October 20, 2011

Carlotta Dixon

2401 Mail Service Center

Raleigh, NC 27699

Re: 10A NCAC 10 .0102, .0203, .0308-.0312, .0506

Dear Ms. Dixon:

At its October 20, 2011 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0102 based on ambiguity. There are terms in Chapter 10 that are not defined and it is therefore not clear what they mean. It is not clear what is meant by "private agency" and it is not clear if a "decision" includes a statement of reasons. Those terms should be defined in the rule.

The Commission objected to Rule .0203 based on lack of statutory authority and ambiguity. In (b), it is not clear what the "net cost study rates" are or how they are determined. There is also no authority cited for them to be established by an oversight committee. The cited authority is for the Social Services Commission to establish rates. This objection applies to existing language in this rule.

The Commission objected to Rule .0308 based on ambiguity. In (b)(1), (2) and (4), it is not clear what standards the local purchasing agency is to use in determining that a recipient or provider is not capable of paying in full.

The Commission objected to Rule .0309 based on lack of statutory authority and ambiguity. In (d), it is not clear what standards the Division of Child Development and Early Education will use in requiring the correction of an underpayment or overpayment. Pursuant to G.S. 150B-19(6), there is no authority to adopt this modification provision without setting out the specific guidelines to be used.

The Commission objected to Rule .0310 based on lack of statutory authority and ambiguity. In (a), there is no authority cited to set requirements in a records retention schedule rather than by rule. In (c), it is not clear what standards the Division is to use in determining whether to require an agency to pay back funds improperly spent. This objection applies to existing language in this rule.

The Commission objected to Rule .0311 based on lack of statutory authority and ambiguity. The review process established in this Rule is unclear. If a provider is entitled to a contested case hearing based on a decision of a local purchasing agency, there is no authority cited for the Commission to add in additional steps. If a provider is only entitled to a contested case hearing after a decision by the Review Panel mentioned in (g), that is unclear. Notice in accordance with G.S. 150B-23 is only relevant to filing a contested case with the Office of Administrative Hearings. There is no authority to establish by rule if a person is entitled to a contested case hearing. In (c), it is not clear what standards a local purchasing agency is to use in granting a delay. In (d), and other places it is not clear if a "statement of decision" must include the reasons for the decision.

The Commission objected to Rule .0312 based on lack of statutory authority and ambiguity. In (b), it is not clear who appoints any alternates. In (e), there is no authority cited for the Panel to convene in closed session. This would appear to be a public meeting. In (m), it is not clear what standards the Secretary is to use in setting the time for the Panel to make its decision. As with Rule .0311, this rule is ambiguous on who is the agency making the decision subject to a contested case hearing. The last sentence in (n) implies it is the Local purchasing agency immediately after saying it is the Panel.

The Commission objected to Rule .0506 based on lack of statutory authority. In (b), there is no authority cited to set requirements in a records retention schedule rather than by rule. It is also not clear what is meant by "private agency." This objection applies to existing language in the rule.

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 action, please let me know.

Sincerely,

Robert A. Bryan, Jr.

Commission Counsel

RAB:jbe