

1 10A NCAC 73A .0101 has been adopted as published in 29:16 NCR page 1937 as follows:
2

3 **CHAPTER 73 – CONTROLLED SUBSTANCES**
4

5 **SECTION .0100 - GENERAL**
6

7 **10A NCAC 73A .0101 SCOPE AND PURPOSE**

8 Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibits the
9 provision of Temporary Assistance for Needy Families assistance to individuals who have a drug related felony
10 conviction occurring on or after August 22, 1996. The purpose of the rules in this Subchapter is to set forth
11 requirements for the substance use screening and drug testing of Work First Program applicants and recipients.
12

13 *History Note: Authority G.S. 108A-25.2; 108A-29.1; 143B-153;*
14 *Eff. June 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0102

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

NOTE WELL: 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 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, as this text is written, it appears as though G.S. 90-87(5) is defining only "immediate precursor." Please clarify. The intent may be to write the definition as follows:

"Controlled substance" means as defined in G.S. 90-87(5).

Line 9, should the term being defined be "illegal use of controlled substances" as that is the statutory term?

Line 9, what is meant by "unlawful"? Please clarify.

Line 9, by replacing the word "drugs" in the term being defined, the use of "controlled substances" in the definition is incorrect and should be changed. Consider a cross-reference to the specifically identified controlled substances that will be address by the rules, such as follows:

"Illegal use of controlled substances" means the [unlawful – to be clarified] use of the drugs set forth in Rule .0103 of this Section."

Lines 16 through 18, incorporate options available under G.S. 108A-29.1(g). Was the drafting of the rule intentional to exclude the determination option set forth in G.S. 108A-29.1(g)(2)? Please clarify.

Line 19, why does the rule only reference a conviction and not an arrest or outstanding warrant? Please clarify.

Line 21, what is the questionnaire "approved by the Division"? Please clarify. Has this document been created? Where is it located? How is the content known?

Lines 23 through 25 are duplicative of G.S. 108A-29.1. Is this Item of the Rule necessary?

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, April 28, 2015

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0102 has been adopted with changes as published in 29:16 NCR page 1937 as follows:

2

3 **10A NCAC 73A .0102 DEFINITIONS**

4 The following definitions apply to this Chapter:

5 (1) "Controlled substance" means a drug, substance or immediate precursor as defined by G.S. 90-87(5).

6 (2) "Drug test" means the production and submission of a biochemical assay by an applicant or recipient
7 for chemical analysis to detect illegal use of drugs. Such chemical analysis shall meet the requirements of
8 the Controlled Substance Examination Regulation Act, Chapter 95, Article 20 of the General Statute.

9 (3) "Illegal use of drugs" means the unlawful use of controlled substances.

10 ~~(4) "Intentional Program Violation" means any action by a Work First applicant or recipient to knowingly,~~
11 ~~willfully, and with deceitful intent, make a verbal or written false statement to obtain or attempt to obtain~~
12 ~~benefits for which they are not eligible, or hide or withhold information to obtain benefits for which they~~
13 ~~are not eligible.~~

14 ~~(4)(5)~~ "Reasonable suspicion" means a sufficient basis to believe that the individual is engaged in the
15 illegal use of a controlled substance ~~may have occurred~~, and such reasonable suspicion shall be established
16 only by one of the following:

17 (a) a score of three (3) or above on the verbal screening questionnaire, the Drug Abuse
18 Screening Test (DAST-10), or

19 (b) a criminal conviction relating to an illegal controlled substance within the past three
20 years.

21 ~~(5)(6)~~ "Substance use screening" means a verbal questionnaire approved by the Division of Social Services
22 to determine a potential for a substance use disorder.

23 ~~(6)(7)~~ "Applicant or recipient" for the purposes of drug testing shall not mean:

24 (a) a child only case, or

25 (b) a dependent child under age 18.

26

27 *History Note: Authority G.S. 108A-29.1; 143B-153;*

28 *Eff. June 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0103

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

NOTE WELL: 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 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, rewrite to replace the “/” with an “or” as follows:

“methamphetamines or amphetamines”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0103 has been adopted as published in 29:16 NCR page 1937 as follows:

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3 **10A NCAC 73A .0103 DRUG TESTING**

4 The county director shall require a basic five panel drug test for applicants and recipients of Work First
5 Family Assistance where there is a reasonable suspicion the applicant or recipient is engaged in the illegal
6 use of controlled substances. The drug test shall identify the illegal use of the following controlled
7 substances:

8 (1) cannabinoids;

9 (2) cocaine;

10 (3) methamphetamines/amphetamines;

11 (4) opiates; and

12 (5) phencyclidine.

13

14 *History Note: Authority G.S. 108A-29.1; 143B-153;*

15 *Eff. June 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0104

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

NOTE WELL: 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 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 through 5, is this Rule requiring drug testing of every applicant or recipient of funds from the Work First Program? G.S. 108A-29.1(a) states the following:

- (a) The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement.

Please clarify what the scope of coverage is for this rule?

Line 5, delete "of the Work First Program."

Lines 9 through 10, and lines 15 through 16, there appears to be an inconsistency. Line 9 references "entire household" and line 16 reflects that "entire" has been deleted. Please be consistent. Please clarify how the "entire household" or "household" is ineligible if G.S. 108A-29.1 does not apply to "dependent children under the age of 18."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0104 has been adopted with changes as published in 29:16 NCR page 1937 as follows:

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3 **10A NCAC 73A .0104 DRUG TESTING REQUIREMENTS**

4 (a) The Drug Abuse Screening Test (DAST-10) shall be completed as a condition of eligibility for the
5 Work First program by an applicant or recipient of the Work First Program. ~~the following:~~

6 (1) ~~an applicant or recipient of the Work First Program; or~~

7 (2) ~~an applicant or recipient, who has been previously disqualified because of an Intentional~~
8 ~~Program Violation.~~

9 (b) If the applicant or recipient refuses to complete the DAST-10 the entire household unit shall be
10 ineligible for cash assistance.

11 (c) If reasonable suspicion exists, the individual shall submit to a drug test at the Division of Social
12 Services' expense with the Division of Social Services' contracted vendor, as required by G.S. 108A-29.1.

13 (d) If an applicant or recipient declines to submit to the drug test or fails to complete the drug test the
14 ~~entire~~ household ~~unit~~ shall be ineligible for cash assistance.

15 (e) ~~If there is evidence that~~ an applicant or recipient substitutes, adulterates or tampers with the drug
16 testing the ~~entire~~ household ~~unit~~ shall be ineligible for cash assistance.

17
18 *History Note: Authority G.S. 108A-29.1; 143B-153;*

19 *Eff. June 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0105

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

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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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 5 references that the laboratory must be licensed and certified. How is this known? Is a list maintained somewhere? Please clarify in the rule.

Line 18, replace the period after "chart below" with a colon

Line 21, this text was not published and has been added after publication. Who is the "Medical Review Officer"? Please clarify. Is this change substantial?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0105 has been adopted as published in 29:16 NCR page 1938 as follows:

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3 **10A NCAC 73A .0105 TECHNIQUES AND METHODS**

4 (a) The analysis of drug test specimens shall be conducted by a laboratory licensed by the NC Department
5 of Health and Human Services and certified by the Substance Abuse and Mental Health Services
6 Administration (SAMHSA).

7 (b) Controlled substances or metabolites of a controlled substance shall be tested and analyzed using
8 approved analytical techniques or methods, as follows:

- 9 (1) immunoassay;
10 (2) thin-layer chromatography;
11 (3) gas chromatography;
12 (4) mass spectroscopy;
13 (5) high performance liquid chromatography; or
14 (6) spectroscopy.

15 (c) Results of the drug test analysis shall be expressed as equivalent to nanograms by weight of a controlled
16 substance or metabolite, or a controlled substance per milliliter.

17 (d) The drug test threshold values shall meet the cutoff levels contained in the Mandatory Guidelines for
18 Federal Workplace Drug Testing Programs as adopted by SAMHSA and identified in the chart below.

19

Initial Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana Metabolites	50 ng/mL	THCA1	15 ng/mL
Cocaine Metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL
Amphetamines AMP/MAMP	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL 250 ng/mL
Opiate Metabolites Codeine/Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL 2000 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL

20
21 (e) All confirmatory positive test results shall be reviewed by a Medical Review Officer.

22
23 *History Note: Authority G.S. 108A-29.1; 143B-153;*

24 *Eff. June 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0106

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

NOTE WELL: 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 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, please verify the CFR citation. The referenced document appears to cover Social Security documentation.

Line 9, add a comma after "physical"

Line 10, what is the intent of the term "unauthorized"? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0106 has been adopted with changes as published in 29:16 NCR page 1938 as follows:

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3 **10A NCAC 73A .0106 CONFIDENTIALITY**

4 (a) A drug test given under this Section shall be confidential and consistent with the HIPAA Privacy Rule
5 appearing in 45 CFR Sections ~~160~~ 160, et seq. and State Law.

6 (b) The drug test results, medical history, or medications taken by the individual shall be a confidential
7 record unless its disclosure is otherwise authorized by law or by written consent from the applicant or
8 recipient.

9 (c) The county departments of social services shall implement administrative, physical and technical
10 safeguards to avoid unauthorized use or disclosure of drug test results.

11

12 *History Note: Authority G.S. 108A-29.1; 143B-153;*

13

Eff. June 1, 2015.

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 73A .0107

RECOMMENDED ACTION:

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

COMMENT:

It is staff's recommendation that the Rules Review Commission object to the permanent Rule 10A NCAC 73A .0107 filed by the Social Services Commission, as the rule adopted and filed by the Social Services Commission is unclear and ambiguous.

The permanent rule adopted by Social Services Commission is unclear and ambiguous.

See G.S. 150B-21.9(a)(2):

Paragraph (b) of the Rule states the following:

(b) An individual who fails to complete the drug test within twelve (12) business days of the referral date and provides documentation of an incapacity may receive additional time to complete the drug test.

Abigail M. Hammond
Commission Counsel

This sentence of the Rule references a twelve day period that is not set by statute. Staff counsel has sought clarification from the agency and requested the addition of a cross-reference in the technical change request. The remainder of the sentence provides no guidance to the “individual who fail[ed] the drug test,” such as what type of documentation is considered or to whom the documentation needs to be provided for review. Line 8 uses the term “may” to indicate that the allowance of additional time is permissive, but provides no guidance to as to how a determination is reached regarding the allowance of additional time.

Summary:

It is staff’s recommendation that the Rules Review Commission should object to the permanent Rule 10A NCAC 73A .0107 filed by the Social Services Commission.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0107

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

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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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, please verify the P.L. citation. It does not appear to reference "reasonable accommodations" or the "American Disability Act of 1990."

Line 7, is the twelve day requirement set forth in another rule or statute that could be cross-referenced? Please clarify.

Line 7, please refer to 26 NCAC 02C .0108(9) for correct formatting of numbers within text.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0107 has been adopted as published in 29:16 NCR page 1938 as follows:

2

3 **10A NCAC 73A .0107 REASONABLE ACCOMODATION**

4 (a) Reasonable accommodations shall be provided to allow individuals with disabilities to comply with the
5 drug testing requirement in accordance with the American Disability Act of 1990, as amended in 2008
6 (P.L. 110-328).

7 (b) An individual who fails to complete the drug test within twelve (12) business days of the referral date
8 and provides documentation of an incapacity may receive additional time to complete the drug test.

9

10 *History Note: Authority G.S. 108A-29.1; 143B-153;*

11 *Eff. June 1, 2015.*

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 73A .0108

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:

It is staff's recommendation that the Rules Review Commission object to the permanent Rule 10A NCAC 73A .0108 filed by the Social Services Commission, as the rule adopted and filed by the Social Services Commission is unclear and ambiguous.

The permanent rule adopted by Social Services Commission is unclear and ambiguous.

See G.S. 150B-21.9(a)(2):

The basis for the current rulemaking efforts by the Social Services Commission is in response to S.L. 2014-115, which provided the following statutory directive:

- (d) The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section. The Social Services Commission shall adopt rules pertaining to the successful completion of, or the satisfactory participation in, a substance abuse treatment program under subsection (b1) of this section, including rules regarding timely reporting of completion of or participation in the substance abuse treatment programs.

Abigail M. Hammond
Commission Counsel

Paragraph (c) of the Rule states the following:

(c) Upon receipt of a confirmed positive test result, the county department of social services shall refer the individual to a qualified professional in substance abuse as defined in Rule 10A NCAC 27G .0104(19). The qualified professional shall provide substance use information to the applicant or recipient, and determination results of successful completion or satisfactory participation in a substance abuse treatment program to the county department of social services.

The second sentence of this Paragraph provides no guidance to the qualified professional in substance abuse as to how to timely report completion of or participation in the substance abuse treatment program. There is no guidance as to what qualifies as timely and there is no direction on how to provide this information. The terms “successful completion” and “satisfactory participation” are not defined by G.S. 108A-29.1 or a prior rule.

Summary:

It is staff’s recommendation that the Rules Review Commission should object to the permanent Rule 10A NCAC 73A .0108 filed by the Social Services Commission.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 73A .0108

DEADLINE FOR RECEIPT: Wednesday, May 13, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "each household" with "applicant or recipient"

Line 7, replace "individual" with "applicant or recipient"

Line 11, place the term "qualified professional" in quotation marks to clarify the term being defined.

Line 11, if Social Services Commission is not the rulemaking body for the referenced rule, please incorporate the rule in accordance with G.S. 150B-21.6.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, April 28, 2015

1 10A NCAC 73A .0108 has been adopted with changes as published in 29:16 NCR page 1938 as follows:

2

3 **10A NCAC 73A .0108 NOTICES**

4 (a) At application and at redetermination of eligibility for cash assistance, each household shall receive notice of ~~the~~
5 ~~rights and responsibilities, and consequences for drug testing.~~ rights and responsibilities, hearing and appeal rights,
6 and conditions for a retest.

7 (b) At the time of testing and upon receipt of a confirmed positive drug test result, the individual shall ~~be notified of~~
8 ~~the rights and responsibilities and consequences for a retest.~~ receive notice of rights and responsibilities, hearing and
9 appeal rights, and conditions for a retest.

10 (c) Upon receipt of a confirmed positive test result, the county department of social services shall refer the
11 individual to a qualified professional in substance abuse as defined in Rule 10A NCAC 27G .0104(19). The
12 qualified professional shall provide substance use information to the applicant or recipient, and determination results
13 of successful completion or satisfactory participation in a substance abuse treatment program to the county
14 department of social services.

15

16 *History Note: Authority G.S. 108A-29.1; 108A-79; 143B-153;*

17 *Eff. June 1, 2015.*