

REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 14A .0301

DEADLINE FOR RECEIPT: Friday, December 7, 2018

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

On line 4, do you mean "Section" instead of "Subchapter"?

In (1), line 13, please insert a comma after "483.5"

In (5), Page 2, line 4, insert a comma after "resident"

On line 5, do not insert "or."

On line 6, remove the comma after "or"

Thus, the sentence will read "written expression by the resident, family member, or legal representative..."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 21, 2018

1 10A NCAC 14A .0301 is readopted as published in 32:24 NCR 2642-2644 as follows:

2
3 **10A NCAC 14A .0301 DEFINITIONS**

4 The following definitions will apply throughout this Subchapter:

- 5 ~~(1)~~ "Agency" means the Hearing Officer and his office in the Division of Health Service Regulation,
6 Department of Health and Human Services.
- 7 ~~(2)~~ "Dismissal" means the dismissal of a request for a hearing if:
8 ~~(a)~~ the applicant withdraws the request in writing; or
9 ~~(b)~~ the applicant fails to appear at a scheduled hearing without good cause.
- 10 ~~(3)~~ "Division" means the North Carolina Division of Health Service Regulation of the Department of
11 Health and Human Services.
- 12 ~~(4)~~(1) "Facility" means a nursing facility which meets the requirements of the Social Security Act as is
13 defined in 42 CFR 483.5, 483.5 which is herein incorporated by reference, including subsequent
14 amendments and editions. The Code of Federal Regulations may be accessed free of charge at
15 http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08.
- 16 ~~(5)~~(2) "Hearing Officer" means the person at the Hearing Unit designated to preside over hearings between
17 residents and nursing facility providers regarding transfers and discharges.
- 18 ~~(3)~~ "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical
19 Assistance of the Department of Health and Human Services.
- 20 ~~(6)~~(4) "Notice" means a written notification of transfer or ~~discharge~~ discharge, as required by 42 CFR
21 483.15 (c), by the facility to the resident and either an immediate family member, if known, or if an
22 immediate family member is not known, the authorized representative. The resident shall be handed
23 the notice on the same day that it is dated. The notice must include: the resident's representative as
24 defined in 42 CFR 483.5.
- 25 ~~(a)~~ the reason for the transfer or discharge;
26 ~~(b)~~ the effective date of the transfer or discharge;
27 ~~(c)~~ the location to which the resident is transferred or discharged;
28 ~~(d)~~ a statement that the resident has the right to appeal to the Hearing Officer;
29 ~~(e)~~ the name, address, and telephone number of the state Long Term Care Ombudsman;
30 ~~(f)~~ for nursing facility residents with developmental disabilities, the mailing address and
31 telephone number of the agency responsible for the protection and advocacy of
32 developmentally disabled individuals established under Part C of the Developmental
33 Disabilities Assistance and Bill of Rights Act;
34 ~~(g)~~ for nursing facility residents who are mentally ill, the mailing address and telephone
35 number of the agency responsible for the protection and advocacy of mentally ill
36 individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;

1 (h) ~~_____ a statement that the resident has the right to review his records not later than five days prior~~
 2 ~~to a hearing; and~~

3 (i) ~~_____ a statement that the appeal will be at no cost to the resident.~~

4 ~~(7)(5)~~ "Request for a Hearing" means a ~~clear expression, in writing, written expression~~ by the resident ~~or~~
 5 ~~or, either an immediate family member, if known, or if an immediate family member is not known,~~
 6 ~~the authorized or, legal representative, that he or she wants the opportunity to present his or her case~~
 7 ~~to the hearing officer. Hearing Officer. The "Request for Hearing Form" will suffice as a clear,~~
 8 ~~expression, in writing, that a hearing is desired.~~

9 ~~(8)~~ "Request for Hearing Form" means a form which that is to be given to the resident and either an
 10 ~~immediate family member, if known, or if an immediate family member is not known, the~~
 11 ~~authorized representative, simultaneously with the Notice of Transfer or Discharge. The request for~~
 12 ~~hearing form must include at the least:~~

13 ~~(a) _____ the date of Notice of Transfer or Discharge;~~

14 ~~(b) _____ the date to be transferred or discharged;~~

15 ~~(c) _____ the Division of Health Service Regulation's correct mailing address and phone number;~~

16 ~~(d) _____ the resident's name, address, telephone number, and social security number;~~

17 ~~(e) _____ the nursing facility's name and address;~~

18 ~~(f) _____ the name, address, and telephone number of authorized representative; and~~

19 ~~(g) _____ space to elect the option of a hearing by telephone or in person.~~

20 ~~(9)(6)~~ "Resident" means any person who is receiving treatment or long-term care in a facility.

21 ~~(10)(7)~~ "Serve" or "Service" means personal delivery, delivery by first class or certified United States Postal
 22 Service ~~mail mail,~~ or delivery by licensed overnight express mail, postage prepaid and addressed to
 23 the party at his or her last known address. ~~Service by mail or licensed overnight express mail is~~
 24 ~~complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be~~
 25 ~~served, in an official depository of the United States Postal Service or upon delivery, postage prepaid~~
 26 ~~and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express~~
 27 ~~mail service. For purposes of service on the Division, the Hearing Officer of the Division shall be~~
 28 ~~the designated agent.~~

29
 30 *History Note: Authority G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42
 31 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 CFR 483.15(c);
 32 G.S. 143B-165(10);
 33 Eff. August 3, 1992-1992;
 34 Readopted Eff. January 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 14A .0302

DEADLINE FOR RECEIPT: Friday, December 7, 2018

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

On line 7, it seems that "Hearing procedures are held" is redundant. Consider stating "Hearing procedures shall be in accordance with..."

On line 7, replace "is" with "are" before "herein"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 21, 2018

1 10A NCAC 14A .0302 is readopted as published in 32:24 NCR 2642-2644 as follows:

2
3 **10A NCAC 14A .0302 GENERAL**

4 ~~(a) The Division has established an appeal process for nursing facility residents who have been notified of transfer or~~
5 ~~discharge. All residents who have~~ Any resident who has ~~been advised of the date of a transfer or discharge in writing,~~
6 ~~writing~~ may request that the ~~Division~~ Hearing Officer set a date for a ~~fair~~ hearing in accordance with ~~and subject to~~
7 these Rules. Hearing procedures are held in accordance with rules in 10A NCAC 22H .0200, which is herein
8 incorporated by reference, including subsequent amendments and editions. These Rules may be accessed free of
9 charge at <http://reports.oah.state.nc.us/ncac.asp>.

10 ~~(b) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and~~
11 ~~District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes~~
12 ~~shall not apply in any hearings held by the Division Hearing Officer unless another specific statute or rule provides~~
13 ~~otherwise. Division hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by~~
14 ~~the provision of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at the~~
15 ~~hearing.~~

16
17 *History Note:* Authority G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42
18 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.12; CFR 483.15(c); G.S. 143B-165(10);
19 Eff. August 3, 1992-1992;
20 Readopted Eff. January 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 14A .0303

DEADLINE FOR RECEIPT: Friday, December 7, 2018

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In reviewing these Rules, the staff recommends the following technical changes be made:

What does this Rule address that Rule .0302 does not? What is the purpose of this Rule?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 21, 2018

1 10A NCAC 14A .0303 is readopted as published in 32:24 NCR 2642-2644 as follows:

2

3 **10A NCAC 14A .0303 INITIATING A HEARING**

4 ~~(a) In order to initiate a hearing with the Hearing Officer, hearing, a resident must first have been served by the facility~~
 5 ~~administrator with a written Notice of Transfer or Discharge notice and must shall file a Request for Hearing in~~
 6 ~~accordance with the Rules in 10 NCAC 14A .0300. rules in 10A NCAC 22H .0200. The Request for Hearing must be~~
 7 ~~in writing and must be signed by the resident. A Request for Hearing form shall be provided to the resident by the~~
 8 ~~facility for this purpose.~~

9 ~~(b) The hearing is a mechanism for listening to appeals by residents concerning disputes over transfers and discharges.~~
 10 ~~The hearing shall be narrowly focused on discharge and transfer issues between the nursing facility and the resident~~
 11 ~~and shall not involve Medicaid matters such as eligibility, which is the responsibility of the Medicaid hearing officer.~~

12 ~~(c) Should an appeal of the Notice of Transfer or Discharge be desired, a Request for a Hearing, accompanied by the~~
 13 ~~Notice of Transfer or Discharge, shall be served to the Hearing Officer and must be received by him no later than 11~~
 14 ~~days from the date of the facility's Notice of Transfer or Discharge. If the request for hearing has not been received~~
 15 ~~within 11 days, the resident shall waive his right to appeal. The resident must be notified of the option for the hearing~~
 16 ~~to be in person (face to face) or by telephone.~~

17 ~~(d) The facility administrator must make available to the resident information and records at least five working days~~
 18 ~~prior to the hearing to enable an opportunity for review and preparation. The facility administrator must forward~~
 19 ~~identical information relevant to the transfer or discharge to the agency, to be received at least five working days prior~~
 20 ~~to the hearing. A resident must authorize release of his medical records to the hearing officer.~~

21

22 *History Note: Authority G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42*
 23 *U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.12; CFR 483.15(c); G.S. 143B-165(10);*
 24 *Eff. August 3, 1992; 1992;*
 25 *Readopted Eff. January 1, 2019.*