



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

Division of Health Benefits

2. Rule citation & name:

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

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No **Effective date:** April 30, 2020

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: April 24, 2020
- b. Proposed Temporary Rule published on the OAH website: May 1, 2020
- c. Public Hearing date: May 20, 2020 10am to noon
- d. Comment Period: April 24, 2020 through May 22, 2020
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 4/24/2020
- f. Adoption by agency on: June 9, 2020
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19, previously unidentified in humans, spreads easily from person to person that can result in serious illness or death. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 27, 2020, the Governor issued Executive Order No. 121 directing Essential Business and Operations to have employees utilize telework to the greatest extent possible. The emergency rule is needed to permit conducting county appeals hearings by phone or other electronic means to ensure the health and safety of our beneficiaries, county staff and state staff while continuing to adjudicate appeals. This measure is in the public interest and promotes the ends of justice as delaying appeal hearings would be detrimental in a time of greater health needs and economic fragility of North Carolinians.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

This rule is adopted in accordance with N.C.G.S. 150B-21.1A. Adherence to notice and hearing requirements is contrary to the public interest due to COVID-19. Immediate adoption is necessary due to serious and unforeseen threat posed by COVID-19. Adherence to administrative steps places Medicaid beneficiaries at risk of not timely receiving food and health benefits to which they may have been entitled by delaying adjudication of an appeal of a denied application. A timely appeal decision is needed to commence receiving the benefits to which they may be entitled even more urgently during this period of unforeseen public health emergency and the ensuing potential for economic fragility for beneficiaries. The risk of disease spread to beneficiaries, county staff and state staff by conducting face to face appeal hearings at Department of Social Services offices (many of which are closing) must be contained while preserving the right to a timely appeal decision.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No**9. Rule-making Coordinator:**

Shazia A. Keller

Phone:

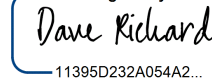
919-855-4019

E-Mail:

shazia.keller@dhhs.nc.gov

Agency contact, if any:**Phone:****E-Mail:****10. Signature of Agency Head*:**

DocuSigned by:



11395D232A054A2...

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name:

Dave Richard

Title:

Deputy Secretary, NC Medicaid

E-Mail: dave.richard@dhhs.nc.gov**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Service Benefits

RULE CITATION: 10A NCAC 21A .0304

DEADLINE FOR RECEIPT: Monday, June 15, 2020

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Temporary Rulemaking Findings of Need Form, Form 0500:

In Box 1, please state that the rulemaking agency is "DHHS/ Division of Health Benefits" as the Secretary has rulemaking authority.

In Box 2, please insert the correct rule name.

In Box 4, the Emergency Rule became effective May 4, 2020. Please correct the date.

In Box 5(a), the OAH website says the temporary rule was submitted on April 23. Please confirm the date that it was submitted.

In the Rule:

Please change the Introductory Statement to read, "10A NCAC 21A .0304 is adopted under temporary procedures as follows:"

I take it the changes made to this rule that are highlighted were in response to public comment?

On line 5, please insert a comma after "de novo appeals"

And are there any other type of appeal than "de novo" heard by a county? Why was this added?

In (1), line 7, and (2) line 10, please replace "such" with "the"

In (1), how will the agency ensure compliance with G.S. 108A-79(e)(4), which requires the ability to examine the case file during the hearing?

On line 8, what is "feasible" here? Feasible to whom?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 10, 2020

On lines 8 and 9, what is the "Public Health Act"? Please include a citation.

Please change your History Note so that it looks like this:

*History note: Authority G.S. 108A-54; 108A-79; 42 C.F.R. 431.205; 42 C.F.R. 431.240;
Emergency Adoption Eff. May 4, 2020;
Temporary Adoption Eff. June 26, 2020.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 10, 2020

1 10A NCAC 21A .0304 is proposed as a temporary rule as follows:

2
3 **10A NCAC 21A .0304 CONDUCTING DEPARTMENT ~~IN COUNTY~~ APPEAL HEARINGS BY**
4 **TELEPHONE OR ELECTRONIC MEANS**

5 For public assistance and social services **de novo** appeals **including appeals of cases involving disability** filed pursuant
6 to G.S. 108A-79:

7 (1) The Department **may shall** require conducting ~~in county~~ **such** appeal hearings by telephone or
8 feasible electronic means **during a public health emergency declared under section 319 of the Public**
9 **Health Service Act or a state of emergency declared pursuant to G.S. 166A-19.20.**

10 (2) The Department shall notify the appellant when ~~in county~~ **such** hearings are required to be conducted
11 in this manner by First Class U.S. Mail and make hearing arrangements considering the technology
12 medium available to the appellant.

13 (3) The Department shall continue such appeal hearings as necessary to fulfill ~~all due process standards~~
14 **procedural rights of the appellant as defined by 42 C.F.R. 431.242, which is incorporated by**
15 **reference including subsequent amendments and editions, and available free of charge at**
16 **<https://www.ecfr.gov>.**

17 *History note:* Authority **G.S. 108A-54;108A-79; 42 C.F.R. 431.205; 42 C.F.R. 431.240; 42 C.F.R. 431.242.**

18 *Effective date*