

Burgos, Alexander N

From: Baker, Denise
Sent: Thursday, December 5, 2024 2:01 PM
To: Ascher, Seth M
Cc: Burgos, Alexander N
Subject: RE: Existing Rule Review 10A NCAC 27G

Thanks so much Seth. I really appreciate your feedback and favorable consideration of our request.

W. Denise Baker, M.A., L.P.A., J.D.
Team Leader, Legislative and Regulatory Affairs
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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, December 5, 2024 1:08 PM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Existing Rule Review 10A NCAC 27G

Denise,

The additional information was all appreciated. The questions were more about managing our anticipated workload as your rules come in. Based on the information your provided, I will recommend a January 1st, 2029 readoption deadline for this chapter. Note we are making deadlines on the first of the month for administrative purposes.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

From: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Sent: Monday, December 2, 2024 9:12 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Existing Rule Review 10A NCAC 27G

Hi Seth -

I so enjoyed the holiday break and hope you did as well.

Thanks for your feedback and willingness to collaborate in developing a schedule to accomplish the readoption process.

I'm not requesting or attempting to establish two dates by which the readoption of the rules in Subchapter 27G must be accomplished. Rather, I was attempting, perhaps a little overzealously, to provide the information required by Rule 26 NCAC 05 .0212 as referenced in your email. I'm not sure yet how many of our rules can be readopted without changes thereby permitting them to be readopted sooner than later.

It's my understanding that the rules have to be readopted by the date established by the RRC. As you mentioned, there are over 200 rules in Subchapter 27G. While the rules do not have to be readopted simultaneously, we're trying to establish a timeline mindful of the nature of the rules themselves, rule making priorities, and the impact of other agencies involved in the rule making process. For instance, while there are instances in which we can readopt the rules as they now exist, there are other instances when changes impacting the costs of their implementation will have to be determined and assessed in collaboration with OSBM. For that reason, coupled with those mentioned below, I'm not sure it will be feasible to readopt all the rules simultaneously. The December 31, 2028 readoption date will better ensure completion of this process.

I understand the readoption of the rules in the determination reports I mentioned is not implicated at this time and reference to the same is somewhat premature. Please understand, like you, I'm looking at my Commission's entire obligation (i.e., volume of rules, determinations, filing deadlines, readoption) and calendar per the periodic review mindful of the impact of each decision upon their overall workload. I'll raise concerns specific to those at the time required.

I hope this better clarifies the request and answers the questions that you raised. Please let me know if you have additional questions/concerns.

I look forward to hearing from you.

Take care,
Denise

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

Team Leader, Legislative and Regulatory Affairs

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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Sunday, December 1, 2024 7:07 PM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Existing Rule Review 10A NCAC 27G

Denise,

I hope you a good holiday break.

First, I think the timeline you propose is reasonable based on the number of rules and issues you addressed. I expect we will be able to come up with a mutually acceptable deadline I can recommend to the RRC for this batch.

One complication, am I understanding correctly that you are proposing to adopt and submit the rules in two batches (Dec 2026 and Dec 2028)? This complicates things slightly on our end, as we are trying to use the readoption deadlines to manage our schedule. Given the large number of rules in this batch (232 by my count) , we are going to try and keep other large rulesets on different deadlines. Two questions to help us accomplish that:

1. Do you have any estimate for the percentage of rules the Commission would anticipate readopting in 2026 v. 2028?
2. Alternatively, would the Commission be open to publishing and adopting the entire set in 2028?

Regarding the other reports coming down the pipeline, when we get to setting readoption deadlines for those rules, feel free to build into your timeline that the same staff/commissions will be working on the rules for this deadline. That is the kind of factor the RRC would want to take into account for your future deadlines, as it is perfectly reasonable that if your people are busy on this ruleset, they will not yet be able to start on the next one.

Happy to discuss all this further if you have any questions or suggestions about how to handle your rulesets efficiently.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

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

Sent: Wednesday, November 27, 2024 4:08 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Existing Rule Review 10A NCAC 27G

Hi Seth –

I hope that each of you is doing well and enjoying the gift of this day. Please see my response below.

Readoption Date: For the reasons below, I respectfully request that the readoption date for the rules in Subchapter 27G be set as December 31, 2028.

1. Subchapter 27G is the largest of the nine subchapters in Chapter 27. Collectively, the rules in Chapter 27 govern mental health, developmental disabilities, and substance use community facilities and services while the rules in Subchapter 27G, specifically, govern mental health, developmental disabilities, and substance use services, the Local Management Entities/Managed Care Organizations (LME-MCOs) which currently oversee delivery of these programs and services, as well as the facilities and agencies providing the same, and the licensure process implemented by the Division of Health Service Regulation (DHSR) in accordance with G.S. § 122C.
2. Subchapter 27G includes not only general rules (i.e., core rules) governing all mental health, developmental disabilities, and substance use services but also program specific rules applicable to specific programs and services (e.g., Substance Use Intensive Outpatient Program) as well as programs and facilities governing more than one disability type. Consequently, the readoption of the rules in Subchapter 27G is somewhat complex not only in terms of subject matter, but also in terms of the multiple agencies whose work is impacted by their implementation, including not only the Divisions of Mental Health, Developmental Disabilities, and Substance Use Services (DMH/DD/SUS), DHSR, Child and Family Well-being (DCFWB), Health Benefits (DHB), but also LME-MCOs, and private provider agencies.
3. DMH/DD/SUS and DHB are collectively engaged in the implementation of the Centers for Medicare and Medicaid Services 1115 Substance Use Disorders Demonstration Waiver which will require additional consultation to ensure compliance with the same. This, too, is expected to require changes that may require further amendment of readopted rules.
4. The community mental health, developmental disabilities, and substance abuse service delivery system is in a period of transition as we prepare to move to a Tailored Plan approach for the delivery of State-funded services.
5. Ultimately, readoption of rules during a time of transition is likely to result in the need for further amendments to readopted rules. We would prefer time to consider changes to Subchapter 27 in line with changes the transition will likely require of the remaining rules in Chapter 27.
6. Finally, during its meeting November 21, 2024, the Commission approved a total of three Initial Determination Reports governing the rules in Subchapters 26A, 26B, and 26D as well as eleven Final Determination Reports for the rules scheduled for review by the RRC in February and March 2025 suggesting that we'll be looking to identify a readoption date for all of those rules before the end of June. Keep in mind, generally speaking, the Commission meets on a quarterly basis.

Rulemaking Priorities

1. The community mental health, developmental disabilities, and substance abuse service delivery system is in a period of transition as we implement a Tailored Plan approach for the delivery of State-funded services. This will, by necessity, require revisions to the existing rules governing the system's operation. While we are permitted to readopt the rules without substantive changes, our goal is to incorporate any essential changes in a single rulemaking initiative and avoid have to again amend readopted rules within a short period of time.
2. Implementation of the Centers for Medicare and Medicaid Services 1115 Substance Use Disorders Demonstration Waiver which will require additional consultation to ensure compliance with the same. This, too, is expected to require changes that may require further amendment of readopted rules.

Readoption plan –

1. January – December 2025:

- a. Engage staff of the following Divisions in the readoption process as these rules directly impact and/or govern their respective areas of work: DMH/DD/SUS; DCFWB; DHSR; and DHB.
 - b. Identify which rules, if any, could be readopted without substantive changes.
 - c. Identify which rules will require substantive changes in content, scope, and implementation.
2. January – December 2026
 - a. Begin readoption of rules which can be implemented without substantive changes.
 - b. Consult with the Office of State Budget Management regarding development and its approval of fiscal notes where applicable.
 - c. Follow rulemaking procedures
 - i. Initial approval
 - ii. Approval of fiscal note (where applicable)
 - iii. Publication
 - iv. Notice to public and interested persons
 - v. Public comment period (public hearing if necessary)
 - vi. Final adoption
 - vii. Submission to RRC
3. January 2027 – December 2028
 - a. Engage staff in development of language / content for rules requiring substantive changes
 - b. Begin readoption of rules requiring substantive changes (by subject matter)
 - c. Consult with OSBM regarding development and its approval of fiscal notes
 - d. Follow rulemaking procedures
 - i. Initial approval
 - ii. Approval of fiscal note (where applicable)
 - iii. Publication
 - iv. Notice to interested persons
 - v. Public comment period (public hearing if necessary)
 - vi. Final adoption
 - vii. Submission to RRC

Thank you for your consideration of this request. Please let me know if you have questions or if additional information is required.

Denise

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

Team Leader, Legislative and Regulatory Affairs

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From: Baker, Denise
Sent: Friday, October 4, 2024 8:47 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Existing Rule Review 10A NCAC 27G

Thank you.

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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, October 3, 2024 1:42 PM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Existing Rule Review 10A NCAC 27G

Good afternoon,

The attached periodic review reports have been finalized. The next step is to set a deadline for the readoption of these rules. Pursuant to G.S. 150B-21.3A and 26 NCAC 05 .0212, the RRC sets this deadline after consultation with the agency, and this email serves as the RRC's request for that consultation. Please review 26 NCAC 05 .0212 for the information required to be submitted to the RRC, and the deadlines for doing so.

It appears that the deadline for your agency to provide this information is December 2, 2024. As a starting point, I would recommend a February 1, 2027 readoption deadline, but I am open to considering a different recommendation based on the needs of your agency.

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

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From: McGhee, Dana <dana.McGhee@oah.nc.gov>
Sent: Tuesday, October 1, 2024 9:52 AM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: Existing Rule Review 10A NCAC 27G

Good morning, Denise,

The determinations in the attached periodic review reports for 10A NCAC 27G are effective today. Commission Counsel Seth Ascher will reach out to you to discuss setting the readoption date for the rules in the reports.

Let me know if you have any questions.

Dana McGhee

Publications Coordinator

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