

## Burgos, Alexander N

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**Subject:** FW: Technical Corrections / Revised Rules  
**Attachments:** 10A NCAC 27G .7004 .docx; 10A NCAC 27I .0601 .docx; 10A NCAC 27I .0602 .docx; 10A NCAC 27I .0605 .docx; 10A NCAC 27I .0606 .docx; 10A NCAC 27I .0607 .docx; 10A NCAC 27I .0608 .docx

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**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Thursday, April 25, 2024 4:05 PM  
**To:** Rules, Oah <oah.rules@oah.nc.gov>; Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Cc:** Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>  
**Subject:** Technical Corrections / Revised Rules

Good afternoon –

Attached please find the rules as revised in response to RRC Counsel's feedback.

Please let me know if you have questions or need additional information.

Thank you,  
Denise

**W. Denise Baker, M.A., L.P.A., J.D.**  
Team Leader, Legislative and Regulatory Affairs  
Division of MH/DD/SAS  
[NC Department of Health and Human Services](#)

Office: 984-236-5272  
Mobile: 919-437-6517  
Fax: 919-508-0973  
[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building  
695 Palmer Dr  
3004 Mail Service Center  
Raleigh NC 27699-3004

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

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1 10A NCAC 27G .7004 is amended with changes as published in 38:12 NCR 810 as follows.

2  
3 10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-  
4 MEDICAID SERVICES

5 (a) This Rule governs appeals by a client, or the client's legally responsible person, made to the Local Management  
6 Entity (LME) Entity-Managed Care Organization [~~(LME-MCO)~~ (LME-MCO), area authority or county program  
7 Director of ~~Utilization Review~~ Utilization Review (UR) decisions made by the LME agency to deny, reduce, suspend  
8 or terminate a client's non-Medicaid funded services.

9 ~~(b) A client may appeal to the LME Director the utilization review decision of a LME to deny, reduce suspend, or~~  
10 ~~terminate a non-Medicaid state funded service.~~

11 ~~(c)~~(b) The LME [~~LME-MCO~~ LME-MCO, area authority or county program] shall~~shall~~:

12 (1) send to the ~~client~~client, or ~~the client's legally responsible person~~person, legal representative(s)  
13 notification letters regarding utilization review decisions for non-Medicaid funded services.

14 (2) ~~The letter shall be dated~~date and ~~mailed~~mail the notification letter no later than the next ~~work~~  
15 ~~business~~ day following the ~~review~~ UR decision to deny, reduce, suspend, or terminate a non-  
16 Medicaid state funded service.

17 (3) ~~The LME~~ [~~LME-MCO~~] shall separately notify the provider regarding the service authorization.

18 ~~(d)~~(c) The letter shall include information regarding the reason for the UR decision and any available service options  
19 ~~or considerations~~ while the appeal is under review.

20 ~~(e)~~(d) ~~An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal~~  
21 ~~representative.~~ Only the client, or the client's legally responsible person, may file an appeal of the non-Medicaid UR  
22 decision. The appeal must be in writing and received in writing by the LME [~~LME-MCO~~ LME-MCO, area authority  
23 or county program] within 15 working business days of the date of the notification letter. The LME [~~LME-MCO~~ LME-  
24 MCO, area authority or county program] shall provide help to ~~an appellant~~ a client who requests assistance in filing  
25 the appeal.

26 ~~(f)~~(e) The LME [~~LME-MCO~~ LME-MCO, area authority or county program] shall acknowledge receipt of the appeal  
27 in writing in a letter to the ~~appellant~~ client, or the client's legally responsible person, dated the next ~~working~~ business  
28 day after receipt of the appeal.

29 ~~(g)~~(f) The ~~LME~~ LME-MCO, area authority or county program may authorize interim services until the final review  
30 decision, as set forth in 10A NCAC 27I .0609, is reached. The decision to authorize interim services shall be based  
31 upon medical necessity criteria as set forth in State-funded Service Definitions. State-funded service definitions are  
32 available via this link: [https://www.ncdhhs.gov/providers/provider-information/mental-health-development-](https://www.ncdhhs.gov/providers/provider-information/mental-health-development-disabilities-and-substance-use-services/service-definitions)  
33 disabilities-and-substance-use-services/service-definitions. The decision shall also be in compliance with G.S. 122C-  
34 2.

35 (g) The [~~LME-MCO~~ LME-MCO, area authority or county program] Director shall assign staff to conduct a clinical  
36 review of the UR decision.

1 (h) The clinical review shall be conducted by an employee(s) or contractor(s) of the LME/LME-MCO, area authority  
2 or county program not involved in the ~~utilization review~~ UR decision that is the subject of the appeal. The clinical  
3 reviewer(s) clinical credentials shall be at least comparable to those of the person who rendered the initial ~~utilization~~  
4 ~~review~~ UR decision.

5 (i) The clinical reviewer(s) shall ~~complete a clinical review of the appeal and shall~~ issue a written decision to uphold  
6 or overturn the original UR decision.

7 (j) The ~~LME/LME-MCO, area authority~~ LME/LME-MCO, area authority or county program shall notify the ~~appellant~~ client, or the client's legally  
8 responsible person, in writing of the clinical review decision in a letter dated and mailed within seven ~~working~~ business  
9 days from receipt of the appeal request and shall separately notify the provider regarding the service authorization.

10 (k) If the clinical review overturns the initial ~~utilization review~~ UR decision, the decision letter shall state the date on  
11 which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall  
12 be reinstated.

13 (l) In cases in which the ~~decision~~ clinical review decision upholds the ~~previous~~ original UR decision, the LME/LME-  
14 MCO, area authority or county program shall inform ~~appellants~~ the client, or the client's legally responsible person,  
15 in writing of the opportunity to appeal a decision regarding a non-Medicaid service the clinical review decision to the  
16 State Division of Mental Health, Developmental Disabilities and Substance Abuse/Use Services ~~Non-Medicaid~~  
17 ~~Appeals Panel~~ according pursuant to Rules 10A NCAC 27I .0600 and G.S. 143B-147(a)(9). .0600-.0601-.0609.

18  
19 *History Note: Authority G.S. 122C-112.1(a)(29); 143B-147;*

20 *Eff. July 1, 2008;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,*  
22 *2019. 2019;*

23 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0601 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0601 SCOPE**

4 (a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or  
5 county program affecting a non-Medicaid eligible client.

6 (b) A non-Medicaid eligible ~~client~~ client, or the client's legally responsible person, may appeal to the Division Director  
7 the clinical review decision of an **LME-MCO** area authority or county program to deny, reduce, suspend, or terminate  
8 a non-Medicaid state funded service.

9 ~~(c) An appeal shall be filed with the Division only after a client has received a review decision from the area authority~~  
10 ~~or county program.~~

11 ~~(d)(c)~~ Nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal  
12 decisions of third party payers to the Division.

13 ~~(e)(d)~~ Non-Medicaid services shall be provided in accordance with G.S. 122C-2. As set forth in G.S. 143B-147(a)(9),  
14 nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings  
15 of the Division by requesting a contested case hearing pursuant to G.S. 150B.

16 ~~(f)(e)~~ There shall be no reprisal or retaliation to anyone who is a party to an appeal.

17 ~~(g)(f)~~ The **LME-MCO** area authority or county program may authorize interim services until the final written decision  
18 as set forth in Rule .0609 of this Section is reached.

19

20 *History Note: Authority G.S. 143B-147;*

21 *Eff. October 1, 2006;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*

23 *~~2017. 2017.~~*

24 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0602 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0602 DEFINITIONS**

4 As used in the rules in this Section, the following terms shall have the meanings specified:

5 (1) "Director" means the Director of the Division of Mental Health, Developmental Disabilities and  
6 Substance **AbuseUse** Services.

7 (2) "Division" means the Division of Mental Health, Developmental Disabilities and Substance  
8 **AbuseUse** Services.

9 (3) "Legally Responsible Person" means the same as defined in G.S. 122C-3.

10 (4) "Within Available Resources" means the same as defined in G.S. 122C-2.

11

12 *History Note: Authority G.S. 143B-147;*

13 *Eff. October 1, 2006;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
15 *~~2017.~~ 2017:*

16 *Amended Eff. May 1, 2024.*

17

1 10A NCAC 27I .0605 is amended with changes as published in 38:12 NCR 811 as follows.

2  
3 10A NCAC 27I .0605 DIVISION'S INITIAL RESPONSE TO A DMH/DD/SAS NON-MEDICAID  
4 APPEAL

5 (a) The Director shall screen the request for appeal to the Division to determine:

- 6 (1) if the appeal was reviewed by the LME-MCO, area authority or county program according to the  
7 area authority or county program policy and procedures; ~~and~~  
8 (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state  
9 funded ~~service~~; service;  
10 (3) if the appeal falls within the scope of Rule .0601 of this Section; and  
11 (4) if the appeal was filed in accordance with the requirements of Rule .0603 of this Section.

12 (b) The Director shall send an acknowledgement letter to the ~~client~~ client, or the client's legally responsible person,  
13 and the LME-MCO, area authority or county program within 5 business days of receipt of the request for appeal to  
14 the Division.

15 (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept  
16 an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.

17 (d) The Director shall notify the LME-MCO, area authority or county program and the ~~client~~ client, or the client's  
18 legally responsible person, whose appeal is accepted for ~~review~~review, to ~~forward~~submit all documentation considered  
19 during the LME-MCO, area authority or county program review to the Division no later than 10 calendar days from  
20 the date of the acknowledgement letter. Documentation shall be submitted to the DMHDDSUS Hearing Office, 3001  
21 Mail Service Center, Raleigh, NC 27699-3001 or via fax at (984) 777-9264. The acknowledgement letter shall advise  
22 the parties that a ~~panel will be convened to~~ Hearing Officer will conduct a hearing.

23 (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as  
24 ~~disqualified~~ denied with an explanation of the basis for ~~disqualification~~; denial.

25 (f) If the appeal is denied on the basis of Subparagraph (a)(1) of this Rule, the ~~The~~ LME-MCO, area authority or  
26 county program shall review the ~~appeal, if the appeal made to the Division is disqualified on the basis of not having~~  
27 ~~been reviewed according to the area authority or county program's policy and procedures.~~ appeal in accordance with  
28 the requirements of Rule 10A NCAC 27G .7004.

29 (g) The ~~client~~ client, or the client's legally responsible person, shall have 11 calendar days from the date of the LME-  
30 MCO, area authority or county program clinical review decision to resubmit the appeal to the Division.

31  
32 *History Note: Authority G.S. 143B-147;*

33 *Eff. October 1, 2006;*

34 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
35 *2017. 2017;*

36 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0606 is amended with changes as published in 38:12 NCR 811 as follows.**

2  
3 **10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL**

4 (a) The Director shall ~~convene a five member panel to conduct a hearing for an~~ ensure the Hearing Officer conducts  
5 an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.

6 ~~(b) The panel members shall consist of the following:~~

7 (1) ~~a provider agency representative who meets the following requirements:~~

8 (A) ~~the representative shall be from a provider agency that is not be a party to the appeal; and~~

9 (B) ~~the representative shall have clinical expertise in the disability area pertinent to the appeal;~~

10 (2) ~~an employee of an area authority or county program who meets the following requirements:~~

11 (A) ~~the employee shall be from an area authority or county program that is not a party to the~~  
12 ~~appeal; and~~

13 (B) ~~the employee shall have clinical expertise in the disability area pertinent to the appeal;~~

14 (3) ~~two individuals who are members of a consumer and family advisory committee who is not a party~~  
15 ~~to the appeal; and~~

16 (4) ~~an employee of the Division.~~

17 ~~(e)(b) The Hearing Officer shall be an employee of the Division. Division shall serve as the chairperson of the panel~~  
18 ~~and shall be a voting member in the case of a tie.~~

19 ~~(d)(c) The Director shall forward the record on appeal and all supplemental documentation to the Hearing Officer~~  
20 ~~chairperson of the panel~~ within five calendar days of receipt thereof.

21 ~~(e)(d) The Director shall provide a copy of applicable law and rules to the Hearing Officer. chairperson of the panel.~~

22 ~~(f)(e) The Hearing Officer chairperson shall schedule a panel~~ hearing including designation of a time and place.

23 ~~(g)(f) The Hearing Officer chairperson shall notify the client, or the client's legally responsible person, other panel~~  
24 ~~members~~ and the area authority or county program of the time and place no less than 15 calendar days prior to the  
25 date of the hearing.

26 (g) The hearing may be conducted in person or virtually taking into account reasonable accommodations, including  
27 but not limited to, the following:

28 (1) compliance with HIPAA requirements;

29 (2) accommodation needs of the client; and

30 (3) State mandated travel restrictions.

31  
32 *History Note: Authority G.S. 143B-147;*

33 *Eff. October 1, 2006;*

34 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
35 *2017. 2017;*

36 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0607 is amended with changes as published in 38:12 NCR 811 as follows.**

2  
3 **10A NCAC 27I .0607 ~~PANEL~~ HEARING PROCEDURES**

4 (a) ~~The chairperson of the panel:~~ Hearing Officer:

- 5 (1) shall convene the hearing at the prearranged time and place;
- 6 (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;
- 7 and
- 8 (3) shall conduct proceedings in an orderly manner.

9 (b) ~~The panel:~~ Hearing Officer:

- 10 (1) may limit the total number of persons presenting for the client and area authority or county program;
- 11 and
- 12 (2) may impose time limits for presentations.

13 (c) Either party may be represented by a person or attorney of their choice.

14 (d) Prior to the hearing, the client, client, or the client's legally responsible person, and the area authority or county

15 program shall:

- 16 (1) specify by name and position all individuals who will be present for the hearing;
- 17 (2) provide the ~~panel~~ Hearing Officer with requested information; and
- 18 (3) when applicable, ensure that representatives of the parties shall be present at the hearing.

19 (e) ~~Any member of the panel~~ The Hearing Officer may address questions to either party.

20 (f) ~~The panel~~ Hearing Officer may obtain any form of technical assistance or consultation relevant to the appeal.

21 (g) No transcript shall be made and no party shall be allowed to record the proceeding. ~~The panel~~ Hearing Officer

22 may choose to record the proceeding for ~~its~~ his or her own use. A tape so made shall be destroyed after the ~~panel~~

23 Hearing Officer issues ~~its~~ the Hearing decision.

24 (h) Witnesses shall not be sworn before testifying.

25  
26 *History Note: Authority G.S. 143B-147;*

27 *Eff. October 1, 2006;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*

29 *2017. 2017;*

30 *Amended Eff. May 1, 2024.*



1 **10A NCAC 27I .0608 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0608 ~~PANEL HEARING OFFICER DECISION FINDINGS AND DECISION~~**

4 (a) The ~~panel~~ Hearing Officer's findings and decisions are based on the record and any new evidence that would be  
5 material to the issues on appeal.

6 (b) The standard of review for the ~~panel~~ Hearing Officer is whether the decision of the LME-MCO, area authority or  
7 county program is supported by the evidence presented.

8 ~~(c) The panel shall vote on each specific item being appealed. The Hearing Officer shall consider all issues under~~  
9 appeal.

10 ~~(d) Findings and decisions of the panel shall be by majority vote.~~

11 ~~(e)(d)~~ Any decision may be rescheduled for a subsequent meeting if the ~~panel~~ Hearing Officer determines that ~~it~~ he  
12 or she lacks sufficient information to render a decision at the initial hearing.

13 ~~(f)(c)~~ ~~All panel~~ The Hearing Officer's findings and decisions shall be reached and sent in writing to the client  
14 or the client's legally responsible person, and to the LME-MCO, area authority or county program Director within 60  
15 calendar days of the written request for ~~appeal to the client, the area authority or county program and the Director.~~ an  
16 appeal.

17

18 *History Note: Authority G.S. 143B-147;*

19 *Eff. October 1, 2006;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
21 *2017. 2017;*

22 *Amended Eff. May 1, 2024.*

## Burgos, Alexander N

---

**Subject:** FW: 28F, 27G, 27I Rules-Request for Changes

---

**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>

**Sent:** Wednesday, April 24, 2024 12:05 PM

**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>

**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Thank you so much for your feedback. I've made the changes you suggested below and will submit them as instructed.

Enjoy your day.

**W. Denise Baker, M.A., L.P.A., J.D.**

Team Leader, Legislative and Regulatory Affairs

Division of MH/DD/SAS

[NC Department of Health and Human Services](#)

Office: 984-236-5272

Mobile: 919-437-6517

Fax: 919-508-0973

[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building

695 Palmer Dr

3004 Mail Service Center

Raleigh NC 27699-3004

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## Burgos, Alexander N

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**Subject:** FW: 28F, 27G, 27I Rules-Request for Changes

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**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>

**Sent:** Wednesday, April 24, 2024 11:55 AM

**To:** Baker, Denise <Denise.Baker@dhhs.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>

**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Good morning,

Thank you for the reply. The “State-funded Service Definitions” do not need to be incorporated by reference. The Definitions are not part of a rule adopted by your agency and are not part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association. You can just cross-reference the Definitions. Below is a suggestion for how it may be drafted.

(f) The LME-MCO, area authority or county program may authorize interim services until the final review decision, as set forth in 10A NCAC 27I .0609, is reached. The decision to authorize interim services shall be based upon medical necessity criteria as set forth in State-funded Service Definitions,. State-funded service definitions are available via this link: <https://www.ncdhhs.gov/providers/provider-information/mental-health-development-disabilities-and-substance-use-services/service-definitions>. The decision shall also be in compliance with G.S. 122C-2.

After you make the final changes above, please submit all revised rules via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) no later than 5pm on April 25, 2024. The electronic copy must be saved as the official rule name (XX NCAC XXXX). Please include me on the email.

Thank you.

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

## Burgos, Alexander N

---

**Subject:** FW: 28F, 27G, 27I Rules-Request for Changes  
**Attachments:** 10A NCAC 27G .7004 .docx

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**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Tuesday, April 23, 2024 4:20 PM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>  
**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Good afternoon –

Please see attached. I've incorporated the language suggested and clarified the standards used in making decisions regarding the authorization of services, including interim services.

### **§ 143B-137.1. Department of Health and Human Services — duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provisions of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens — as individuals, families, and communities — to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

Please let me know if you have additional questions or suggested changes.

Take care,  
Denise

**W. Denise Baker, M.A., L.P.A., J.D.**  
Team Leader, Legislative and Regulatory Affairs  
Division of MH/DD/SAS  
[NC Department of Health and Human Services](#)

Office: 984-236-5272  
Mobile: 919-437-6517  
Fax: 919-508-0973  
[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building  
695 Palmer Dr  
3004 Mail Service Center  
Raleigh NC 27699-3004

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1 10A NCAC 27G .7004 is amended with changes as published in 38:12 NCR 810 as follows.

2  
3 10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-  
4 MEDICAID SERVICES

5 (a) This Rule governs appeals by a client, or the client's legally responsible person, ~~made~~ to the Local Management  
6 Entity (LME) Entity-Managed Care Organization [~~(LME-MCO)]~~ (LME-MCO), area authority or county program  
7 Director of ~~Utilization Review~~ Utilization Review (UR) decisions made by the LME agency to deny, reduce, suspend  
8 or terminate a client's non-Medicaid funded services.

9 ~~(b) A client may appeal to the LME Director the utilization review decision of a LME to deny, reduce suspend, or~~  
10 ~~terminate a non-Medicaid state funded service.~~

11 ~~(c)~~ (b) The LME [~~LME-MCO]~~ LME-MCO, area authority or county program ~~shall~~ shall:

12 (1) send to the ~~client~~ client, or the client's legally responsible person ~~person,~~ legal representative(s)  
13 notification letters regarding utilization review decisions for non-Medicaid funded services.

14 (2) The letter shall be dated ~~date~~ and mailed ~~mail~~ the notification letter no later than the next ~~work~~  
15 business day following the ~~review~~ UR decision to deny, reduce, suspend, or terminate a non-  
16 Medicaid state funded service.

17 (3) The LME [~~LME-MCO]~~ ~~shall~~ separately notify the provider regarding the service authorization.

18 ~~(d)~~ (c) The letter shall include information regarding the reason for the UR decision and any available service options  
19 ~~or considerations~~ while the appeal is under review.

20 ~~(e)~~ (d) ~~An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal~~  
21 ~~representative.~~ Only the client, or the client's legally responsible person, may file an appeal of the non-Medicaid UR  
22 decision. The appeal must be in writing and received in writing by the LME [~~LME-MCO]~~ LME-MCO, area authority  
23 or county program within 15 working business days of the date of the notification letter. The LME [~~LME-MCO]~~ LME-  
24 MCO, area authority or county program shall provide help to ~~an appellant~~ a client who requests assistance in filing  
25 the appeal.

26 ~~(f)~~ (e) The LME [~~LME-MCO]~~ LME-MCO, area authority or county program shall acknowledge receipt of the appeal  
27 in writing in a letter to the ~~appellant~~ client, or the client's legally responsible person, dated the next ~~working~~ business  
28 day after receipt of the appeal.

29 ~~(g)~~ (f) The ~~LME~~ LME-MCO, area authority or county program may authorize interim services until the final review  
30 decision, as set forth in 10A NCAC 27I .0609, is reached. The decision to authorize interim services shall be based  
31 upon medical necessity criteria as set forth in State-funded Service Definitions, incorporated by reference including  
32 subsequent amendments. The decision shall also be in compliance with G.S. 122C-2. State-funded service definitions  
33 are available via this link: [https://www.ncdhhs.gov/providers/provider-information/mental-health-development-](https://www.ncdhhs.gov/providers/provider-information/mental-health-development-disabilities-and-substance-use-services/service-definitions)  
34 disabilities-and-substance-use-services/service-definitions.

35 (g) The [~~LME-MCO]~~ LME-MCO, area authority or county program Director shall assign staff to conduct a clinical  
36 review of the UR decision.

1 (h) The clinical review shall be conducted by an employee(s) or contractor(s) of the LME/LME-MCO, area authority  
2 or county program not involved in the ~~utilization review~~ UR decision that is the subject of the appeal. The clinical  
3 reviewer(s) clinical credentials shall be at least comparable to those of the person who rendered the initial ~~utilization~~  
4 ~~review~~ UR decision.

5 (i) The clinical reviewer(s) shall ~~complete a clinical review of the appeal and shall~~ issue a written decision to uphold  
6 or overturn the original UR decision.

7 (j) The ~~LME/LME-MCO, area authority~~ LME/LME-MCO, area authority or county program shall notify the ~~appellant~~ client, or the client's legally  
8 responsible person, in writing of the clinical review decision in a letter dated and mailed within seven ~~working~~ business  
9 days from receipt of the appeal request and shall separately notify the provider regarding the service authorization.

10 (k) If the clinical review overturns the initial ~~utilization review~~ UR decision, the decision letter shall state the date on  
11 which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall  
12 be reinstated.

13 (l) In cases in which the ~~decision~~ clinical review decision upholds the ~~previous~~ original UR decision, the LME/LME-  
14 MCO, area authority or county program shall inform ~~appellants~~ the client, or the client's legally responsible person,  
15 in writing of the opportunity to appeal ~~a decision regarding a non-Medicaid service~~ the clinical review decision to the  
16 State Division of Mental Health, Developmental Disabilities and Substance Abuse/Use Services ~~Non-Medicaid~~  
17 ~~Appeals Panel~~ according pursuant to Rules 10A NCAC 27I .0600 and G.S. 143B-147(a)(9). .0600-.0601-.0609.

18  
19 *History Note: Authority G.S. 122C-112.1(a)(29); 143B-147;*

20 *Eff. July 1, 2008;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,*  
22 *2019. 2019;*

23 *Amended Eff. May 1, 2024.*

## Burgos, Alexander N

---

**Subject:** FW: 28F, 27G, 27I Rules-Request for Changes

---

**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>

**Sent:** Tuesday, April 16, 2024 2:14 PM

**To:** Baker, Denise <Denise.Baker@dhhs.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>

**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Please respond by Tuesday, April 23<sup>rd</sup> at 5pm.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

---

**From:** Baker, Denise <[Denise.Baker@dhhs.nc.gov](mailto:Denise.Baker@dhhs.nc.gov)>

**Sent:** Tuesday, April 16, 2024 1:43 PM

**To:** Wiggs, Travis C <[travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Robersonlinthicum, Grace <[glinthicum@ncdoj.gov](mailto:glinthicum@ncdoj.gov)>; Scott, Pam <[Pam.Scott@dhhs.nc.gov](mailto:Pam.Scott@dhhs.nc.gov)>

**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Thanks so much. When do you need my response by?

**W. Denise Baker, M.A., L.P.A., J.D.**

Team Leader, Legislative and Regulatory Affairs

Division of MH/DD/SAS

[NC Department of Health and Human Services](#)

Office: 984-236-5272

Mobile: 919-437-6517

Fax: 919-508-0973

[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building

695 Palmer Dr

3004 Mail Service Center

Raleigh NC 27699-3004

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

---

**From:** Wiggs, Travis C <[travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)>

**Sent:** Tuesday, April 16, 2024 11:12 AM

**To:** Baker, Denise <[Denise.Baker@dhhs.nc.gov](mailto:Denise.Baker@dhhs.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Robersonlinthicum, Grace <[glinthicum@ncdoj.gov](mailto:glinthicum@ncdoj.gov)>; Scott, Pam <[Pam.Scott@dhhs.nc.gov](mailto:Pam.Scott@dhhs.nc.gov)>

**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Good morning,

Thank you for making the changes. Please reply to the questions below.

In 10A NCAC 27G .7004 (f), will you change the language to make it consistent with similar language in 10A NCAC 27I .0601 (f)? In my opinion, the language in .0601(f) will be clearer for the regulated public.

Are there specific standards/criteria the LME-MCO will use to determine if interim services will be provided while on appeal? If so, can the standards/criteria be cross-referenced or incorporated by reference in the Rule?

If the LME-MCO does not have specific standards/criteria to follow, will you include that the decision will be “based upon client need and funding availability” as you mentioned below?

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)



## Burgos, Alexander N

---

**Subject:** FW: 28F, 27G, 27I Rules-Request for Changes  
**Attachments:** 10A NCAC 27G .7004.docx; 10A NCAC 27I .0605 .docx; 10A NCAC 27I .0606 .docx; 10A NCAC 27I .0607 .docx; 10A NCAC 27I .0608 .docx; 10A NCAC 27I .0601 .docx; 10A NCAC 27I .0602 .docx

---

**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Monday, April 15, 2024 1:04 PM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Robersonlinthicum, Grace <glinthicum@ncdoj.gov>; Scott, Pam <Pam.Scott@dhhs.nc.gov>  
**Subject:** RE: 28F, 27G, 27I Rules-Request for Changes

Good afternoon –

Attached please find the changes requested.

### 10A NCAC 27G .7004

- Rule 10A NCAC 27I .0609 does not authorize interim services.
- Ultimately, the decision to authorize interim services until the final decision is reached rests solely with the LME-MCO based upon client need and funding availability.
- I've changed the reference to list the range of rules within 10A NCAC Section .0600.

### 10A NCAC 27I .0605

- Documentation may be submitted via mail or via fax
- I've added that information to the rule.

### 10A NCAC 27I .0607

- No, the Hearing Officer does not have unfettered discretion in applying subsection (a)(2).
- No, the Hearing Officer does not have unfettered discretion in applying subsection (b)(1) and (2).
- Rather, the Hearing Officer schedules the hearing to allow ample time for the parties to provide rebuttal or summary comments should they choose to do so.

### 10A NCAC 27I .0608

- No, the Hearing Officer does not have unfettered discretion in determine whether new evidence would be material. In determining whether new evidence is material, the Hearing Officer determines whether it is relevant to the issue on appeal.

### Additional Changes

- **10A NCAC 27I .0601**
  - Added LME-MCO consistent with Rules 27I .0608 and .0609 as published.
- **10A NCAC 279 .0602**
  - Changed the Division's name (Division of Mental Health, Developmental Disabilities, and Substance Use Services

Please let me know if you have additional questions.

Please include Grace Linthicum and Pam Scott on the invitation to the RRC meeting. I've copied them on this email to provide their contact information.

Thank you,  
Denise

**W. Denise Baker, M.A., L.P.A., J.D.**

Team Leader, Legislative and Regulatory Affairs

Division of MH/DD/SAS

[NC Department of Health and Human Services](#)

Office: 984-236-5272

Mobile: 919-437-6517

Fax: 919-508-0973

[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building

695 Palmer Dr

3004 Mail Service Center

Raleigh NC 27699-3004

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

1 10A NCAC 27G .7004 is amended with changes as published in 38:12 NCR 810 as follows.

2  
3 10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-  
4 MEDICAID SERVICES

5 (a) This Rule governs appeals by a client, or the client's legally responsible person, ~~made~~ to the Local Management  
6 Entity (LME) Entity-Managed Care Organization (LME-MCO) Director of ~~Utilization Review~~ Utilization Review  
7 (UR) decisions made by the LME LME-MCO to deny, reduce, suspend or terminate a client's non-Medicaid funded  
8 services.

9 ~~(b) A client may appeal to the LME Director the utilization review decision of a LME to deny, reduce suspend, or~~  
10 ~~terminate a non-Medicaid state funded service.~~

11 ~~(c)~~ (b) The LME LME-MCO shall send to the client ~~client,~~ or the client's legally responsible person ~~person,~~ legal  
12 representative(s) notification letters regarding utilization review decisions for non-Medicaid funded services. The  
13 letter shall be dated and mailed no later than the next ~~work~~ business day following the ~~review~~ UR decision to deny,  
14 reduce, suspend, or terminate a non-Medicaid state funded service. The ~~LME~~ LME-MCO shall separately notify the  
15 provider regarding the service authorization.

16 ~~(d)~~ (c) The letter shall include information regarding the reason for the UR decision and any available service options  
17 ~~or considerations~~ while the appeal is under review.

18 ~~(e)~~ (d) ~~An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal~~  
19 ~~representative. Only the client, or the client's legally responsible person, may file an appeal of the non-Medicaid UR~~  
20 ~~decision.~~ The appeal must be in writing and received ~~in writing~~ by the ~~LME~~ LME-MCO within 15 ~~working~~ business  
21 days of the date of the notification letter. The ~~LME~~ LME-MCO shall provide help to ~~an appellant~~ a client who requests  
22 assistance in filing the appeal.

23 ~~(f)~~ (e) The ~~LME~~ LME-MCO shall acknowledge receipt of the appeal in writing in a letter to the ~~appellant~~ client, or  
24 the client's legally responsible person, dated the next ~~working~~ business day after receipt of the appeal.

25 ~~(g)~~ (f) The ~~LME~~ LME-MCO may authorize interim services until the final review decision, as set forth in 10A NCAC  
26 27I .0609, is reached.

27 (g) The LME-MCO Director shall assign staff to conduct a clinical review of the UR decision.

28 (h) The clinical review shall be conducted by an employee(s) or contractor(s) of the ~~LME~~ LME-MCO not involved in  
29 the ~~utilization review~~ UR decision that is the subject of the appeal. The clinical reviewer(s) clinical credentials shall  
30 be at least comparable to those of the person who rendered the initial ~~utilization review~~ UR decision.

31 (i) The clinical reviewer(s) shall ~~complete a clinical review of the appeal and shall~~ issue a written decision to uphold  
32 or overturn the original UR decision.

33 (j) The LME shall notify the ~~appellant~~ client, or the client's legally responsible person, in writing of the clinical review  
34 decision in a letter dated and mailed within seven ~~working~~ business days from receipt of the appeal request and shall  
35 separately notify the provider regarding the service authorization.

1 (k) If the clinical review overturns the initial ~~utilization review~~ UR decision, the decision letter shall state the date on  
2 which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall  
3 be reinstated.

4 (l) In cases in which the ~~decision~~ clinical review decision upholds the ~~previous original UR~~ decision, the LMELME-  
5 MCO shall inform ~~appellants~~ the client, or the client's legally responsible person, in writing of the opportunity to  
6 appeal ~~a decision regarding a non-Medicaid service~~ the clinical review decision to the State Division of Mental Health,  
7 Developmental Disabilities and Substance AbuseUse Services ~~Non-Medicaid Appeals Panel~~ according pursuant to  
8 Rules 10A NCAC 27I .0600 and G.S. 143B-147(a)(9). .0600-.0601-.0609.

9  
10 *History Note: Authority G.S. 122C-112.1(a)(29); 143B-147;*  
11 *Eff. July 1, 2008;*  
12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,*  
13 *2019. 2019;*  
14 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0601 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0601 SCOPE**

4 (a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or  
5 county program affecting a non-Medicaid eligible client.

6 (b) A non-Medicaid eligible ~~client~~ client, or the client's legally responsible person, may appeal to the Division Director  
7 the clinical review decision of an **LME-MCO** area authority or county program to deny, reduce, suspend, or terminate  
8 a non-Medicaid state funded service.

9 ~~(c) An appeal shall be filed with the Division only after a client has received a review decision from the area authority~~  
10 ~~or county program.~~

11 ~~(d)(c)~~ Nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal  
12 decisions of third party payers to the Division.

13 ~~(e)(d)~~ Non-Medicaid services shall be provided in accordance with G.S. 122C-2. As set forth in G.S. 143B-147(a)(9),  
14 nothing in these Rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings  
15 of the Division by requesting a contested case hearing pursuant to G.S. 150B.

16 ~~(f)(e)~~ There shall be no reprisal or retaliation to anyone who is a party to an appeal.

17 ~~(g)(f)~~ The **LME-MCO** area authority or county program may authorize interim services until the final written decision  
18 as set forth in Rule .0609 of this Section is reached.

19

20 *History Note: Authority G.S. 143B-147;*

21 *Eff. October 1, 2006;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*

23 *~~2017. 2017.~~*

24 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0602 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0602 DEFINITIONS**

4 As used in the rules in this Section, the following terms shall have the meanings specified:

5 (1) "Director" means the Director of the Division of Mental Health, Developmental Disabilities and  
6 Substance **AbuseUse** Services.

7 (2) "Division" means the Division of Mental Health, Developmental Disabilities and Substance  
8 **AbuseUse** Services.

9 (3) "Legally Responsible Person" means the same as defined in G.S. 122C-3.

10 (4) "Within Available Resources" means the same as defined in G.S. 122C-2.

11

12 *History Note: Authority G.S. 143B-147;*

13 *Eff. October 1, 2006;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
15 *~~2017.~~ 2017:*

16 *Amended Eff. May 1, 2024.*

17

1 10A NCAC 27I .0605 is amended with changes as published in 38:12 NCR 811 as follows.

2  
3 10A NCAC 27I .0605 DIVISION'S INITIAL RESPONSE TO A DMH/DD/SAS NON-MEDICAID  
4 APPEAL

5 (a) The Director shall screen the request for appeal to the Division to determine:

- 6 (1) if the appeal was reviewed by the LME-MCO, area authority or county program according to the  
7 area authority or county program policy and procedures; ~~and~~  
8 (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state  
9 funded ~~service~~; service;  
10 (3) if the appeal falls within the scope of Rule .0601 of this Section; and  
11 (4) if the appeal was filed in accordance with the requirements of Rule .0603 of this Section.

12 (b) The Director shall send an acknowledgement letter to the ~~client~~ client, or the client's legally responsible person,  
13 and the LME-MCO, area authority or county program within 5 business days of receipt of the request for appeal to  
14 the Division.

15 (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept  
16 an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.

17 (d) The Director shall notify the LME-MCO, area authority or county program and the ~~client~~ client, or the client's  
18 legally responsible person, whose appeal is accepted for ~~review~~ review, to ~~forward~~ submit all documentation considered  
19 during the LME-MCO, area authority or county program review to the Division no later than 10 calendar days from  
20 the date of the acknowledgement letter. Documentation shall be submitted to the DMHDD/SUS Hearing Office, 3001  
21 Mail Service Center, Raleigh, NC 27699-3001 or via fax at (984) 777-9264. The acknowledgement letter shall advise  
22 the parties that a ~~panel will be convened to~~ Hearing Officer will conduct a hearing.

23 (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as  
24 ~~disqualified~~ denied with an explanation of the basis for ~~disqualification~~; denial.

25 (f) If the appeal is denied on the basis of Subparagraph (a)(1) of this Rule, the ~~The~~ LME-MCO, area authority or  
26 county program shall review the ~~appeal, if the appeal made to the Division is disqualified on the basis of not having~~  
27 ~~been reviewed according to the area authority or county program's policy and procedures.~~ appeal in accordance with  
28 the requirements of Rule 10A NCAC 27G .7004.

29 (g) The ~~client~~ client, or the client's legally responsible person, shall have 11 calendar days from the date of the LME-  
30 MCO, area authority or county program clinical review decision to resubmit the appeal to the Division.

31  
32 *History Note: Authority G.S. 143B-147;*

33 *Eff. October 1, 2006;*

34 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
35 *2017. 2017;*

36 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0606 is amended with changes as published in 38:12 NCR 811 as follows.**

2  
3 **10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL**

4 (a) The Director shall ~~convene a five member panel to conduct a hearing for an~~ ensure the Hearing Officer conducts  
5 an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.

6 ~~(b) The panel members shall consist of the following:~~

7 (1) ~~a provider agency representative who meets the following requirements:~~

8 (A) ~~the representative shall be from a provider agency that is not be a party to the appeal; and~~

9 (B) ~~the representative shall have clinical expertise in the disability area pertinent to the appeal;~~

10 (2) ~~an employee of an area authority or county program who meets the following requirements:~~

11 (A) ~~the employee shall be from an area authority or county program that is not a party to the~~  
12 ~~appeal; and~~

13 (B) ~~the employee shall have clinical expertise in the disability area pertinent to the appeal;~~

14 (3) ~~two individuals who are members of a consumer and family advisory committee who is not a party~~  
15 ~~to the appeal; and~~

16 (4) ~~an employee of the Division.~~

17 ~~(e)(b) The Hearing Officer shall be an employee of the Division. Division shall serve as the chairperson of the panel~~  
18 ~~and shall be a voting member in the case of a tie.~~

19 ~~(d)(c) The Director shall forward the record on appeal and all supplemental documentation to the Hearing Officer~~  
20 ~~chairperson of the panel~~ within five calendar days of receipt thereof.

21 ~~(e)(d) The Director shall provide a copy of applicable law and rules to the Hearing Officer. chairperson of the panel.~~

22 ~~(f)(e) The Hearing Officer chairperson shall schedule a panel~~ hearing including designation of a time and place.

23 ~~(g)(f) The Hearing Officer chairperson shall notify the client, or the client's legally responsible person, other panel~~  
24 ~~members~~ and the area authority or county program of the time and place no less than 15 calendar days prior to the  
25 date of the hearing.

26 (g) The hearing may be conducted in person or virtually taking into account reasonable accommodations, including  
27 but not limited to, the following:

28 (1) compliance with HIPAA requirements;

29 (2) accommodation needs of the client; and

30 (3) State mandated travel restrictions.

31  
32 *History Note: Authority G.S. 143B-147;*

33 *Eff. October 1, 2006;*

34 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
35 *2017. 2017;*

36 *Amended Eff. May 1, 2024.*



1 **10A NCAC 27I .0607 is amended with changes as published in 38:12 NCR 811 as follows.**

2  
3 **10A NCAC 27I .0607 ~~PANEL~~ HEARING PROCEDURES**

4 (a) ~~The chairperson of the panel:~~ Hearing Officer:

- 5 (1) shall convene the hearing at the prearranged time and place;
- 6 (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;
- 7 and
- 8 (3) shall conduct proceedings in an orderly manner.

9 (b) ~~The panel:~~ Hearing Officer:

- 10 (1) may limit the total number of persons presenting for the client and area authority or county program;
- 11 and
- 12 (2) may impose time limits for presentations.

13 (c) Either party may be represented by a person or attorney of their choice.

14 (d) Prior to the hearing, the client, client, or the client's legally responsible person, and the area authority or county

15 program shall:

- 16 (1) specify by name and position all individuals who will be present for the hearing;
- 17 (2) provide the ~~panel~~ Hearing Officer with requested information; and
- 18 (3) when applicable, ensure that representatives of the parties shall be present at the hearing.

19 (e) ~~Any member of the panel~~ The Hearing Officer may address questions to either party.

20 (f) ~~The panel~~ Hearing Officer may obtain any form of technical assistance or consultation relevant to the appeal.

21 (g) No transcript shall be made and no party shall be allowed to record the proceeding. ~~The panel~~ Hearing Officer

22 may choose to record the proceeding for ~~its~~ his or her own use. A tape so made shall be destroyed after the ~~panel~~

23 Hearing Officer issues ~~its~~ the Hearing decision.

24 (h) Witnesses shall not be sworn before testifying.

25

26 *History Note: Authority G.S. 143B-147;*

27 *Eff. October 1, 2006;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*

29 *2017. 2017;*

30 *Amended Eff. May 1, 2024.*

1 **10A NCAC 27I .0608 is amended with changes as published in 38:12 NCR 811 as follows.**

2

3 **10A NCAC 27I .0608 ~~PANEL HEARING OFFICER DECISION FINDINGS AND DECISION~~**

4 (a) The ~~panel~~ Hearing Officer's findings and decisions are based on the record and any new evidence that would be  
5 material to the issues on appeal.

6 (b) The standard of review for the ~~panel~~ Hearing Officer is whether the decision of the LME-MCO, area authority or  
7 county program is supported by the evidence presented.

8 ~~(c) The panel shall vote on each specific item being appealed. The Hearing Officer shall consider all issues under~~  
9 appeal.

10 ~~(d) Findings and decisions of the panel shall be by majority vote.~~

11 ~~(e)(d)~~ Any decision may be rescheduled for a subsequent meeting if the ~~panel~~ Hearing Officer determines that ~~it~~ he  
12 or she lacks sufficient information to render a decision at the initial hearing.

13 ~~(f)(c)~~ ~~All panel~~ The Hearing Officer's findings and decisions shall be reached and sent in writing to the client  
14 or the client's legally responsible person, and to the LME-MCO, area authority or county program Director within 60  
15 calendar days of the written request for ~~appeal to the client, the area authority or county program and the Director.~~ an  
16 appeal.

17

18 *History Note: Authority G.S. 143B-147;*

19 *Eff. October 1, 2006;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*  
21 *2017. 2017;*

22 *Amended Eff. May 1, 2024.*

## **Burgos, Alexander N**

---

**From:** Wiggs, Travis C  
**Sent:** Tuesday, April 2, 2024 3:55 PM  
**To:** Baker, Denise  
**Cc:** Burgos, Alexander N  
**Subject:** 28F, 27G, 27I Rules-Request for Changes  
**Attachments:** 4\_2024\_Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for the April 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Tuesday, April 30, 2024, at 10:00 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 close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on April 16, 2024.

Thank you.

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

## Burgos, Alexander N

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**Subject:** FW: Proposed Rules Submitted to OAH

---

**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Sent:** Monday, March 25, 2024 2:17 PM  
**To:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Proposed Rules Submitted to OAH

Good afternoon,

I've worked in this role two months. I'm asking questions because these are the first set of permanent rules I've reviewed where a public hearing was not conducted.

The Submission of Permanent forms did not contain all the necessary information for me to determine if your agency has complied with G.S. 150B-21.2.

I will email you once I've completed my review of the rules submitted by your agency.

Thanks,

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

## Burgos, Alexander N

---

**Subject:** FW: Proposed Rules Submitted to OAH

---

**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Monday, March 25, 2024 11:51 AM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Proposed Rules Submitted to OAH

Good morning –

Do you mind me asking what is prompting these questions? Is there something that I should know?

Our Notice of Text contained instructions regarding the procedures to request a public hearing; we did not receive one. Please know we would have convened a public hearing had we received a request for the same.

Yes – we accepted comments during the public comments period.

Take care,

**W. Denise Baker, M.A., L.P.A., J.D.**  
Team Leader, Legislative and Regulatory Affairs  
Division of MH/DD/SAS  
[NC Department of Health and Human Services](#)

Office: 984-236-5272  
Mobile: 919-437-6517  
Fax: 919-508-0973  
[denise.baker@dhhs.nc.gov](mailto:denise.baker@dhhs.nc.gov)

Anderson Building  
695 Palmer Dr  
3004 Mail Service Center  
Raleigh NC 27699-3004

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

## **Burgos, Alexander N**

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**Subject:** FW: Proposed Rules Submitted to OAH

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**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Sent:** Monday, March 25, 2024 10:38 AM  
**To:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Proposed Rules Submitted to OAH

Ms. Baker,

Thank you for the additional information. Did your agency receive a written request for a public hearing for any of the proposed rules within 15 days after notice of the text was published on December 15, 2023? Did your agency accept comments on all the proposed rules for at least 60 days after the notice of text was published on December 15, 2023?

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

## Burgos, Alexander N

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**Subject:** FW: Proposed Rules Submitted to OAH  
**Attachments:** Form\_0400\_10A NCAC 28F .0101.docx.pdf

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**From:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Sent:** Friday, March 22, 2024 3:28 PM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Proposed Rules Submitted to OAH

I've updated Form 400 for Rule 10A NCAC 28F .0101 to reflect the basis for its amendment. As submitted, the form contained the language for the Non-Medicaid Appeal rules.

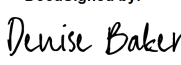
**W. Denise Baker, M.A., L.P.A., J.D.**  
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## SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 10A NCAC 28F .0101, <i>Regions for Institutional Amendment</i>	
<b>3. Action:</b> <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: December 4, 2023 Link to Agency notice: <a href="https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-use-services/north-carolina-commission-mental-health-developmental-disabilities-and-substance-use-services/proposed-rules">https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-use-services/north-carolina-commission-mental-health-developmental-disabilities-and-substance-use-services/proposed-rules</a> Hearing on: Adoption by Agency on: <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on: February 22, 2024	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact ( $\geq$ \$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2023-3 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b> Per S.L. 2023-3, RJ Blackley Alcohol and Drug Abuse Treatment Center was to cease State-operation effective March 1, 2023. This rule has been amended to reflect realignment of counties previously served by the RJ Blackley Center.	
<b>10. Rulemaking Coordinator:</b> Denise Baker  <b>Phone:</b> 984-236-5272 <b>E-Mail:</b> <a href="mailto:denise.baker@dhhs.nc.gov">denise.baker@dhhs.nc.gov</a>  <b>Additional agency contact, if any:</b> <b>Phone:</b> <b>E-Mail:</b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <small>DocuSigned by:</small>    <small>8E9D889105824F1...</small> </div> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> <b>Title:</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	



## Burgos, Alexander N

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**From:** Baker, Denise  
**Sent:** Friday, March 22, 2024 12:43 PM  
**To:** Wiggs, Travis C  
**Cc:** Burgos, Alexander N  
**Subject:** RE: Proposed Rules Submitted to OAH

Hi Mr. Wiggs

G.S. 150B-21.2(c) speaks to the Notice of Text and relates to the rule's publication in the *NC Register*.

The Submission for Permanent Rule form, used to submit the rule(s) for review by the RRC does not require that information; for example, there's no place on the form to enter the comment period. I've always left the section of the form titled *Hearing on* blank where no hearing was conducted prior to the final adoption of the rule.

As relates to Rule 10A NCAC 27G .7004, the rule was originally adopted by the Division; in amending it, both the Division and Commission adopted the rule but were unable to meet on the same date. Hence, both dates are provided.

Please let me know if you have questions or need additional information.

Thank you,  
Denise

**W. Denise Baker, M.A., L.P.A., J.D.**  
Team Leader, Legislative and Regulatory Affairs  
Division of MH/DD/SAS  
[NC Department of Health and Human Services](#)

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[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

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**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Sent:** Friday, March 22, 2024 12:07 PM  
**To:** Baker, Denise <Denise.Baker@dhhs.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** Proposed Rules Submitted to OAH

Ms. Baker,

I'm the attorney who is reviewing the rules submitted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for the April 2024 RRC meeting. I need some further information regarding these proposed rules. The cover form for each rule (Submission for Permanent Rule-0400) does not appear to contain all the information required in G.S. 150B-21.2(c).

Please provide the following information for each rule submitted:

1. The date, time, and place of any public hearing conducted.
2. Instructions to demand a public hearing.
3. The dates of the comment period.

Also, in 10A NCAC 27G.7004, the cover form lists two different dates for when the rule was adopted by your agency. Which date is correct?

Thank you.

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

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