

**CHAPTER 01 – OFFICE OF THE SECRETARY**

**SUBCHAPTER 01A - PROCEDURE**

**SECTION .0100 - RULE MAKING PROCEDURES**

**10A NCAC 01A .0101 PETITIONS**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the Secretary of the Department of Human Resources (hereinafter referred to as the Secretary) shall make his request in a petition addressed to:

Staff Attorney for Administrative Procedures  
Department of Human Resources  
101 Blair Drive  
Raleigh, North Carolina 27603

(b) The petition shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;
- (2) the statutory authority for the agency to promulgate the rule;
- (3) the reasons for the proposal;
- (4) the effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) the names and addresses, if known, of those most likely to be affected by the proposed rule; and
- (8) the name and address of the petitioner.

(c) The Secretary or his designee shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Secretary or his designee shall consider all the contents of the submitted petition, plus any additional information he deems relevant.

(d) Within 30 days of submission of the petition, the Secretary or his designee shall render a decision. To deny the petition, the Secretary or his designee shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Secretary or his designee shall initiate a rule making proceeding by issuing a rule making notice, as provided in these rules.

*History Note: Authority G.S. 143B-10(j)(2); 150B-16;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; April 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

**10A NCAC 01A .0102 NOTICE**

(a) Upon a determination to hold a rule making proceeding, either in response to a petition or otherwise, the Secretary or his designee shall give notice to all interested parties in accordance with G.S. 150A-12.

(b) Any person desiring information in addition to that provided in a particular rule making notice may contact:

Staff Attorney for Administrative Procedures  
Department of Human Resources  
101 Blair Drive  
Raleigh, North Carolina 27603

*History Note: Authority G.S. 143B-10; 150B-11; 150B-12;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; January 1, 1986; April 1, 1985; July 1, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

**10A NCAC 01A .0103 HEARING OFFICER**

The Secretary, or one or more hearing officers designated and authorized by the Secretary, shall be hearing officers in a rule making hearing.

*History Note:* Authority G.S. 143B-10(j)(3);  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

#### **10A NCAC 01A .0104 HEARINGS**

- (a) Any person desiring to make an oral presentation at a public hearing is encouraged to submit a written copy of the presentation to the hearing office prior to or at the public hearing.
- (b) Presentations may not exceed 10 minutes unless, upon request made either before or at the hearing, the hearing officer grants an extension of time for good cause.
- (c) Any person may file a written submission containing data, comments, or arguments after publication of a rule making notice up to and including the day of the hearing. A submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it. Written submissions must be sent to:

Staff Attorney for Administrative Procedures  
Department of Human Resources  
325 North Salisbury Street  
Raleigh, North Carolina 27611

- (d) The hearing officer shall have complete control over the rulemaking hearing, including:
- (1) the responsibility of having a record made of the hearing;
  - (2) extension of any time allotments,
  - (3) recognition of speakers,
  - (4) prevention of repetitious presentations, and
  - (5) general management of the hearing.

The hearing officer shall assure that each person attending the hearing is given a fair opportunity to present views, data, and comments.

*History Note:* Authority G.S. 143B-10; 150B-11; 150B-12;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1986; April 1, 1985; July 1, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

#### **10A NCAC 01A .0105 STATEMENT OF REASONS FOR AND AGAINST RULE MAKING DECISION**

- (a) Any interested person who desires from the Secretary a concise written statement of the principal reasons for and against the decision by the Secretary to adopt or reject a rule may, either prior to the decision or within 30 days thereafter, submit a request to:

Staff Attorney for Administrative Procedures  
Department of Human Resources  
101 Blair Drive  
Raleigh, North Carolina 27603

- (b) An "interested person" shall be any person, as defined in G.S. 150A-2(7), whose rights, duties, or privileges might be affected by the adoption of the rule.
- (c) The request must be made in writing, must contain a statement that the requesting person is an interested person, and must identify the rule or proposed rule involved.
- (d) The Secretary shall issue the statement of reasons for and against his decision within 45 days after receipt of the request.

*History Note:* Authority G.S. 143B-10(j)(2); 150B-11; 150B-12;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; April 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

### **10A NCAC 01A .0106 RECORD OF RULE MAKING PROCEEDINGS**

A record of all rulemaking proceedings conducted by the Secretary's Office, including responses to petitions for rulemaking, shall be maintained in the Office of Legal Affairs and shall be available for public inspection during regular office hours. This record shall include:

- (1) the original petition, if any,
- (2) the notice,
- (3) written presentation or submission,
- (4) any written minutes or audio tape of the oral hearing, and
- (5) a final draft of the adopted rule.

*History Note:* Authority G.S. 143B-10; 150B-11;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; January 1, 1986;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

### **10A NCAC 01A .0107 FEES**

A fee may be charged by the Office of Legal Affairs to persons requesting materials from hearing records. The fee will cover the cost of meeting the request.

*History Note:* Authority G.S. 12-3.1; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; January 1, 1986; July 1, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

### **10A NCAC 01A .0108 DECLARATORY RULINGS**

(a) The Secretary or his designee shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to:

Staff Attorney for Administrative Procedures  
Department of Human Resources  
101 Blair Drive  
Raleigh, North Carolina 27603

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the statute or rule to which the petition relates,
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him, and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Secretary or his designee believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. When good cause is deemed to exist, the Secretary or his designee shall notify in writing the petitioner and the Staff Attorney for administrative procedures of his decision, stating reasons for the denial of a declaratory ruling. The Secretary or his designee may refuse to consider the validity of a rule:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted,
- (2) unless the rule making record evidences a failure by the agency to consider specified relevant factors,
- (3) if a factual situation similar to that being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record, or
- (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(d) Where a declaratory ruling is deemed appropriate, the Secretary or his designee shall issue the ruling within 60 days of the receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the Secretary or his designee in the particular case.

(f) The Secretary or his designee may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(g) A record of all declaratory ruling proceedings shall be maintained by the Staff Attorney for administrative procedures and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request,
- (2) the reasons for refusing to issue a ruling when the request is denied,
- (3) all written memoranda and information submitted,
- (4) any written minutes or audio tape or other record of the oral hearing, and
- (5) a statement of the ruling when the request is granted.

*History Note:* Authority G.S. 143B-10(j)(2); 150B-11; 150B-17;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; April 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

## **SECTION .0200 - CONTESTED CASES**

**10A NCAC 01A .0201**    **DEFINITIONS**  
**10A NCAC 01A .0202**    **REQUEST FOR DETERMINATION**  
**10A NCAC 01A .0203**    **RECORD**

*History Note:* Authority G.S. 143B-10; 143B-10(j)(3); 150B-11; 1150B-22; 150B 23; 150B-23(e); 150B-29(6);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989; April 1, 1988; July 1, 1987; June 1, 1987; January 1, 1986;  
April 1, 1985;  
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

**10A NCAC 01A .0204**    **EXCEPTIONS TO RECOMMENDED DECISION**

*History Note:* Authority G.S. 143B-10; 150B-11; 150B-36; 150B-37;  
ARRC Objection February 18, 1988;  
Eff. July 1, 1988;  
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

## **SECTION .0300 – PUBLIC RECORDS**

**10A NCAC 01A .0301**    **PUBLIC RECORD FEES**

*History Note:* Authority G.S. 12-3.1; 143B-10; 150B-11;  
Eff. May 1, 1993;  
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

**10A NCAC 01A .0302**    **USE OF NAMES AND PHOTOGRAPHS**

*History Note:* Authority G.S. 122C-52; 122C-53; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1989;  
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

## **SECTION .0400 - DATA SYSTEMS STANDARDS**

**10A NCAC 01A .0401**    **AUTOMATED DATA SYSTEMS**

*History Note: Authority G.S. 143B-10(e) and (j); 143B-139.1;  
Eff. July 1, 1980;  
Amended Eff. November 1, 1989;  
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.*

## **SECTION .0500 – FISCAL STANDARDS**

### **10A NCAC 01A .0501 BUDGET STANDARDS**

- (a) A local human service agency may require a contractor or subcontractor except for individual personal service agreement to prepare and maintain a budget in a manner consistent with the policies, regulations, and procedures of the local human service agency, local authority or governing board.
- (b) All proposed budgets of local human service agencies, upon review and approval by the appropriate local governing authority, shall be submitted in accordance with prescribed format and time schedule to the grantor division of the department for review and approval.
- (c) Each local human service agency shall receive written notification from the grantor division of the department relative to the approval of the budget for the fiscal period, which shall be incorporated in the grant agreement specified in Section .0600 of this Subchapter.
- (d) Except as otherwise provided by law, amendments to the approved budget ordinance during the fiscal period shall be approved by the appropriate local governing authority, and recorded in appropriate minutes. Budgetary changes in excess of dollar amounts specified in the grant agreement or division rules and regulations shall also be submitted to and approved by the grantor division of the department prior to actual implementation of the budgetary re-alignment.
- (e) Amendments to a contract (including a personal services contract) to which this Subchapter applies during the fiscal year shall be approved in advance by the local human service agency, and shall be attached to the contract and incorporated therein. Failure to receive prior approval by the local human service agency shall be a basis on which the grantor division may refuse to provide state or federal reimbursement for the line-item over-expenditure. If the grantor division refuses such payment, the local human service agency shall be entitled to a hearing under Rule .0901(d) of this Subchapter.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1980;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

## **SECTION .0600 - CONTRACTING STANDARDS**

### **10A NCAC 01A .0601 CONTRACTS AND GRANTS**

- (a) In consideration of receiving either state or federal funds, the receiving party other than a local human service agency shall sign a contract with the department or division which shall contain the obligations of the parties to the agreement.
- (b) Prior to distributing any federal or state funds, each division shall either:
  - (1) sign a grant or contract with the local human service agency making compliance with these and other divisional policies a condition of receipt of the funds, or
  - (2) promulgate rules regarding the expenditure of any federal or state funds.
- (c) All criteria for the funding of grants and contracts shall be adopted by the department or division and filed in the North Carolina Administrative Code.

*History Note: Authority G.S. 143B-10(e) and (j)(1); 143B-139.1; 45 C.F.R. Part 74.175, Appendix C, Part I-B-6;  
Eff. July 1, 1980;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

### **10A NCAC 01A .0602 CONTRACTS WITH LOCAL AGENCIES FOR SPECIAL PROJECTS**

Whenever the department or a division contracts with a private agency to provide services on the basis of a negotiated fixed rate, then such contracts shall be governed by separate rules which must be approved by the Secretary prior to their promulgation.

*History Note:* Authority G.S. 143B-10(e) and (j); 143B-139.1; 45 C.F.R. 228.70;  
Eff. July 1, 1980;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

#### **10A NCAC 01A .0603 SUBORDINATION OF OTHER CONTRACTS AND GRANTS**

Contracts, grants, agreements or any other understandings among the divisions or between the department or the divisions and other state agencies shall not diminish or eliminate the requirements contained in this Subchapter.

*History Note:* Authority G.S. 143B-10(e) and (j); 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

#### **10A NCAC 01A .0604 GENERAL PROVISIONS OF A CONTRACT OR GRANT**

(a) The following items shall be the minimum requirements of each contract or grant agreement:

- (1) A specification of target population; services to be provided; objectives; expected results;
- (2) A budget as specified in Rule .0501 of this Subchapter;
- (3) A provision agreeing to maintain all relevant records for a period of five years or until all audit exceptions have been resolved, whichever is longer;
- (4) The following information:
  - (A) names of parties;
  - (B) date;
  - (C) duration of the grant or contract, including the effective and termination dates;
  - (D) amount of the grant or contract and schedule of payment;
  - (E) particular duties of the grantee or contractor;
- (5) Provisions for termination by mutual consent, or for cause by sixty days written notice to the other party, or as otherwise provided by law;
- (6) A provision that the awarding of the contract or grant is subject to allocation and appropriation of funds to the department, division or local agency for the purposes set forth in the contract or grant;
- (7) A provision that requires reversion of unexpended funds to the department or division upon termination of the grant or contract;
- (8) All subcontracts entered into by a local human service agency must have prior approval of its local authority.

(b) If there is a clause allowing subcontracting, a provision shall be added stating that:

- (1) the grantee or contractor is not relieved of any of the duties and responsibilities of the original contract with the department or division;
- (2) the subcontractor agrees to abide by the standards contained in this Subchapter, or to provide such information to allow the grantee or contractor to comply with these standards.

*History Note:* Authority G.S. 143B-10(e) and (j); 143B-139.1; 45 C.F.R. 74.20-74.23; 45 C.F.R. 228.70;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.

### **SECTION .0700 - PLANNING AND PROGRAMMATIC REPORTING STANDARDS**

#### **10A NCAC 01A .0701 ANNUAL PLANS**

(a) Divisions may require that every local human service agency shall develop an annual program plan that is consistent with minimum requirements and program standards set by applicable state commissions, federal

requirements, and departmental instructions. The annual plan shall be an integral part of a continuing, comprehensive and cooperative planning process and may include the following:

- (1) an inventory of all programs and services to be offered by the agency during the next fiscal year;
  - (2) a statement of needs and problems that the agency addresses and the extent of those needs and problems within the agency's geographic jurisdiction;
  - (3) a statement of the agency's objectives for the next fiscal year. These objectives will be presented to reflect their:
    - (A) contribution to reduction of needs and problems, and
    - (B) relationship to programmatic goals established by the state agency;
  - (4) a listing of the activities which will be conducted to accomplish each objective and a description of the planned effects these activities will have on the needs and problems and an identification of past accomplishments by activities in the area;
  - (5) a description of the steps the agency will take to monitor adherence to its plan and to measure progress towards its objectives;
  - (6) a description of the methods the agency will use to evaluate its activities, and the priority areas to be evaluated during the next fiscal year; and
  - (7) a description of the agency's efforts to include its governing board, its clients, and the general public in the planning process and the administration of its programs.
- (b) If an annual plan is required, then it shall be submitted along with the local human service agency's annual budget to the agency's local authority for review and approval. Then the approved annual plan and budget shall be submitted to the grantor division of the department in accordance with prescribed format and time schedule.
- (c) Divisions may require that local agencies develop a system for monitoring program plans that will enable local agencies to report progress in accomplishing planned objectives.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

#### **10A NCAC 01A .0702 CONTRACT PLANS**

Divisions may require that every local human service agency that enters into a contract with a private provider of client services shall:

- (1) include such contract(s) as an activity item in its annual plan, describing the purpose of the contract, the steps the agency will take to monitor adherence to the contract, and the methods the agency will use to evaluate the contract(s); and
- (2) require the contractor, prior to the signing of the contract, to develop a plan of work which includes items (1), (2), (3), (4), (5), and (6) of Rule .0701 of this Subchapter; this plan of work shall be attached to the contract and incorporated therein, as specified in Section .0700 of this Subchapter.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

#### **10A NCAC 01A .0703 OTHER REQUIRED REPORTS**

Grantor divisions of the department may from time to time require other reports from local human service agencies to which this Subchapter applies. Such reports which are specified in Title 10A of the North Carolina Administrative Code are hereby incorporated as an administrative standard.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

### **SECTION .0800 - EVALUATION STANDARDS**

### **10A NCAC 01A .0801 LOCAL HUMAN SERVICE AGENCIES TO CO-OPERATE WITH DEPT**

Local human service agencies and the department shall mutually assist each other in conducting evaluations of human service programs but shall not be required to provide staffing without approval from the appropriate authority. Unless otherwise prohibited by statute or regulation this requirement includes access of state staff to records, staff, and clients, and participation on evaluation task forces as resources permit. Departmental staff will be responsible for ensuring that local human service agencies are informed as soon as possible about evaluation needs, and to minimize disruption of local operations. In return, local human service agencies will be provided results of all pertinent evaluation studies conducted by the department.

*History Note: Authority G.S. 122C-56; 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

## **SECTION .0900 - COMPLIANCE**

### **10A NCAC 01A .0901 AGENCY COMPLIANCE**

(a) Each grantor Division shall assist each local human service agency in achieving compliance and shall ensure compliance with the rules in this Subchapter or Division rules promulgated to comply with these Rules. A local human service agency shall be deemed to be in compliance until the Division Director determines, after an administrative review, that the local human service agency or one of its contractors is not in compliance.

(b) Each grantor Division shall conduct periodic administrative reviews. These reviews may be conducted as a separate procedure or in conjunction with existing review procedures.

(c) At the conclusion of an administrative review, the principal reviewer shall meet with the chief administrative officer of the local human service agency to discuss the findings. Following this exit conference, the principal reviewer shall prepare a written report and transmit the report to the Division Director. If the findings of the review indicate the local human service agency is in compliance with administrative standards, the Division Director will forward a copy of the administrative review report to the agency director under a transmittal letter indicating the agency's compliance. If the local human service agency is not in compliance, the following steps shall be taken:

- (1) The Division Director shall send a copy of the administrative review report to the local human service agency, to the appropriate local authority and the chairman of the local board of County Commissioners:
  - (A) citing the specific findings of non-compliance and what is required to come into compliance;
  - (B) notifying the agency that it has 60 days from the receipt of the report to come into compliance in these areas or to develop and submit to the Division a corrective plan. The Division is responsible for providing consultation and technical assistance regarding the areas of non-compliance to the local agency upon request; and
  - (C) withholding of all state administrative funds that pertain to that particular item of non-compliance.

Note: The purpose of this provision is to limit the withholding of funds only to the single instance of non-compliance. For example, if a certain personnel position or a particular contract is out-of-compliance, only funds pertaining to that position or contract would be withheld.

- (2) By the end of the 60 day notice period, the local human service agency shall achieve compliance or submit a corrective plan to the division.
- (3) In the event that the local human service agency submits a corrective plan to the Division within the 60 day notice period, the Division Director shall review the corrective plan to ensure that it addresses each specific finding of non-compliance, and that the implementation of the corrective plan can be expected to bring the agency into compliance.
- (4) Within 30 days after receipt of the plan, the Division Director shall either approve the plan as submitted or indicate how the local human service agency can amend the corrective plan in order to obtain approval. After a corrective plan has been approved, the Division Director shall monitor the local human service agency's progress towards compliance during the corrective phase, and inform the local human service agency the appropriate local authority and the local board of county commissioners of its findings in writing. If the findings indicate that the local human



service agency is not making sufficient progress towards compliance in accordance with its corrective plan, the Division Director shall so notify the local human service agency, the appropriate local authority, and the local board of county commissioners in writing that it has the additional 60 days from receipt of the notice to achieve compliance.

- (5) In the event that the local human service agency fails to submit a corrective plan within the 60-day notice period, the Division Director shall recommend to the Secretary the withholding of all state administrative funds of which the non-compliance item is a part. If the Secretary concurs with the Division Director's recommendation, the Secretary will notify the local board of county commissioners and the appropriate local authority. The withholding of these funds shall continue until the requirement for a compliance plan is met or the Secretary overturns the Division Director's decision. When such funds are withheld, then the local governing board shall receive copies of any notification mailed to the local authority.

(d) A local human service agency which is not in compliance and from which the administrative funds are being withheld, may appeal to the Secretary within 15 days of the receipt of the proposed action. If such an appeal is requested, the Secretary shall appoint a hearing panel composed of five persons to hear the appeal. Two of these persons shall be departmental employees who are not part of the division supervising the local human service agency; two of these persons shall be employees of the local human service agency other than the agency that is appealing. The fifth member shall be a member of the commission, board or advisory council that serves the division supervising the local human service agency. The Secretary shall have final decision-making authority except as otherwise provided by law. The hearing procedures set forth in 10A NCAC 01B shall be followed for the appeal:

- (1) If, after review of the evidence, the Secretary finds that the local human service agency is out-of-compliance and that the procedures herein have been followed by the division, the state administrative funds will continue to be withheld until compliance is achieved, as determined by the division director.
- (2) If, after review of the evidence, the Secretary finds that the local human service agency is out-of-compliance, but that the procedures herein have not be followed by the division, a 30-day extension of time may be granted to the agency to come into compliance or submit an acceptable corrective plan to the Division Director in accordance with Paragraphs (c)(3), (c)(4) and (c)(5) of this Rule. State administrative funds will be continued during the 30-day extension period and all withheld funds will be restored.
- (3) If, after review of the evidence, the Secretary finds that the local human service agency is in compliance in the previously identified areas of non-compliance, funding will be continued and all withheld funds will be restored.

(e) These compliance procedures shall take precedence over all other compliance procedures for administrative standards in Title 10A which may be incompatible. However, nothing herein shall be construed to take precedence over any non-conflicting program standards compliance procedures in Title 10A. Furthermore, the Division Directors may enforce additional program standards or withhold, as appropriate, administrative funds other than those covered by this Subchapter but which are covered under provisions of the General Statutes or other provisions of Title 10A of the Administrative Code. The departmental auditing procedures and the audit appeals process, as codified in 10A NCAC 01, shall not be considered a part of this review and compliance process.

(f) Although local human service agencies do not have to comply with G.S. 150B, the Administrative Procedure Act, in the promulgation of rules, local human service agencies must comply with rules promulgated by the department or the appropriate commission which are applicable to them. Any non-compliance with the standards in this Chapter is subject to administrative review and an administrative appeal under G.S. 150B, Article 3.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1979;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

#### **10A NCAC 01A .0902 CONTRACT COMPLIANCE**

(a) Every division shall assure compliance by recipients of contracts with all the terms of a contract. Upon determination of non-compliance, the division shall give the recipient 60 days written notice to come into compliance. After the 60 day period, the division may:

- (1) terminate the contract and take any necessary action to retrieve unexpended funds and unauthorized expenditures;
  - (2) suspend payments pending negotiation of a plan of corrective action; or
  - (3) offset future payments with the amount improperly spent.
- (b) Every local human service agency shall be responsible for ensuring that contractors and subcontractors have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions may be a basis for an audit exception. It is left to the discretion of the local human service agency director as to the method of ensuring compliance by the contractor or subcontractor.

*History Note: Authority G.S. 143B-139.1;  
Eff. July 1, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

## **SECTION .1000 – AUDITING PROCEDURES**

### **10A NCAC 01A .1001 SINGLE AUDITS OF LOCAL GOVERNMENTS AND PUBLIC AUTHORITIES**

- (a) Independent auditors retained to conduct single audits for local governments or public authorities may be notified by the Department of Health and Human Services (hereinafter "the Department") or the Local Government Commission of problem areas that the audit shall address.
- (b) The Local Government Commission shall review single audits for compliance with OMB Circular A-133 and accept those single audits for the State that have been determined to comply with Federal and State requirements. Whenever a single audit is performed on a local government or public authority that received funds from the Department during the fiscal year audited, the Local Government Commission shall provide the Department with a copy of the audit report(s).
- (c) Following receipt of the audit report by the Controller of the Department, relevant portions of the report shall be sent to the Controller's Office employee who is assigned division responsibility for coordination of a departmental position on the corrective actions planned or taken.
- (d) The Department or any affected division of the Department may request any additional information deemed necessary for clarification of an audit finding, recommendation, questioned cost or the corrective action plan. The local government or public authority shall provide the information to the requesting official within 30 days after the receipt of the request. If additional information or clarification from the independent auditor is requested, the local government or public authority shall direct its auditor to provide the information requested to the requesting official within the 30 day response time.
- (e) If the Department has reason to believe that due professional care was not used in conducting a single audit or if a local government or public authority or their independent auditor is unwilling or unable to provide clarification or additional information requested by an official of the Department, a written request for review of the auditor's work papers may be filed with the Office of the State Auditor by the Controller. The Controller shall make or arrange for any review of the auditor's work papers deemed necessary for timely resolution of single audit findings, recommendations, or questioned cost.
- (f) Following receipt of any additional information requested, the Controller's Office shall prepare a recommendation to accept or reject the corrective action plan for each fiscal compliance finding, recommendation or questioned cost. The Director of an affected division shall prepare a recommendation to accept or reject the corrective action plan for each program-specific compliance finding or recommendation. If the corrective action plan is rejected, the reasons for the rejection and an acceptable corrective action shall be specified. These recommendations shall be forwarded to the Controller's Office Audit Resolution Coordinator for Governmental Audits for coordination of a Departmental position on the corrective action plan.
- (g) The Secretary of the Department shall provide the local government or public authority with a written determination which accepts or rejects the corrective action plan for each audit finding, recommendation or questioned cost that pertains to or otherwise affects a program of the Department. If the corrective action plan is rejected the reasons for the rejection and an acceptable corrective action shall be specified in the determination letter. If the corrective action plan indicates that the proposed corrective action for nonmonetary findings has not been implemented, the determination on all nonmonetary findings shall specify the time by which the local government or public authority shall implement the corrective action if different from the time proposed in the corrective action plan. The determination on all questioned costs or other charges to the Department shall state whether the cost or other charge is allowable or unallowable for reimbursement to the local government or public

authority under applicable laws and rules. If a cost or other charge to the Department is determined to be unallowable for reimbursement, the determination letter shall require full monetary repayment to the Department within 60 days of the date of the determination letter. The amount of any cost or other charge determined to be unallowable shall constitute a debt due the State of North Carolina until repayment in full is received by the Department.

(h) A determination by the Secretary of the Department required under Paragraph (g) of this Rule shall become final unless a petition for a contested case is filed in accordance with G.S. 150B-23.

(i) Upon a petition for a contested case filed in accordance with G.S. 150B-23 monetary repayment or implementation of a corrective action required under Paragraph (g) of this Rule shall be suspended only for individual determinations or parts of a determination specifically disputed in the appeal. Interest may be charged under the conditions specified under Paragraph (j) of this Rule on the amount of any cost or other charge determined to be unallowable under Paragraph (g) of this Rule.

(j) Except where otherwise provided by statutes or rules, Federal agencies are required to charge interest on overdue amounts in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal. If a Federal agency charges the Department interest on the Federal share of an overdue amount from a local government or public authority, the Department shall charge the interest to the local government or public authority.

(k) If a local government or public authority fails to make repayment of an amount due to the Department or obtain Department approval of a deferred payment plan by the "due date" specified in Paragraph (g) of this Rule, the Department shall offset the amount of the disallowance or any portion thereof remaining unpaid and any interest due from subsequent reimbursements or other amounts due the local government or public authority until the amount due is fully recovered.

(l) A local government or public authority may propose a plan for repayment of amounts determined to be unallowable on an installment basis. The local government or public authority must certify that it is unable to make repayment by the "due date" specified in Paragraph (g) of this Rule and that commercial financing can not be obtained. Repayment of the Federal share of amounts determined to be unallowable shall not be allowed on an installment basis unless the Federal grantor agency approves of the installment plan or otherwise allows the Department the same installment repayment terms. Interest may be charged as specified under Paragraph (j) of this Rule while awaiting Federal approval of an installment plan or on installment payments.

(m) If a local government or public authority fails to submit additional information requested under Paragraph (d) of this Rule or fails to implement corrective action within the time frame established by the Secretary under Paragraph (g) of this Rule, the Secretary of the Department or the Director of the requesting division may suspend all or any portion of the administrative and indirect cost funding administered by the Department until such time as the required corrective action plan or additional information is submitted as requested. Alternatively, the Secretary of the Department may issue a unilateral determination on the audit findings, recommendations, and questioned cost requiring any corrective action and repayment of questioned cost deemed necessary for compliance with the laws and rules governing assistance programs affected.

*History Note: Authority G.S. 143B-10(j); 143B-139.1; 143B-139.3; 159-34;  
Eff. January 1, 1990;  
Amended Eff. August 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23,  
2017.*

#### **10A NCAC 01A .1002 AUDITS OF HOSPITALS, NONPROFITS, HIGHER EDUCATION AGENCIES**

(a) Public and private hospitals, public and private institutions of higher education and quasi-public and private nonprofit organizations [recipient organization(s)] which receive, use, or expend State or Federal funds must comply with the requirements of G.S. 143-6.1, Office of the State Auditor's Audit Advisory #2 and OMB Circular A-133 as applicable. These regulations detail reporting and other requirements that recipient organizations must meet in order to receive State or Federal funds. Depending on the amount of State or Federal funds received, used, or expended, the recipient organization(s) may be required to have either an audit made or a sworn accounting of receipts and expenditures.

(b) The University of North Carolina and public hospitals operated by the State of North Carolina have annual audits performed by the State Auditor. The scope of such audits and the contents of the audit reports are the responsibility of the State Auditor and shall be accepted and relied upon by the Department unless a cognizant Federal agency finds that such audits do not meet the requirements of OMB Circular A-133.

- (c) The above audit requirements are not applicable to procurements. However, the purpose and substance of an agreement rather than form shall govern whether financial assistance was provided. A subrecipient is an entity that receives financial assistance passed down from the prime recipient. The subrecipient's responsibility is to help the recipient meet the requirements of the assistance award. The test for a subrecipient relationship is whether financial assistance is received from a recipient to carry out a program. A vendor is an entity that receives a procurement contract for goods or services. The vendor's responsibility is to meet the requirements of the procurement contract.
- (d) The above audit requirements do not replace a request for submission of audit reports in connection with requests for direct appropriation of state aid by the General Assembly through the Secretary of the Department for recommendations to the Governor and the Advisory Budget Commission and the General Assembly in accordance with G.S. 159-34.
- (e) The above audit requirements do not replace requirements for submission of a financial audit report or financial information by the Department in connection with applications for funding or licensure, provider certification or cost reporting, and other purposes not related to provision of State and Federal financial assistance.
- (f) The Secretary of the Department may grant a waiver of any or all of the audit standards to a recipient organization who does not receive any grants, contracts or other financial assistance financed in whole or in part with Federal funds when an audit of assistance financed with State funds is not otherwise required by law and is not cost effective.
- (g) Each recipient organization shall submit one copy of the audit report and corrective action plan required in Paragraph (a) of this Rule to each division of the Department which provided State or Federal financial assistance during the fiscal year covered by such audit within 30 days from the date the report is issued by the auditor, and no later than the 13th month following the close of the recipient organization's fiscal year in which assistance was received.
- (h) Upon receipt of the audit report the Department shall conduct a desk review of the audit report to determine if the reporting standards required in OMB Circular A-133 have been met. If an audit received from a recipient organization does not meet the standards required in OMB Circular A-133, the Secretary of the Department shall issue a letter of determination to the recipient organization rejecting the audit and listing the required standards that were not met. The recipient organization shall be allowed no more than 90 days from the date of receipt of the Secretary's determination letter to submit a revised audit report which meets the standards required in OMB Circular A-133. If the recipient organization fails to submit an audit report revised in accordance with the determination letter, the Secretary of the Department may suspend further financial assistance payments to the recipient organization or subject the recipient organization to an audit or compliance review by the Department or the State Auditor.
- (i) The Department or any affected division of the Department may request any additional information deemed necessary for clarification of an audit finding, recommendation, questioned cost or the corrective action plan. The recipient organization shall provide the information to the requesting official within 30 days after the receipt of the request. If additional information or clarification from the independent auditor is requested, the recipient organization shall direct their auditor to provide the information requested to the requesting official.
- (j) If the Department has reason to believe that due professional care was not used in conducting the audit required under OMB Circular A-133, or if the recipient organization or their auditor is unwilling or unable to provide clarification or additional information requested by an official of the Department, the Controller of the Department may make or arrange for any review of the auditor's work papers deemed necessary for timely resolution of the audit findings, recommendations, or questioned cost.
- (k) The Secretary of the Department shall provide the recipient organization with a written determination which accepts or rejects the corrective action plan for each audit finding, recommendation or questioned cost that pertains to or otherwise affects a program of the Department. If the corrective action plan is rejected the reasons for the rejection and an acceptable corrective action shall be specified in the determination letter. If the corrective action plan indicates that the proposed corrective action for nonmonetary findings has not been implemented, the determination on all nonmonetary findings shall specify the time by which the local government or public authority shall implement the corrective action if different from the time proposed in the corrective action plan. The determination on all questioned cost or other charges to the Department shall state whether the cost or other charge is allowable or unallowable for reimbursement to the recipient organization under applicable laws, rules and other provisions of assistance agreements. If a cost or other charge to the Department is determined to be unallowable for reimbursement, the determination letter shall require full monetary repayment to the Department within 60 days of the date of the determination letter. The amount of any cost or other charge determined to be unallowable shall constitute a debt due the State of North Carolina until repayment in full is received by the Department.

- (l) A determination by the Secretary of the Department required under Paragraph (k) or Paragraph (h) of this Rule shall become final unless a petition for contested case is filed in accordance with G.S. 150B-23.
- (m) Upon a petition for contested case filed in accordance with G.S. 150B-23, monetary repayment or implementation of a corrective action required under Paragraph (k) of this Rule shall be suspended only for individual determinations or parts of a determination specifically disputed in the appeal. Interest may be charged under the conditions specified under Paragraph (n) of this Rule on the amount of any cost or other charge determined to be unallowable under Paragraph (k) of this Rule.
- (n) Except where otherwise provided by statutes or regulations, Federal agencies are required to charge interest on overdue amounts in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal. If a Federal agency charges the Department interest on the Federal share of an overdue amount from a recipient organization, the Department shall charge the interest to the recipient organization.
- (o) If a recipient organization fails to make repayment of an amount due to the Department or obtain Department approval of a deferred payment plan by the "due date" specified in Paragraph (k) of this Rule the Department shall offset the amount of the disallowance or any portion thereof remaining unpaid and any interest due from subsequent reimbursements or other amounts due the recipient organization until the amount due is fully recovered.
- (p) A recipient organization may propose a plan for repayment of amounts determined to be unallowable on an installment basis. The recipient organization must certify that it is unable to make repayment by the "due date" specified in Paragraph (k) of this Rule and that commercial financing can not be obtained. Repayment of the Federal share of amounts determined to be unallowable shall not be allowed on an installment basis unless the Federal grantor agency approves of the installment plan or otherwise allows the Department the same installment repayment terms. Interest may be charged as specified under Paragraph (n) of this Rule while awaiting Federal approval of an installment plan or on installment payments.
- (q) If a recipient organization fails to submit the corrective action plan required under Paragraph (a) of this Rule or additional information requested under Paragraph (i) of this Rule or fails to implement corrective action within the time frame established by the Secretary under Paragraph (k) of this Rule, the Secretary of the Department or the Director of the requesting Division may suspend payment to the recipient organization of all or any portion of the administrative and indirect cost funding administered by the Department until such time as the required audit, corrective action plan or additional information is submitted as requested. Alternatively, the Secretary of the Department may issue a unilateral determination on the audit findings, recommendations, and questioned cost requiring any corrective action and repayment of questioned cost deemed necessary for compliance with the laws and rules governing assistance programs affected.

*History Note: Authority G.S. 143B-10(j); 143B-139.1;  
Eff. January 1, 1990;  
Amended Eff. August 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

#### **10A NCAC 01A .1003 PURCHASE OF SERVICE VS. FINANCIAL ASSISTANCE**

- (a) Non-profit and for profit agencies that receive State or Federal financial assistance either directly from DHHS as a recipient or indirectly as a subrecipient through contractual agreements with local agencies funded by DHHS shall have a compliance audit performed in accordance with OMB Circular A-133; however, Circular A-133 does not apply to purchases of goods/services (vendors).
- (b) A recipient/subrecipient is distinguished from a vendor (purchase of service agreement) by the degree of responsibility assumed to meet the requirements of the program.
- (c) In a financial assistance arrangement, the recipient/subrecipient receives the funding to carry out or administer a program. A recipient/subrecipient may be responsible for determining who is eligible for participation in a program by applying pre-determined eligibility requirements. A vendor who reserves the right to reject a participant based on a criteria other than eligibility, does not become a recipient by exercising that right. A recipient/subrecipient is responsible for making programmatic decisions and its performance is measured against meeting the program's objectives. Normally, but not always, there is an interest in how program funds are expended. Although recipient/subrecipient generally have cost reimbursement grants/contracts it is possible for them to have a fee/rate per unit of service arrangement.
- (d) A vendor (purchase of services/goods) is measured against the terms of a contract. Goods must meet certain specifications and services are measured against certain quality standards. A vendor normally operates in a

competitive environment and once a pre-determined unit price has been established in a contract, usually there is no interest in how the vendor expends funds in meeting the vendor's obligation under the terms of the contract.

(e) In distinguishing between a purchase of service and financial assistance arrangement, the substance of the relationship is more important than the form of the agreement.

(f) Reviewing a recipient/subrecipient's contractual requirements and answering the following questions shall give an indication of the type arrangement represented by the contract.

		Indication of	
		Financial Assistance Yes	Purchase/ Service No
1.	Does the contract provider determine client eligibility?		
2.	Does the contract provider authorize services on a client specific basis?		
3.	Does the contract provider determine the appropriateness of the services to be provided?		
4.	Does the contract provider provide administrative functions, such as:		
	a. Program evaluation?		
	b. Program planning?		
	c. Monitoring?		
	d. Develop program standards, procedures, and rules?		
5.	Does the contract provider have responsibility for program compliance?		
6.	Does the contract provider have to submit a cost report to satisfy a cost reimbursement arrangement?		
7.	Does the contract provider have any obligation to the funding authority other than the delivery of the specified goods/services?	No	Yes
8.	Does the contract provider operate in a competitive environment?		
9.	Does the contract provider provide similar goods or services to many different purchasers?		
10.	Does the contract provider provide the goods or services within normal business operations?		

The list in this Rule is not intended to be all inclusive; however, the answers to the questions shall offer guidance in distinguishing between a purchase of service or financial assistance arrangement. There may be other factors that would influence the decision on whether a contract is classified as either financial assistance or purchase of service and the decision shall only be made after weighing all factors relative to the contract. All factors will not carry the same weight. As an illustration, if any of the answers to questions 1 through 5 are yes, the contract shall almost always be a financial assistance arrangement. However, regardless of the answers to the questions, they shall not contradict a determination/classification that has been/or may be made by the funding Federal authority.

The funding DHHS Division shall be available to assist, on a timely basis, its local counterparts in making the distinction in unique situations.

*History Note: Authority G.S. 143B-10(j)(2); Eff. June 1, 1995; Amended Eff. August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

**SECTION .1100 – REIMBURSEMENT**

**10A NCAC 01A .1101 RATE SETTING METHODS FOR FACILITIES THAT SERVE STATE/COUNTY SPECIAL ASSISTANCE RESIDENTS**

(a) A rate for facilities which serve State/County Special Assistance residents shall be reviewed annually, and pending approval of the Legislature, shall be effective for dates of service for a 12 month period beginning each October 1. Rates are derived from submission of cost reports for the most recent 12 month period. The maximum rate shall be developed by ranking prior year per diem cost from the lowest to the highest in two separate arrays, one for direct cost and one for indirect cost. The per diem cost at the 75% percentile shall be used for the direct rate and the 60% percentile shall be used for the indirect rate. The maximum rate determined by this method may be adjusted as necessary to comply with federal or state laws or policies.

(b) The rate calculated in Paragraph (a) of this Rule shall include an annual adjustment to reflect increases or decreases in prices that are expected to occur from the cost report period on which the rates are developed to the year in which the rate applies. The price level adjustment factors shall be computed using aggregate base year cost in the following manner:

- (1) Cost shall be accumulated into the following groups:
  - (A) labor,
  - (B) fixed,
  - (C) other.
- (2) The relative weight of each cost group shall be calculated to the second decimal point by dividing the total cost of each group (labor, fixed, and other) by the total cost.
- (3) Price adjustment factors for each cost group shall be established as follows:
  - (A) Labor. The percentage change for labor costs shall be based on the projected average hourly wage of North Carolina service workers as provided by the North Carolina Office of State Budget and Management.
  - (B) Fixed. No adjustment shall be made for this category, thus making the factor zero.
  - (C) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the OSBM.
  - (D) The weights computed in Subparagraph (b)(2) of this Rule shall be multiplied by the percentage change computed in Parts (b)(3)(A), (B) and (C) of this Rule.
  - (E) The sum computed for each category in Part (b)(3)(D) of this Rule shall be the price level adjustment factor for the coming fiscal year.

*History Note: Authority G.S. 143B-10; S.L. 1999-334;  
Eff. August 1, 1998;  
Temporary Amendment Eff. September 24, 1999;  
Temporary Amendment Expired July 11, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.*

#### **10A NCAC 01A .1102 COST REPORTING: FOR FACILITIES THAT SERVE STATE/COUNTY SPECIAL ASSISTANCE RESIDENTS**

(a) Each facility which serves State/County Special Assistance residents shall prepare and submit a report of its costs and other financial information. Facilities shall prepare and submit the cost report on the fiscal year as defined in G.S. 131D-4.2. Facilities that fail to file their cost reports by the due date are subject to enforcement actions for non-compliance as defined in G.S. 131D-4.2. If the Department of Health and Human Services (DHHS) finds good cause for delay, it may extend the deadline for filing the report for up to an additional 30 days. A good cause is an action that is uncontrollable by the provider.

(b) The cost report shall be submitted on forms provided by the Office of the DHHS Controller. The Department of Health and Human Services shall make the cost report format available to each facility on or before the last day of the fiscal year report period.

*History Note: Authority G.S. 143B-10; S.L. 1999-334;  
Eff. August 1, 1998;  
Temporary Amendment Eff. September 24, 1999;  
Temporary Amendment Expired July 11, 2000;  
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#### **SECTION .1200 - GUARDIANSHIP: DISINTERESTED PUBLIC AGENT**

**10 NCAC 01A .1201 UNIFORM ACCOUNTING PROCEDURES**

(a) Any disinterested public agent appointed as general guardian or guardian of the person must file status reports with the designated agency, if one has been appointed. The initial status report shall be filed within six months after the appointment of the guardian. The second status report shall be filed one year after the guardian's appointment and subsequent status reports shall be filed annually thereafter. If no designated agency is appointed, the status reports shall be kept on file by the guardian.

(b) Any disinterested public agent appointed as general guardian or guardian of the estate must file financial reports with the clerk of superior court in accordance with G.S. 35A-1253.

*History Note:* Authority G.S. 35A-1216;  
Eff. July 1, 1984;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23, 2017.