

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, May 12, 2022 5:30 PM
To: Piekaar, Misty L
Cc: Burgos, Alexander N
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.?

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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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From: Piekaar, Misty L <Misty.Piekaar@dhhs.nc.gov>
Sent: Thursday, May 12, 2022 9:33 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

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 invite 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 invites 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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