

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0101

DEADLINE FOR RECEIPT: Friday, June 14, 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 the overall intent of this Rule? Much of this appears to be unnecessary as it simply provides cross-references to other Rules or provides information set forth in statute. Please review and revise as needed.

If you decide that it is necessary, in (b), Chapter 71S is not applicable to child support enforcement. Please provide the correct cross-reference.

In (c),(d), and (e) is the title of this Section of the Division still correct?

In (d), is 71T related to public assistance? It does not appear to be.

In your History Note, 108A-25 provides the Commission authority of these Rules "under supervision of the Department of Human Resources." I'm assuming that "the Department of Human Resources is simply an outdated name of the Department. If that's correct, please confirm that this rulemaking was undertaken "under the supervision of the Department."

In your History Note, I don't understand the inclusion of 108A-29 and 108A-29.1. Are these applicable here? Also, given that these are Social Services Commission Rules, I don't understand the inclusion of 143B-10. Does the Secretary have some authority here as well?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0101 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **CHAPTER 67 – SOCIAL SERVICES - PROCEDURES**

4
5 **SUBCHAPTER 67A – GENERAL ADMINISTRATION**

6
7 **SECTION .0100 - ADMINISTRATION**

8
9 **10A NCAC 67A .0101 CONTENTS**

10 (a) Procedure. The rulemaking rules of the division of social services are contained in 10A NCAC 68.

11 (b) Child Support Enforcement. The purpose of the child support enforcement section is to supervise a program to
12 assure that dependent children are supported by their parents or other persons who are legally responsible for providing
13 such support. Rules of the child support enforcement section are contained in 10A NCAC 71S.

14 (c) Disability Determination. The purpose of the disability determination section is to process applications for
15 disability benefits under Titles II and XIX of the Social Security Act.

16 (d) Public Assistance. The purpose of the Public Assistance Section is to supervise the administration of the public
17 assistance programs as designated by the Division of Social Services. Rules for these programs are found in 10A
18 NCAC 71T through 71W.

19 (e) Family Services. The purpose of the family services section is to direct, coordinate, develop, and supervise
20 programs of social services for children and their families and for aged or disabled adults. Rules governing these
21 services are found in 10A NCAC 70 and 71A through 71R.

22
23 *History Note: Authority G.S. 108A-25; 108A-29; 108A-29.1; 143B-10; 143B-153; ~~143B-138~~; 143B-138.1; U.S.C.*
24 *301 et seq.;*
25 *Eff. February 1, 1976;*
26 *Readopted Eff. October 31, 1977;*
27 *Amended Eff. March 1, ~~1990~~; 1990;*
28 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0103

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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:

On line 4, please consider changing "The purpose of this Rule is to establish standards for office..." to "This Rule sets forth requirements for office..."

On line 4, add a comma after "equipment"

On line 5, add a comma before and after "including agency suboffices and special centers"

On line 5, what are "special centers"? I assume that your regulated public is familiar with this term?

On line 5, delete "that will adequately and effectively meet program, staff and client needs" If you need some variation of this language, delete or define "adequately and effectively" and add a comma after "staff"

On line 6, delete "are supplementary to, and do not replace," and say "are in addition to"

On line 6-7, what are the "Federal Confidentiality of Information requirements"? Is there a cross-reference available?

On line 7, what are "any provisions in the State, county or municipal building codes"? Here, can you delete "any provisions" so that it simply reads something like "These requirements are in addition to Federal Confidentiality of Information requirements and State, county, or municipal building codes."

On line7, add a comma after "county"

In Item (1), delete "appropriately marked and" as it appears to be redundant of "identifiable"

Also, in item (1), line 9, add "as follows" after "services agency"

In (1)(a), delete or define "clearly."

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In (1)(b), what is a “public building”? Here, do you just mean “if the office is housed in the same building as other agencies...”

Also in (1)(b), what is meant by “agencies”? I assume that this is not per the APA definition – is this “State or county agencies”?

In (1)(b), delete or define “Standard” in “standard building”

In (1)(b), “similar and equal” are contradictory of each other. What is the intent here?

Please provide some sort of introductory language to (2) and (4) as you’ve done for (1) and (3) and (7).

In (2)(a), who is “competent authority”? Is this an inspector?

In (2)(a), delete “of sound and substantial construction and”

What is the intent of Item (3)? Is it to say that each office must have this minimum square footage? If so, I don’t understand “which will vary due to position function, special equipment and furniture needs, fixed existing conditions or the availability of separate private interviewing rooms.” I also don’t understand “guidelines” on line 21 and “recommended minimum...” on line 23 Are these the required minimums or are they not? Are they actually dependent upon function, equipment, furniture, etc.? Please review and revise for purposes of clarity.

In (3), please consider deleting “Adequate office space shall be provided for each employee.” Given the rest of this Item, this appears to be unnecessary.

In (3)(b) and (c), what is the difference between “supervisors” and “management”? Are these commonly used terms within your regulated community?

In (3)(e), what is “adequate for function”? Given (4)(b), is this necessary here?

In Item (5), what is the “principal location”? Is this a term commonly used with your regulated public?

In (5), what is meant by “sufficient size to accommodate the people availing themselves to its use each day”? How are they supposed to determine this?

In Item (6), what is meant by “adequate to accommodate the average number of people usually in attendance”? How many seats is “adequate”? “average number of people” in attendance of what? Staff meetings? Trainings? Client interviews? Please provide some additional information here.

In Item (7), delete or define “sufficient” and “conveniently” Also, here is the intent regarding “locating” or “storing”?

In Item (7), please add “as follows” at the end of “and forms:”

In (7)(a), delete or define “convenient”

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In (7)(a), add a comma after “use”

In (7)(b), delete or define “adequately”

*In (7)(c), is there a cross-reference available for what constitute “confidential information”?
Either in your Rules and/or federally?*

In (7)(c), who are “authorized personnel”?

In (7)(d), consider deleting “used in maintaining the building and grounds.”

*In Item (8), who may “visit the agency on DSS related business”? Can you provide some
examples of who this may include?*

In Item (8), delete or define “periodically”

In Item (9), delete or define “adequately”

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

1 10A NCAC 67A .0103 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0103 STANDARDS FOR OFFICE SPACE AND FACILITIES**

4 The purpose of this Rule is to establish standards for office space, equipment and facilities for county departments of
5 social services including agency suboffices and special centers that will adequately and effectively meet program,
6 staff and client needs. These requirements are supplementary to, and do not replace, Federal Confidentiality of
7 Information requirements and any provisions in State, county or municipal building codes.

8 (1) Identification of Office. All social services offices shall be appropriately marked and identifiable
9 in the community as a social services agency:

10 (a) Each office shall be identified by an outside sign clearly visible from the road or street.

11 (b) If the office is housed within a public building occupied by other agencies or units of
12 government, the agency shall be listed on a standard building directory in a manner similar
13 and equal to that accorded every other agency.

14 (2) Requirements for Physical Plant.

15 (a) Buildings housing social services agencies shall be certified by competent authority to be
16 of sound and substantial construction and in compliance with state and local fire and
17 building codes.

18 (b) All buildings for which site clearance began before June 3, 1977, shall meet the equal
19 access provisions specified in Section 504 of the Rehabilitation Act of 1973 as amended.

20 (3) Requirements for Space. Adequate office space shall be provided for each employee. The following
21 guidelines show the acceptable minimum range of space which will vary due to position function,
22 special equipment and furniture needs, fixed existing conditions or the availability of separate
23 private interviewing rooms. The staff category descriptions and recommended minimum square
24 footages of space range are shown below:

25 (a) Staff Who Interview Clients In Their Offices	80
26 (b) Supervisors	80
27 (c) Management	96
28 (d) Staff Members Not Required to Conduct Interviews In Their Offices	56
29 (e) Separate Private Interviewing Rooms	Adequate for
	Function

30
31 (4) Requirements for Privacy:

32 (a) Private offices shall be required for the county director and each supervisor.

33 (b) Private offices or interviewing room shall be available to all staff who interview clients.

34 (5) Requirements for Waiting Room and Reception Area. The principal location of each county
35 department of social services shall be arranged to provide a waiting room of sufficient size to
36 accommodate the people availing themselves of its use each day. A separate area is required for the
37 receptionist.

- 1 (6) Requirement for Conference Room. A conference or staff training room with seating capacity
2 adequate to accommodate the average number of people usually in attendance shall be provided for
3 use in meetings and training sessions.
- 4 (7) Requirement for Storage Space and Confidentiality of Records. Sufficient space shall be provided
5 for conveniently locating files and records, supplies, and forms:
- 6 (a) Files and supplies shall be accessible and convenient to staff responsible for their
7 maintenance, use and protection.
- 8 (b) Files and records shall be adequately protected from fire, other damage and theft.
- 9 (c) Access to confidential information shall be limited to authorized personnel only.
- 10 (d) Space shall be available for storing janitorial and maintenance supplies and equipment used
11 in maintaining the building and grounds.
- 12 (8) Requirement to Provide Office Space for Persons Who Periodically Visit the Agency on DSS
13 Related Business. Office space shall be provided to persons who periodically visit the agency on
14 DSS related business.
- 15 (9) Requirement for Equipment. Furnishings and equipment shall be provided to enable staff to
16 adequately perform its duties.

17
18 *History Note:* Authority G.S. 108A-80; 143B-153; 45 C.F.R. 205.170(a)(b);
19 Eff. April 1, 1978;
20 Amended Eff. May 1, 1990; May 1, ~~1988~~1988;
21 Readopted Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0105

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Overall, I feel like this Rule may be missing some information. (a) jumps right into noncompliance – is this Rule only applicable when there has been noncompliance? Please review and revise as necessary for clarity.

Also, what is the authority of the Social Services Commission over this Rule? 143B-153(2a)(b)(1) appears to give authority to the Secretary over allocation, budgeting, and expenditures. Would this fall into that category?

Please be consistent in the capitalization of “Regional Director” throughout this Rule.

Throughout this Rule, you’ve said “acceptable plan of compliance” and “corrective action plan.” Are these the same? Please be consistent in your terminology where possible.

In (a), do you mean something like “In order to claim the cost of administration for federal and State participation, agencies shall be in compliance with Rule .0103 of this Subchapter and submit a plan for compliance within 90 days of notification of non-compliance.”

In (a), capitalize state, if you mean the State of NC.

In (a), delete or define “acceptable”

In (b), delete or define “periodically”

In (b), what are the “established standards”?

In (b), are the contents of DSS-1414 set forth elsewhere in rule or statute? If not, please provide the substantive requirements in rule.

In (b), I don’t understand lines 9-12. Are lines 9-11 saying that in addition to the period evaluation, the county shall have additional evaluations if there’s reason to do so? Please review and clarify. If so, please say something like “The Regional Office shall conduct an

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evaluation every three years or upon a complaint or knowledge of noncompliance with Rule .0103 of this Subchapter (or whatever the requirement here is.)

Are lines 11-12 necessary? They do not appear to be.

In (c), who is the "principal reviewer"? (b) says "regional director or his or her designee. Please be consistent where you can.

In (c), line 16, change "will" to "shall"

In (c), line 18, add a comma following "commissioners"

On line 18, what is a "transmittal letter"?

In (c)(1), add a comma after "commissioners"

Please provide some sort of introduction to (c)(1)(A) through (C).

Please end (c)(1)(A) with a semi-colon.

In (C)(1)(B), please change "is responsible for providing" to "shall provide"

In (c)(1)(C), what is "an acceptable plan for compliance"?

In (c)(2), change "will" to "shall" in "which will require"

Also in (c)(2), how will the determination whether to approve construction plans be made? Please provide the factors that will be used.

In (c)(3), will it be approved if it addresses each finding? If so, please say that (I think this would address some of the other concerns regarding the approval of these plans.)

In (c)(3), line 3, change "will" to "shall" and provide the approval standards. Also, do you need this and this same requirement in (c)(2)?

In (c)(4), how is the Regional Director to make this decision? What factors will he or she use in determining whether to grant a corrective action plan?

In (c)(4), what is the "corrective action phase"?

In (c)(4), lines 10 and 14, delete or define "sufficient"

In (c)(4), lines 9-13, please consider revising to say "If the findings indicate that the agency is not making progress towards compliance in accordance with its corrective action plan, it shall have 60 additional days to achieve compliance. The Regional Director shall so notify the agency, the local social services board chairman, and the chairman of the local board of county commissioners in writing."

In (c)(4), line 11 add a comma following "board chairman"

(c)(5) only addresses when a corrective action plan is not submitted. Was it also intended to include when it is not approved?

In (c)(5), change "will" to "shall" on lines 21 and 27.

In (c)(5), how is the Secretary to make this decision? Please provide the factors that will be used.

In (c)(5), please capitalize "secretary"

In (c)(5), line 22, add a comma after "county commissioners"

What is the overall intent of (d)? Is this to say that "A county department of social services that is not in compliance and has had funds withheld may appeal in accordance with 150B-23"? Do you mean "Article 3 of Chapter 150B"?

Delete 150B-23 as this does not provide authority for this Rule.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0105 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0105 ADMINISTRATION AND AGENCY COMPLIANCE**

4 (a) Federal and state participation in the cost of administration may not be claimed when agencies are not in
5 compliance with the standards set forth in 10A NCAC 67A .0103 or when the county fails to submit an acceptable
6 plan for compliance within 90 days of notification of non-compliance.

7 (b) The regional director or his or her designated representative shall evaluate each county department of social
8 services periodically, but not less than every three years, to determine compliance with the established standards, using
9 form DSS-1414 for each location. The evaluation shall be triggered by information known to the Regional Office,
10 such as changes in program regulations or staffing patterns which would affect compliance, or complaints concerning
11 compliance issues. A county department of social services shall be deemed to be in compliance until the Regional
12 Director determines, after evaluation, that the agency is not in compliance.

13 (c) At the conclusion of an evaluation, the principal reviewer shall meet with the director of the county department to
14 discuss the findings. Following this exit conference, the principal reviewer shall prepare a written report and transmit
15 the report to the Regional Director. If the findings of the review indicate the county department is in compliance, the
16 Regional Director will, within 30 days of the date of the evaluation, forward a copy of the administrative review report
17 to the agency director, the local social services board chairman, the chairman of the local board of county
18 commissioners and the county manager under a transmittal letter indicating the agency's compliance. If the county
19 department is not in compliance, the following steps shall be taken within 30 days of the date of the evaluation:

20 (1) The regional director shall send a copy of the evaluation report to the county director, the local social
21 services board chairman, the chairman of the local board of county commissioners and the county
22 manager:

23 (A) citing the specific findings of non-compliance and what is required to come into
24 compliance:

25 (B) notifying the agency that it has 90 days from the receipt of the report to come into
26 compliance in these areas or to develop and submit to the division a corrective action plan.
27 The division is responsible for providing consultation and technical assistance regarding
28 the areas of non-compliance to the local agency upon request; and

29 (C) notifying the agency that all federal and state administrative funds will be withheld should
30 the county fail to comply or submit an acceptable plan for compliance within 90 days of
31 notification of non-compliance.

32 (2) By the end of the 90 day notice period, the county department shall achieve compliance or submit a
33 corrective action plan to the division. If the corrective action plan contains provision for
34 construction of new facilities, construction plans, which will require the approval of the division
35 director, must be submitted prior to construction.

36 (3) In the event that the county department submits a corrective action plan to the division within the
37 90 day notice period, the Regional Director shall review the corrective action plan to ensure that it

addresses each specific finding of non-compliance, and that the implementation of the corrective action plan can be expected to bring the agency into compliance. If construction plans are submitted as part of corrective action, the Regional Director will obtain the approval of the division director.

- (4) Within 30 days after receipt of the plan, the Regional Director shall either approve the plan as submitted or indicate how the county department can amend the corrective action plan in order to obtain approval. After a corrective action plan has been approved, the Regional Director shall monitor the agency's progress towards compliance during the corrective action phase, and inform the agency, the local social services board chairman, the chairman of the local board of county commissioners and the county manager of its findings in writing. If the findings indicate that the agency is not making sufficient progress towards compliance in accordance with its corrective action plan, the Regional Director shall so notify the agency, the local social services board chairman and the chairman of the local board of county commissioners in writing that the agency has an additional 60 days from receipt of the notice to achieve compliance. If the agency does not achieve compliance or make sufficient progress towards compliance in accordance with its corrective action plan within the additional 60 day period, withholding shall commence in accordance with the procedures set forth in Paragraph (c) (5) of this Rule.

- (5) In the event that the county department of social services fails to submit a corrective action plan within the 90-day notice period, the division director shall, within 30 days of the above referenced notification of county authorities, recommend to the secretary the withholding of all federal and state administrative funds. If the secretary concurs with the division director's recommendation, the secretary will, within 30 days of the division director's recommendation, notify the agency director, the local social services board chairman, the chairman of the local board of county commissioners and the county manager of the decision to withhold funds. The withholding of these funds shall be retroactive to the date of the original transmittal letter signed by the Regional Director notifying the agency of non-compliance and shall continue until the requirement for a compliance plan is met. If the county department appeals the decision under the procedures outlined in Paragraph (d) of this Rule, the action to withhold funds will be deferred until the conclusion of the hearing and any subsequent appeals.

- (d) A county department of social services which is not in compliance and has been notified by the secretary of the decision to withhold funds, may appeal. If an appeal is desired, the county is required under G.S. 150B-23(a), as amended by Chapter 878 of the 1987 North Carolina Session Laws, to file hearing requests for Department of Human Resources matters with the Office of Administrative Hearings.

*History Note: Authority G.S. 143B-153; 150B-23(a); 45 C.F.R. 205-170(b);
Eff. April 1, 1978;
ARRC Objection March 17, 1988;
Amended Eff. March 1, 1990; August 1, ~~1988~~-1988;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0106

DEADLINE FOR RECEIPT: Friday, June 14, 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:

By this Rule, do you mean something like the following:

~~For reviewing compliance of~~ The director or his or her designee of any county department departments of social services with civil rights requirements in accordance with XXXXX shall review compliance with those requirements annually on a form that includes the following information:

- (1) whatever is required;
- (2) whatever else is required; and
- (3) whatever is required.

requirements, a form will be supplied to county departments of social services to be completed annually by the county director or his [or her] designee. Compliance will be reviewed by the appropriate regional representative.

If you choose not to use the above suggestion, note the following:

On line 4, what are the "civil rights requirements"? Is there a cross-reference available?

On lines 4 and 6, change "will" to "shall."

On line 4, are the substantive requirements of the form set forth elsewhere in rule or statute? If not, please provide them in Rule.

On line 6, who is the "appropriate regional representative"?

Is the last sentence of this Rule necessary?

Please add any additional statutory authority. I don't think that 143B-10 is applicable here. Do you mean 143B-153?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0106 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0106 CIVIL RIGHTS**

4 For reviewing compliance of county departments of social services with civil rights requirements, a form will be
5 supplied to county departments of social services to be completed annually by the county director or his or her
6 designee. Compliance will be reviewed by the appropriate regional representative.

7
8 *History Note: Authority G.S. 143B-10;*
9 *Eff. April 1, ~~1979~~ 1979;*
10 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0107

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

A lot of this Rule appears to be background/informational in nature. Is it necessary?

Also, this Rule appears to apply to requirements regarding "allocation, budgeting, and expenditures." 143B-153(2b)(b)(2) (the second (2)) gives the Secretary authority over these if they are funds administered by the Department. Is the intent of this Rule to govern these funds or other funds? Please review and clarify.

In (a), add a comma after "planning"

In (a), what are these forms? Are you referring to those forms set forth in this Rule? If so, please say so.

In this Rule, are the substantive requirements of each form set forth elsewhere in rule or statute? If not, please provide the substantive requirements in rule.

In (b), are the forms the initial service client information record and the service client information change notice? If so, please make that more clear.

In (b) and (c), delete or define "required" (providing the substantive requirements of the form will address this issue) and "properly"

In (b), what is "federal financial participation"? Is your regulated public familiar?

In (c), change 'will' to "shall"

In (c), is "services for the blind services workers" now the division of services for the blind? If so, would that be under the authority of services for the blind?

What is your authority to say what will be the "basis for county reimbursement"?

I don't understand the inclusion of 45 CFR 436.16 and 5 USC 552a. How do these provide authority for this Rule?

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Commission Counsel
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Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0107 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0107 FORMS**

4 (a) In order to comply with the budgeting, planning and reimbursement requirements of G.S. Chapter 108A and 45
5 ~~CFR 228.1745~~ CFR 431.16, each county department of social services shall complete all forms specified by the
6 Department of Health and Human Services.

7 (b) The forms, initial service client information record, and service client information change notice, shall be
8 completed by the case manager for each client requesting social services. All required fields must be completed and
9 required fields not properly completed shall be considered an error and returned to the worker. Clients may refuse to
10 provide their social security numbers and shall not be denied benefits, but the worker identification numbers of case
11 managers are required in order to allocate costs for federal financial participation.

12 (c) The form, worker daily report of services to clients, shall be completed by the county services workers and division
13 of services for the blind services workers. This form provides information to meet reporting requirements at the
14 federal, state and local levels and will provide the basis for county reimbursement. All required fields must be
15 completed and required fields not properly completed shall be considered an error and returned to the worker. The
16 worker identification numbers of service workers are required in order to allocate costs for federal financial
17 participation.

18
19 *History Note: Authority G.S. 75-62; 143B-153; 45-~~CFR 228.1745~~ CFR 431.16; 5 USC 552a;*
20 *Eff. August 15, 1980;*
21 *Amended Eff. September 1, 2008; December 1, 2007; March 1, 1990; January 1, ~~1983~~ 1983;*
22 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE-B

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0108

DEADLINE FOR RECEIPT: Friday, June 14, 2019

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

Overall is this Rule necessary? It does not appear to confer any directives to anyone other than the Division.

In your History Note, 108A-25.1 has been repealed. Do you mean 108A-25.3? Also, is it necessary to still cite 1997-497? It appears as though this Session Law created 108A-25.1, which has since been repealed.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0108 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0108 ADVISORY TO COUNTIES REGARDING PETITION OF GARNISHMENT**

4 The Division of Social Services shall advise county departments of social services and consolidated human services
5 boards of any State and federal laws and regulations that restrict the garnishment of wages to recoup a fraudulent
6 public assistance program payment as provided in G.S. ~~108A-25.1~~108A-25.3.

7
8 *History Note: Authority S.L. 1997-497; G.S. 108A-25.1; 143B-153;*

9 *Temporary Adoption Eff. December 8, 1997;*

10 *Eff. April 1, ~~1999~~1999;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0201

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this Rule necessary? It does not currently do anything other than point to statute. If this Rule is necessary, please revise it to say something like "A public assistance applicant or recipient may appeal the decision of the county board of social services, county department or social services, or the board of county commissioners granting, denying, or modifying assistance or the failure of the county board of social services or county department of social services to act in accordance with Social Services Commission Rules in accordance with 108A-79 and the Rules of this Section."

Please add any additional applicable statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0201 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **SECTION .0200 - HEARING POLICY**
4

5 **10A NCAC 67A .0201 GENERAL**

6 For more information concerning the notice of proposed action and appeals process, see G.S. 108A-79.

7
8 *History Note: Authority G.S. 143B-153;*

9 *Eff. October 1, 1981;*

10 *Amended Eff. January 1, ~~1983~~ 1983;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0202

DEADLINE FOR RECEIPT: Friday, June 14, 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:

45 CFR 205.10(a)(4)(i) appears to always require "timely and adequate notice", except as provided in 45 CFR (a)(4)(ii), (iii), or (iv). This Rule appears to contradict those requirements. Please review and revise as necessary.

On line 4, what are "applicable program specific federal regulations..."?

In Item (1), what "factual information" would be sufficient to meet this? Can you provide some examples?

In Items (3), should "in" be "on" in "in behalf"?

In Item (4), what is "incompetent incapacitated" and how is this determined? Does this have to be judicially adjudicated?

Please add any additional applicable statutory authority.

In your History Note, 108A-25 provides the Commission authority of these Rules "under supervision of the Department of Human Resources." I'm assuming that "the Department of Human Resources is simply an outdated name of the Department. If that's correct, please confirm that this rulemaking was undertaken "under the supervision of the Department."

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0202 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0202 EXCEPTIONS FOR NOTIFICATION**

4 Except as otherwise provided by applicable program specific federal regulations, the county department of social
5 services does not need to provide notification of action to the client when:

- 6 (1) the agency is terminating services based on factual information confirming the death of the client;
7 (2) the provision of protective services to children or protective services-evaluation to adults is initiated
8 or terminated;
9 (3) the county department of social services has applied for services in behalf of an individual for whom
10 they have custody or guardianship for adults;
11 (4) the county department of social services has applied for services in behalf of an individual who is
12 incompetent incapacitated; or
13 (5) the service is terminated at the end of a period of eligibility and the recipient has not requested that
14 the services be continued.

15
16 *History Note: Authority G.S. 108A-25; 143B-153; 45 C.F.R. 205.10;*
17 *Eff. October 1, 1981;*
18 *Amended Eff. November 1, ~~2007~~2007;*
19 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0203

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Overall, what is the authority to say that it will be delayed for up to 10 days? I feel certain that there is something out there, but 108A-79(j) refers to a hearing at a state level and says that "the decision may only be delayed for the length of time the appellant requested a delay." From that, I infer that an appellant may request a delay for longer than 10 days. I'm not concerned about your authority to delay a hearing at all, but more whether you have the authority to put the 10 day requirement in place. Is there a federal regulation available? Perhaps 45 CFR 205.10(a)(7)? If this is applicable to state hearings, wouldn't this be under authority of the Department?

Alternatively, is the intent to get to the local hearing under 108A-79(e) and this is providing the definition of "good cause"?

In (a), by "may", do you mean "shall"? Also, how is it determined how much time will be given ("up to")?

(a), please capitalize "state" if you mean the State of NC.

In (b)(2), who is considered to be "family"?

In (b)(4), what is the intent here?

In (b)(5), what is the "10 work day notice"? Is this in accordance with 108A-79(b)?

Add "and" or "or" at the end of (b)(6).

In (b)(7), please add some additional information as to how this will be determined. Perhaps something like "in the interests of justice."

Please see 55 N.C.A.G. 91 regarding authority here.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0203 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0203 GOOD CAUSE FOR DELAYED HEARINGS**

4 (a) A state appeal hearing may be delayed for as much as 10 calendar days when there is good cause.

5 (b) Good cause exists when:

- 6 (1) There is a death in the appellant's family;
- 7 (2) The appellant or someone in his or her family is ill;
- 8 (3) The appellant is unable to obtain representation;
- 9 (4) The appellant's representative has a conflict with the scheduled date;
- 10 (5) The appellant receives a notice of action proposing a reduction or termination of assistance after the
- 11 10 work day notice expires;
- 12 (6) The appellant is unable to obtain transportation;
- 13 (7) The hearing officer determines that the hearing should be delayed for some other reason.

14
15 *History Note: Authority G.S. 108A-79; 143B-153;*
16 *Eff. October 1, 1981;*
17 *Amended Eff. February 1, ~~1986~~ 1986;*
18 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0204

DEADLINE FOR RECEIPT: Friday, June 14, 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 hearing is this Rule applicable to? Is this a local or a State hearing? If it's a State hearing, wouldn't the Secretary have authority in accordance with 108A-79(i)?

Also, is this hearing not available to the public?

On line 5, change "which" to "that"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0204 is amended without notice pursuant to G.S. 150B-21.5(a)(5) as follows:

2
3 **10A NCAC 67A .0204 ATTENDANCE AT THE HEARING**

4 Attendance at the hearing is limited to the appellant, his or her representative, representatives of the county department
5 and any witnesses which the appellant or the county department wish to call upon for testimony.

6
7 *History Note: Authority G.S. 108A-79; 143B-153;*

8 *Eff. October 1, 1981;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
10 *6, 2016.*

11 *Amended Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0205

DEADLINE FOR RECEIPT: Friday, June 14, 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:

I read this to be at a State hearing, if that's correct, wouldn't the Secretary have authority in accordance with 108A-79(i)?

Also, please review this Rule in light of 108A-79(f). I'm not sure that I fully understand what is going on here.

In (a), what is a "tentative decision"? Overall, the process of all of this is unclear to me given this Rule and 108A-79(f). Here, it makes it sound like there is an initial decision from the State upon appeal from a local level, then a hearing can be requested at the State level following the "tentative decision"? Please review and clarify as needed.

In (a), how is he or she to make a "tentative decision"?

In (a), are all decisions sent to both parties? By certified mail? If so, do you need to separate them? Can you just say "Tentative decisions shall be sent to both parties by certified mail"?

Please review (b) in light of 108A-79(f) which requires that a decision be made "upon the evidence presented at the hearing."

In (c), what is meant by "is not contacted"? Can you change this to say what the directive actually is. For example, "The parties shall provide notice of appeal within 10 calendar days from the date of the notice of the decision. If notice of appeal is not received, the tentative decision shall become final"?

Also, in (c), just to be clear, this is the date of the notice, not the date it is receipt or sent?

In (d), change "becomes" to "shall become"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0205 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 67A .0205 APPEAL OF DECISION**

4 (a) The hearing officer shall make a tentative decision which shall be served upon the county department and the
5 appellant by mail. Decisions proposing to reverse the county department's action shall be sent by certified mail to the
6 county department while decisions affirming the county department's actions will be sent by certified mail to the
7 appellant.

8 (b) The county and the appellant may present oral and written argument, for and against the decision. Written
9 argument may be submitted to or contact made with the Chief Hearing Officer to request a hearing for oral argument.

10 (c) If the Chief Hearing Officer is not contacted within 10 calendar days of the date of the notice of the tentative
11 decision, the tentative decision shall become final.

12 (d) If the party that requested oral argument fails to appear at the hearing for oral argument, the tentative decision
13 becomes final.

14 (e) A decision upholding the appellant shall be put into effect within two weeks after receipt of the final decision.
15

16 *History Note: Authority G.S. 108A-79; 143B-153;*

17 *Eff. October 1, 1981;*

18 *Amended Eff. March 1, 1992; February 1, ~~1986~~, 1986;*

19 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 67A .0206

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given 108A-79(c), is (a) necessary?

If (a) is necessary, what is the "date of action"? I assume it's those listed in 108A-79(a)?

Given 108A-79(g), if (b) necessary? To the extent that it is necessary, what is your authority to say what the Department can do at the State hearing level? This appears to fall under the authority of the Department. I have the same comment for (c) to the extent that it is applicable.

I assume the intent of (c) is to define good cause for purposes of 108A-79(e) for local hearings? If so, please say something like "For purposes of 108A-79(e) for local hearings, "good cause" shall include the following."

Please review (c)(1) for purposes of clarity.

In (c)(2), what is considered to be "extended"?

In (c)(2), add a comma after "child"

In (c)(3), what time frames? Is there a cross-reference available? Do you mean those set forth in 108A-79?

In (c)(4) and (5), change "which" to "that" in "which results"

In (c)(7), add a comma in between "county" and "such as"

In (c)(7), change "applicant/recipient" to one or the other, whichever is applicable.

In (c)(7), delete or define "inadequately"

In (c)(7), add a comma after "rights"

In (d), delete "but is not limited to:"

Amber May

Commission Counsel

Date submitted to agency: Thursday, June 6, 2019

Please add “and” or “or” at the end of (c)(6) and (d)(3).

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 67A .0206 is amended without notice pursuant to G.S. 150B-21.5(a)(5) as follows:

2
3 **10A NCAC 67A .0206 GOOD CAUSE FOR NOT REQUESTING HEARING AND REQUIRED TIME**
4 **FRAMES**

5 (a) Except in the food stamp program, an appellant shall request a local hearing within 60 days from the date of action
6 unless he or she shows good cause. If the appellant shows good cause, the local hearing request must be made no later
7 than the 90th day from the date of action.

8 (b) Except in the food stamp program, an appellant shall request a state hearing within 15 days from the date the local
9 hearing decision is mailed unless he or she shows good cause. If the appellant shows good cause, the state hearing
10 request must be made no later than the 90th day from the date of action.

11 (c) Good cause for not requesting a local hearing within 60 days from the date of action and for not requesting a state
12 hearing within 15 days from the date the local decision is mailed is defined as:

- 13 (1) Failure of the appellant to receive the notification of action to be taken on the notification of the
14 local hearing decision;
- 15 (2) Extended hospitalization of the appellant or spouse, child or parent of the appellant;
- 16 (3) Failure of a representative, acting on the appellant's behalf, to meet the time frames;
- 17 (4) Illness which results in the appellant being incompetent or unconscious and no representative has
18 been appointed;
- 19 (5) Illness which results in the incapacity of the appellant;
- 20 (6) Death of the appellant or his or her representative;
- 21 (7) Delay caused by the county such as failing to assist the applicant/recipient in filing an appeal,
22 inadequately or incorrectly providing information on appeal rights or discouraging a request for
23 appeal.

24 (d) The appellant shall provide evidence to substantiate good cause. Evidence may include but is not limited to:

- 25 (1) Doctor's statement;
- 26 (2) Hospital bill;
- 27 (3) Written statement from the appellant's representative;
- 28 (4) Written statement of the appellant or other individual knowledgeable about the situation.

29
30 *History Note: Authority G.S. 108A-79; 143B-153; ~~e. 599, 1987 Session Laws~~; 7 C.F.R. 273.15(g);*
31 *45 C.F.R. 205.10(a)(5)(iii); 42 C.F.R. 431.221(d);*
32 *Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*
33 *Eff. May 1, 1988;*
34 *Amended Eff. March 1, 1990;*
35 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
36 *6, 2016.*
37 *Amended Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, June 14, 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:

For each form, please complete box 9B.

If any rules end up being two or more pages, please be sure to only print on one side of the page.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0101

DEADLINE FOR RECEIPT: Friday, June 14, 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:

In (a), just to verify, are y'all currently accepting electronic submissions? The answer may be no, but please be sure that the rule is up to date and accurate.

Regarding (b), 150B-20 sets forth what is required for a petition for rulemaking regarding adoptions and amendments. The Statute says that "the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change." If you want to keep this information in Rule, please move it to a new Paragraph and make it optional for your folks to submit any information not pertaining to the Rule text and a statement of the effect (please move any costs/fiscal note requirements to the "may" category.)

Is (d) necessary? It repeats the requirements of 150B-20(b).

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 68 .0101 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **CHAPTER 68 - SOCIAL SERVICES: RULEMAKING**

4
5 **SECTION .0100 – RULEMAKING: SOCIAL SERVICES COMMISSION**

6
7 **10A NCAC 68 .0101 PETITIONS**

8 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Social Services Commission
9 (hereinafter referred to as the commission) shall make his or her request in a petition addressed to:

10 ~~Special Assistant to the Director~~
11 Division of Social Services
12 Department of Health and Human Services
13 ~~325 North Salisbury Street~~
14 2401 Mail Service Center
15 Raleigh, North Carolina 27699-2401

16 (b) The petition shall contain the following information:

- 17 (1) either a draft of the proposed rule or a summary of its contents;
18 (2) the statutory authority for the agency to promulgate the rule;
19 (3) the reasons for the proposal;
20 (4) the effect of existing rules or orders;
21 (5) any data supporting the proposal;
22 (6) the effect of the proposed rule on existing practices in the area involved, including cost factors;
23 (7) the names and addresses, if known, of those most likely to be affected by the proposed rule; and
24 (8) the name and address of the petitioner.

25 (c) The commission or its designee shall determine, based on a study of the facts stated in the petition, whether the
26 public interest will be served by granting the petition. The commission or its designee shall consider all the contents
27 of the submitted petition, plus any additional information it deems relevant.

28 (d) Within ~~30~~120 days of submission of the petition, the commission or its designee shall render a decision to deny
29 the petition or to initiate rulemaking proceedings. If the decision is to deny the petition, the commission or its designee
30 shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the
31 commission or its designee shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these
32 rules.

33
34 *History Note: Authority G.S. 143B-153; ~~150B-16; 150B-20~~;*
35 *Eff. February 1, 1976;*
36 *Readopted Eff. October 31, 1977;*
37 *Amended Eff. March 1, ~~1990~~1990;*
38 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0102

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please be sure to format this Rule in accordance with 26 NCAC 02C .0108. Specifically, please change the spacing to 1.5.

For an alternative suggestion for this Rule, please see 21 NCAC 64 .0502 at <http://reports.oah.state.nc.us/ncac/title%2021%20-%20occupational%20licensing%20boards%20and%20commissions/chapter%2064%20-%20speech%20and%20language%20pathologists%20and%20audiologists/21%20ncac%2064%20.0502.pdf>

In (a), please add "in accordance with 150B-21.2(d) after "mailing list."

In (a), capitalize "commission"

On line 5, please change "its" to "his, her, or its"

Out of curiosity, it is an option for a person to sign up for an electronic mailing list?

On line 11, I assume that you're relying on 150-21.2(d) for your fee in that "an agency may charge an annual fee to each person... to cover copying and mailing costs", but what about electronically? Again, please see the suggested rule.

On line 11, change "will" to "shall"

Please consider making the information regarding the agenda its own Paragraph.

What is the intent of (b)? What information is this intended to get to? As written, I don't understand. Is this necessary? Would this information not otherwise be covered under the Public Records Act in Chapter 132 of the General Statutes?

If (b) is necessary, please review and clarify; and delete the addresss. Since you have provided this information in (a), there's no need to do it here.

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

I'm not sure that I understand the inclusion of 150B-19 in your History Note. Please delete.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 68 .0102 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0102 NOTICE**

4 (a) Any person or agency desiring to be placed on the mailing list for commission rulemaking notices must file a
5 request in writing, furnishing its name and mailing address, with:

6 ~~Special Assistant to the Director~~
7 Division of Social Services
8 Department of Health and Human Services
9 2401 Mail Service Center
10 Raleigh, North Carolina 27699-2401

11 Persons or agencies on this mailing list will be billed twelve dollars (\$12.00) annually. Names will be deleted from
12 the mailing list if payment is not received by June 30 each year. Any person who wishes to receive copies of the
13 agendas only may do so by contacting the ~~Special Assistant to the Director~~ at the address in this Paragraph. No fee
14 will be charged for the agenda only.

15 (b) Any person desiring information in addition to that provided in a particular rulemaking notice may contact:

16 ~~Special Assistant to the Director~~
17 Division of Social Services
18 Department of Health and Human Services
19 2401 Mail Service Center
20 Raleigh, North Carolina 27699-2401
21

22 *History Note: Authority G.S. 143B-153; 150B-19; 150B-21.2;*
23 *Eff. February 1, 1976;*
24 *Readopted Eff. October 31, 1977;*
25 *Amended Eff. August 3, 1992; March 1, ~~1990-1990~~;*
26 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0103

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Given 150B-21.1(a3) and 21.2(e), which provide requirements regarding rulemaking hearings, this Rule appears to be unnecessary. This Rule also appears to pertain exclusively to internal management, which does not meet the definition of a Rule pursuant to 150B-2(8a)(a).

1 10A NCAC 68 .0103 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0103 HEARING OFFICER**

4 The commission, one or more members of the commission, or one or more hearing officers designated and authorized
5 by the commission shall be hearing officers in a rulemaking hearing.

6
7 *History Note: Authority G.S. 143B-153; ~~150B-12~~;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. October 31, 1977;*

10 *Amended Eff. March 1, ~~1990~~ 1990;*

11 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

Given 150B-21.2(e) and (f), which provides requirements regarding rulemaking hearings and public comments, Staff believes that this Rule is unnecessary.

To the extent that this Rule is necessary, Staff believes it is unclear as the Rule uses words such as "promptly", "brief", "clearly", "full and effective", and "fair" without providing additional clarifying information.

In addition, Staff believes that Paragraph (d) is beyond the statutory authority of the agency as it conflicts with 150B-21.2(f). As written, it appears as though the agency may be providing a public comment period that is shorter than the required 60 days pursuant to 150B-21.2(f).

Amber May
Commission Counsel

1 10A NCAC 68 .0104 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0104 HEARINGS**

4 (a) Any person desiring to present data, views, or arguments orally on the proposed rule may file a request with:

5 ~~Special Assistant to the Director~~
6 Division of Social Services
7 Department of Health and Human Resources
8 2401 Mail Service Center
9 Raleigh, North Carolina 27699-2401

10 Any person desiring to make an oral presentation may submit a written copy of the presentation to the ~~Special~~
11 ~~Assistant Director~~ prior to the hearing, or at the hearing.

12 (b) A request to make an oral presentation may contain a brief summary of the requesting person's views with respect
13 to the subject matter, and a statement of the length of time the person intends to speak.

14 (c) The ~~Special Assistant Director~~ shall promptly acknowledge receipt of a request to make an oral presentation and
15 shall inform the requesting person of any limitations deemed necessary to the end of a full and effective public hearing
16 on the proposed rule.

17 (d) Any person may file a written submission containing data, comments, or arguments after publication of a
18 rulemaking notice up to and including the day of the hearing, unless a longer period is stated in the particular notice
19 or an extension of time is granted for good cause. A submission must clearly state the rule or proposed rule to which
20 the comments are addressed and must also include the name and address of the person submitting it. Written
21 submissions must be sent to:

22 ~~Special Assistant to the Director~~
23 Division of Social Services
24 Department of Health and Human Services
25 2401 Mail Service Center
26 Raleigh, North Carolina 27699-2401

27 The ~~Special Assistant Director~~ will promptly acknowledge receipt of all written submissions.

28 (e) The presiding officer at the hearing shall have complete control over the proceedings, including:

- 29 (1) the responsibility of having a record made of the proceedings,
30 (2) extension of any time allotments,
31 (3) recognition of speakers,
32 (4) prevention of repetitious presentations, and
33 (5) general management of the hearing.

34 The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present views,
35 data, and comments.

36
37 *History Note: Authority G.S. 143B-153; ~~150B-12;~~*
38 *Eff. February 1, 1976;*
39 *Readopted Eff. October 31, 1977;*
40 *Amended Eff. March 1, ~~1990~~ 1990;*
41 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

Given 150B-20, Staff believes that this Rule is unnecessary as 150B-20 sets forth notice requirements regarding the grant or denial of a rule-making petition.

1 10A NCAC 68 .0105 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0105 STATEMENT OF REASONS FOR AND AGAINST RULEMAKING DECISION**

4 (a) Any interested person who desires from the commission a concise written statement of the principal reasons for
5 and against the decision by the commission to adopt or reject a rule may, either prior to the decision or within 30 days
6 thereafter, submit a request to:

7 ~~Special Assistant to the Director~~
8 Division of Social Services
9 Department of Health and Human Services
10 ~~325 North Salisbury Street~~
11 2401 Mail Service Center
12 Raleigh, North Carolina 27699-2401

13 (b) An "interested person" shall be defined as any person, as defined in G.S. 150B-2(7), whose rights, duties, or
14 privileges might be affected by the adoption of the rule.

15 (c) The request must be made in writing, must contain a statement showing that the requesting person is an interested
16 person, and must identify the rule or proposed rule involved.

17 (d) The commission shall issue the statement of reasons for and against its decision within 45 days after receipt of the
18 request.

19
20 *History Note: Authority G.S. 143B-153; ~~150B-12;~~*
21 *Eff. February 1, 1976;*
22 *Readopted Eff. October 31, 1977;*
23 *Amended Eff. March 1, ~~1990-1990;~~*
24 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0106

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

Given 150B-21.2(i), Staff believes that this Rule is unnecessary as 150B-21.2(i) requires that an agency maintain a rulemaking record and provides the information to be included in that record.

1 10A NCAC 68 .0106 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0106 RECORD OF RULEMAKING PROCEEDINGS**

4 A record of all rulemaking proceedings, including any petitions shall be maintained by the ~~Special Assistant to the~~
5 Director, Division of Social Services and shall be available for public inspection during regular office hours. This
6 record shall include:

- 7 (1) the original petition,
8 (2) the notice,
9 (3) all written memoranda and information submitted,
10 (4) any recording or transcript of the oral hearing, and
11 (5) a final draft of the rule.

12
13 *History Note:* *Authority G.S. 143B-153; ~~150B-11~~; 150B-21.2;*
14 *Eff. February 1, 1976;*
15 *Readopted Eff. October 31, 1977;*
16 *Amended Eff. March 1, ~~1990~~-1990;*
17 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0107

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this Rule necessary? If so, what is your specific authority for this Rule? I don't see that this fee is allowed by 143B-153. Please note that 12-3.1 requires specific authority for an agency to charge any fees.

If this Rule is necessary, what is the overall intent? Is it to get to all public records? If so, please note that 132-6.2(b), only allows a fee of the actual cost of making the copy. If it is to get to mailing list information, note that 150B-21.2(d) allows an "annual fee to each person on the agency's mailing list to cover copying and mailing costs."

If this Rule is necessary, what about electronic mailing lists?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 68 .0107 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0107 FEES**

4 A fee of ten cents (\$0.10) per page shall be charged by the ~~Special Assistant~~ Director to persons requesting material
5 from commission records.

6
7 *History Note: Authority G.S. 143B-153; ~~150B-11~~; 150B-19;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. October 31, 1977;*

10 *Amended Eff. March 1, ~~1990~~ 1990;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0108

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given 150B-4, is (a) necessary?

If it is necessary, in (a), what is your authority to delegate this function to the Division? 150B-4 requires that the "agency" issue a declaratory ruling"

Also in (a), what rules are adopted by the "Director"? These are Social Services Commission Rules.

In (a), change "shall have the power to make a..." to "may issue..."

Please end (a)(1) through (3) with semi-colons, rather than commas.

In (c)(3), delete or define "concise"

In (d), (e), and (f), who is the "person or group with the power to make a declaratory ruling"? Again, these are SSC rules under SSC authority, which requires the SSC to make this ruling.

In (d), what is meant by "good reason"? How is this determined?

In (d), what is meant by "issuance of a declaratory ruling would be undesirable"? Does this mean "deny the request"?

In (d), is it necessary to say 30 days here or do you want to just cross-reference 150B-4(a1)?

Is the intent of (e) to expound upon the idea of "good reason" in (d)? If so, please make that clear.

In (e), by "may", do you mean "shall"?

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

I don't understand the intent of (e). What is meant by "may refuse to consider the validity of a rule and issue a declaratory ruling"? Here, do you mean deny the request? Please use statutory terminology where you can (here, please say grant or deny the request)

In (e)(2), what are "specified relevant factors"?

In (e)(3), delete "specifically"

In (e)(4), delete "presently"

Is (f) necessary, it appears to repeat 150B-4(a1).

In (g) and (h), how will these be determined?

Given 150B-21.2(i), is (i) necessary? I don't think it is.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 68 .0108 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0108 DECLARATORY RULINGS**

4 (a) The director of the division shall have the power to make a declaratory ruling on the validity of a rule adopted by
5 the director, or on the applicability of a rule or statute adopted by either the director or the commission. The
6 commission shall have the power to make a declaratory ruling on the validity of a rule adopted by the commission.

7 (b) All requests for declaratory rulings shall be by written petition and shall be submitted to:

8 ~~Special Assistant to the Director~~
9 Division of Social Services
10 Department of Health and Human Services
11 ~~325 North Salisbury Street~~
12 2401 Mail Service Center
13 Raleigh, North Carolina 27699-2401

14 (c) Every request for a declaratory ruling must include the following information:

- 15 (1) the name and address of the petitioner,
16 (2) the statute or rule to which the petition relates,
17 (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its
18 potential application to him or her, and
19 (4) the consequences of a failure to issue a declaratory ruling.

20 (d) Whenever the person or group with the power to make a declaratory ruling believes for a good reason that the
21 issuance of a declaratory ruling would be undesirable, that person or group may refuse to issue one. Such refusal shall
22 be followed, within ~~60~~30 days of the receipt of the petition, by the issuance of written notification to the petitioner
23 and to the hearing office. The notice shall state the decision and the reasons therefore.

24 (e) The person or group with the power to make a declaratory ruling may refuse to consider the validity of a rule and
25 issue a declaratory ruling.

- 26 (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that
27 such a ruling would be warranted;
28 (2) unless the rulemaking record evidences a failure by the agency to consider specified relevant factors;
29 (3) if there has been a similar controlling factual determination in a contested case, or if the factual
30 context being raised for a declaratory ruling was specifically considered upon adoption of the rule
31 being questioned as evidenced by the rulemaking record; or
32 (4) if circumstances stated in the request or otherwise known to the agency show that a contested case
33 hearing would presently be appropriate.

34 (f) Where the person or group with the power to make a declaratory ruling does not deem undesirable the issuance of
35 such a ruling, the declaratory ruling shall be issued within ~~60~~45 days after receipt of the petition.

36 (g) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may
37 be deemed appropriate, in the discretion of the person or group that is to issue the ruling.

38 (h) The person or group that is to issue a declaratory ruling may issue notice to persons who might be affected by the
39 ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(i) A record of all declaratory ruling proceedings shall be maintained by the ~~Special Assistant~~ Director and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request,
- (2) the reasons for refusing to issue a ruling,
- (3) all written memoranda and information submitted,
- (4) any recording or transcript of any oral hearing, and
- (5) a statement of the ruling.

*History Note: Authority G.S. 143B-153; ~~150B-17~~; 150B-4;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. March 1, ~~1990~~.1990;
Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 Rules .0202, .0203, .0204, .0205, .0206, and .0208

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

Staff is recommending objection to the above cited Rules for lack of statutory authority and necessity.

Staff is recommending objection to these Rules as the cited authority does not provide any authority for Rulemaking to the Social Services Commission.

If the intent of these Rules is to apply to rulemaking procedures of the Social Services Commission, these Rules are unnecessary as they repeat the requirements set forth in Section .0100 of this Chapter. To the extent this information is not repetitive of Section .0100, these Rules are not necessary as the requirements set forth in these Rules are currently set forth in 150B-21.2 the Administrative Procedure Act.

1 10A NCAC 68 .0202 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0202 NOTICE**

4 (a) Upon a determination to hold a rulemaking proceeding, either in response to a petition or otherwise, the director
5 or his or her designee shall give 30 days notice to all interested parties of a public hearing on the proposed rule.

6 (b) Any person or agency desiring to be placed on the mailing list for the director's rulemaking notices may file a
7 request in writing, furnishing a name and mailing address, with:

8 Director
9 Division of Social Services
10 Department of Health and Human Services
11 ~~325 North Salisbury Street~~
12 2401 Mail Service Center
13 Raleigh, North Carolina 27699-2401

14 The request must state the subject areas within the authority of the director for which notice is requested.

15 (c) The director or his or her designee shall review its mailing list periodically and may write to any person on the list
16 to inquire whether that person wishes to remain on the list. If no response is received, that person may be removed
17 from the list.

18 (d) If practicable and appropriate, public notice of rulemaking proceedings shall be sent to community, special
19 interest, government, trade, or professional organizations for publication.

20 (e) Any person desiring information in addition to that provided in a particular rulemaking notice may contact:

21 Director
22 Division of Social Services
23 Department of Health and Human Services
24 ~~325 North Salisbury Street~~
25 2401 Mail Service Center
26 Raleigh, North Carolina 27699-2401
27

28 *History Note: Authority G.S. 143B-10; ~~150B-12~~; 150B-21.2*
29 *Eff. July 1, 1977;*
30 *Readopted Eff. October 31, 1977;*
31 *Amended Eff. March 1, ~~1990~~.1990;*
32 *Readopted Eff. July 1, 2019.*

1 10A NCAC 68 .0203 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0203 HEARING OFFICER**

4 The director or one or more hearing officers designated by the director shall be hearing officers in a rulemaking
5 hearing.

6
7 *History Note: Authority G.S. 143B-10; ~~150B-12~~; 150B-21.2;*

8 *Eff. July 1, 1977;*

9 *Readopted Eff. October 31, 1977;*

10 *Amended Eff. March 1, ~~1990~~ 1990;*

11 *Readopted Eff. July 1, 2019.*

1 10A NCAC 68 .0204 is readopted as published in 17:33: NCR 1763 as follows:

2
3 **10A NCAC 68 .0204 HEARINGS**

4 (a) Any person desiring to make an oral presentation may submit a written copy of the presentation to the director
5 prior to the hearing or at the hearing.

6 (b) Any person may file a written submission containing data, comments, or arguments after publication of a
7 rulemaking notice up to and including the day of the hearing, unless a longer period is stated in the particular notice
8 or an extension of time is granted for good cause. A submission must clearly state the rule or proposed rule to which
9 the comments are addressed and must also include the name and address of the person submitting it. Written
10 submissions must be sent to:

11 Director
12 Division of Social Services
13 Department of Health and Human Services
14 ~~325 North Salisbury Street~~
15 2401 Mail Service Center
16 Raleigh, North Carolina 27699-2401

17 The director will promptly acknowledge receipt of all written submissions.

18 (c) The presiding officer at the hearing shall have complete control over the proceedings, including:

- 19 (1) the responsibility of having a record made of the proceedings,
20 (2) extension of any time allotments,
21 (3) recognition of speakers,
22 (4) prevention of repetitious presentations, and
23 (5) general management of the hearing.

24 The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present views,
25 data, and comments.
26

27 *History Note: Authority G.S. 143B-10; ~~150B-12~~; 150B-21.2;*
28 *Eff. July 1, 1977;*
29 *Readopted Eff. October 31, 1977;*
30 *Amended Eff. March 1, ~~1990~~.1990;*
31 *Readopted Eff. July 1, 2019.*

1 10A NCAC 68 .0205 is readopted as published in 17:33 NCR 1763 as follows:

2
3 **10A NCAC 68 .0205 JUSTIFICATION OF RULEMAKING DECISION**

4 (a) Any interested person who desires from the director a concise written statement of the principal reasons for and
5 against the decision by the director to adopt or reject a rule may, either prior to the decision or within ~~30~~15 days
6 thereafter, submit a request to:

7 Hearing Office
8 Department of Health and Human Services
9 ~~325 North Salisbury Street~~
10 2401 Mail Service Center
11 Raleigh, North Carolina 27699-2401

12 (b) An "interested person" shall be defined as any person, as defined in G.S. 150B-2(7), whose rights, duties, or
13 privileges might be affected by the adoption of the rule.

14 (c) The request must be made in writing, must contain a statement showing that the requesting person is an interested
15 person, and must identify the rule or proposed rule involved.

16 (d) The director shall issue the statement of reasons for and against its decision within ~~45~~15 days after receipt of the
17 request.

18
19 *History Note: Authority G.S. 143B-10; ~~150B-12(e)~~; 150B-21.2;*
20 *Eff. July 1, 1977;*
21 *Readopted Eff. October 31, 1977;*
22 *Amended Eff. March 1, ~~1990~~.1990;*
23 *Readopted Eff. July 1, 2019.*

1 10A NCAC 68 .0206 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 68 .0206 RECORD OF RULEMAKING PROCEEDINGS**

4 A record of all rulemaking proceedings, including any petitions received by the Director of the Division of Social
5 Services shall be maintained by the director and shall be available for public inspection during regular office hours.

6 This record shall include:

- 7 (1) the original petition,
8 (2) the notice,
9 (3) all written memoranda and information submitted,
10 (4) any recording or transcript of the oral hearing, and
11 (5) a final draft of the rule.

12
13 *History Note:* *Authority G.S. 143B-10; ~~150B-11~~; 150B-21.2;*
14 *Eff. July 1, 1977;*
15 *Readopted Eff. October 31, 1977;*
16 *Amended Eff. March 1, ~~1990~~-1990;*
17 *Readopted Eff. July 1, 2019.*

1 10A NCAC 68 .0208 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 68 .0208 DECLARATORY RULINGS**

4 The rule stated in 10A NCAC 68 .0108 shall be applicable for this Section.

5
6 *History Note:* *Authority G.S. 143B-10; ~~450B-17~~; 150B-4;*
7 *Eff. July 1, 1977;*
8 *Readopted Eff. October 31, ~~1977~~; 1977;*
9 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0301

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. None of the cited authority appears to provide rulemaking authority regarding employment of county departments of social services.

Amber May
Commission Counsel

1 10A NCAC 68 .0301 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **SECTION .0300 – BOARDS OF SOCIAL SERVICES**
4

5 **10A NCAC 68 .0301 EMPLOYMENT OF RELATIVES OF COUNTY BOARD MEMBERS**

6 No person shall be considered for employment in a county department of social services during the time a member of
7 his or her immediate family is serving on the county board of social services or the board of county commissioners in
8 the same county. This regulation in no way affects the status of a person who is already an employee of a county
9 department of social services and of whose immediate family a member becomes a candidate for or is appointed or
10 elected to the county board of social services or the board of commissioners in the same county. "Immediate family
11 member," is for purposes of this Regulation defined as a spouse, parent, sibling, child, grandparent, grandchild,
12 stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, niece,
13 or nephew.
14

15 *History Note: Authority G.S. 108A-1 et seq.; 143B-153;*
16 *Eff. February 1, 1976;*
17 *Readopted Eff. October 31, 1977;*
18 *Amended Eff. March 1, ~~1990-1990~~;*
19 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0302

DEADLINE FOR RECEIPT: Friday, June 14, 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 the overall intent of this Rule? Is it to say how the Social Services Commission is going to get their names for the appointments that they are responsible for in accordance with 108A-3? Is this Rule necessary? If so, please make this Rule more clear.

Also, if you need this Rule, please provide in Rule how you are going to make this decision.

Also, I don't read 108A-1 to confer rulemaking authority to you all regarding this topic. I read it to simply say that the counties have to follow your program rules.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, June 6, 2019

1 10A NCAC 68 .0302 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 68 .0302 SELECTION OF COUNTY BOARD MEMBERS BY SOCIAL SERVICES COMM**

4 Division Regional Directors are required to name for consideration for county board membership at least one person
5 whose name is secured from organizations, interested groups, or individuals within the county. The Commission may,
6 however, appoint persons who are recommended through other sources.

7
8 *History Note: Authority G.S. 108A-1; 108A-3; 108A-6; 143B-153;*

9 *Eff. February 1, 1976;*

10 *Readopted Eff. October 31, 1977;*

11 *Amended Eff. September 1, ~~1991~~, 1991;*

12 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 68 .0303

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. None of the cited authority appears to provide rulemaking authority regarding delegation of authority by county boards to the Commission. Further, this appears to be addressed by 108A-14(b), making this Rule unnecessary.

Amber May
Commission Counsel

1 10A NCAC 68 .0303 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 68 .0303 DELEGATION OF AUTHORITY BY COUNTY BOARDS**

4 A county board of social services may delegate to the director of the county department of social services the
5 responsibility, with respect to financial responsibility and suspected fraud, to accomplish the requirements of the
6 ~~AFDC~~, TANF, medical assistance, and special assistance programs.

7
8 *History Note: Authority G.S. 108A-1 et seq.; 143B-153;*

9 *Eff. February 1, 1976;*

10 *Readopted Eff. October 31, ~~1977~~, 1977;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, June 14, 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:

For each form, please complete box 9B.

Please add any additional applicable statutory authority (including any applicable federal law) in your History Note.

If any rules end up being two or more pages, please be sure to only print on one side of the page.

Throughout these Rules, please capitalize "state" whenever you are referring to the State of NC.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0101

DEADLINE FOR RECEIPT: Friday, June 14, 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:

On line 8, what is meant by "Subchapter"? This set of Rules is not divided into Subchapters. Do you mean Chapter?

Please consider revising line 8 to say, "As used in this Chapter, the following definitions shall apply."

In any event, delete "unless the context clearly requires otherwise,"

In Item (1), what is meant by "agency policy"?

In Item (1), line 12, what is meant by "acting responsibly"? Do you mean those persons set forth in .0403?

In Item (1), change "subsumed" to "included"

For purposes of clarity, please consider revising Item (3) to read "... means any information received in connection with the performance of any function of the agency, including information stored in computer data banks or computer files."

Alternatively, in Item (3), consider deleting "whether recorded or not and"

In Item (3), change "which" to "that" in "which was received"

In Item (6), what is the difference between a "judge" and "a judicial official"?

In Item (6), is an oral order sufficient? Please confirm this is accurate.

In Item (6), change "which" to "that"?

In Item (6), delete or define "explicitly"

In Item (7), delete "the provision of"

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

In (7), since “agency” is a defined term, and it doesn’t seem to apply here, what is meant by “private agency”? Please clarify this language and use a different term than “agency.”

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0101 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **CHAPTER 69 – CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS**

4
5 **SECTION .0100 – GENERAL PROVISIONS**

6
7 **10A NCAC 69 .0101 DEFINITIONS**

8 As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings
9 specified:

- 10 (1) "Client" means any applicant for, or recipient of, public assistance or services, or someone who
11 makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency.
12 For purposes of this Subchapter, someone acting responsibly for the client in accordance with
13 agency policy is subsumed under the definition of client.
- 14 (2) "Agency" means the state Division of Social Services and the county departments of social services,
15 unless separately identified.
- 16 (3) "Client information" or "client record" means any information, whether recorded or not and
17 including information stored in computer data banks or computer files, relating to a client which
18 was received in connection with the performance of any function of the agency.
- 19 (4) "Director" means the head of the state Division of Social Services or the county departments of
20 social services.
- 21 (5) "Delegated representative" means anyone designated by the director to carry out the responsibilities
22 established by the rules in this Subchapter. Designation is implied when the assigned duties of an
23 employee require access to confidential information.
- 24 (6) "Court order" means any oral order from a judge or a written document from a judicial official which
25 directs explicitly the release of client information.
- 26 (7) "Service provider" means any public or private agency or individual from whom the agency
27 purchases services, or authorizes the provision of services provided or purchased by other divisions
28 of the Department of Human Resources.

29
30 *History Note: Authority G.S. 108A-80; 143B-153;*

31 *Eff. October 1, ~~1981~~ 1981;*

32 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0102

DEADLINE FOR RECEIPT: Friday, June 14, 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 the overall intent of this Rule? Please review and revise for clarity.

On line 4, by "information", do you mean the defined term of "client information"? If not, what kind of information are you intended to get to here?

On line 4, just to make sure that I understand, this can come from another county DSS or an individual? Is the intent of "agency" here to only include another county DSS? If not, please clarify in your Rule who is considered "another agency" for purposes of this Rule.

On line 6, change "will" to "shall"

On line 6, what is meant by "any condition imposed by the furnishing agency or individual"? Please review and clarify.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0102 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0102 INFORMATION FROM OTHER AGENCIES**

4 If the agency receives information from another agency or individual, then such information shall be treated as any
5 other information generated by the state Division of Social Services or the county departments of social services, and
6 disclosure thereof will be governed by any condition imposed by the furnishing agency or individual.

7
8 *History Note: Authority G.S. 108A-80; 143B-153;*

9 *Eff. October 1, ~~1981~~ 1981;*

10 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0201

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given 180A-80, is this Rule necessary?

If this Rule is necessary, I read this to say that if you all promulgate a rule that is stronger than state statute or federal regulations, that the rule will override statute or federal reg. I'm assuming that you have no authority for this.

On line 6, capitalize "state", assuming you mean NC.

On line 6, by regulation, do you mean State Rule?

How and who determined which provides more protection for the client?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0201 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **SECTION .0200 – SAFEGUARDING CLIENT INFORMATION**
4

5 **10A NCAC 69 .0201 CONFLICT OF LAWS**

6 Whenever there is inconsistency between federal or state statutes or regulations specifically addressing confidentiality
7 issues, the agency shall abide by the statute or regulation which provides more protection for the client.
8

9 *History Note: Authority G.S. 108A-80; 143B-153;*

10 *Eff. October 1, 1981;*

11 *Amended Eff. March 1, ~~1990~~1990;*

12 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0202

DEADLINE FOR RECEIPT: Friday, June 14, 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:

In (a), because "client information" is a defined term, delete "contained in any records of the agency"

In (a), change "shall protect and preserve such information from dissemination" to "shall not disseminate" or "shall keep this information confidential"

In (a), add a comma after whatever word you choose before except.

In (a), change "Subchapter" to "Chapter"

In (b), change "may not" to "shall not", assuming that's what you mean.

In (b), change "by an order of the court" to "court order" so as to use your defined term.

In (b), who are "authorized staff"

Is (c) necessary? The agency will have to follow this anyway without this Paragraph. So, I don't think that it is.

*If it is necessary, in (c), where can the record retention schedule be found? What are the Rules of the **Division** of Social Services? By Division Rules, do you mean these Commission Rules?*

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0202 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0202 OWNERSHIP OF RECORDS**

4 (a) All client information contained in any records of the agency is the property of the agency, and employees of the
5 agency shall protect and preserve such information from dissemination except as provided by the rules of this
6 Subchapter.

7 (b) Original client records may not be removed from the premises by individuals other than authorized staff of the
8 agency, except by an order of the court.

9 (c) The agency shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by
10 the Division of Archives and History, rules of the Division of Social Services, and state and federal statutes and
11 regulations.

12
13 *History Note: Authority G.S. 108A-80; 143B-153;*

14 *Eff. October 1, ~~1981~~ 1981;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0203

DEADLINE FOR RECEIPT: Friday, June 14, 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 tell county DSS offices what facilities they must have? Please add any additional statutory authority (including any federal authority.)

In (a), delete or define "secure" and "controlled"

In (a), line 4, change "records" to "client information" or "client records", since these are defined terms.

In (a), line 5, add a comma after "volunteers"

In (a), line 5, who are "other individuals"?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0203 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0203 SECURITY OF RECORDS**

4 (a) The agency shall provide a secure place with controlled access for the storage of records. Only employees,
5 students, volunteers or other individuals who must access client information in order to carry out duties assigned or
6 approved by the agency shall be authorized access to the storage area.

7 (b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be
8 responsible for the security of the record until it is returned to the storage area.

9 (c) The agency shall establish procedures to prevent accidental disclosure of client information from automated data
10 processing systems.

11
12 *History Note: Authority G.S. 108A-80; 143B-153;*

13 *Eff. October 1, 1981;*

14 *Amended Eff. March 1, ~~1990~~1990;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0204

DEADLINE FOR RECEIPT: Friday, June 14, 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 the overall intent of this Rule? Is this Rule necessary given the rest of the Rules? If it is necessary, what is your authority to tell a County DSS what it has to do for its employees.

If this Rule is necessary and you do have authority, what is meant by "shall assure"? How is this to be done? Here, do you mean something like "The Director shall inform all authorized individuals of the confidential nature..."

On line 4, who are "authorized individuals"?

On line 5, what is meant by "disseminate written policy"? Please note that the APA defines both rule and policy. Policy is defined as a "nonbinding interpretive statement" and is not appropriate to reference in rule.

If you have authority to tell a County DSS that they have to provide training, what kind of training is required?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0204 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0204 ASSURANCE OF CONFIDENTIALITY**

4 The director shall assure that all authorized individuals are informed of the confidential nature of client information
5 and shall disseminate written policy to and provide training for all persons with access to client information.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0205

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Overall, is this Rule necessary? It appears to relate to internal management and employment matters.

Please see the most recently approved version of 10A NCAC 23H .0106, which was just approved by RRC last month and appears to be a companion rule to this one.

What is the intent of (a)? Is it to get to employees of the Division? When you use "agency", are you intending to get the employees of county DSS? I assume that with the addition of "governed by the State Personnel Act", the intent is to get to only get to employees of the Division. If that's the case, please change "the agency" (since it's defined to include State and county employees) to "employed by the Department and subject..." If the intent was to get to both State and county employees, what is your authority to regulate employment matters of the County.

In (a), add a comma after "dismissal"

In (c), add a comma after "employees" and delete "but"

In (c), what is meant by "the same manner as employees"?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0205 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0205 LIABILITY OF PERSONS WITH ACCESS TO CLIENT INFORMATION**

4 (a) Individuals employed by the agency and governed by the State Personnel Act are subject to suspension, dismissal
5 or disciplinary action for failure to comply with the rules of this Subchapter.

6 (b) Individuals other than employees, including volunteers and students who are agents of the Department of Health
7 and Human Services who have access to client information and fail to comply with the rules in this Subchapter shall
8 be denied access to confidential information and may be subject to dismissal or termination of relationship with the
9 agency.

10 (c) Individuals other than employees but including volunteers and students who are agents of the Department of
11 Health and Human Services and who have access to client information shall be liable in the same manner as employees.

12
13 *History Note:* *Authority G.S. 108A-80; 143B-153;*
14 *Eff. October 1, 1981;*
15 *Amended Eff. February 1, ~~1986~~ 1986;*
16 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0301

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is your specific authority for this Section pursuant to 108A-80(a) in that these provide circumstances when disclosure would be necessary for the administration of the programs of public assistance or with regard to access to case files under 108A-80(d)? If so, please just confirm.

Would it make sense to combine Rules .0301 and .0302? Please see the most recently approved version of 10A NCAC 23H .0107, which was just approved by RRC last month and appears to be a companion rule to this one.

What is meant by "Confidentiality of information about himself or herself is the right of the client"? Please consider deleting this language as it appears to be unnecessary.

Please end Items (1) and (2) with semi-colons, rather than periods, and add an "and" or "or" the end of Item (2).

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0301 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **SECTION .0300 - CLIENT ACCESS TO RECORDS**
4

5 **10A NCAC 69 .0301 RIGHT OF ACCESS**

6 Confidentiality of information about himself or herself is the right of the client. Upon written or verbal request the
7 client shall have access to review or obtain without charge a copy of the information in his or her records with the
8 following exceptions:

- 9 (1) information that the agency is required to keep confidential by state or federal statutes or regulations.
10 (2) confidential information originating from another agency as provided for in Rule .0102 of this
11 Subchapter.
12 (3) information that would breach another individual's right to confidentiality.
13

14 *History Note: Authority G.S. 108A-80; 143B-153;*
15 *Eff. October 1, ~~1981~~ 1981;*
16 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0302

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine Rules .0301 and .0302? Please see the most recently approved version of 10A NCAC 23H .0107, which was just approved by RRC last month and appears to be a companion rule to this one.

On line 4, change "as defined in" to "as set forth in"

Delete "as promptly as feasible but"

On line 5, what are "working days"? Do you mean "business days"? Please change this to read "... no more than five business days after receipt of the request."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0302 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0302 PROMPT RESPONSE TO REQUEST**

4 The agency shall provide access as defined in Rule .0301 of this Subchapter as promptly as feasible but no more than
5 five working days after receipt of the request.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

1 10A NCAC 69 .0303 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0303 WITHHOLDING INFORMATION FROM THE CLIENT**

4 (a) When the director or a delegated representative determines on the basis of the exceptions in Rule .0301 of this
5 Subchapter to withhold information from the client record, this reason shall be documented in the client record.

6 (b) The director or a delegated representative must inform the client that information is being withheld, and upon
7 which of the exceptions specified in Rule .0301 of this Subchapter the decision to withhold the information is based.
8 If confidential information originating from another agency is being withheld, the client shall be referred to that agency
9 for access to the information.

10 (c) When a delegated representative determines to withhold client information, the decision to withhold shall be
11 reviewed by the supervisor of the person making the initial determination.

12
13 *History Note:* Authority G.S. 108A-80; 143B-153;

14 *Eff. October 1, ~~1981~~ 1981;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0304

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine this Rule with .0305 and .0306? Please see the most recently approved version of 10A NCAC 23H .0109, which was just approved by RRC last month and appears to be a companion rule to this one.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0304 is proposed for amendment as follows:

2
3 **10A NCAC 69 .0304 PROCEDURES FOR REVIEW OF RECORDS**

4 The director or his or her delegated representative shall be present when the client reviews the record. The director
5 or his or her delegated representative must document in the client record the review of the record by the client.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, 1981;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
10 *6, 2016.*

11 *Amended Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0305

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine this Rule with .0304 and .0306? Please see the most recently approved version of 10A NCAC 23H .0109, which was just approved by RRC last month and appears to be a companion rule to this one.

On line 4, please add a comma following "completeness"

What does the sentence on lines 4-7 mean? What happens to a deletion? Is this not an option?

On line 5, who will determine whether "it is required to support receipt" Is this in accordance with State and federal law?

On line 5, capitalize "state" if you mean North Carolina

On line 7, what is meant by "justified"?

Please consider moving lines 8-9 ("Such corrections and statements shall ne made a permanent...") to the end of this Paragraph and change "such" to "any" or "all."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0305 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0305 CONTESTED INFORMATION**

4 A client may contest the accuracy, completeness or relevancy of the information in his or her record. A correction of
5 the contested information, but not the deletion of the original information if it is required to support receipt of state or
6 federal financial participation, shall be inserted in the record when the director or his or her delegated representative
7 concurs that such correction is justified. When the director or his or her delegated representative does not concur, the
8 client shall be allowed to enter a statement in the record. Such corrections and statements shall be made a permanent
9 part of the record and shall be disclosed to any recipient of the disputed information. If a delegated representative
10 decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the
11 person making the initial decision.

12
13 *History Note: Authority G.S. 108A-80; 143B-153;*

14 *Eff. October 1, ~~1981~~ 1981;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0306

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine this Rule with .0304 and .0305? Please see the most recently approved version of 10A NCAC 23H .0109, which was just approved by RRC last month and appears to be a companion rule to this one.

Are there any specific requirements of the written request? If so, please provide them here.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0306 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0306 REVIEW OF RECORD BY PERSONAL REPRESENTATIVES**

4 Upon written request from the client, his or her personal representative, including an attorney, may have access to
5 review or obtain without charge, a copy of the information in his or her record. The client may permit the personal
6 representative to have access to his or her entire record or may restrict access to certain portions of the record. Rules
7 .0301 through .0305 of this Subchapter shall apply.

8
9 *History Note: Authority G.S. 108A-80; 143B-153;*

10 *Eff. October 1, ~~1981~~ 1981;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0401

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is your specific authority for this Section pursuant to 108A-80(a) in that these provide circumstances when disclosure would be necessary for the administration of the programs of public assistance or with regard to access to case files under 108A-80(d)? If so, please just confirm.

Would it make sense to combine Rules .0401, .0402, .403, and .0404? Please see the most recently approved version of 10A NCAC 23H .0110, which was just approved by RRC last month and appears to be a companion rule to this one.

In (b), what "requirement for listing" of the information? I assume that there is a specific cross-reference to State or federal law for this requirement? I assume this is not the same thing as referenced in 108A-80(b) regarding Work First Family Assistance?

In (c), please change "which" to "that" in "which is owned"

In (c), add a comma after "individuals" on line 15.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0401 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **SECTION .0400 - RELEASE OF CLIENT INFORMATION**
4

5 **10A NCAC 69 .0401 PROCEDURE FOR OBTAINING CONSENT FOR RELEASE OF**
6 **INFORMATION**

7 (a) As a part of the application process for public assistance or services, the client shall be informed of the need for
8 and give consent to the release of information necessary to verify statements to establish eligibility.

9 (b) As a part of the application process for ~~Aid to Families with Dependent children~~ Temporary Assistance for Needy
10 Families, and State or County Special Assistance for Adults, the client shall be informed of the requirement for listing
11 of the public assistance recipient's name, address, and amount of the monthly grant in a public record open to public
12 inspection during the regular office hours of the county auditor.

13 (c) No individual shall release any client information which is owned by the state Division of Social Services or the
14 county departments of social services, or request the release of information regarding the client from other agencies
15 or individuals without obtaining a signed consent for release of information. Disclosure without obtaining consent
16 shall be in accordance with Section .0500 of this Subchapter.

17
18 *History Note: Authority G.S. 108A-80; 143B-153;*
19 *Eff. October 1, 1981;*
20 *Amended Eff. March 1, ~~1990~~ 1990;*
21 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0402

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine Rules .0401, .0402, .403, and .0404? Please see the most recently approved version of 10A NCAC 23H .0110, which was just approved by RRC last month and appears to be a companion rule to this one.

In (a), line 4, delete "be on a form provided by the state Division of Social Services or shall"

Add "and" at the end of (a)(4).

In (b), change "information which may include but is not limited to" to "information, including the following:"

Add "or" at the end of (b)(1)

Add "a" at the beginning of (b)(2)

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0402 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0402 CONSENT FOR RELEASE OF INFORMATION**

4 (a) The consent for release of information shall be on a form provided by the state Division of Social Services or shall
5 contain the following:

- 6 (1) name of the provider and the recipient of the information;
7 (2) the extent of information to be released;
8 (3) the name and dated signature of the client;
9 (4) a statement that the consent is subject to revocation at any time except to the extent that action has
10 been taken in reliance on the consent;
11 (5) length of time the consent is valid.

12 (b) The client may alter the form to contain other information which may include but is not limited to:

- 13 (1) a statement specifying the date, event or condition upon which the consent may expire even if the
14 client does not expressly revoke the consent;
15 (2) specific purpose for the release.

16
17 *History Note: Authority G.S. 108A-80; 143B-153;*

18 *Eff. October 1, ~~1981~~ 1981;*

19 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0403

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine Rules .0401, .0402, .403, and .0404? Please see the most recently approved version of 10A NCAC 23H .0110, which was just approved by RRC last month and appears to be a companion rule to this one.

Add an "and" or "or" at the end of Item (2).

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0403 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0403 PERSONS WHO MAY CONSENT TO THE RELEASE OF INFORMATION**

4 The following persons may consent to the release of information:

- 5 (1) the client;
- 6 (2) the legal guardian if the client has been adjudicated incompetent;
- 7 (3) the county department of social services if the client is a minor and in the custody of the county
- 8 department of social services.

9
10 *History Note: Authority G.S. 108A-80; 143B-153;*

11 *Eff. October 1, ~~1981~~ 1981;*

12 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0404

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Would it make sense to combine Rules .0401, .0402, .403, and .0404? Please see the most recently approved version of 10A NCAC 23H .0110, which was just approved by RRC last month and appears to be a companion rule to this one.

On line 4-5, what is "the meaning of informed consent"? What exactly are they to explain? Here, can you just say "Prior to obtaining consent for release of information, the Director or delegated representative shall provide the following information to the client:"

Did you intend on including the Director or just the delegated representative (note that I've included the director in the above suggestion.)

In Item (2), delete or define "definite"

In Item (2), how is the need for release of information determined?

In item (4), what is meant by "regulations"? Here, do you mean federal regulations or State rules? If you intend to capture both, please say "statutes, rules, and regulations" If you are only intending to include these Rules, change "regulations" to "rules."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0404 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0404 INFORMED CONSENT**

4 Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of
5 informed consent. The client shall be told the following:

- 6 (1) contents to be released;
7 (2) that there is a definite need for the information;
8 (3) that the client can give or withhold the consent and the consent is voluntary;
9 (4) that there are statutes and regulations protecting the confidentiality of the information.

10
11 *History Note: Authority G.S. 108A-80; 143B-153;*

12 *Eff. October 1, ~~1981~~ 1981;*

13 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0405

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this Rule necessary? It does not appear to be as it does nothing other than point to the other Rules in this Subchapter.

If this Rule is necessary, delete "as defined" on line 4.

Also, by "may release" do you mean "shall release"?

I assume that it's not just this Section of Rules. If this is needed, do you want to include statutes, rules, and regulations.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0405 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0405 PERSONS DESIGNATED TO RELEASE CLIENT INFORMATION**

4 Directors and their delegated representatives, as defined, may release client information in accordance with rules in
5 Section .0400 of this Subchapter.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0406

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please see the most recently approved version of 10A NCAC 23H .0112, which was just approved by RRC last month and appears to be a companion rule to this one.

What is the overall intent of this Rule, specifically, what is meant by "shall ensure"? Would it be appropriate to say something like "Whenever client information is disclosed in accordance with this Section, the director or delegated representative shall document the disclosure in the client record"?

On line 5, delete or define "appropriate" in "appropriate client record"

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0406 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **10A NCAC 69 .0406 DOCUMENTATION OF RELEASE**

4 Whenever client information is released on the basis of a consent as defined in .0402 of this Subchapter, the director
5 or delegated representative shall place a copy of the signed consent in the appropriate client record.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0501

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is your specific authority for this Section pursuant to 108A-80(a) in that these provide circumstances when disclosure would be necessary for the administration of the programs of public assistance or with regard to access to case files under 108A-80(d)? If so, please just confirm.

Please see the most recently approved version of 10A NCAC 23H .0111(a), which was just approved by RRC last month and appears to be a companion rule to this one.

Please add "and" at the end of (a)(2) and (b)(2).

In (b)(2), is this intended to get to different counties? If so, please consider making that more clear. A suggestion would be to change "the county department of social services" to "a different county..."

In (b)(3), what is meant by "a provision of a service"? Do you just mean something like "to facilitate services requested"?

In (b)(3), line 21, add "a" before "referring county"

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0501 is readopted as published in 17:33 NCR 1764 as follows:

2
3 **SECTION .0500 - DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT**
4

5 **10A NCAC 69 .0501 DISCLOSURE WITHIN THE AGENCY**

6 (a) Client information from the public assistance record may be disclosed without the consent of the client under the
7 following circumstances:

- 8 (1) to other employees of the county department of social services for purposes of making referrals,
9 supervision, consultation or determination of eligibility;
10 (2) to other county departments of social services when the client moves to that county and requests
11 public assistance;
12 (3) between the county departments of social services and the state Division of Social Services for
13 purposes of supervision and reporting.

14 (b) Client information from the service record may be disclosed without the consent of the client under the following
15 circumstances:

- 16 (1) to other employees of the county department of social services for purposes of making referrals,
17 supervision, consultation or determination of eligibility;
18 (2) to another county department of social services when that county department of social services is
19 providing services to a client who is in the custody of the county department of social services;
20 (3) to another county department of social services to the extent necessary to facilitate the provision of
21 a service requested by referring county department of social services;
22 (4) between the county department of social services and the state Division of Social Services for
23 purposes of supervision and reporting.
24

25 *History Note: Authority G.S. 108A-80; 143B-153;*
26 *Eff. October 1, 1981;*
27 *Amended Eff. March 1, ~~1990~~.1990;*
28 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0502

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Although noted for this entire Section, what is your specific authority for releasing this information for research purposes? Even without a list of names, 108A-80(a) limits the disclosure of "other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files, or communications of the Department or the County Boards." 108A-80(b) and (b1) set the exceptions to that. Is there a federal law that allows for information to be release for purposes of research?

Please see the most recently approved version of 10A NCAC 23H .0111(b), which was just approved by RRC last month and appears to be a companion rule to this one (but not my authority concern here.)

Lines 4-6, what or who is "requesting approval"? From whom? Are the records only to be disclosed to someone who is actually approved (as opposed to someone who has only requested approval)?

On line 5, will specify what?

Given the previous comments, consider language such as: "Client information may be disclosed without client consent to individuals approved to conduct studies of client records. The request to conduct the study shall be in writing, and shall be approved based upon:"

Please note that you'll still need to specify who approves this request if you use this suggestion.

In (1), what is "potential"?

In (3), line 19, what do you mean by "presentation"? Also, by "investigation", do you mean "research"?

In (5), how will this assurance work?

Amber May
Commission Counsel

Date submitted to agency: Friday, May 31, 2019

Also in (5), are you all providing the names of for research purposes? Again, what is your authority for this? If you are not providing the names to the research folks, is (5) necessary?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0502 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0502 DISCLOSURE FOR THE PURPOSE OF RESEARCH**

4 Client information may be disclosed without the consent of the client to individuals requesting approval to conduct
5 studies of client records, provided such approval is requested in writing and the written request will specify and be
6 approved on the basis of:

- 7 (1) an explanation of how the findings of the study have potential for expanding knowledge and
8 improving professional practices;
9 (2) a description of how the study will be conducted and how the findings will be used;
10 (3) a presentation of the individual's credentials in the area of investigation;
11 (4) a description of how the individual will safeguard information;
12 (5) an assurance that no report will contain the names of individuals or any other information that makes
13 individuals identifiable.
14

15 *History Note: Authority G.S. 108A-80; 143B-153;*

16 *Eff. October 1, ~~1981~~ 1981;*

17 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0503

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please see the most recently approved version of 10A NCAC 23H .0111(c), which was just approved by RRC last month and appears to be a companion rule to this one.

On lines (c), lines 4 and 5, please capitalize "State" if you mean "NC"

Line 6, justifiable to whom? How is this determined?

On line 6, define "adequate" Is there a federal cross-reference available?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0503 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0503 DISCLOSURE FOR PURPOSES OF ACCOUNTABILITY**

4 Client information may be disclosed without the consent of the client to federal, state, or county employees for the
5 purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs,
6 provided that the need for the disclosure of confidential information is justifiable for the purpose and that adequate
7 safeguards are maintained to protect the information from re-disclosure.

8
9 *History Note: Authority G.S. 108A-80; 143B-153;*

10 *Eff. October 1, 1981;*

11 *Amended Eff. March 1, ~~1990~~1990;*

12 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0504

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given the other Rules in this Section (particularly .0503), is this Rule necessary? If so, please see the most recently approved version of 10A NCAC 23H .0111(d), which was just approved by RRC last month and appears to be a companion rule to this one.

On line 4, please capitalize "State" if you mean "NC"

On line 5, did you intend on including your rules? If so, please say "State and federal statutes, rules, and regulations."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0504 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0504 DISCLOSURE PURSUANT TO OTHER LAWS**

4 Client information may be disclosed without the consent of the client for purposes of complying with other state and
5 federal statutes and regulations.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0505

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this Rule necessary? Wouldn't an agency have to release this information because of the court order itself, as opposed to this Rule? If this Rule is necessary, please see the most recently approved version of 10A NCAC 23H .0111(d), which was just approved by RRC last month and appears to be a companion rule to this one. Would it make sense to combine this with .0504 as it's done in 23H .0111(d)?

Delete "as defined"

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0505 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0505 DISCLOSURE PURSUANT TO A COURT ORDER**

4 Client information may be disclosed without the consent of the client in response to a court order, as defined.

5
6 *History Note: Authority G.S. 108A-80; 143B-153;*

7 *Eff. October 1, ~~1981~~1981;*

8 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0506

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please see the most recently approved version of 10A NCAC 23H .0111(e), which was just approved by RRC last month and appears to be a companion rule to this one.

What is the meant by "to the extent possible"? Please consider deleting this language.

How is the client to be informed? In writing? Verbally? Does it matter?

On line 5, delete or define "appropriate" in "appropriate record"? Do you mean the client's file?

What is "the method of informing the client"? If you provide how the client is to be informed on line 4, I think this issue may be addressed.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0506 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0506 NOTICE TO CLIENT**

4 When information is released without the client's consent, the client shall be informed to the extent possible, of the
5 disclosure. The method of informing the client of the disclosure shall be documented in the appropriate record.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0507

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please see the most recently approved version of 10A NCAC 23H .0112, which was just approved by RRC last month and appears to be a companion rule to this one.

What is the overall intent of this Rule? Specifically, what is meant by "shall ensure"? Would it be appropriate to say something like "Whenever client information is disclosed in accordance with this Section, the director or delegated representative shall document the disclosure in the client record"?

On line 5, delete or define "appropriate" in "appropriate client record"

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0507 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0507 DOCUMENTATION OF DISCLOSURE**

4 Whenever client information is disclosed in accordance with Section .0500 of this Subchapter, the director or delegated
5 representative shall ensure that documentation of the disclosure is placed in the appropriate client record.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0508

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this Rule necessary? It does not appear to be as it does nothing other than point to the other Rules in this Subchapter.

If this Rule is necessary, delete "as defined" on line 4.

Also, by "may release" do you mean "shall release"?

I assume that it's not just this Section of Rules. If this is needed, do you want to include statutes, rules, and regulations.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0508 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0508 PERSONS DESIGNATED TO DISCLOSE INFORMATION**

4 Directors and their delegated representatives, as defined, may disclose client information in accordance with Section
5 .0500 of this Subchapter.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0601

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is your specific authority for this Section pursuant to 108A-80(a) in that these provide circumstances when disclosure would be necessary for the administration of the programs of public assistance or with regard to access to case files under 108A-80(d)? If so, please just confirm.

Please consider revising (a) to say "agencies may disclose information to service providers only to the extent necessary to determine service requirements, meet the needs of the client, and to provide eligibility information for reporting purposes.

Alternatively, in (a), line 6, delete "other"

In (a), line 5, delete "as defined"

In (a), what are "service requirements"?

In (a), what are the "needs of the client"? How is this determined?

In (a), what reporting? Is there a cross-reference available?

In (b), what Rules? Is there a specific cross-reference? Is this Paragraph necessary?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0601 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **SECTION .0600 - SERVICE PROVIDERS**
4

5 **10A NCAC 69 .0601 INFORMATION NEEDS OF SERVICE PROVIDERS**

6 (a) Agencies may disclose client information to other service providers, as defined, only to the extent necessary to
7 determine the service requirements and to meet the needs of the client, and to the extent necessary to provide eligibility
8 information for reporting purposes.

9 (b) The client shall be informed and consent to the disclosure of this information in accordance with the rules of this
10 Subchapter.

11
12 *History Note: Authority G.S. 108A-80; 143B-153;*

13 *Eff. October 1, ~~1981~~1981;*

14 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0602

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given that contracts are not subject to rulemaking, is this Rule necessary?

If so, change "will agree to restrict" to "shall restrict"

On line 5, capitalize "state's"

What is the "provision of services"? Do you mean "for services"? Please delete "the provision of"

On line 6, delete or define "directly"

On line 6-7, what are "services concerning clients"? Do you mean "client services"?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0602 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0602 CONTRACT RESTRICTION**

4 As a part of every contract for the purchase of services, the service provider will agree to restrict the use or disclosure
5 of information obtained in connection with the administration of the state's programs for the provision of services
6 concerning clients to purposes directly connected with the administration of the service program.

7
8 *History Note: Authority G.S. 108A-80; 143B-153;*

9 *Eff. October 1, ~~1981~~ 1981;*

10 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0603

DEADLINE FOR RECEIPT: Friday, June 14, 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 for rule? If you have authority, what is the overall intent of this Rule? Is it necessary?

What is the intent of (b)? The way that I read this is to say that a policy issued by a "cognizant state agency" (which I honestly have no idea what that is) can override a rule. Is that the intent? What is "written policy promulgated by their cognizant state agencies"? Please keep in mind that "policy" is defined by the APA. Does this "policy" rise to the definition of a Rule as also defined by the APA? If not, please don't make reference to a written policy in your rules. If so, please provide the substantive requirements here (assuming that you have authority to tell County DSS these things.)

In (b), capitalize "state" in "state agency"

What is the overall intent of (c)? Please consider simplifying this for purposes of clarity.

In (c), what is "written policy"? Please see my comments regarding policy above.

In (c), what is meant by "shall assure"?

In (c), what are "the provision of services"? Can you just say "services" and delete "the provision of" Alternatively, is this a term of art?

In (c), who is the "Department of Human Resources"? Please consider just saying "department" and defining "Department" in .0101 as DHHS (assuming that's what you mean.)

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0603 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0603 ASSURANCE OF CONFIDENTIALITY**

4 (a) The county department of social services shall disseminate written policy and assure that all private agency and
5 individual service providers from whom they purchase services are informed of the confidential nature of client
6 information.

7 (b) Public agency service providers shall abide by written policy promulgated by their cognizant state agency, if any.
8 If written policy has not been issued, Paragraph (a) of this Rule shall apply.

9 (c) The Department of Human Resources shall disseminate written policy and assure that all service providers from
10 whom the county departments of social services authorize the provision of services to clients understand the
11 confidential nature of client information.

12
13 *History Note: Authority G.S. 108A-80; 143B-153;*

14 *Eff. October 1, ~~1981~~ 1981;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0604

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given that contracts are not subject to rulemaking, is this Rule necessary?

If this Rule is necessary, please make Paragraph (a) into two separate sentences. Specifically, please make "and the service provider" it's own sentence and delete the "and"

In(b), any information provided to whom?

In (b), what is meant by "re-disclosure"? Re-disclosure from whom? What if it is required by a court order or other law? I don't think you have authority for this without some qualifiers.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0604 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0604 OWNERSHIP OF RECORDS**

4 (a) All client information contained in records of the service provider is the property of the service provider, and the
5 service provider and employees of the service provider shall protect and preserve such information in accordance with
6 the terms of their contract.

7 (b) Any information furnished by the county department of social services shall be protected from re-disclosure.

8
9 *History Note: Authority G.S. 108A-80; 143B-153;*

10 *Eff. October 1, ~~1981~~ 1981;*

11 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 69 .0605

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Given that contracts are not subject to rulemaking, is this Rule necessary?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, May 31, 2019

1 10A NCAC 69 .0605 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 69 .0605 LIABILITY OF SERVICE PROVIDERS**

4 Failure to comply with the rules in Section .0600 of this Subchapter shall constitute a breach of contract and shall be
5 grounds to terminate the contract.

6
7 *History Note: Authority G.S. 108A-80; 143B-153;*

8 *Eff. October 1, ~~1981~~ 1981;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Overall, what is your authority for these Rules? The only authority currently listed is 2007-323 which appears to give authority to the Department and/or the State Education Assistance Authority, as opposed to the Commission. Is there any other, additional authority for these Rules?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0101

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Is this rule necessary? If so, please consider the following revision: "The North Carolina Child Welfare Postsecondary Educational Support Program shall be administered and funds distributed in accordance with the rules of this Chapter."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

1 10A NCAC 72 .0101 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **CHAPTER 72 – EDUCATIONAL ASSISTANCE**

4
5 **SECTION .0100 - GENERAL**

6
7 **10A NCAC 72 .0101 SCOPE**

8 The rules in this Chapter implement the North Carolina Child Welfare Postsecondary Educational Support Program
9 established by section 10.34(a) of Session Law 2007-323.

10
11 *History Note: Authority S.L. 2007-323, s. 10.34;*

12 *Eff. June 1, ~~2008~~2008;*

13 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0102

DEADLINE FOR RECEIPT: Friday, June 14, 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:

At line 4, consider: "The following definitions shall apply in this Chapter:"

In (1), delete or define "normally."

At line 6, do you need the term "at least?"

At line 9, what agency?

In (3), why do you list the services provided by the agency in this rule? How does this list of services relate to the Child Welfare Postsecondary Support Program?

At line 11, delete or define "successful."

At line 22, delete or define, "consistent" and "regular."

At line 24, what do you mean by "being available?"

At lines 29-30, what do you mean by "evaluating progress toward goal achievement?"

In (4), you do not need to repeat the text of 20 USC 108711.

*In (5), did you intend to define "education training voucher" as vouchers provided by the federal scholarship program funded by the John Chafee Foster Care Independence Act?
Is the language at lines 4-6 beginning with "which benefits young adults" necessary?*

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

In (6)(a), why not simply say “has received a high school diploma or GED?”

In (b), approved by what entity?

In (6)(d), Rule .0201 does not define “satisfactory progress toward completion.”

In (11), please delete the parentheses and say “program, also known as NC Reach,”

In (12), how can your regulated public access this manual? Is it available online? If so, please add a link to the manual in your rule.

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

1 10A NCAC 72 .0102 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 72 .0102 DEFINITIONS**

4 Unless the context indicates some other meaning, the words and terms below have the following meanings:

- 5 (1) "Academic Year" means a period of time in which a student normally completes the equivalent of
6 at least two semesters or three quarters of academic work.
- 7 (2) "Approved Institution" means one of the branches of the University of North Carolina or one of the
8 North Carolina community colleges.
- 9 (3) "Case Management Services" are a set of services provided by an agency contracting with the North
10 Carolina Division of Social Services (DSS) for participating students and their families which are
11 designed to support the student's successful postsecondary education experience. Such services
12 include:
- 13 (a) processing and accepting applications for the program;
- 14 (b) certifying each eligible student and the amount of the Eligible Student's Scholarship and
15 communicating this information to the North Carolina State Education Assistance
16 Authority to authorize release of funds;
- 17 (c) compiling accurate databases of resources in the students' academic communities that can
18 help students succeed in school;
- 19 (d) providing or arranging for counseling regarding academic issues as well as other concerns
20 that may affect the performance of the student;
- 21 (e) communicating with and advising students on academic issues;
- 22 (f) providing consistent, regular contact with students throughout their postsecondary
23 experience;
- 24 (g) being available to students experiencing crisis;
- 25 (h) providing or arranging for emergency housing up to two weeks for students who have no
26 safe place to live when school is out of session;
- 27 (i) if allowed by the student, being available to consult with student's families and staff of
28 local Departments of Social Services regarding student's postsecondary experiences;
- 29 (j) monitoring grades and the individual's course of study, and evaluating progress toward
30 goal achievement;
- 31 (k) maintaining records for each individual student regarding their academic progress and
32 assistance provided; and
- 33 (l) providing quarterly program reports of case management services to the contract
34 administrator at the Division of Social Services.
- 35 (4) "Cost of Attendance" Costs of attendance are defined by the Higher Education Act of 1965(20
36 U.S.C. 108711), which includes tuition, fees, room, board, supplies, transportation, and personal

- 1 expenses. This amount is established by each institution. This grant is limited to cost of attendance
2 less other grants or scholarships from federal, state, or other sources.
- 3 (5) "Education Training Voucher" (ETV) means the Federal scholarship program funded by the John
4 Chafee Foster Care Independence Act 42 U.S.C. 677, which benefits young adults who were in the
5 custody of the Department of Social Services at or after age 17 or were adopted from public foster
6 care after the age of 12.
- 7 (6) "Eligible Student" means a student who:
- 8 (a) has completed the requirements for secondary education (high school diploma or GED)
9 and has not yet achieved his or her 26th birthday;
- 10 (b) is pursuing an undergraduate degree, diploma, or certificate at an approved institution on
11 at least a half-time basis;
- 12 (c) was in the custody of a North Carolina local Department of Social Services on his or her
13 18th birthday, or was adopted from the North Carolina foster care system on or after his or
14 her 12th birthday;
- 15 (d) is making satisfactory progress toward completion of the course of undergraduate study as
16 defined in Rule .0201 of this Chapter.
- 17 (7) "Fiscal Year" means each annual period which begins on July 1 in any calendar year and ends on
18 June 30 the following calendar year.
- 19 (8) "Higher Education Act" means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.
20 1070, et seq.
- 21 (9) "Matriculated Status" means the student is recognized by the approved institution as a student in a
22 defined program of study leading to an associate's degree, baccalaureate degree, diploma or
23 certificate.
- 24 (10) "Pell Grant" means the needs based scholarship program administered by the federal government to
25 benefit low income baccalaureate and postgraduate students.
- 26 (11) "Program" means the Postsecondary Educational Support Scholarship program (NC Reach)
27 established by Section 10.34(a) of Session Law 2007-323.
- 28 (12) "Residence Manual" means the most current edition of *A Manual to Assist the Public Higher*
29 *Education Institutions of North Carolina in the Matter of Student Residence Classification for*
30 *Tuition Purposes* as adopted by the Board of Governors of the University of North Carolina.
- 31 (13) "Scholarship" means an award for education awarded to an eligible student under the program.

32
33 *History Note: Authority S.L. 2007-323, s. 10.34;*
34 *Eff. June 1, ~~2008-2008~~;*
35 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0201

DEADLINE FOR RECEIPT: Friday, June 14, 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:

If a student meets these criteria and funds are available, will they always receive a scholarship? Is the only limitation the availability of funds? If so, change "may" to "shall."

At line 12, add an "and" at the end of the line.

In (4), what do you mean by "does not owe a refund?"

Just to be sure, it is the college or university where the student is enrolled that determines whether a student meets the listed requirements?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

1 10A NCAC 72 .0201 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **SECTION .0200 - STUDENT ELIGIBILITY FOR SCHOLARSHIPS, SATISFACTORY PROGRESS**
4 **REQUIREMENTS**
5

6 **10A NCAC 72 .0201 GENERAL RULE**

7 Subject to availability of funds a student may receive a scholarship for an academic year if the approved institution at
8 which the student is enrolled, or admitted for enrollment, determines that the student:

- 9 (1) Meets all of the eligibility requirements established in this Chapter;
10 (2) Is a North Carolina resident for tuition purposes under G.S. 116-143.1 and the Residence Manual;
11 (3) Has complied with the registration requirements of the Military Selective Service Act (50 U.S.C. A.
12 451 et seq.) or is exempt from registration requirements;
13 (4) Is not in default, or does not owe a refund, under any federal or state loan or grant program.
14

15 *History Note: Authority S.L. 2007-323, s. 10.34;*
16 *Eff. June 1, 2008;*
17 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0202

DEADLINE FOR RECEIPT: Friday, June 14, 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:

In line 4, you use "may." Is the scholarship limited by availability of funds here too? Could you change this to "shall"?

At line 9, what is "satisfactory academic progress" at this stage? Is it still determined by the approved institution?

At line 10, please say "he or she."

At line 11, if the assistance is discontinued, how is it determined the assistance will be resumed?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

1 10A NCAC 72 .0202 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 72 .0202 SATISFACTORY PROGRESS REQUIREMENT**

4 An eligible student may receive a scholarship for the eligible student's subsequent academic years provided that, for
5 each subsequent academic year, the eligible student meets the standards by which the approved institution measures
6 a student's satisfactory academic progress toward completion of a program of study for the purposes of determining
7 eligibility for federal financial aid under the Higher Education Act. Any eligible student who is placed on academic
8 probation may continue to receive a NC Reach scholarship for one additional semester if the approved institution
9 allows the student to continue in matriculated status. If the student fails to make satisfactory academic progress in the
10 semester or term subsequent to the term in which he received academic probation, NC Reach assistance shall be
11 discontinued for at least one full academic year.

12
13 *History Note: Authority S.L. 2007-323, s. 10.34;*

14 *Eff. June 1, ~~2008~~ 2008;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0203

DEADLINE FOR RECEIPT: Friday, June 14, 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:

Please change "may not" to "shall not."

Could you use the term "academic year" in this rule instead of "school year," since it is defined in .0102?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

1 10A NCAC 72 .0203 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **10A NCAC 72 .0203 LIMITATION OF AWARD**

4 An eligible student may not receive an NC Reach scholarship for more than a total of four school years, to include the
5 Spring and Fall terms and summer school.

6
7 *History Note: Authority S.L. 2007-323, s. 10.34;*

8 *Eff. June 1, ~~2008~~2008;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 72 .0301

DEADLINE FOR RECEIPT: Friday, June 14, 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:

In (a), delete or define "directly."

In (a), what agency contracts with DSS. You are requiring applicants to apply with the "agency," but not specifying who the agency is.

In (b), do you mean their eligibility as it relates to being in the custody of the county DSS on his or her 18th birthday or being adopted from foster care on or after their 12th birthday?

In (c), please separate the list with commas: "the Education Training Voucher, Pell Grant, and NC Reach Scholarship."

In (c), what if the student receives a scholarship not listed? For example, what if they receive an athletic scholarship?

At line 14, delete "regarding" and replace it with "and."

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

Amber May
Commission Counsel
Date submitted to agency: Friday, June 7, 2019

1 10A NCAC 72 .0301 is readopted as published in 17:33 NCR 1765 as follows:

2
3 **SECTION .0300 - APPLICATION**
4

5 **10A NCAC 72 .0301 SCHOLARSHIP APPLICATION PROCEDURES**

6 (a) Method of Applying for Scholarships. Students shall apply directly for NC Reach through the agency which
7 contracts with the Division of Social Services to provide case management services for the NC Reach recipients.

8 (b) Determination of eligible students. Eligibility for the NC Reach program shall be verified by employees of the
9 custodial county Department of Social Services or the State Division of Social Services.

10 (c) Scholarships within an Academic Year. An Eligible Student may receive a scholarship for one or more semesters
11 or quarters, provided that the eligible student's total financial aid from the Education Training Voucher and Pell Grant
12 and the NC Reach scholarship does not exceed the total cost of attendance.

13 (d) Denial of Scholarship Applications. The Case Management contractor shall notify any student whose application
14 is denied regarding the reasons for the denial.
15

16 *History Note: Authority S.L. 2007-323, s. 10.34;*

17 *Eff. June 1, ~~2008-2008~~;*

18 *Readopted Eff. July 1, 2019.*