

## SUBCHAPTER 22H - APPEALS PROCEDURES

### SECTION .0100 - BENEFICIARY APPEALS FOR DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF A MEDICAID SERVICE OR AN AUTHORIZATION FOR A MEDICAID SERVICE

#### 10A NCAC 22H .0101 APPEALS BY MEDICAID BENEFICIARIES

Appeals by Medicaid beneficiaries of determinations by the Division to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service are governed by G.S. 108A-70.9A and G.S. 108A-70.9B.

*History Note:* Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431; 42 C.F.R. 456;  
Eff. April 13, 1979;  
Amended Eff. May 1, 1990; November 1, 1983; October 4, 1979;  
RRC objection due to lack of Authority and ambiguity Eff. October 18, 1995;  
Amended Eff. December 11, 1995;  
Readopted Eff. July 1, 2018.

#### 10A NCAC 22H .0102 REQUESTS FOR FORMAL AND INFORMAL APPEALS

#### 10A NCAC 22H .0103 TIME LIMITS ON REQUESTS FOR RECIPIENT/APPLICANT INFORMAL APPEALS

*History Note:* Authority G.S. 108A-25(b); 42 C.F.R. 431; 42 C.F.R. 456;  
Eff. April 13, 1979;  
Amended Eff. December 1, 1995; May 1, 1990; November 1, 1983; October 4, 1979;  
RRC objection to Rule .0103 due to lack of Authority and ambiguity Eff. October 18, 1995;  
Amended Eff. December 11, 1995;  
Repealed Eff. July 1, 2018.

#### 10A NCAC 22H .0104 PAYMENT PENDING APPEALS

If a final decision rendered in accordance with G.S. 108A-70.9B(g) upholds the adverse determination, as defined in G.S. 108A-70.9A(a), the Division may institute recovery procedures against the beneficiary to recoup the cost of any services furnished resulting from the appeal process.

*History Note:* Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431.230(b);  
Eff. April 13, 1979;  
Amended Eff. December 1, 1995; October 4, 1979;  
Readopted Eff. July 1, 2018.

#### 10A NCAC 22H .0105 DISMISSAL OF APPEAL

*History Note:* Authority G.S. 108A-25(b); 42 C.F.R. Part 431;  
Eff. April 13, 1979;  
Amended Eff. December 1, 1995; May 1, 1990;  
Repealed Eff. July 1, 2018.

### SECTION .0200 - HEARINGS: TRANSFER AND DISCHARGES FROM NURSING FACILITIES

#### 10A NCAC 22H .0201 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Division" means the North Carolina Division of Health Benefits, Department of Health and Human Services.
- (2) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings between a resident and a nursing facility provider regarding transfers and discharges.

- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Health Benefits, Department of Health and Human Services.
- (4) "Notice of Transfer or Discharge form" means the form developed by the Division containing the elements described at 42 C.F.R. 483.15(c)(5), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (5) "Request for Hearing" means a written request by the resident, family member, or legal representative of the resident that the resident wants to appeal the facility's decision to transfer or discharge.
- (6) The "Nursing Home Hearing Request Form " means the form developed by the Division containing:
  - (a) the resident's name;
  - (b) the facility's name;
  - (c) the date of the Notice of Transfer or Discharge form;
  - (d) the date of the scheduled transfer or discharge;
  - (e) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina;
  - (f) the requestor's name, address, telephone number, and signature; and
  - (g) the telephone number, fax number, mailing address, and email address of the Division's Hearing Unit.

*History Note:* Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483; Eff. April 1, 1994; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; Amended Eff. July 1, 2018; Amended Eff. March 1, 2020.

#### **10A NCAC 22H .0202 TRANSFER AND DISCHARGE REQUIREMENTS**

- (a) To transfer or discharge a resident, a facility shall comply with all of the requirements of 42 C.F.R. 483.15, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (b) In addition to the requirements in Paragraph (a) of this Rule, a resident and, if contact information is available, a family member or legal representative of the resident, shall be notified in writing of a facility's decision to transfer or discharge the resident. The Notice of Transfer or Discharge form shall be used by a facility when giving notice of a transfer or discharge.
- (c) Failure to complete the Notice of Transfer or Discharge form shall result in the notice of the transfer or discharge being invalid.
- (d) The resident shall be handed the Notice of Transfer or Discharge form on the same day that it is dated.
- (e) A copy of the notice of Transfer or Discharge form shall be mailed to the family member or legal representative, if contact information is available, on the same day that it is dated.
- (f) The facility shall provide a Nursing Home Hearing Request Form to the resident and to the family member or legal representative, if contact information is available, at the same time as providing the Notice of Transfer or Discharge form.

*History Note:* Authority G.S. 108A-25(b); 150B-21.6; 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483; Eff. April 1, 1994; Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0203 INITIATING A HEARING**

- (a) In order to initiate an appeal of a facility's intent to transfer or discharge, a resident, family member, or legal representative shall submit a written request for a hearing to the Hearing Unit. The request for hearing shall be received by the Hearing Unit within 11 calendar days from the date of the facility's notice of transfer or discharge. If the eleventh day falls on a Saturday, Sunday, or legal holiday, then the period during which an appeal may be requested shall run until the end of the next business day which is not a Saturday, Sunday, or legal holiday.
- (b) The request for hearing shall be submitted to the Hearing Unit by mail, facsimile, or hand delivery.

*History Note:* Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; Eff. April 1, 1994; Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0204 HEARING PROCEDURES**

- (a) Upon timely receipt of a request for a hearing of a transfer or discharge by a nursing facility as set out in Rule .0203 of this Section, the Hearing Unit shall notify the parties of the request.
- (b) The parties shall be notified by certified mail of the date, time, and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) The facility shall make available to the resident all documents and records to be used at the hearing, to be received at least five business days prior to the hearing. The facility administrator shall forward identical information to the Hearing Unit, to be received at least five business days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause. For purposes of this Rule, circumstances beyond the control of the party constitute good cause.
- (e) The hearing officer shall dismiss a request for hearing if the resident or family member or legal representative of the resident fails to appear at a scheduled hearing, unless good cause is shown.
- (f) The hearing officer shall proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedures as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division Hearing Officer. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel or other representative at the hearing.

*History Note:* Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 431, Subpart E; 42 C.F.R. Part 483, Subpart E; Eff. April 1, 1994; Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0205 HEARING OFFICER'S FINAL DECISION**

- (a) The Hearing Officer's final decision shall uphold or reverse the facility's decision regarding the transfer or discharge of a resident. Copies of the final decision shall be mailed via certified mail to the parties.
- (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. The Department as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

*History Note:* Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; Eff. April 1, 1994; Readopted Eff. July 1, 2018.

### **SECTION .0300 - PASRR HEARINGS**

#### **10A NCAC 22H .0301 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Division" means the North Carolina Division of Health Benefits, Department of Health and Human Services.
- (2) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings regarding Preadmission Screening and Resident Review (PASRR) determinations.
- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Health Benefits, Department of Health and Human Services.
- (4) "Preadmission Screening and Resident Review (PASRR) Notice of Determination" means the form developed by the Division, containing the elements described at 42 C.F.R. 483.130(k), which

is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

- (5) "Request for Hearing" means a written request on a Hearing Request Form by the evaluated individual or family member or legal representative of the evaluated individual, that the evaluated individual wants to appeal the (PASRR) determination.
- (6) The "Hearing Request Form" means the form developed by the Division containing:
  - (a) the individual's name;
  - (b) the facility name, if the individual is residing in a facility;
  - (c) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina; and
  - (d) the requestor's name, address, telephone number, and signature.
- (7) The "North Carolina PASRR II Screening Form" means both the North Carolina PASRR-MI Psychiatric Screening form and the North Carolina Dual Psychiatric and Intellectual Developmental Disabilities/Related Conditions PASRR II Screening Data form developed by the Division, containing the elements described at 42 C.F.R. 483.128(i)–(j), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

*History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; 42 C.F.R. 483.128; 42 C.F.R. 483.130; Eff. October 1, 1994; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; Amended Eff. July 1, 2018; Amended Eff. March 1, 2020.

#### **10A NCAC 22H .0302 PASRR REQUIREMENTS**

- (a) The evaluated individual and family member or legal representative shall be notified in writing of the Division of MH/DD/SAS' PASRR determination under the provisions of 42 CFR 483.130 which is incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (b) The PASRR Notice of Determination form shall be used by Division of MH/DD/SAS when giving notice of a PASRR determination.
- (c) The Division of MH/DD/SAS shall provide a Hearing Request form, PASRR II Screening form, and PASRR Notice of Determination form to the evaluated individual and legal representative under the provisions of 42 CFR 483.128(1) which is incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

*History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; Eff. October 1, 1994; Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0303 INITIATING A HEARING**

- (a) In order to initiate an appeal of a PASRR determination, the evaluated individual, family member, or legal representative shall submit a Hearing Request Form to the Hearing Unit. The form shall be received by the Hearing Unit within 11 calendar days from the date of the PASRR Notice of Determination. If the 11th day falls on a Saturday, Sunday, or legal holiday, then the period during which an appeal may be requested shall run until the end of the next business day which is not a Saturday, Sunday, or legal holiday.
- (b) The Hearing Request Form shall be submitted to the Hearing Unit by mail, facsimile, or hand delivery.

*History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i - 3(e)(3) and - (f)(3); 1396r(e)(3), (e)(7)(F), and (f)(3); 42 C.F.R. 431.200; 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subpart E; Eff. October 1, 1994; Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0304 HEARING PROCEDURES**

- (a) Upon receipt of a Hearing Request Form to appeal a PASRR determination, the Hearing Unit shall notify the Division of MH/DD/SAS of the request.
- (b) The parties shall be notified by certified mail of the date, time, and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person requesting the hearing by certified mail and forward identical information to the Hearing Unit, to be received by both the requestor and the Hearing Unit at least five business days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause. For purposes of this Rule, circumstances beyond the control of the party constitute good cause.
- (e) The hearing officer shall dismiss a request for a hearing if the evaluated individual or legal representative fails to appear at a scheduled hearing, unless good cause is shown.
- (f) The hearing officer shall proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that chapter unless otherwise stated in these Rules. Parties may be represented by counsel or other representative at the hearing.

*History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 42 C.F.R. 431, Subpart E; 42 C.F.R. Part 483, Subpart E;  
Eff. October 1, 1994;  
Readopted Eff. July 1, 2018.

#### **10A NCAC 22H .0305 HEARING OFFICER'S FINAL DECISION**

- (a) The Hearing Officer's final decision shall uphold or reverse the Division of MH/DD/SAS' PASRR decision. Copies of the final decision shall be mailed via certified mail to the parties.
- (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. The Division as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

*History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 42 U.S.C.S. 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E;  
Eff. October 1, 1994;  
Readopted Eff. July 1, 2018.