

Burgos, Alexander N

From: Piekaar, Misty L
Sent: Wednesday, May 18, 2022 9:17 AM
To: Peaslee, William W; Burgos, Alexander N
Cc: Piekaar, Misty L
Subject: RE: Temporary Rules 10A NCAC 06Q .0201

Received. Thank you for your email.

Misty L. Piekaar-McWilliams, JD
Legal Services Developer
Division of Aging and Adult Services
NC Department of Health and Human Services

Office: 919-855-4980
Fax: 919-715-0364
Misty.Piekaar@dhhs.nc.gov



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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, May 17, 2022 5:36 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: Temporary Rules 10A NCAC 06Q .0201

Attached please find the RRC staff opinion recommending objection to the above captioned temporary rule.

William W. Peaslee
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Office of Administrative Hearings

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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Tuesday, May 17, 2022 10:50 AM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06Q .0201 and 10A NCAC 06T .0201

Thanks.

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From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Tuesday, May 17, 2022 10:49 AM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06Q .0201 and 10A NCAC 06T .0201

Good morning,

Misty, I have updated both links of agency communication to include these Rules. Once Bill finalizes them, they will be posted separately as Final Revised Rules for RRC. Thank you.

Alexander Burgos

Paralegal
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Alexander.burgos@oah.nc.gov

From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Tuesday, May 17, 2022 10:36 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06Q .0201 and 10A NCAC 06T .0201

Bill-

Please know I checked the RRC website and I wanted to make sure you had our last submission. Please find attached what we last submitted for each rule. Please let me know if you have any questions and/or concerns and thanks for working for us.

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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Monday, May 16, 2022 5:03 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

William-

Thank you for your email. Yes, to directly answer your question, there are ‘local entities’ other than county lead agencies who play a role. It is in the county discretion who it may be for both rules.

For both HCCBG (Home & Community Care Block Grant) funding (06Q) and State Adult Day Care Fund (SSBG funding) (06T), there is some discretion at the county level in who plays a role. (Note, for rule 06T .0201, because we have mentioned both Social Services Block Grant (Title XX) and the rule mentions State Adult Day Care Fund, note this service under 06T is comprised of State Federal funds and county dollars. The State funding is referred to as the State Adult Day Care Fund and the Federal funding is referred to as the Social Services Block Grant (SSBG). We simply mention this in case we have created some confusion.)

For HCCBG (06Q), county lead agencies do play a role. Specifically the County Board of Commissioners appoints an agency or office within that county to serve as a County Lead Agency. For instance, a County Lead Agency could be a county manager’s office, a public human services agency, a private non-profit human services agency or a regional Area Agency on Aging which are considered to be other local entities.

For SSBG (06T), despite the budget bill stating county lead agencies shall set rates (see Section 9A.3B.(c)), it is counties and their designees, often a county department of social services (DSS) who have discretion to appropriate these funds and to whom. The county determines who are the local entities and what role they play. For instance, it could be a private non-profit, a consolidated human services entity or a local DSS. This funding source relies heavily on contracts to permit each county discretion since all counties may have unique circumstances.

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, May 16, 2022 1:58 PM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

Misty,

I am not a subject matter expert and therefore have to solicit answers from the agencies with the expertise. I have asked the following question a few times and I still do not have an answer.

In the published version of 10A NCAC 06T .0201(c) and (d), the proposed temporary rule stated that the rates shall “be set by the local entities or each county lead agency...”

In the published version of 10A NCAC 06Q .0201(a) and (b), the proposed temporary rule stated that the rates shall “be set by the local entities or each county lead agency...”

Are there “local entities” other than the county lead agencies? Please answer this question.

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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Monday, May 16, 2022 1:25 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

William-

Thank you for your email. We originally used all three (3) terms from the budget bill to be inclusive.

That being stated, please note we are proposing to define local level as attached which would include counties and their designees. A designee could be a county lead agency. If you look at rule 10A NCAC 71R .0104, we believe it adds some clarity as it reads, “Services funded by the Social Services Block Grant [10A NCAC 06T .0201 is funded by the referenced grant] shall be provided directly by the Department of Health and Human Services, its divisions or *their local counterparts; or services shall be purchased from public or private providers by contracting in accordance with federal, state, and local regulations governing such purchases*”. (emphasis added) However, the distinction is 10A NCAC 71R .0104 applies to 28 programs whereas this program isn’t as broad as 10A NCAC 71R .0104 and, so, we have not cross referenced it in this rule.

Please let us know if further questions.

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, May 16, 2022 9:26 AM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

Great. Now that you have acknowledged that the county lead agencies are at the local level, are there any other entities at the "local level"? Do any cities have agencies?

If the answer is no, then the language in the proposed rule "set by the local entity or county lead agency" is redundant and ambiguous.

If the answer is yes, then please identify the local entities at the local level. Further, if there are multiple local entities within a county, including the county lead agencies, which agency has authority, or supremacy in the event of a conflict, to determine the rate?

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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Friday, May 13, 2022 12:08 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

William-

Yes, the Social Services Commission considers the county lead agency to be at the local level because the local level is the county for the purpose of this rule.

We propose to add the following language to the rule (but not include the proposed wording we offered yesterday). For the purpose of this Rule, local level is defined as the county or its designee. County shall have the same meaning as stated in G.S. 153A-1(3).

Please advise.

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, May 12, 2022 5:30 PM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

Thank you for your email.

G.S. 143B-153 (2a)b.3. states that the reimbursement rates shall be determined at the “local level”. Does the agency consider the “county lead agency” to be at the “local level”? If the answer is yes, then I would agree that the agency has the authority. If the answer is no, then the agency does not have authority to adopt a rule in which entities not at the “local level” determine the rates.

So far the agency has “abstained” from defining “local level”. In proposed temporary rule 10A NCAC 06T .0201, the agency makes a distinction between a “local entity” and “county lead agency” by the use of the word “or”.

Facially, a “local entity” is at the “local level”.

So I ask again, does the Social Services Commission consider a “county lead agency” to be at the “local level” pursuant to G.S. 143B-153(2a)b.3.?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Thursday, May 12, 2022 4:23 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

William-

Thank you for your email. The authority for this rule comes from NCGS 143B-153 due to its funding source and not from NCGS 143B-181.1(c).

If we added this proposed wording at the end of 10A NCAC 06T .0201, would it suffice?

For the purpose of this Rule, local level is defined as the county department of social services as stated in G.S. 108A-74(a)(3).

Thanks.

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, May 12, 2022 3:19 PM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Temporary Rules 10A NCAC 06T .0201

Thank you for your email. Regrading proposed temporary rule 10A NCAC 06T .0201:

Are “county Lead agencies” at the “local level”? If they are, then the agency has at least partially defined “local level”. If they are not, it would appear that the agency lacks the authority to allow county lead agencies to set the rate for the purchase of adult day care services.

If county lead service agencies are at the “local level”, are there any entities other than the “county lead agencies” at the local level? If the answer is no, then the language in the proposed rule “set by the local entity or county lead agency” is redundant and ambiguous. If the answer is yes, then the local entities at the local level need to be identified by way of definition. Further, if there are multiple local entities at the local level, including the county lead agencies, which agency has authority, or supremacy in the event of a conflict, to determine the rate?

If the agency abstains from interpreting or defining the phrases “local level” or “local entity”, isn’t the proposed rule facially ambiguous? If the agency won’t define them, how can the public? Does G.S. 143B-181.1(c) not give the Secretary the authority to define these terms? Do agencies not routinely “assume the intentions” of a law ratified by the legislature and signed into law by the Governor?

While I understand the agency’s desire for a statutory definition of “local level” and “local entities” (the latter of which was only used in a subtitle in S.L. 2021-180), doesn’t the use of these terms in an administrative rule without definition by the agency creates ambiguity precluded by G.S. 150B-21.9?

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William-

It is a pleasure connecting with you. Thank you for your review. Please find attached the technical changes form in addition to the rules with changes. In the past, I used a different color for my responses to technical changes to make it easier and hope that works for you as well. Please let me know if you have further questions and/or concerns.

Regarding the meeting, please note that it is our intent to have myself, Glenda Artis and Heather Carter personally present at the meeting, if that is fine. I know with social distancing, there is limited space but in the past, if the room was too crowded, we would wait outside (or the additional room) so I hope this will work for RRC.

Again, it is my pleasure and I look forward to working with you.

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, May 9, 2022 4:54 PM
To: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Temporary Rules 10A NCAC 06Q .0201 and 10A NCAC 06T .0201

Good afternoon, Misty,

I'm the attorney who reviewed the temporary Rules submitted by the North Carolina Department of Health and Human Services for the May 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, May 19, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, as soon as possible but no later than Friday, May 13, 2022.

In the meantime, please let me know if you have any questions or concerns about these changes.

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