



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 19, 2017

Carlotta Dixon
Social Services Commission
Sent via email to Carlotta.Dixon@dhhs.nc.gov

Re: Extension of the Period of Review for Rules:
10A NCAC 70A .0103;
10A NCAC 70B .0102;
10A NCAC 70M .0402 and .0603; and
10A NCAC 70P .0101, .0102, .0103, .0104, and .0105.


Dear Ms. Dixon:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in order to allow the Social Services Commission to complete requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

Should you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

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January 20, 2017

Via Email Only: loretta.peace-bunch@ncdoi.gov
Loretta Peace-Bunch, Rulemaking Coordinator
Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

Re: Objection to Rules – 11 NCAC .0105, .0201, .0301, .0501, .0505, .0508, .0511, .0603, .0703, .0704

Dear Ms. Peace-Bunch:

At its meeting on January 19, 2017, the Rules Review Commission objected to the above-captioned Rules in accordance with G.S. 150B-21.10(2).

The Commission objected to 11 NCAC 05A .0105, .0501, and .0505 based upon lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1). The Commission found that the content of the rules pertains to actions within the statutory authority of the State Fire and Rescue Commission.

Please note that during the meeting, Chairman Dunklin expressed concerns about 11 NCAC 05A .0105 and the following legislative directive set forth in G.S. 58-78-10(b):

[State Fire and Rescue] Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for programs and grants-in-aid for fire protection, firefighting, and rescue purpose...

Additionally, Commissioner Bryan questioned the necessity of 11 NCAC 05A .0105 if the content of the Rule was addressing internal management of an agency.

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11 NCAC 05A .0501 was further objected to by the Commission, as it is unclear whether the rate making authority vested in the Commissioner of Insurance by G.S. 58-40-25(4) was being implemented in Rule 05A .0501 by the State Fire Marshall. The Commission further objected to this Rule based upon lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1), as it appears as though the State Fire Marshal is determining eligibility for death benefits provided by Article 12A of Chapter 143 of the General Statutes. The statutory authority for implementation of Article 12A of Chapter 143 of the General Statutes is exclusively within the jurisdiction of the Industrial Commission.

11 NCAC 05A .0505 was further objected to by the Commission, as it is unclear if the State Fire Marshal has changed the statutory requirements set forth in G.S. 58-86-25 by using different terms and requirements than those set forth in the statute, creating unclear and ambiguous content in this Rule in violation of G.S. 150B-21.9(a)(2).

The Commission objected to 11 NCAC 05A .0201, and .0301 based upon a lack of necessity. 11 NCAC 05A .0201 recites G.S. 58-80-1. 11 NCAC 05A .0301 recites G.S. 58-84-40. G.S. 150B-19(4) prohibits an agency from adopting a rule that "repeats the content of a law." Therefore, these Rules fail to comply with G.S. 150B-21.9(a)(3). 11 NCAC 05A .0301 was further objected to by the Commission, as it is unclear if the State Fire Marshal has changed the statutory requirements set forth in G.S. 58-84-40, creating unclear and ambiguous content in this Rule in violation of G.S. 150B-21.9(a)(2).

The Commission objected to 11 NCAC 05A .0508 based upon a lack of clarity, as it is unclear whether the rate making authority vested in the Commissioner of Insurance by G.S. 58-36-10(3) is being implemented in this Rule by the State Fire Marshall. In the alternative, if the State Fire Marshal is implementing the rate making authority set forth in G.S. 58-36-10(3), the Commission objected to this Rule for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

The Commission objected to 11 NCAC 05A .0511 based upon a lack of clarity, as it is unclear whether the rate making authority vested in the Commissioner of Insurance by G.S. 58-40-25(2) is being implemented in this Rule by the State Fire Marshall. In the alternative, if the State Fire Marshal is implementing the rate making authority set forth in G.S. 58-40-25(2), the Commission objected to this Rule for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

The Commission objected to 11 NCAC 05A .0603 based upon a lack of clarity, as it is unclear whether the rate making authority vested in the Commissioner of Insurance by G.S. 58-36-10(3) is being implemented in this Rule by the State Fire Marshall. In the alternative, if the State Fire Marshal is implementing the rate making authority set forth in G.S. 58-36-10(3), the Commission objected to this Rule for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1). The Commission further objected to this Rule for imposing a penalty set forth in Paragraph (d) of the Rule that is not authorized by the cited statutory authority, and therefore lacks statutory authority and fails to comply with G.S. 150B-21.9(a)(1). The Commission further objected to this Rule

based upon a lack of clarity, as the Rule references an application not identified by name and not providing any information on how to obtain the application, creating unclear and ambiguous content in this Rule in violation of G.S. 150B-21.9(a)(2). The Commission further objected to this Rule for referencing an application that is outside the rulemaking process and is not implementing a process prescribed by a rule or statute, and therefore fails to comply with G.S. 150B-21.9(a)(4).

The Commission objected to 11 NCAC 05A .0703 based upon a lack of clarity, as the Rule references an application not identified by name and not providing any information on how to obtain the application, creating unclear and ambiguous content in this Rule in violation of G.S. 150B-21.9(a)(2). The Commission further objected to this Rule for referencing an application that is outside the rulemaking process and is not implementing a process prescribed by a rule or statute, and therefore fails to comply with G.S. 150B-21.9(a)(4). The Commission further objected to this Rule for imposing a penalty set forth in Paragraph (d) of the Rule that is not authorized by the cited statutory authority, and therefore lacks statutory authority and fails to comply with G.S. 150B-21.9(a)(1).

The Commission objected to 11 NCAC 05A .0704 based upon a lack of necessity and for that the language in the Rule is unclear and ambiguous. This Rule duplicates, by the use of a contradictory statement, one of the requirements set forth in Rule 11 NCAC 05A .0703. G.S. 58-87-5(a)(2) states when an applicant must match funds and 11 NCAC 05A .0703(f)(3) indicates what an applicant that must match funds shall file with the State Fire Marshal. This Rule is unclear and ambiguous in light of the requirements set forth in 11 NCAC 05A .0703(f)(3), and restates requirements set forth in 11 NCAC 05A .0703(f)(3), creating unclear and ambiguous content in this Rule in violation of G.S. 150B-21.9(a)(2). G.S. 150B-19(4) prohibits an agency from adopting a rule that "repeats the content of a...rule." Therefore, this Rule fails to comply with G.S. 150B-21.9(a)(3).

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,



Abigail M. Hammond
Commission Counsel



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January 19, 2017

Via Email Only: Margaret.B.Duke@nc.gov
Margaret B. Duke, Rulemaking Coordinator
State Human Resources Commission
1331 Mail Service Center
Raleigh, NC 27608

Re: 25 NCAC 01C .0402 and .1004; 01D .0101, .0102, .0105, .0112, .0114, .0201, .0301, .0401, .0608, .0901, .1001, .2701, .2702; and 01O .0108

Dear Ms. Duke:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days after the date of the extension - in this case, within 70 days after January 19, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Jason Thomas
Commission Counsel

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