

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~~ an applicant or recipient with
5 disabilities to comply with the drug testing requirement in accordance with the ~~American Disability Act of~~
6 ~~1990, as amended in 2008 (P.L. 110-328).~~ Americans with Disabilities Act of 1990, as amended in 2008
7 (P.L.110-325), which is incorporated by reference, including subsequent amendments and editions. A copy
8 of the Act may be obtained on the United States Department of Justice, Civil Rights Division at
9 <http://www.ada.gov/pubs/adastatute08.htm>.

10
11 ~~(b) An individual who fails to complete the drug test within twelve (12) business days of the referral date~~
12 ~~and provides documentation of an incapacity may receive additional time to complete the drug test.~~

13
14 *History Note: Authority G.S. 108A-29.1; 143B-153;*
15 *Eff. July 1, 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~~ applicant or recipient
5 ~~shall receive notice of the rights and responsibilities, and consequences for drug testing.~~ rights and responsibilities,
6 hearing and appeal rights, and conditions for a retest.

7 (b) At the time of testing and upon receipt of a confirmed positive drug test result, the ~~individual applicant or~~
8 ~~recipient shall be notified of the rights and responsibilities and consequences for a retest.~~ receive notice of rights and
9 responsibilities, hearing and 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 applicant or recipient for substance abuse information to a qualified professional in substance abuse~~
12 “qualified professional in substance abuse” as defined in Rule 10A NCAC 27G .0104(19); .0104(19), which is
13 incorporated by reference, including subsequent amendments and editions. A copy of the Rule may be obtained at
14 <http://reports.oah.state.nc.us/ncac.asp>.

15 ~~—The qualified professional shall provide substance use information to the applicant or recipient, and determination~~
16 ~~results of successful completion or satisfactory participation in a substance abuse treatment program to the county~~
17 ~~department of social services.~~

18
19 *History Note: Authority G.S. 108A-29.1; 108A-79; 143B-153;*
20 *Eff. July 1, 2015.*



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

May 22, 2015

Sent via email to carlotta.dixon@dhhs.nc.gov

Carlotta Dixon, Rulemaking Coordinator
Social Services Commission
820 Boylan Avenue
Raleigh, North Carolina 27603

Re: Objection to Rules 10A NCAC 73A .0107 and 10A NCAC 73A .0108

Dear Ms. Dixon:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 10A NCAC 73A .0107, finding that the language in Paragraph (b) relating to drug testing is unclear and ambiguous. The Rule references a twelve day period that is not set by statute. The remainder of the sentence provides no guidance to the "individual who fail[ed] the drug test" as to 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.

The Commission objected to Rule 10A NCAC 73A .0108, finding that the language in Paragraph (c) does not provide reporting requirements and that the terms "successful completion" and "satisfactory participation" are unclear and ambiguous. The second sentence of Paragraph (c) 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 the treatment information.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

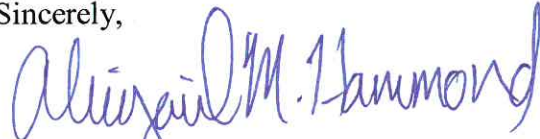
Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Abigail M. Hammond". The signature is written in a cursive style with a large, looped "A" and a long, sweeping "H".

Abigail M. Hammond
Commission Counsel

1 10A NCAC 73A .0107 has been adopted with changes 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 ~~individual applicant or recipient~~ with
5 disabilities to comply with the drug testing requirement in accordance with the American Disability Act of
6 1990, as amended in 2008 (~~P.L. 110-328~~), (P.L. 110-325), which is incorporated by reference, including
7 subsequent amendments and editions.

8 (b) An ~~individual applicant or recipient~~ who fails to complete the drug test ~~within twelve (12) business~~
9 ~~days of the referral date~~ and provides documentation of an incapacity ~~may receive additional time~~ shall
10 have until the application processing timeframe ends to complete the drug test.

11
12 *History Note: Authority G.S. 108A-29.1; 143B-153;*

13 *Eff. July 1, 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~~ applicant or recipient
5 ~~shall receive notice of the rights and responsibilities, and consequences for drug testing.~~ rights and responsibilities,
6 hearing and appeal rights, and conditions for a retest.

7 (b) At the time of testing and upon receipt of a confirmed positive drug test result, the ~~individual applicant or~~
8 ~~recipient shall be notified of the rights and responsibilities and consequences for a retest.~~ receive notice of rights and
9 responsibilities, hearing and 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 applicant or recipient to a qualified professional in substance abuse~~ “qualified professional in substance
12 abuse” as defined in Rule 10A NCAC 27G .0104(19). .0104(19), which is incorporated by reference, including
13 subsequent amendments and editions.

14
15 *History Note: Authority G.S. 108A-29.1; 108A-79; 143B-153;*
16 *Eff. July 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
- ☒ 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 .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

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 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

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 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.*