

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Health and Human Services

RULE CITATION: 10A NCAC 14A .0101

DEADLINE FOR RECEIPT: Wednesday, June 5, 2019

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 our office to inquire concerning the staff recommendation.

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

What is your authority to require (b)(2) and (b)(5)? 150B-20 requires only that a person submit "the proposed text of the requested rule change and a statement of the effect.." If you want to keep these requirements, please move them to (c).

Please consider adding the general rulemaking authority for the Department to your History Note.

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

10A NCAC 14A .0101 is readopted as published in 33:15 NCR 1542-1544 as follows:

SECTION .0100 - RULEMAKING

10A NCAC 14A .0101 PETITIONS

(a) Any person wishing to submit a written petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by the Director of the Division of Health Service Regulation shall ~~address the petition~~ submit the petition addressed to the Director, Division of Health Service Regulation, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(b) The petition shall contain the following information:

- (1) ~~either a draft of the proposed rule or a summary of its contents~~ the text of the proposed rule(s) for adoption or amendment and the statutory authority for the agency to promulgate the ~~rule~~; rule(s);
- (2) a statement of the ~~reason~~ reasons for proposal; adoption of the proposed rule(s), amendment or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) ~~any data supporting the proposal;~~ a statement of the effect of the proposed rule(s) on existing practices in the area involved, if known;
- (5) ~~effect of the proposed rule on existing practices in the area involved, including cost factors, if known;~~ a statement explaining the costs and computation of the cost factors, if known; and
- (6) names of those most likely to be affected by the proposed rule, with addresses, if known;
- (7) ~~(6)~~ the name(s) and address(es) of the petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) documents and any data supporting the petition;
- (2) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

~~(e)~~ (d) The Director, based on a study review of the facts stated in the petition, ~~will determine whether the public interest will be served by granting the petition. He will~~ shall consider ~~all the contents of the submitted petition, plus any additional information he deems relevant.~~ the following in his or her determination to grant the petition:

- (1) whether he or she has authority to adopt the rule(s);
- (2) the effect of the proposed rule(s) on existing rules, programs and practices;
- (3) probable costs and cost factors of the proposed rule(s);
- (4) the impact of the rule on the public and the regulated entities; and
- (5) whether the public interest will be served by granting the petition.

~~(d)~~ (e) ~~Within 30 days of submission of the petition, the Director will render a final decision. If the decision is to deny the petition, the Director will notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Director will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided~~

1 ~~in these rules.~~ Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to
2 the petitioner by the Director of Division of Health Service Regulation.

3
4 *History Note: Authority G.S. ~~143B-10~~; 150B-20;*
5 *Eff. June 10, 1977;*
6 *Readopted Eff. December 1, 1977;*
7 *Amended Eff. November 1, ~~1989~~. 1989;*
8 *Readopted Eff. July, 1, 2019.*

1 10A NCAC 14A .0102 is repealed through readoption as published in 33:15 NCR 1542-1544 as follows:

2
3 **10A NCAC 14A .0102 RULEMAKING PROCEDURES**

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5 *History Note: Authority G.S. ~~143B-10~~; 150B-20;*

6 *Eff. November 1, ~~1989~~; 1989;*

7 *Repealed Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Health and Human Services

RULE CITATION: 10A NCAC 14A .0103

DEADLINE FOR RECEIPT: Wednesday, June 5, 2019

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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 that the following technical changes be made:

In (b)(5), delete or define "concise."

Please delete the "or" at the end of (d)(1), (2), (3), (4), and (5).

Both (c) and (d)(6) speak to public interest. Do you need it in both places?

In (d), please change "includes, but is not limited to" to "includes the following:"

In (d)(4), delete "specifically"

In (d)(7), delete "presently"

In (e), how will this determination be made?

What is the intent of (f)? Is it that he or she "may issue notice" or is it that he or she "may accept public comments"? How will this determination be made?

Please consider adding the general rulemaking authority for the Department to your History Note.

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

1 10A NCAC 14A .0103 is readopted as published in 33:15 NCR 1542-1544 as follows:

2
3 **10A NCAC 14A .0103 DECLARATORY RULINGS**

4 (a) The Director of the Division of Health Service Regulation may ~~make~~ issue declaratory rulings. All requests for
5 declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 809 Ruggles
6 Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

7 (b) All requests for a declaratory ruling ~~must~~ shall include the following information:

8 (1) the name and address of the petitioner;

9 (2) a statement of all relevant facts if the person aggrieved requests a declaratory ruling as to the
10 applicability to a statute, rule, or order of the Division;

11 ~~(2)~~ (3) the statute or rule to which the petition relates;

12 (4) a statement regarding the petitioner's opinion as to any conflict or inconsistencies, if any, within the
13 Division regarding an interpretation of the law or a rule adopted by the Division to which the petition
14 relates;

15 ~~(3)~~ (5) a concise statement of the manner in which the petitioner is aggrieved by the rule or ~~statute~~ statute,
16 or its potential application to ~~him~~; him or her; and

17 ~~(4)~~ (6) the consequences of a failure to issue a declaratory ~~ruling~~; ruling; and

18 (7) the petitioner's opinion as to the potential impact of the declaratory ruling on the public.

19 (c) Whenever the Director ~~believes~~ finds for good cause that the issuance of a declaratory ruling will not serve the
20 public interest, he or she may ~~refuse~~ deny the request to issue ~~one~~ a declaratory ruling. ~~When good cause is deemed~~
21 ~~to exist, In such a case, the Director shall notify the petitioner in writing of his the decision in writing stating reasons~~
22 to deny the request for declaratory ruling and shall state the reason for the ~~denial of a declaratory ruling~~; denial.

23 (d) ~~The Director may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling; Good~~
24 cause for the denial of a declaratory ruling request includes, but is not limited to:

25 (1) the person submitting the request is not a person aggrieved; or

26 (2) there is no conflict or inconsistency within the Division regarding an interpretation of the law or a
27 rule adopted by the Division; or

28 ~~(1)~~ (3) if a situation where there has been similar controlling factual determination in a contested ~~case~~; case;
29 or

30 (4) if the request for declaratory ruling involves a factual context ~~being raised for a declaratory ruling~~
31 was that was specifically considered upon adoption of the rule being questioned as ~~evidence~~
32 evidenced by the rulemaking record; or

33 (5) the factual representations are not specific to the statute or rule being questioned; or

34 (6) issuing the declaratory ruling will not serve the public interest; or

35 ~~(2)~~ (7) if circumstances stated in the request or otherwise known to the agency show that a contested case
36 hearing would presently be appropriate.

~~(e) Where a declaratory ruling is deemed to be in the public interest, the Director shall issue the ruling within 60 days of receipt of the petition.~~

~~(f) (e)~~ A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be appropriate the Director may determine in a particular case.

~~(g) (f)~~ The Director may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

~~(h) A record of all declaratory ruling procedures shall be maintained for as long as the ruling has validity. This record will contain:~~

~~(1) — the original request,~~

~~(2) — reasons for refusing to issue a ruling,~~

~~(3) — all written memoranda and information submitted,~~

~~(4) — any written minutes or audio tape or other record of the oral hearing, and~~

~~(5) — a statement of the ruling.~~

~~This record will be maintained in a file at the Division Office, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701 and will be available for public inspection during regular office hours.~~

History Note: Authority G.S. ~~143B-10; 150B-4;~~

Eff. November 1, 1989;

Amended Eff. November 1, ~~2010; 2010;~~

Readopted Eff. July 1, 2019.