

Comments to Revised Rule Language Submitted by NCDHHS DHB for
Consideration During 2019-09-19 Meeting of Rules Review Commission

10A NCAC 23G .0304 CHANGE IN SITUATION

(a) For the purposes of this Rule, a “change in situation” includes:

- (1) Change of address;
- (2) Change in living arrangement;
- (3) Adding or deleting a budget unit member;
- (4) Increase or decrease in income;
- (5) Change in reserve;
- (6) Cessation of disability or blindness;
- (7) Parent or parents are no longer incapacitated or unemployed;
- (8) Change in responsible relative; or
- (9) Change in Medicaid program category.

(b) The Medicaid client or his or her representative shall report any change in situation in the client's budget unit or household as defined by 42 C.F.R. 435.603 that affects eligibility to the county department of social services within 10 calendar days of knowledge of the change. 42 C.F.R. 435.603 is incorporated by reference, including subsequent amendments and editions, available and free of charge at <https://www.ecfr.gov>.

(c) Once the county department of social services learns from any source that there has been a change in situation that affects eligibility, it shall verify that information by reviewing its files or electronically as defined-provided by 42 C.F.R. 435.949, which is incorporated by reference including subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov>. When the change in situation cannot be verified from its files or electronically, it shall send a notice of the need to obtain verification, as defined by 10A NCAC 23A .0102, of the change. No notice shall be sent if the change in situation can be verified in the county department of social services' files or electronically.

(d) For Medicaid applications, the application processing standards set forth in 10A NCAC 23C .0201 shall apply.

(e) For an active case with an ongoing certification period, once the county department of social services learns from any source that there has been a change situation, it shall review the case and determine eligibility. Processing shall be completed within 30 calendar days after the agency learns of the change.

Commented [MJC1]: Without specifying that the client's situation is the one for which a change triggers a reporting requirement, the rule is ambiguous and thus objectionable under N.C.G.S. § 150B-21.9(a)(2).

Commented [MJC2]: Whose knowledge counts for purposes of this deadline? This language is ambiguous and thus objectionable under N.C.G.S. § 150B-21.9(a)(2).

Commented [MJC3]: The cited regulation provides for an electronic service for verifying information related to Medicaid eligibility. It does not “define” the term *electronically*. Changing “defined” to “provided” as shown here is necessary lest the rule remain unclear and thus objectionable under N.C.G.S. § 150B-21.9(a)(2).

Commented [MJC4]: The stricken phrase is not needed, as the definitions provided in 10A N.C.A.C. 23A.0102 already apply “[f]or purposes of this Chapter,” meaning Chapter 23 and its subchapters, including Subchapter 23G—in which this rule appears.

Commented [MJC5]: Why specifically reference the “application processing” standards but not the requirements for dispositioning an application (e.g., 10A N.C.A.C. 23C.0104)? Applying the interpretive canon of *inclusio unius est exclusio alterius*, this provision actually reinforces the idea that DSS is not required to honor the notice and hearing requirements of N.C.G.S. § 108A-79. Such a departure from statutory requirements would exceed the agency's authority for purposes of N.C.G.S. § 150B-21.9(a)(1). At a minimum, the provision is latently ambiguous and thus objectionable under N.C.G.S. § 150B-21.9(a)(2).

Commented [MJC6]: The interplay between proposed ¶¶ (d) and (e) results in lack of clarity for purposes of N.C.G.S. § 150B-21.9(a)(2). For example, what if someone has an “active case” (e.g., they are receiving limited benefits under Family Planning) but they *also* submit an application for full benefits? Would the 30-day processing standard under ¶ (e) apply even though there is an application for purposes of ¶ (d)? Also, the term “processing” is not defined. It should mean the process described in N.C.G.S. § 108A-79. However, the agency has affirmatively instructed DSS personnel that such procedures are not required in when an individual remains Family-Planning eligible. The net effect of the provision is therefore to persist in authorizing DSS to disregard due process requirements that should be followed “at the time of *any subsequent action* on [the individual's] case.” N.C.G.S. § 108A-79(a) (emphasis added).