

## Burgos, Alexander N

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**Subject:** FW: Re: RRC/Request for Extension  
**Attachments:** Request that RRC Approve Subchapter 27G Extension Request.pdf

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**From:** Baker, Denise <[Denise.Baker@dhhs.nc.gov](mailto:Denise.Baker@dhhs.nc.gov)>  
**Sent:** Monday, December 11, 2023 4:10 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: Re: RRC/Request for Extension

Hi Brian –

Please see attached. I hope this helps clarify and support our request. Please let me know if you have additional questions or need additional information.

Denise



NC DEPARTMENT OF  
**HEALTH AND  
 HUMAN SERVICES**  
 Division of Mental Health, Developmental  
 Disabilities and Substance Use Services

**ROY COOPER** • Governor  
**KODY H. KINSLEY** • Secretary  
**MARK T. BENTON** • Chief Deputy Secretary for Health  
**KELLY CROSBIE** • Director

December 11, 2023

**MEMORANDUM**

**TO:** Brian Liebman, J.D., Counsel  
 Rules Review Commission  
 Office of administrative Hearings

**FROM:** W. Denise Baker, Rulemaking Coordinator  
 Commission for MH/DD/SAS and Division of MH/DD/SUS

**RE:** Request for Extension of Review of 10A NCAC Subchapter 27G  
 G.S. 150B-21.3, Periodic Review and Expiration of Existing Rules

DS  
 DB

I've received notice of your intent to recommend that the Rules Review Commission (RRC) deny the joint request for an extension of the scheduled review of the rules in Subchapter 27G submitted on behalf of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission for MH/DD/SAS) and the Division of Mental Health, Developmental Disabilities, and Substance Use Services (DMH/DD/SUS). For the reasons below, I respectfully request that you reconsider your decision and recommend instead that the Rules Review Commission (RRC) approve the request.

G.S. 150B-21.3A(d) requires the Rules Review Commission (RRC) to establish a schedule for the review and re-adoption of existing rules on a decennial basis assigning each Title of the North Carolina Administrative Code a date by which the review is to be completed. It requires that the RRC consider the scope and complexity of rules subject to the review as well as the resources needed to conduct the same. Finally, it grants the RRC broad authority to modify the schedule and extend the time for review in appropriate circumstances. While the statute does not bar the scheduling of the rules within Subchapter 27G for review a mere five years after the initial review was completed and the Determination Report approved by the RRC, it does grant the RRC broad authority to modify the schedule and extend the time for review under appropriate circumstances.

At its core, this review and re-adoption process involves a minimum of two schedules. The first schedule addresses the timeframe in which an agency must review its existing rules, publish its Initial Determination Report, consider all comments received during publication, and submit its Final Determination Report, inclusive of the agency's responses to all public comments, to the RRC. The second schedule addresses a timeframe by which the agency must re-adopt all existing rules determined necessary coincident with that review. It is this first schedule, which involves the agency's initial review, that is at issue.

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Of course, a review of the almost 200 existing rules in Subchapter 27G would likely permit a determination of whether each rule is Necessary or Unnecessary in light of the mental health, developmental disability, and substance use service delivery system as it now exists. We could then readopt all rules determined Necessary in accordance with the second schedule, the Readoption Schedule, developed in consultation with staff of the RRC. However, this approach would then require that, as legislatively mandated system changes are implemented, we then again amend existing rules or adopt new ones to accommodate those changes. As noted in the joint request submitted by the Commission for MH/DD/SAS and the DMH/DD/SUS, and reiterated below, the review of Subchapter 27G is complex, and the planned system changes extensive.

Rule 26 NCAC 05 .0204, *Extension of Time*, permits an agency head to submit a written request for an extension of time to file its Determination Report with the RRC. The Commission for MH/DD/SAS and the DMH/DD/SUS request a modification of the scheduled review of the rules in Subchapter 27G based, in part, upon consideration of the following factors:

1. Collectively, the rules in Chapter 27 govern mental health, developmental disabilities, and substance use community facilities and services while the rules in Subchapter 27G govern mental health, developmental disabilities, and substance use services, the Local Management Entities/Managed Care Organizations which currently oversee delivery of these programs and services, as well as the facilities and agencies providing the same. The rules in Subchapter 27G also govern the licensure process implemented by the Division of Health Service Regulation (DHSR) in accordance with G.S. § 122C. Subchapter 27G includes not only general rules (i.e., core rules) governing all mental health, developmental disabilities, and substance use services but also program specific rules applicable to specific programs and services (e.g., Substance Use Intensive Outpatient Program) as well as programs and facilities governing more than one disability type. Consequently, a review of the rules in Subchapter 27G is somewhat complex not only in terms of subject matter, but also given that it involves, at a minimum, staff of the DMH/DD/SUS, members of the Commission, staff of DHSR, and consultation with staff of the recently established Division of Child and Family Well-being as these rules impact the scope of work of each.
2. The DMH/DD/SUS and the Division of Health Benefits are collectively engaged in the implementation of the Centers for Medicare and Medicaid Services 1115 Substance Use Disorder Demonstration Waiver. This will require amendment of a minimum of eight existing licensure rules as well as adoption of at least five new rules governing the licensure process. It is not feasible that these rules be amended and the new rules adopted prior to completion of the scheduled July 2024 review of Subchapter 27G. As such, once reviewed per this scheduled review, and then readopted per a readoption schedule, those readopted rules will require amendment as implementation of this Waiver unfolds. Coincident with planning for the implementation of this Waiver, the divisions are also in consultation regarding the creation of disability-specific rules in an effort to more effectively address the unique service needs pertinent to each. Ultimately, at a minimum, amendment of readopted rules will result in duplication of effort and impact the workload of the Commission for MH/DD/SAS, the DMH/DD/SUS, and staff supporting the RRC.
3. The community mental health, developmental disabilities, and substance abuse service delivery system is in a period of transition as we prepare to move to a Tailored Plan approach for the delivery of State-funded services.

G.S. § 150B-21.3A(d)(1) grants the Rules Review Commission broad authority to modify the schedule established for the review and readoption of existing rules on a decennial basis and extend the time for review in *appropriate circumstances*. While the statute does not define *appropriate circumstances*, it

does require the RRC to, in establishing the schedule, consider the scope and complexity of the rules subject to this review as well as staff resources required to conduct the review suggesting that these factors are, at a minimum, among those to be considered in determining when the RRCs broad authority to modify the schedule might be exercised. Subchapter 27G, the largest of Chapter 27, contains a number of core rules applicable to community mental health, developmental disabilities, and substance use services and impact the work of the Commission as well as four divisions. Equally important, conducting a review of the rules in Subchapter 27G and implementing a readoption plan while legislatively mandated system changes are underway will likely require that we again engage in extensive rulemaking once those changes are completed. A modification of the scheduled review of Subchapter 27G permits a review of those rules informed by system changes and helps avoid the need to further amend rules readopted per a readoption schedule developed following this scheduled initial review. Finally, with the exception of Subchapter 27G, the remaining rules in Chapter 27 are scheduled for review beginning in February 2025 through April 2026 which permits reviews 7, 8, and 10 years following their initial review. Our request for an extension of the scheduled review of Subchapter 27G also permits their review closer to that provided from the remaining rules governing the community service delivery system.

In conclusion, the factors listed above seem consistent with *appropriate circumstances* under which the RRC may exercise its broad authority to modify the existing review schedule. Consequently, for the aforementioned reasons, I respectfully request that scheduled review of the rules in Subchapter 27G be modified and rescheduled for July 2026 to permit the review of these rules coincident with that of the remaining rules in Chapter 27. Please do not hesitate to contact me at [denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov) should you have additional questions related to this request.

cc: Kody Kinsley (via electronic mail)  
Commission (via electronic mail)  
Mark Benton (via electronic mail)  
Mark Payne (via electronic mail)  
W. Denise Baker (via electronic mail)  
Jessica Macari (via electronic mail)  
Pam Scott (via electronic mail)  
Rajeev K. Premakumar (via electronic mail)  
Interested Persons (via electronic mail)

## Burgos, Alexander N

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**From:** Rules, Oah  
**Sent:** Thursday, November 30, 2023 10:48 AM  
**To:** Liebman, Brian R; Burgos, Alexander N  
**Subject:** FW: RRC / Request for Extension  
**Attachments:** Commission-Division MHDDSAS Request for Extension Subchapter 27G Review Nov2023 Final.docx.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Monday, November 20, 2023 4:53 PM  
**To:** Rules, Oah <oah.rules@oah.nc.gov>  
**Subject:** RE: RRC / Request for Extension

Good afternoon –

The correct rule citation for the request for an extension is 26 NCAC 05 .0204.

Thank you,  
Denise

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**From:** Baker, Denise  
**Sent:** Monday, November 20, 2023 4:47 PM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Subject:** RRC / Request for Extension

Good morning –

Per Rule 10A NCAC 05 .0204, *Extension of Time*, attached please find a joint request from the Commission for Mental Health, Developmental Disabilities and the Division of Mental Health, Developmental Disabilities, and Substance Use Services for an extension of the scheduled review of Rules 10A NCAC 27G required by G.S. 150B-21.3A.

Please let me know if you have questions or need additional information.

Thank you,  
Denise

**W. Denise Baker, M.A., L.P.A., Esq.**  
Team Leader, Legislative and Regulatory Affairs Team  
Division of MH/DD/SAS  
[NC Department of Health and Human Services](#)

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NC DEPARTMENT OF  
**HEALTH AND  
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 Division of Mental Health, Developmental  
 Disabilities and Substance Use Services

**ROY COOPER** • Governor  
**KODY H. KINSLEY** • Secretary  
**MARK T. BENTON** • Chief Deputy Secretary for Health  
**KELLY CROSBIE** • Director

November 20, 2023

**MEMORANDUM**

**TO:** Rules Review Commission  
 Office of Administrative Hearings

DS

**FROM:** I. Azell Reeves, Chair  
 Commission for MH/DD/SAS

Kelly Crosbie, Director  
 Division of MH/DD/SUS

DS

**RE:** Request for Extension of Review of 10A NCAC Subchapter 27G  
 G.S. 150B-21.3, Periodic Review and Expiration of Existing Rules

G.S. 150B-21.3A(d) requires the Rules Review Commission (RRC) to establish a schedule for the review and readoption of existing rules on a decennial basis assigning each Title of the North Carolina Administrative Code a date by which the review is to be completed. The RRC adopted Rule 26 NCAC 05 .0211, *Schedule*, effective April 1, 2014, which governed the periodic review process spanning 2014-2023. This schedule required that the Determination Report for Rules 10A NCAC Subchapter 27G be submitted to the RRC for review in May 2019. G.S. 150B-21.3A(c)(1) requires agencies subject to the same to conduct a review of its existing rules at least once every 10 years per the schedule established by the RRC. Consistent with the RRC's 2014-2023 schedule, the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) and the Division of Mental Health, Developmental Disabilities, and Substance Use Services (Division) completed their review of Rules 10A NCAC Subchapter 27G submitting Determination Reports to the RRC in May 2019. Despite the requirement of a decennial review of existing rules, the RRC's 2024-2027 Periodic Review Schedule, updated September 22, 2023, requires a review of these same rules in July 2024, five years following the initial review.

G.S. § 150B-21.3A(d)(1) grants the Rules Review Commission broad authority to modify the schedule established for the review and readoption of existing rules on a decennial basis and extend the time for review in appropriate circumstances. Rule 10A NCAC 05 .0204, *Extension of Time*, permits an agency head to submit a written request for an extension of time from the RRC. In accordance with Rule 10A NCAC 05 .0204, the Commission and the Division jointly request an extension of the July 2024 schedule recently established for the periodic review and expiration of existing rules as it relates Rules 10A NCAC Subchapter 27G. The rules in this subchapter were adopted pursuant to the authority of the Commission and/or the authority of the Secretary of the Department of Health and Human Services delegated to the Division Director.

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The Commission and the Division request a waiver of this timeframe based upon consideration of the following factors:

1. While G.S. 150B-21.3A(c) requires that an *agency* conduct a review of its existing rules *at least once every 10 years*, per G.S.150B-21.3A(d), the *RRC's schedule* is to provide for the review and readopting of existing rules *on a decennial basis*. The RRC's July 2024 due date is only five years following the initial review of the rules in Subchapter 27G.
2. Collectively, the rules in Chapter 27 govern mental health, developmental disabilities, and substance use community facilities and services while the rules in Subchapter 27 G govern mental health, developmental disabilities, and substance use services, the Local Management Entities/Managed Care Organizations which oversee delivery of these programs and services, as well as the facilities and agencies providing the same. The rules in Subchapter 27G also govern the licensure process implemented by the Division of Health Service Regulation (DHSR) in accordance with G.S. § 122C. Subchapter 27G includes not only general rules (i.e., core rules) governing all mental health, developmental disabilities, and substance use services but also program specific rules applicable to specific programs and services (e.g., Substance Use Intensive Outpatient Program) as well as programs and facilities governing more than one disability type. Consequently, a review of the rules in Subchapter 27G involves, at a minimum, staff of the Division, members of the Commission, staff of DHSR, and consultation with staff of the recently established Division of Child and Family Well-being.
3. The Division and the Division of Health Benefits are collectively engaged in the implementation of the Centers for Medicare and Medicaid Services 1115 Substance Use Disorder Demonstration Waiver. This will require amendment of a minimum of eight existing licensure rules as well as adoption of at least five new rules governing the licensure process. Coincident with planning for the implementation of this Waiver, the divisions are also in consultation regarding the creation of disability-specific rules in an effort to more effectively address the unique service needs pertinent to each.
4. The community mental health, developmental disabilities, and substance abuse service delivery system is in a period of transition as we prepare to move to a Tailored Plan approach for the delivery of State-funded services.
5. With the exception of Subchapter 27G, the remaining rules in Chapter 27 are scheduled for review beginning in February 2025 through April 2026 which permits reviews 7, 8, and 10 years following their initial review.
6. Subchapter 27G, the largest of Chapter 27, is scheduled for the earliest review at five years (July 2024). The majority of the rules in this subchapter were adopted per the Commission's authority. The Commission meets on a quarterly basis; it's unlikely that this timeframe will permit completion of a thorough review of these rules.
7. The Commission and the Division completed their review of all rules adopted per its authority within the timeframe required by the previously adopted RRC schedule and requested no waivers in the conduct of that process.
8. The Commission and the Division anticipate that the extension of the current time for review of the rules in Subchapter 27G permits reviews mindful of the impact of their decisions upon the remaining rules in the Chapter as well as upon the transitioning mental health, developmental disabilities, and substance abuse service delivery system in its entirety.
9. Under the current periodic review process, all rules determined necessary will require readoption. An extension of the current review period for the rules in Subchapter 27G will permit a more efficient readoption process as it will permit the changes required by implementation of Tailored Plans and the CMS 1115 SUD Demonstration Waiver to be incorporated at the time of that readoption.

In conclusion, for the aforementioned reasons, the Commission and the Division respectfully request that the review of the rules in Subchapter 27G be rescheduled for July 2026 to permit the review of these rules



coincident with that of the remaining rules in Chapter 27. Please do not hesitate to contact us or our Rulemaking Coordinator, Denise Baker, should you have any questions related to this request: [reev5205@bellsouth.net](mailto:reev5205@bellsouth.net); [kelly.crosbie@dhhs.nc.gov](mailto:kelly.crosbie@dhhs.nc.gov); [denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov).

cc: Kody Kinsley (via electronic mail)  
Commission for MHDDSAS (via electronic mail)  
Mark Benton (via electronic mail)  
Mark Payne (via electronic mail)  
W. Denise Baker (via electronic mail)  
Jessica Macari (via electronic mail)  
Pam Scott (via electronic mail)  
Rajeev K. Premakumar (via electronic mail)  
Interested Persons (via electronic mail)