

CHAPTER 26 – MENTAL HEALTH: GENERAL

SUBCHAPTER 26A – RULES OF PROCEDURE

SECTION .0100 – RULEMAKING PROCEDURES

10A NCAC 26A .0101 AVAILABILITY OF THESE RULES

A copy of all rules adopted by the Commission for Mental Health Services and a copy of all rules adopted by the Department of Human Resources for the Division of mental health services shall be available for public inspection during regular office hours at the Raleigh office of the Division, each of the regional offices of the Division and each of the institutions of the Division.

History Note: Authority G.S. 143B-147;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0102 SCOPE

These rules apply to persons wishing to submit comments at rule-making hearings or request additional information regarding proposed or adopted rules.

History Note: Authority G.S. 143B-10(j)(2); 143B-147; 150B-11;
Eff. February 1, 1976;
Amended Eff. April 1, 1990; January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0103 PETITIONS

(a) Except for petitions regarding the addition, deletion, or rescheduling of controlled substances which are governed by 10A NCAC 26F .0117, any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Commission or the Division Director shall address the petition to: A.P.A. Coordinator, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3001 Mail Service Center, Raleigh, North Carolina 27699-3001.

(b) The petition shall contain the following information:

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

(c) The A.P.A. coordinator shall determine whether the rule comes under the statutory authority of the Commission or the Division Director or both and submit the petition to the appropriate body.

(d) The Commission or Division Director 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 Commission or Division Director shall consider all the contents of the petition, plus any additional information deemed relevant.

(e) The Commission or Division Director shall render a final decision on the petition within the time requirements of G.S. 150B-20. If the decision is to deny the petition, the petitioner shall be notified in writing and provided the reasons for the denial. Denial of the petition shall be considered a final agency decision as specified in G.S. 150B-20. If the decision is to approve the petition, rule-making proceedings shall be initiated in accordance with the rules in this Section.

History Note: Authority G.S. 143B-10(j)(2); 143B-147; 150B-11; 150B-16;
Eff. February 1, 1976;
Amended Eff. April 1, 1990; January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0104 NOTICE

(a) When a rule-making hearing is scheduled for either the Commission or the Division Director, in response to a petition or otherwise, the Division shall give notice of a public hearing. The notice shall meet the requirements of G.S. 150B-21.2.

(b) Persons desiring information in addition to that provided in a particular rule-making notice shall contact the Division's A.P.A. coordinator or other person specified in the hearing notice according to the directions in the notice.

History Note: Authority G.S. 143B-10(j)(2); 143B-18; 143B-147; 150B-11; 150B-12;
Eff. February 1, 1976;
Amended Eff. January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0105 HEARINGS

(a) Written Submissions.

(1) Any person may file a written submission containing data, comments, or arguments within the 30-day period that the hearing record is open for written comments. The deadline for written submissions shall be stated in the hearing notice.

(2) The written submission shall clearly state the proposed rule to which the comments are addressed. Written submissions shall be sent to the person and address specified in the hearing notice.

(b) Management of Hearing. The hearing officer shall have complete control of the hearing, including:

(1) the responsibility of having a record made of the hearing,

(2) extension of any time allotments,

(3) recognition of speakers,

(4) elimination of repetitious presentations, and

(5) general management of the hearing.

(c) Fair Opportunity to Present Views. The hearing officer shall insure that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

History Note: Authority G.S. 143B-10(j)(2); 143B-147; 150B-11; 150B-12;
Eff. February 1, 1976;
Amended Eff. April 1, 1990; January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0106 JUSTIFICATION OF RULE-MAKING DECISION

(a) Any interested person, either prior to adoption of a rule or within 30 days thereafter, who desires a concise statement of the principal reasons for and against the adoption of a rule by the Commission or Division Director and the factors that led to overruling the considerations urged against its adoption may submit a request to: A.P.A. Coordinator, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3001 Mail Service Center, Raleigh, North Carolina 27699-3001.

(b) For purposes of this Rule, an "interested person" shall be any person, group, or organization whose rights, duties, or privileges might be affected by the adoption of the rule.

(c) The request shall be made in writing, shall identify the rule or proposed rule involved, and shall contain a statement of the reasons of interest.

History Note: Authority G.S. 143B-10(j)(2); 143B-147; 150B-11; 150B-12;
Eff. February 1, 1976;
Amended Eff. January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0107 RECORD OF RULE-MAKING PROCEEDINGS

A record of all rule-making hearings shall be maintained by the office of the Division's A.P.A. coordinator. The record shall be available for public inspection during regular office hours and shall include:

(1) any petitions related to the hearing,

(2) the hearing notice,

(3) all written memoranda and information submitted,

(4) a transcript of the oral hearing,

(5) any statement of reasons issued to an interested person according to Rule .0105 of this Section, and

(6) a final draft of the rule.

The record shall be available for public inspection during regular office hours.

*History Note: Authority G.S. 143B-10(j)(2); 143B-147; 150B-11;
Eff. February 1, 1976;
Amended Eff. August 1, 1990; April 1, 1990; January 1, 1987; April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 26A .0108 FEES

Except when a statute provides otherwise, the Division may charge a fee to cover the costs of meeting requests for information related to the rule-making hearing including material, duplicating, mailing, and allocable personnel costs.

*History Note: Authority G.S. 143B-147; 150B-11;
Eff. February 1, 1976;
Amended Eff. April 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

SECTION .0200 - CONTESTED CASES

10A NCAC 26A .0201 SCOPE

The procedures in this Section shall apply to all contested cases coming under the authority of the Director or the authority of the Commission.

*History Note: Authority G.S. 143B-10; 143B-147; 150B-22;
Eff. January 1, 1980;
Amended Eff. April 1, 1990
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 26A .0202 DEFINITIONS

As used in this Section, the following terms shall have the meaning specified:

- (1) "Agency" is the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) or the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.
- (2) "Contested case" means any agency proceeding which is an opportunity for an administrative appeal and in which the legal rights, duties or privileges of a party are required by law to be determined. In particular, this includes appeals under the following statutes:
 - (a) G.S. 122C-26 (exceptions to standards established by the Commission);
 - (b) G.S. 122C-24 (appeal from denial or revocation of a license);
 - (c) G.S. 122C-27 (determination of non-compliance with drug abuse standards); and
 - (d) G.S. 122C-151.2 (appeal from certain divisional actions).
- (3) "Hearing" means a contested case hearing as provided for in G.S. 150B-22 through G.S. 150B-37.
- (4) "Hearing officer" is the person appointed by the Director to conduct a hearing in accordance with the provisions of this Section.

*History Note: Authority G.S. 143B-10; 143B-147; 150B-22;
Eff. January 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 26A .0203 DETERMINATION OF CONTESTED CASE HEARING

(a) Request for Determination.

- (1) Persons may at any time request from the Director a determination of their legal rights, privileges, or duties. Requests shall specify whether a hearing is desired.
- (2) Requests shall be in writing and shall be made only to the Director whether any hearing resulting from the request comes under the authority of the Director or the Commission.

(b) Determination by Director. If persons request a determination of their legal rights the Director shall promptly take the following actions:

- (1) determine that all informal appeal procedures for resolving the issue have been exhausted unless such procedures would cause undue delay;
- (2) determine whether the issue can be brought to a contested case hearing in accordance with Rule .0202(2) of this Section;
- (3) determine whether the request lies within the purview of the Commission or the Director or should be directed to some other authority; or
- (4) appoint a hearing officer.

(c) Notification of Requesting Person. The Director shall notify the person requesting a determination of the actions taken in accordance with (b) of this Rule with the following stipulations:

- (1) If the requesting party is instructed to exhaust all informal appeal procedures, those procedures shall be delineated; or
- (2) If a hearing is to be scheduled and a hearing officer appointed, the Director's notification shall indicate whether the hearing will be held under the authority of the Director or the Commission.

(d) Notification of Commission. If a hearing is to be scheduled as a result of a request for determination and that hearing falls under the authority of the Commission, the Director shall notify the Commission chairman and provide the name of the hearing officer.

History Note: Authority G.S. 143B-10; 143B-147; 150B-22;
Eff. January 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0204 CROSS-REFERENCE TO DEPARTMENTAL RULES

History Note: Authority G.S. 143B-10; 143B-147; 150B-22; 150B-34;
Eff. January 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule expired July 1, 2015.

SECTION .0300 - DECLARATORY RULINGS

10A NCAC 26A .0301 SCOPE

The procedures in this Section shall apply to all requests for and issuance of declaratory rulings, whether arising under the authority of the Director or of the Commission.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;
Eff. January 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0302 DEFINITIONS

- (a) "Declaratory ruling" means a formal and binding interpretation as specified in G.S. 150B-4.
- (b) "Petitioner" as used in this Section means the person requesting a declaratory ruling from the agency.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;
Eff. January 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0303 AUTHORITY TO MAKE DECLARATORY RULINGS

The Director shall have the power to make all declaratory rulings, whether arising under the authority of the Director or of the Commission.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0304 PROCEDURES FOR REQUESTING DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be by written petition and shall be submitted to: The Director, Division of Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3001 Mail Service Center, NC 27699-3001.

(b) All requests for a declaratory ruling shall 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 the petitioner; and
- (4) the consequences of a failure to issue a declaratory ruling.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0305 ACTION ON REQUEST FOR DECLARATORY RULING

(a) Whenever the Director has good cause to believe that issuing a declaratory ruling is undesirable, the Director may decline to issue one. In such cases, the Director shall notify the petitioner in writing of the decision stating the reason for the denial of a declaratory ruling.

(b) The Director may decline to issue a declaratory ruling in the following specific circumstances:

- (1) if the request for a declaratory ruling addresses a situation or fact similar to those specifically considered at the rule-making hearing and is found in the rule-making record;
- (2) if the petitioner cannot show that the circumstances are so changed since adoption of the rule that such a ruling would be warranted; or
- (3) if the circumstances stated in the request indicate that there is a factual dispute and a contested case hearing would be more appropriate.

(c) When issuing a declaratory ruling is deemed appropriate, the Director shall issue the ruling within 60 days of the receipt of the petition.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Amended Eff. April 1, 1990;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0306 PROCEDURES FOR ISSUING DECLARATORY RULINGS

(a) The declaratory ruling process may consist of written submissions, oral hearings or such other procedures as may be deemed appropriate by the Director in the particular case.

(b) The Director, at his discretion, may notify persons who might be affected by the declaratory ruling that they may submit written comments or make oral presentations at the scheduled hearing.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0307 RECORD OF DECLARATORY RULING PROCEEDINGS

A record of all declaratory ruling proceedings shall be maintained by the Division's publications officer and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) all written memoranda and information submitted;
- (3) any recording or transcript if an oral hearing is held; and
- (4) a statement of the ruling or the reasons for refusing to issue a ruling.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 26A .0308 NOTIFICATION OF COMMISSION

The Director shall provide to the Commission Chairman a copy of all declaratory rulings issued.

History Note: Authority G.S. 143B-10; 143B-147; 150B-17;

Eff. January 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.