

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27G .7004

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 6: Capitalize "utilization review."*

*Line 7: Add "-MCO" after "LME."*

*Line 10: After "client" add a comma. After "or" add "the" and add a comma after "person."*

*Line 24: Add "-MCO" after "LME." How does 10A NCAC 27I .0609 authorize interim services until the final review decision? Also, what is the criteria for when interim services "may" be authorized?*

*Line 27: Add "-MCO" after "LME."*

*On pg. 2, Line 1: Add "-MCO" after "LME." Where is 10A NCAC 27I .0600 located in the NCAC? I don't see where it's listed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 **10A NCAC 27G .7004 is amended as published in 38:12 NCR 810 as follows.**

2  
3 **10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-**  
4 **MEDICAID SERVICES**

5 (a) This Rule governs appeals by a client, or the client's legally responsible person, ~~made~~ to the Local Management  
6 Entity (LME) Entity-Managed Care Organization (LME-MCO) Director of utilization review (UR) decisions made  
7 by the LME to deny, reduce, suspend or terminate a client's non-Medicaid funded services.

8 ~~(b) A client may appeal to the LME Director the utilization review decision of a LME to deny, reduce suspend, or~~  
9 ~~terminate a non-Medicaid state funded service.~~

10 ~~(c)~~(b) The ~~LME~~ LME-MCO shall send to the client or client's legally responsible person ~~legal representative(s)~~  
11 notification letters regarding utilization review decisions for non-Medicaid funded services. The letter shall be dated  
12 and mailed no later than the next ~~work~~ business day following the ~~review~~ UR decision to deny, reduce, suspend, or  
13 terminate a non-Medicaid state funded service. The ~~LME~~ LME-MCO shall separately notify the provider regarding  
14 the service authorization.

15 ~~(d)~~(c) The letter shall include information regarding the reason for the UR decision and any available service options  
16 ~~or considerations~~ while the appeal is under review.

17 ~~(e)~~(d) ~~An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal~~  
18 ~~representative. Only the client, or the client's legally responsible person, may file an appeal of the non-Medicaid UR~~  
19 ~~decision.~~ The appeal must be in writing and received in writing by the ~~LME~~ LME-MCO within 15 working business  
20 days of the date of the notification letter. The ~~LME~~ LME-MCO shall provide help to ~~an appellant~~ a client who requests  
21 assistance in filing the appeal.

22 ~~(f)~~(e) The ~~LME~~ LME-MCO shall acknowledge receipt of the appeal in writing in a letter to the ~~appellant~~ client, or  
23 the client's legally responsible person, dated the next working business day after receipt of the appeal.

24 ~~(g)~~(f) The LME may authorize interim services until the final review decision, as set forth in 10A NCAC 27I .0609,  
25 is reached.

26 (g) The LME-MCO Director shall assign staff to conduct a clinical review of the UR decision.

27 (h) The clinical review shall be conducted by an employee(s) or contractor(s) of the LME not involved in the  
28 ~~utilization review~~ UR decision that is the subject of the appeal. The clinical reviewer(s) clinical credentials shall be at  
29 least comparable to those of the person who rendered the initial ~~utilization review~~ UR decision.

30 (i) The clinical reviewer(s) shall ~~complete a clinical review of the appeal and shall~~ issue a written decision to uphold  
31 or overturn the original UR decision.

32 (j) The LME shall notify the ~~appellant~~ client, or the client's legally responsible person, ~~in writing~~ of the clinical review  
33 decision in a letter dated and mailed within seven working business days from receipt of the appeal request and shall  
34 separately notify the provider regarding the service authorization.

35 (k) If the clinical review overturns the initial ~~utilization review~~ UR decision, the decision letter shall state the date on  
36 which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall  
37 be reinstated.

1 (l) In cases in which the ~~decision~~ clinical review decision upholds the ~~previous~~ original UR decision, the LME shall  
2 inform ~~appellants~~ the client, or the client's legally responsible person, in writing of the opportunity to appeal a ~~decision~~  
3 ~~regarding a non-Medicaid service~~ the clinical review decision to the State Division of Mental Health, Developmental  
4 Disabilities and Substance Abuse Services ~~Non-Medicaid Appeals Panel~~ according pursuant to 10A NCAC 271 ~~.0600~~  
5 ~~and G.S. 143B-147(a)(9)~~. .0600.

6  
7 *History Note: Authority G.S. 122C-112.1(a)(29); 143B-147;*

8 *Eff. July 1, 2008;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,*  
10 *~~2019~~ 2019;*

11 *Amended Eff. May 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27I .0601

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 17: What is the legal authority for interim services to be provided until the final written decision? Also, what is the criteria for when interim services “may” be authorized?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs  
Commission Counsel

1 **10A NCAC 27I .0601 is amended as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0601 SCOPE**

4 (a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or  
5 county program affecting a non-Medicaid eligible client.

6 (b) A non-Medicaid eligible ~~client~~ client, or the client's legally responsible person, may appeal to the Division Director  
7 the clinical review decision of an area authority or county program to deny, reduce, suspend, or terminate a non-  
8 Medicaid state funded service.

9 ~~(c) An appeal shall be filed with the Division only after a client has received a review decision from the area authority~~  
10 ~~or county program.~~

11 ~~(d)(c)~~ Nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal  
12 decisions of third party payers to the Division.

13 ~~(e)(d)~~ Non-Medicaid services shall be provided in accordance with G.S. 122C-2. As set forth in G.S. 143B-147(a)(9),  
14 nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings  
15 of the Division by requesting a contested case hearing pursuant to G.S. 150B.

16 ~~(f)(e)~~ There shall be no reprisal or retaliation to anyone who is a party to an appeal.

17 ~~(g)(f)~~ The area authority or county program may authorize interim services until the final written decision as set forth  
18 in Rule .0609 of this Section is reached.

19

20 *History Note: Authority G.S. 143B-147;*

21 *Eff. October 1, 2006;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*

23 *~~2017.~~ 2017.*

24 *Amended Eff. May 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27I .0605

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 17: Add a comma after "review." What are the acceptable methods "to forward all documentation" "no later than 10 calendar days from the date of the acknowledgement letter?"*

*Line 27: Add ",or the client's legally responsible person," after "client."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs  
Commission Counsel

1 10A NCAC 27I .0605 is amended as published in 38:12 NCR 811 as follows.

2  
3 10A NCAC 27I .0605 DIVISION'S INITIAL RESPONSE TO A DMH/DD/SAS NON-MEDICAID  
4 APPEAL

5 (a) The Director shall screen the request for appeal to the Division to determine:

- 6 (1) if the appeal was reviewed by the area authority or county program according to the area authority  
7 or county program policy and procedures; ~~and~~  
8 (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state  
9 funded ~~service.~~ service;  
10 (3) if the appeal falls within the scope of Rule .0601 of this Section; and  
11 (4) if the appeal was filed in accordance with the requirements of Rule .0603 of this Section.

12 (b) The Director shall send an acknowledgement letter to the ~~client~~ client, or the client's legally responsible person,  
13 and the area authority or county program within 5 business days of receipt of the request for appeal to the Division.

14 (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept  
15 an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.

16 (d) The Director shall notify the area authority or county program and the ~~client~~ client, or the client's legally  
17 responsible person, whose appeal is accepted for review to forward all documentation considered during the area  
18 authority or county program review to the Division no later than 10 calendar days from the date of the  
19 acknowledgement letter. The acknowledgment letter shall advise the parties that a ~~panel will be convened to~~ Hearing  
20 Officer will conduct a hearing.

21 (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as  
22 ~~disqualified~~ denied with an explanation of the basis for ~~disqualification.~~ denial.

23 (f) If the appeal is denied on the basis of Subparagraph (a)(1) of this Rule, the ~~The~~ area authority or county program  
24 shall review the ~~appeal, if the appeal made to the Division is disqualified on the basis of not having been reviewed~~  
25 ~~according to the area authority or county program's policy and procedures.~~ appeal in accordance with the requirements  
26 of Rule 10A NCAC 27G .7004.

27 (g) The client shall have 11 calendar days from the date of the area authority or county program clinical review  
28 decision to resubmit the appeal to the Division.

29  
30 *History Note: Authority G.S. 143B-147;*

31 *Eff. October 1, 2006;*

32 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
33 *2017. 2017;*

34 *Amended Eff. May 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27I .0606

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 4: Add "an" after "conducts."*

*Line 20: Are the "five days" business or calendar days?*

*Line 29: Add "and" after the semicolon.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs  
Commission Counsel



1 **10A NCAC 27I .0606 is amended as published in 38:12 NCR 811 as follows.**

2  
3 **10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL**

4 (a) The Director shall ~~convene a five member panel to conduct a hearing for an~~ ensure the Hearing Officer conducts  
5 appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.

6 ~~(b) The panel members shall consist of the following:~~

7 (1) ~~a provider agency representative who meets the following requirements:~~

8 (A) ~~the representative shall be from a provider agency that is not be a party to the appeal; and~~

9 (B) ~~the representative shall have clinical expertise in the disability area pertinent to the appeal;~~

10 (2) ~~an employee of an area authority or county program who meets the following requirements:~~

11 (A) ~~the employee shall be from an area authority or county program that is not a party to the~~  
12 ~~appeal; and~~

13 (B) ~~the employee shall have clinical expertise in the disability area pertinent to the appeal;~~

14 (3) ~~two individuals who are members of a consumer and family advisory committee who is not a party~~  
15 ~~to the appeal; and~~

16 (4) ~~an employee of the Division.~~

17 ~~(e)(b) The Hearing Officer shall be an employee of the Division. Division shall serve as the chairperson of the panel~~  
18 ~~and shall be a voting member in the case of a tie.~~

19 ~~(d)(c) The Director shall forward the record on appeal and all supplemental documentation to the Hearing Officer~~  
20 ~~chairperson of the panel within five days of receipt thereof.~~

21 ~~(e)(d) The Director shall provide a copy of applicable law and rules to the Hearing Officer. chairperson of the panel.~~

22 ~~(f)(e) The Hearing Officer chairperson shall schedule a panel hearing including designation of a time and place.~~

23 ~~(g)(f) The Hearing Officer chairperson shall notify the client, or the client's legally responsible person, other panel~~  
24 ~~members and the area authority or county program of the time and place no less than 15 calendar days prior to the~~  
25 ~~date of the hearing.~~

26 (g) The hearing may be conducted in person or virtually taking into account reasonable accommodations, including  
27 but not limited to, the following:

28 (1) compliance with HIPAA requirements;

29 (2) accommodation needs of the client;

30 (3) State mandated travel restrictions.

31  
32 *History Note: Authority G.S. 143B-147;*

33 *Eff. October 1, 2006;*

34 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
35 *2017. 2017;*

36 *Amended Eff. May 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27I .0607

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(2) Line 6: Does the Hearing Officer have unfettered discretion in applying this subsection since "may" is used?*

*In (b)(1) and (2) Lines 10-12: Does the Hearing Officer have unfettered discretion in applying these subsections since "may" is used?*

*Line 14: Add "or the client's legally responsible person," after "client."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs  
Commission Counsel

1 **10A NCAC 27I .0607 is amended as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0607 PANEL HEARING PROCEDURES**

4 (a) ~~The chairperson of the panel:~~ Hearing Officer:

5 (1) shall convene the hearing at the prearranged time and place;

6 (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;  
7 and

8 (3) shall conduct proceedings in an orderly manner.

9 (b) ~~The panel:~~ Hearing Officer:

10 (1) may limit the total number of persons presenting for the client and area authority or county program;  
11 and

12 (2) may impose time limits for presentations.

13 (c) Either party may be represented by a person or attorney of their choice.

14 (d) Prior to the hearing, the client and the area authority or county program shall:

15 (1) specify by name and position all individuals who will be present for the hearing;

16 (2) provide the ~~panel~~ Hearing Officer with requested information; and

17 (3) when applicable, ensure that representatives of the parties shall be present at the hearing.

18 (e) ~~Any member of the panel~~ The Hearing Officer may address questions to either party.

19 (f) ~~The panel~~ Hearing Officer may obtain any form of technical assistance or consultation relevant to the appeal.

20 (g) No transcript shall be made and no party shall be allowed to record the proceeding. ~~The panel~~ Hearing Officer  
21 may choose to record the proceeding for ~~its~~ his or her own use. A tape so made shall be destroyed after the ~~panel~~  
22 Hearing Officer issues ~~its~~ the Hearing decision.

23 (h) Witnesses shall not be sworn before testifying.

24

25 *History Note: Authority G.S. 143B-147;*

26 *Eff. October 1, 2006;*

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
28 *2017. 2017;*

29 *Amended Eff. May 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Mental Health/DD/SAS

RULE CITATION: 10A NCAC 27I .0608

**DEADLINE FOR RECEIPT: April 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a) Line 4-5: Does the Hearing Officer have unfettered discretion to decide if new evidence "would be material?"*

*Line 7: Add "the" after "by."*

*Line 13: Add a comma after "client."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs  
Commission Counsel

1 **10A NCAC 27I .0608 is amended as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0608 ~~PANEL HEARING OFFICER DECISION FINDINGS AND DECISION~~**

4 (a) The ~~panel~~ Hearing Officer's findings and decisions are based on the record and any new evidence that would be  
5 material to the issues on appeal.

6 (b) The standard of review for the ~~panel~~ Hearing Officer is whether the decision of the LME-MCO, area authority or  
7 county program is supported by evidence presented.

8 ~~(c) The panel shall vote on each specific item being appealed. The Hearing Officer shall consider all issues under~~  
9 appeal.

10 ~~(d) Findings and decisions of the panel shall be by majority vote.~~

11 ~~(e)(d)~~ Any decision may be rescheduled for a subsequent meeting if the ~~panel~~ Hearing Officer determines that ~~it~~ he  
12 or she lacks sufficient information to render a decision at the initial hearing.

13 ~~(f)(c) All panel~~ The Hearing Officer's findings and decisions shall be reached and sent in writing to the client or the  
14 client's legally responsible person, and to the LME-MCO, area authority or county program Director within 60  
15 calendar days of the written request for ~~appeal to the client, the area authority or county program and the Director.~~ an  
16 appeal.

17

18 *History Note: Authority G.S. 143B-147;*

19 *Eff. October 1, 2006;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
21 *2017. 2017;*

22 *Amended Eff. May 1, 2024.*