

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 21A .0304

DEADLINE FOR RECEIPT: Friday, March 11, 2022

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 call our office to inquire concerning the staff recommendation.

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

On the Submission for Permanent Rule Form, please state "DHHS/ Division of Health Benefits" or "Secretary of DHHS/ Division of Health Benefits" since it is the Secretary who has rulemaking authority through the Division. This will also match how you published these Rules in the Register.

Were these changes made in response to public comment? Are these substantial changes pursuant to G.S. 150B-21.2(g)?

The term "State hearing" is used in subitems (3)(l) and (3)(n). Does any part of this rule apply to any different type of hearing? Is the modifier "State" necessary?

In (2), line 14, I suggest replacing "must" with "shall".

In item (3), is the DSS case worker required to provide the Department with this information regardless of the identity of the appellant?

In (3), subitems (h), (i), (j), and (k), the use of parentheses to show both singular and plural is to be avoided. I suggest removing the parentheses and use the plural of each word.

Also, in (3), subitems (h)-(k), who is meant by "representative"? Would it be appellant's representative? Is this counsel, or could it be a family member?

Also in item (3), did you intend to have subitem (q) as a new item (4)? It does not appear to be a part of the proceeding list.

In item (6), on line 11, there appears to be an extra space before "shall".

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: March 1, 2022

10A NCAC 21A .0304 is adopted with changes as published in Vol.35:23 NCR 2518 as follows:

CHAPTER 21 MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 21A GENERAL PROGRAM ADMINISTRATION

10A NCAC 21A .0304 CONDUCTING DEPARTMENT APPEAL HEARINGS BY TELEPHONE OR ELECTRONIC MEANS

For public assistance and social services de novo appeals, including appeals of cases involving disability filed pursuant to G.S. 108A-79(i):

- (1) The Department shall conduct the appeal hearing by telephone or other electronic means with the parties attending at the county department of social services with jurisdiction over the case in accordance with the mode of hearing selected by the appellant at the time the appeal is filed.
- (2) The appellant must select the mode of the hearing at the time the appeal is filed.
- (3) The county department of social services case worker shall notify the Department of the appeal by submitting the completed Request for State Appeal form with the following information:
 - (a) the date of appeal request;
 - (b) the appellant's name;
 - (c) the appellant's social security number and date of birth;
 - (d) the appellant's mailing address and telephone number;
 - (e) the date of application;
 - (f) the mode of hearing selected by the appellant;
 - (g) the appellant's email address, if the appellant requests a remote video hearing;
 - (h) selection of representative(s);
 - (i) the representative(s)' name and title;
 - (j) the representative(s)' mailing address and phone number;
 - (k) the representative(s)' email address;
 - (l) statement of reasonable accommodations required for the appellant to participate in the State hearing;
 - (m) indication of the program being appealed;
 - (n) identification of the issue being appealed at the State hearing; and
 - (o) indication of requested continuation of benefits, if applicable.
- (q) The county department of social services case worker shall attach to the Request for State Appeal the following documents:
 - (i) a copy of the DSS notification letter that prompted the appeal;
 - (ii) local appeal hearing summary and decision, if applicable;
 - (iii) a copy of the D4037 Medicaid Disability Determination Transmittal;

(iv) a copy of the DMA-5135 and related medical records, if applicable;

(v) a copy of relevant documents related to the appeal;

(vi) a copy of the DSS-1473A Addendum for Program Integrity, if applicable; and

(vii) a copy of the DSS-1473B Addendum & Medical Evidence if the appeal is an Expedited Medicaid Appeal.

(5) Based on the mode of hearing the appellant selected at the time the appeal was filed, the hearing officer and the parties shall attend either:

(a) in person at the county department of social services with jurisdiction over the case; or

(b) remotely by telephone or other electronic means.

(6) If the appellant does not select a mode of hearing at the time the Request for State Appeal form is filed, the hearing shall be conducted by telephone or other electronic means.

(7) In the case of a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration under G.S. 166A-19.3(19), the mode of hearing shall be by telephone or other electronic means.

~~(2)(8)~~ The Department shall notify the appellant of the hearing by First Class U.S. Mail.

~~(3)(9)~~ ~~In the case of an emergency that causes a county department of social services to be closed to the public, the parties shall attend by telephone or other electronic means.~~ The county department of social services shall make available by electronic mail, U.S. Mail or physical pick up the case file materials the appellant is entitled to examine pursuant to G.S. 108A-79(i)(1).

~~(4)(10)~~ The Department shall continue ~~such~~ the appeal hearing as necessary to fulfill procedural rights of the appellant as defined by 42 CFR 431.242, which is incorporated by reference including subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov>.

History note: Authority G.S. 108A-54; 108A-79; 108A-80(d); 42 CFR 431.205; 42 CFR 431.240; 42 CFR 431.242;

Emergency Adoption Eff. May 4, 2020;

Temporary Adoption Eff. June 26, 2020;

Temporary Adoption Expired Eff. April 11, 2021;

Eff. October 1, 2021 February 1, 2022 April 1, 2022.