the area rehabilitation supervisor or his designee shall hold the administrative review with the applicant or consumer, the individual's parent or guardian if the individual is a minor, or representative if one has been designated, the CAP Director, if participating, and other individuals deemed necessary by the area rehabilitation supervisor or his designee.

- (2) Within five working days of the administrative review, the area rehabilitation supervisor or his designee shall make a decision and notify the applicant or consumer and others using the following procedures:
 - (A) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
 - (B) send the written report containing the decision to the applicant or consumer by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Division Director and the CAP Director; and
 - (C) provide instructions to the applicant or consumer of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or consumer's signature if the individual agrees with the decision.

(b) Mediation

- (1) The qualified and impartial mediator shall conduct the mediation session with the parties and their representatives. All mediation discussions are confidential and the content may not be used as evidence in subsequent impartial due process hearings or civil proceedings.
- (2) The Division shall bear the costs of mediation.
- (3) At any point in the mediation process, either party or the mediator may elect to terminate the mediation process. Should this occur, resolution through an impartial due process hearing shall continue unless cancelled by the applicant or consumer.
- (4) If an agreement is reached during the mediation session, a written mediation agreement must be developed by the parties with the assistance of the mediator. Both parties must sign it. It must include a clear statement from the consumer that he or she is satisfied with the agreement and that they request cancellation of the impartial due process hearing.

History Note: Authority G.S. 143B-157; 150B-1(e)(5) 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0609 RESPONSE TO ADMINISTRATIVE REVIEW DECISION AND MEDIATION

(a) Administrative Review

- (1) If the applicant or consumer is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0608(a)(2)(C) of this Section and submit it to the area rehabilitation supervisor within five days of receipt of the decision. The area rehabilitation supervisor shall inform the Director of the request to cancel the hearing immediately and forward the form to the Director who shall submit it to the hearing officer.
- (2) If, after the administrative review, the hearing officer does not receive a written request from the applicant or consumer that the hearing be cancelled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (3) If the hearing is cancelled due to a decision resulting from the administrative review, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0607(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

(b) Mediation

- (1) If a mediation agreement is signed as described in Rule .0608(b)(4) of this Section containing a statement regarding the applicant's or consumer's satisfaction with the agreement and his or her desire to cancel the impartial due process hearing, the mediator shall provide a copy of the signed mediation agreement to the applicant or consumer and to the Division representative, then forward a copy of the signed agreement to the Director.
- (2) The Director shall submit it to the hearing officer. The Director shall also forward a copy of the request to cancel the impartial due process hearing to the Client Assistance Program.

- (3) If, after mediation, the hearing officer does not receive a written request from the applicant or consumer to cancel the hearing, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (4) If the hearing is cancelled due to an agreement reached in mediation, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0607(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0610 ADMINISTRATIVE REVIEW BY DIRECTOR

In situations where the issue currently in controversy involves action taken by the central office of the Division, the Director or a designee of the Director shall perform the duties prescribed for the area rehabilitation supervisor in these Rules.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0611 PROCEDURES GOVERNING HEARING

The impartial due process hearing shall be conducted according to the provisions of 34 C.F.R. 361.57(e)(1) and 34 C.F.R. 361.57(e)(2) and according to Rules .0612 through .0621 and Rule .0624 of this Section.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0612 VENUE

- (a) Absent a change of venue pursuant to the procedure described in this Rule, the impartial due process hearing shall be held in the county of residence in this state of the applicant or consumer.
- (b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.
- (c) The motion shall include the following information:
 - (1) The name, address, and telephone number of the movant;
 - (2) identification by the case name and docket number of the proceeding for which the change is sought;
 - (3) the time, date, and place for which the hearing is scheduled;
 - (4) the county in which the party requests that the hearing be held;
 - (5) a statement of the requested change, including the names and addresses of any witnesses whose convenience represents the basis for this request; and
 - (6) any other factors that should be included in ruling on the request.
- (d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and service copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.

(e) The hearing officer shall determine whether a change of venue promotes the ends of justice or serves the convenience of witnesses and shall issue an order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0613 DISCOVERY

(a) Parties in impartial due process hearings shall exchange information, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.

(b) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall base the resolution on the interests of justice. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0614 PRE-HEARING CONFERENCE

(a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.

(b) The conference shall be informal in nature.

(c) The purpose of the conference shall be to discuss:

- (1) The possibility of simplification of issues,
- (2) stipulation of facts or findings,
- (3) identification of areas where evidence will be needed,
- (4) indication of discovery or subpoenas needed, and
- (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0615 SIMPLIFICATION OF ISSUES

The parties to the hearing may agree in advance to simplification of issues by:

- (1) eliminating issues to be contested at the hearing,
- (2) accepting the validity of certain proposed evidence,
- (3) accepting the findings in some other case with relevance to the case at hand, or
- (4) agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 143B-157; 150B-1(d)13; 150B-2; 150B-23; 34 C.F.R. 361.48;
34 C.F.R. 361.57(e);
Eff. December 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0616 EVIDENCE

(a) G.S. 150B-29, G.S. 150B-30, and G.S. 150B-31 are hereby incorporated by reference, including subsequent amendments and editions.

(b) A copy can be obtained from the Division at no cost.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-14(c); 150B-23; 150B-29; 150B-30; 150B-31; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0617 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impractical for the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361-57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0618 EX PARTE COMMUNICATIONS

(a) Ex parte communications in the impartial due process hearing shall be governed by G.S. 150B-35, which is hereby incorporated by reference, including subsequent amendments and editions.

(b) A copy may be obtained from the Division at no cost.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-14(c); 150B-23; 150B-35; 34 C.F.R. 361-57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0619 OATH

No person may testify or present views or data orally at the hearing before being put under oath or affirmation.

History Note: Authority G.S. 143B-157; 150B-1(d)13; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R.. 361.57(b)(3); Eff. December 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0620 CONDUCT OF HEARING

- (a) The hearing officer shall have complete control over the hearing including:
- (1) the responsibility of having a record made of the hearing;
 - (2) the administration of oaths and affirmations;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations; and
 - (5) general management of the hearing.
- (b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or consumer the rights required by 34 C.F.R. 361.57(e)(2).
- (c) The hearing shall not be open to the public.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0621 FAILURE TO APPEAR

- (a) If the applicant or consumer fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.
- (b) The applicant or consumer may submit a written request for rescheduling of the hearing to the Director. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Director may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or consumer. Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the applicant or consumer.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0622 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in 34 C.F.R. 361.57(e)(3). The decision shall be given to the applicant or consumer personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0623 SECRETARY'S REVIEW AND FINAL DECISION

- (a) Either party may request a review of the hearing officer's decision by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.

(b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.

(c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) The reviewing official's review shall be based on the following standards of review:

- (1) The hearing officer's decision shall not be arbitrary, capricious, abuse of discretion, or otherwise unreasonable.
- (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
- (3) In reaching the decision, the hearing officer shall consider such factors as:
 - (A) the federal statute and regulations as they apply to a specific issue in question;
 - (B) the State Plans as they apply to a specific issue in question;
 - (C) Commission rules as they apply to a specific issue in question;
 - (D) key portions of conflicting testimony;
 - (E) Division options in the delivery of services where such options are permissible under federal statute; and
 - (F) restrictions in the federal statute with regard to supportive services as maintenance and transportation.

(e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 days from receipt of the request to review the hearing officer's decision. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(f) If the applicant or consumer does not request the Secretary's review, the hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

(g) The Division Director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the CAP Director, the area rehabilitation supervisor, and the applicant's or consumer's representative, if one is designated. A copy shall also be included in the individual's official case record.

History Note: Authority G.S. 143B-157; 143-545.1; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 105-220; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. March 15, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0624 EXTENSIONS OF TIME

(a) Time extensions may be granted for the procedures in these Rules for good cause at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during an administrative review or mediation as specified in Rule .0603(d) of this Section;
- (2) the time for conducting the impartial due process hearing as specified in Rule .0607(a) of this Section which may be extended only as specified in Rule .0607(c)(4) of this Section; and
- (3) the time for issuance of the written notice of the impartial due process hearing as specified in Rule .0607(b) of this Section.

- (b) When an extension of time is being granted by the person conducting the administrative review, the mediator, or by the hearing officer, consideration shall be given to the effect of the extension of deadlines for other steps in the administrative review, mediation, and impartial due process hearing procedures.
- (c) Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0625 RECORD

- (a) The official records of impartial due process hearings shall be maintained in the central office of the Division.
- (b) Any person wishing to examine a hearing record shall submit a written request to the Director in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0626 TRANSCRIPTS

Any person desiring a transcript of all or part of an impartial due process hearing shall contact the office of the Director. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0627 CIVIL ACTION

Judicial review of decisions issued pursuant to Rules .0602 through .0624 of this Section shall be as specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

History Note: Authority G.S. 143-545.1; 143-546.1; 143B-157; 150B-1(d)13; 150B-2; 150B-23; P.L. 105-220;
34 C.F.R. 361.57(i)(j);
Eff. December 1, 1990;
Temporary Amendment Eff. March 15, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SUBCHAPTER 63G - MEDICAL/EYE CARE PROGRAM

SECTION .0100 – SERVICES

10A NCAC 63G .0101 COVERED SERVICES

- (a) Services provided to any eligible North Carolina resident, pursuant to G.S. 111-8, include:
- (1) eye examinations. Refractions are restricted to one every two years for persons 25 years of age or older and one refraction per year for persons under 25 years of age, without prior approval by division staff;
 - (2) treatment to the eye including medication;
 - (3) eyeglasses and ocular prostheses. Eyeglasses are restricted to one pair every two years for persons 25 years of age or older and one pair per year for persons under 25 years of age, without prior approval by Division staff. Contact lenses are restricted to therapeutic types;
 - (4) hospitalization for eye-related disorders; and
 - (5) surgery to the eye and supporting structures except that there shall be no cosmetic surgery for adults and no payment shall be made for unnecessary surgery as determined by the State Supervising Ophthalmologist. The State Supervising Ophthalmologist is a medical doctor with a specialty in ophthalmology duly licensed to practice by the State of North Carolina. Services are obtained by contract between the Agency and practitioner.
- (b) Prior Approval:
- (1) A second refraction request within the time limitation period must be submitted on the general Request for Prior Approval form documenting the medical necessity for a second refraction (loss of vision, significant decrease in acuity, eye injury, retinal or muscle surgery, etc.).
 - (2) Prior approval is required for all visual aids. The Area Nursing Eye Care Consultant reviews each request for prior services, medical justification, necessity, age, and other criteria before approving or denying the request.
 - (3) Prior approval is required for all treatment, surgery, and prescription drugs. The Area Nursing Eye Care Consultant reviews each request for prior services, medical justification, necessity, age, and other criteria before approving or denying the request.

*History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; September 1, 1984; February 1, 1983; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63G .0102 ELIGIBILITY CRITERIA

- (a) A North Carolina resident is eligible to receive services if:
- (1) the services are not covered by the North Carolina medical assistance (medicaid) program; or
 - (2) the resident is a medicaid recipient on a spend-down who qualifies under the appropriate income criterion; or
 - (3) the services cannot be reimbursed by any other state or federal program providing eye care.
- (b) If the resident is a preschool child or school age child, the family's annual net income cannot exceed the amounts as established by the General Assembly.
- (c) If the resident is an adult, the family's annual net income cannot exceed the amount set out in the North Carolina Budget Bill.

*History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; July 1, 1987; February 1, 1986; December 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63G .0103 APPLICATION FOR SERVICES

- (a) In order to be determined eligible for services, pursuant to this Subchapter, the resident must:
- (1) have been determined to be ineligible for medicaid and other state or federal programs that offer eye care services or eligible for Medicaid but required to meet a spend-down before Medicaid coverage becomes effective;
 - (2) complete the application for services in person or by mail; and

- (3) verify income in the form of a statement from their employer or written proof of other sources of income.
- (b) Individuals wishing to apply for services may contact either the county department of social services or the Division of Services for the Blind field office to determine where application should be made.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. August 1, 1977; January 1, 1977; February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; December 1, 1983; July 1, 1981; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0104 ELIGIBILITY FOR SERVICES

- (a) The Division may, based upon the availability of funds, issue any resident determined eligible for services an authorization for an eye examination and a certification for fitting and dispensing of eyeglasses. These copies must be taken by the applicant to his selected vendor and will authorize the Division of Services for the Blind to pay only for eye examinations by physicians (ophthalmologists) or optometrists and fitting and dispensing of eyeglasses. If the Division determines that sufficient funds are not available to provide all services, the Division may elect to fund surgery, treatment, and medication first.
- (b) All other services including purchase of eyeglasses, medications, follow-up visits, surgery, and other treatments must receive prior approval from the Division of Services for the Blind.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. August 1, 1977; January 1, 1977; February 19, 1976.
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; July 1, 1981; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0105 RETROACTIVE ELIGIBILITY

The division may issue authorizations to pay for emergency inpatient and outpatient surgery and hospital services plus other services or treatment provided prior to determining eligibility if:

- (1) services were received no more than 90 days before application;
- (2) the person would have been eligible at the time the services were performed; and
- (3) the services were those covered by this program.

Surgery and hospitalization not of an emergency nature requires prior approval.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; July 1, 1987; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0106 REDETERMINATION

A redetermination of eligibility is mandatory every six months because of possible changes in economic circumstances.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. January 1, 1990; February 1, 1986; June 1, 1982; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0200 – ADMINISTRATIVE PROCEDURES

10A NCAC 63G .0201 USE OF AUTHORIZATION AND CERTIFICATION

- (a) The consumer shall deliver the authorization to the eye practitioner for the examination and the certification for fitting and dispensing to the eye practitioner or licensed optical provider who will provide these services.
- (b) Out-of-state services must have prior approval by the state supervising ophthalmologist.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. August 1, 1977; January 1, 1977; November 8, 1976; February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0202 CLAIMS

- (a) Claims for services or supplies must be submitted no later than twelve months from the date of service. The division shall not pay claims received more than 12 months from the date of service.
- (b) The amount reimbursed is payment in full. The consumer shall not be billed for any unrealized balance except a co-payment. A co-payment not to exceed five dollars (\$5.00) may be charged the consumer by both the practitioner who provides the eye exam and follow-up and by the optical supplier. This will reduce the division's liability by the amount of the co-payment.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. November 8, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986; June 1, 1983; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0203 FRAUD: PAYMENT OF CLAIM

- (a) All services billed by licensed eye practitioners and optical providers, institutions and suppliers must be consistent with the services actually performed.
- (b) The Division shall use the Medicaid schedule of benefit payments for services charged the Division. This schedule is maintained by the Department of Health and Human Services. Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603-2001. The schedule is incorporated by reference including subsequent amendments and additions.
- (c) Licensed eye practitioners, licensed optical providers, institutions, and suppliers must keep records disclosing the services charged the division for five years. The division may have access to these records on written request by the division director.

History Note: Authority G.S. 108-48; 111-8; 111-23; 143B-157;
Eff. February 1, 1976;
Amended Eff. July 1, 1976; February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0204 FREEDOM OF CHOICE

In accordance with G.S. 90-127.1, all eligible consumers shall be afforded a free choice to select a licensed eye practitioner or optical provider to receive services.

History Note: Authority G.S. 90-127.1; 111-8; 143B-157;

Eff. February 1, 1976;
Amended Eff. February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0205 EXAMINATION REPORTS

- (a) An eye examination report shall be completed by ophthalmologists and optometrists on all persons having:
- (1) a chronic, degenerative eye disorder; or
 - (2) no vision or vision with glasses so defective as to prevent the performance of ordinary activities requiring sight.
- (b) The Division may request specific reports on persons not meeting the criteria in Paragraph (a) of this Rule, with the person's consent.
- (c) Licensed eye practitioners shall not be paid for services until the requested information is supplied.

History Note: Authority G.S. 111-4; 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0300 - HEARING

10A NCAC 63G .0301 APPEAL OF DIVISION ACTIONS

- (a) If a consumer is dissatisfied with an action or service delivered by the medical/eye care program, that consumer may request a conference with the program chief for the Medical/Eye Care Program.
- (b) A conference shall be held within 15 working days from the receipt of the original request.
- (c) If the conference solves the grievance or dissatisfaction, this shall be stated in writing by the program chief and signed by the Consumer.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; June 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63G .0302 REQUEST FOR CONTESTED CASE HEARING

- (a) If the results of the conference are unsatisfactory, the consumer shall be informed by the Division of his or her right to a contested case hearing.
- (b) All contested case hearings shall be heard by the Office of Administrative Hearings pursuant to G.S. 150B, Article 3. The consumer shall be notified by the designated agency representative in writing that he has the right to petition the Office of Administrative Hearings and request a contested case hearing. The consumer shall be instructed by the designated agency representative to contact OAH and request the specific forms to be completed.
- (c) In this same written notice the consumer shall be instructed that they have 60 calendar days from the date they receive the agency notice to request a contested case hearing through OAH. Any petition for a contested case must be returned by the consumer directly to the Office of Administrative Hearings.

History Note: Authority G.S. 111-8; 143B-157; 150B-23;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; December 1, 1990; April 1, 1990; June 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.