

## 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.*

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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).*

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.*

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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.*

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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.*



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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.*

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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.*

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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.*