

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 Service Commission

PERIODIC REVIEW CITATIONS: 10A NCAC 70D and 70M

RECOMMENDED ACTIONS:

1. The Rules Review Commission must determine if a second extension of review of the report for 10A NCAC 70D is appropriate. This is the first request of an agency for a second extension of review.
2. To extend the review of the report for 10A NCAC 70M.

COMMENT:

The Social Service Commission has submitted a request for relief. For your review, I have attached several documents:

- (1) Email from staff counsel to the agency to clarify the requested relief;
- (2) April 4, 2017 letter;
- (3) January 13, 2016 letter;
- (4) Report for 10A NCAC 70D; and
- (5) Report for 10A NCAC 70M.

Please note that while the April 4, 2017 letter received by OAH on May 24, 2017 requests "an extension of time in the process of re-adoption for the above noted subchapters," that is an inaccurate request, as the agency has not published in compliance with Step 1 of G.S. 150B-21.3A(c)(1). As no initial determinations have been made by the agency to-date, there are no rules pending readoption.

The Commission has scheduled the review of the reports 10A NCAC 70D and 70M at the August 2017 Rules Review Commission meeting. Neither report has been submitted to the Office of Administrative Hearings for publication on the OAH website in compliance with 26 NCAC 05 .0203. A review of the agency's website does not reflect compliance with 26 NCAC 05 .0206. At this stage, the agency is unable to make the July 17, 2017 filing deadline established in 26 NCAC 05 .0203 to comply with the scheduled review date set forth in 26 NCAC 05 .0211.

This is the agency's second request for an extension of the review of the report for 10A NCAC 70D. The first request for 10A NCAC 70D was made on the letter dated January 13, 2016,

Abigail M. Hammond
Commission Counsel

and approved by the Commission at the February 2016 Rules Review Commission meeting. Staff counsel is unaware of any agency requesting a second extension for review of a report.

This is the agency's first request for an extension of the review of the report for 10A NCAC 70M. Staff counsel recommends an extension for the report 10A NCAC 70M as it is the first request.

Abigail M. Hammond
Commission Counsel

Hammond, Abigail M

From: Hammond, Abigail M
Sent: Friday, May 26, 2017 11:29 AM
To: Dixon, Carlotta
Cc: Black, Wayne E; Johnson, Joel L; Popkin, Ben
Subject: RE: Extension

Good morning Carlotta,

Please note that the letter from Samuel Ibrahim incorrectly characterizes the status of the 10A NCAC 70D and 10A NCAC 70M rules within the periodic review process. These rules are not subject to readoption at this time. If the Chairman would like to update this request, please provide a re-written letter by Wednesday, May 31, 2017. Otherwise the letter as provided by the Chairman will be posted on the Rules Review Commission's agenda. While I realize this letter was dated on April 4, 2017, it was not received by OAH until after the close of business on May 24, 2017.

Please note that this is the second request pertaining to 10A NCAC 70D. The Rules Review Commission may refuse to grant this second request. If a second request for an extension of time is not granted, the rules are subject to expire, as provided in [G.S. 150B-21.3A\(d\)\(1\)](#). If these rules were "adopted to conform to or implement federal law," the Rules Review Commission must have notice. Please respond no later than Wednesday, May 31, 2017 to indicate if these rules must remain in the NC Administrative Code in compliance with [G.S. 150B-21.3A\(e\)](#).

Sincerely,
Abby Hammond

*Abigail M. Hammond
Counsel to the Rules Review Commission
Office of Administrative Hearings
Direct Dial: (919) 431-3076*

Notice: E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by authorized State officials.

From: Dixon, Carlotta
Sent: Wednesday, May 24, 2017 6:17 PM
To: Brincefield, Julie <julie.brincefield@oah.nc.gov>
Cc: Hammond, Abigail M <abigail.hammond@oah.nc.gov>; May, Amber Cronk <amber.may@oah.nc.gov>; Reeder, Amanda J <amanda.reeder@oah.nc.gov>; Thomas, Jason S <jason.thomas@oah.nc.gov>
Subject: FW: Extension
Importance: High

Dear Julie,
Today forwarded to me is the enclosed letter from the (NC SSC) NC Social Services Commission's request for an extension to re-adopt rules chapter 70D and 70M of 10A NCAC.

Please note seven (7) members of the NC SSC term expired March 31, 2017 including the Chair.

An Interim Chair had to be appointed to complete the letter.
Seven (7) new members have been appointed to the NC SSC between April 1, 2017 to current date.
All seven (7) new members will be attending the NC SSC Meeting scheduled for June 14, 2017.
At that time, the NC SSC will have a quorum.

Thank you,

Carlotta Dixon, MHS, CPM
Section Chief
State Emergency Response Team(SERT)/ESF 6 Human Services Lead
Title VI-Civil Rights Coordinator
NC Division of Social Services-Program Compliance
North Carolina Department of Health and Human Services

919-527-6421 Office
919-334-1198 Fax
Carlotta.dixon@dhhs.nc.gov

820 South Boylan Avenue, McBryde Building
Raleigh, North Carolina 27603

2401 Mail Service Center
Raleigh, NC 27699-2401

From: Green, Angela
Sent: Wednesday, May 24, 2017 4:55 PM
To: Dixon, Carlotta <carlotta.dixon@dhhs.nc.gov>
Subject: Extension

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From: Brincefield, Julie
Sent: Friday, May 05, 2017 2:24 PM
To: Dixon, Carlotta <carlotta.dixon@dhhs.nc.gov>
Cc: Hammond, Abigail M <abigail.hammond@oah.nc.gov>; May, Amber Cronk <amber.may@oah.nc.gov>; Reeder, Amanda J <amanda.reeder@oah.nc.gov>; Thomas, Jason S <jason.thomas@oah.nc.gov>
Subject: Reports - 10A NCAC 70D,M

Good Afternoon,
Per our phone conversation earlier today, the reports for 10A NCAC 70D, M will not be filed for posting. You also indicated that you anticipate a request for waiver to be filed for these reports.

Thanks,
Julie

Julie A. Brincefield
Administrative Assistant
Rules Division
NC Office of Administrative Hearings

Phone (919)431-3073
julie.brincefield@oah.nc.gov



Attachment 1: 2017 request for
10A NCAC 70D, 70M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF SOCIAL SERVICES
SOCIAL SERVICES COMMISSION

ROY COOPER
GOVERNOR

WAYNE E. BLACK
SR. DIRECTOR FOR SOCIAL SERVICES
AND COUNTY OPERATIONS

MANDY COHEN, MD, MPH
SECRETARY

SAMUEL IBRAHIM
INTERIM CHAIR

April 4, 2017

Ms. Abigail Hammond
Commission Counsel
Rules Review Commission
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Dear Ms. Hammond:

This letter is in regards to the re-adoption of rules as identified as "Necessary with Substantive Public Interest" in 10A NCAC 70, subchapters D and M pursuant to 150B-21.3A(c)(2)(g). We are formally requesting an extension of time in the process of re-adoption for the above noted subchapters. These rules are needing to be approved by the Social Services Commission.

As of April 1, 2017, seven of the thirteen Social Services Commission member's appointments have expired. The Governor of North Carolina is charged with the appointment of individual to these positions. The Commission cannot meet to vote on rules until appointments are made. We respectfully request the re-adoption of these two subchapters be extended until December 2017.

If you have any questions, please do not hesitate to contact the Rules Review Coordinator, Carlotta Dixon at (919) 527-6421 or the Director of the Division of Social Services, Wayne Black at (919) 527-6336.

Thank you for your consideration of this request.

Sincerely,

Samuel Ibrahim

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North Carolina Department of Health and Human Services
Division of Social Services – Social Services Commission

Pat McCrory
Governor

Richard O. Brajer
Secretary

Wayne E. Black
Director

Larry W. Potts
Chairman

January 13, 2016

Via E-Mail Only

Garth K. Dunklin, Chair
N.C. Rules Review Commission
N.C. Office of Administrative Hearings
6715 Mail Service Center
Raleigh, N.C. 27699-6714

RE: N.C. Department of Social Services
Periodic Review of Existing Rules-10A NCAC 70A-H
Request for Extension of Time
26 NCAC 05 .0204

Dear Mr. Dunklin:

I am writing to you pursuant to 26 NCAC 05 .0204 to request an extension of time within which to file the Periodic Review of Existing Review Report for the submission to the Rules Review Commission for the Division of Social Services (DSS). The DSS is hereby requesting an extension of time from the Commission in reference to the following:

- i. 26 NCAC 05-0204 item (a) (3) changes of composition to the agency or its staff that resulted in a delay of the review; and
- ii. Session Law 2015-241, Section 12C.9 requires the Department to establish a State Foster Care Benefits Program with appropriations by the General Assembly for the purpose of providing assistance to children who are placed in foster care facilities by county departments of social services in accordance with the rules and regulations of the Social Services Commission. The required implementation date is January 1, 2017.

The DSS is experiencing a high number of vacancies particularly in the management and administrative support positions in the Child Welfare Regulatory and Licensing Services Section. These positions are responsible for conducting the periodic rules review process. The Department would be better served to implement new rules for Fostering Success/Extend Foster Care to 21 Years of Age prior to the periodic rules review process beginning in January 2016. The Department requests an extension for review to begin in January 2017, after the implementation of the new rules for foster care.

The DSS is presently hiring for the vacant positions to increase resources to address the delay of reports and avoid future delays. Currently, staff are reviewing 10A NCAC 70A-H to meet legislative deadlines regarding foster care.

The Division of Social Services regrets any inconvenience that the delay may cause and sincerely appreciates your time and consideration.

Sincerely,

Larry W. Potts

LWP/arg

Social Services Commission

www.ncdhhs.gov • www.ncdhhs.gov/dss

Tel 919-527-6335 • Fax 919-334-1018

Location: McBryde East Building • 820 South Boylan Ave. • Raleigh, NC 27603

Mailing Address: 2401 Mail Service Center • Raleigh, NC 27699-2401

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G.S. 150B-21.3A Report for 10A NCAC 70D, PAYMENT OF GRANTS IN AID TO PRIVATE CHILD CARING INSTITUTIONS								
Agency - Department of Health and Human Services								
Comment Period - Filled in by Agency								
Date Submitted to APO - Filled in by RRC staff								
Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
SECTION .0100 - PAYMENT OF GRANTS-IN-AID TO PRIVATE CHILD-CARING INSTITUTIONS	10A NCAC 70D .0101	PURPOSE	Amended Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0102	DEFINITIONS	Amended Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0103	ADMINISTRATION OF STATE FUNDS	Amended Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0104	PAYMENT OF FUNDS	Amended Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0105	STANDARDS FOR PAYMENT	Amended Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0106	PHASE IN	Eff. July 1, 1992	Select One	Select One		Select One	Select One
	10A NCAC 70D .0107	COST CONTAINMENT	Eff. July 1, 1992	Select One	Select One		Select One	Select One

G.S. 150B-21.3A Report for 10A NCAC 70M, ADOPTION STANDARDS												
Agency - Social Services Commission												
Comment Period - Filled in by Agency												
Date Submitted to APO - Filled in by RRC staff												
Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
	SECTION .0100 - GENERAL	10A NCAC 70M .0101	SCOPE	Amended Eff. October 1, 2008	Select One	Select One		Select One	Select One	Select One	Select One	Select One
	SECTION .0200 - ORGANIZATION AND ADMINISTRATION	10A NCAC 70M .0201	PUBLIC AGENCIES	Amended Eff. October 1, 2008	Select One	Select One		Select One	Select One	Select One	Select One	Select One
	SECTION .0300 - FUNCTIONS OF AN ADOPTION AGENCY	10A NCAC 70M .0301	GENERAL	Amended Eff. June 1, 1990	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0302	SERVICES TO ADOPTIVE APPLICANTS	Amended Eff. October 1, 2008	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0304	ADOPTIVE HOME RECRUITMENT	Eff. October 1, 2008	Select One	Select One		Select One	Select One	Select One	Select One	Select One
	SECTION .0400 - ADOPTION ASSISTANCE: GENERAL	10A NCAC 70M .0401	ADOPTION ASSISTANCE DEFINED	Amended Eff. July 18, 2002	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0402	ELIGIBILITY REQUIREMENTS FOR REGULAR MONTHLY CASH ASSISTANCE PAYMENTS OR VENDOR PAYMENTS	Amended Eff. July 18, 2002	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0403	PROCEDURES/REIMBURSEMENT OF ADOPTION ASSISTANCE BENEFITS	Amended Eff. October1, 2011	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0404	ELIGIBILITY REQUIREMENTS FOR THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND AND EFFECTIVE DATE	Eff. July 18, 2002	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0405	PAYMENTS FROM THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND	Eff. July 18, 2002	Select One	Select One		Select One	Select One	Select One	Select One	Select One
	SECTION .0500 - OUT-OF-STATE ADOPTION FEES - GENERAL	10A NCAC 70M .0501	PURPOSE OF OUT-OF-STATE ADOPTION SERVICE FEES	Amended Eff. July 1, 1991	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0502	GENERAL ELIGIBILITY REQUIREMENTS	Amended Eff. October 1, 2008	Select One	Select One		Select One	Select One	Select One	Select One	Select One
	SECTION .0600 - NON-RECURRING ADOPTION COSTS: GENERAL	10A NCAC 70M .0601	PURPOSE OF REIMBURSEMENT OF NON-RECURRING ADOPTION EXPENSES	Eff. July 1, 1991	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0602	DEFINITIONS	Eff. July 1, 1991	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0603	REQUIREMENTS	Eff. July 1, 1991	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		10A NCAC 70M .0604	REIMBURSEMENT FOR NON-RECURRING ADOPTION EXPENSES	Eff. July 1, 1991	Select One	Select One		Select One	Select One	Select One	Select One	Select One