

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14A – RULEMAKING

SECTION .0100 - RULEMAKING

10A NCAC 14A .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Director of the Division of Health Service Regulation shall address the petition to the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(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 agency to promulgate the rule;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) any data supporting the proposal;
- (5) effect of the proposed rule on existing practices in the area involved, including cost factors, if known;
- (6) names of those most likely to be affected by the proposed rule, with addresses, if known;
- (7) name(s) and address(es) of petitioner(s).

(c) The Director, based on a study of the facts stated in the petition, will determine whether the public interest will be served by granting the petition. He will 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 Director will render a final decision. If the decision is to deny the petition, the Director will notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Director will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.

*History Note: Authority G.S. 143B-10; 150B-20;
Eff. June 10, 1977;
Readopted Eff. December 1, 1977;
Amended Eff. November 1, 1989.*

10A NCAC 14A .0102 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in 10A NCAC 01 are hereby adopted by reference pursuant to G.S. 150B-14(c) to apply to the actions of the Director, with the following modifications:

- (1) Correspondence related to the Director's rulemaking actions shall be submitted to:

Director
Division of Health Service Regulation
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

- (2) The Secretary's designee shall mean the Director of the Division of Health Service Regulation (hereinafter referred to as the Division).
- (3) The "Division" shall be substituted for the "Office of General Counsel" in 10A NCAC 01.
- (4) "Hearing officer" shall mean the Director of the Division of Health Service Regulation or his designee.

(b) Copies of 10A NCAC 01 may be inspected in the Division at the address shown in (a)(1) of this Rule. Copies may be obtained from the Office of Administrative Hearings, 424 North Blount Street, Raleigh, North Carolina, 27601.

*History Note: Authority G.S. 143B-10; 150B-11; 150B-14;
Eff. November 1, 1989.*

10A NCAC 14A .0103 DECLARATORY RULINGS

(a) The Director of the Division of Health Service Regulation may make declaratory rulings. All requests for declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

- (b) All requests for a declaratory ruling must include the following information:
- (1) name and address of the petitioner;
 - (2) statute or rule to which petition relates;
 - (3) concise statement of the manner in which 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 Director believes for good cause that the issuance of a declaratory ruling will not serve the public interest, he may refuse to issue one. When good cause is deemed to exist, the Director shall notify the petitioner of his decision in writing stating reasons for the denial of a declaratory ruling.
- (d) The Director may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling:
- (1) if there has been similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidence by the rulemaking record; or
 - (2) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.
- (e) Where a declaratory ruling is deemed to be in the public interest, the Director shall issue the ruling within 60 days of receipt of the petition.
- (f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be appropriate in a particular case.
- (g) The Director 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.
- (h) A record of all declaratory ruling procedures shall be maintained for as long as the ruling has validity. This record will contain:
- (1) the original request,
 - (2) reasons for refusing to issue a ruling,
 - (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.

This record will be maintained in a file at the Division Office, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701 and will be available for public inspection during regular office hours.

*History Note: Authority G.S. 143B-10; 150B-4;
Eff. November 1, 1989;
Amended Eff. November 1, 2010.*

SECTION .0200 – CONTESTED CASES

- 10A NCAC 14A .0201 DEFINITIONS**
- 10A NCAC 14A .0202 REQUEST FOR DETERMINATION**
- 10A NCAC 14A .0203 RECORD**
- 10A NCAC 14A .0204 EXCEPTIONS TO RECOMMENDED DECISION**

*History Note: Authority G.S. 143B-10; 143B-10(j)(3); 150B-11; 150B-22; 150B-23; 150B-23(e); 150B-29(b); 150B-36; 150B-37;
Eff. November 1, 1989;
Repealed Eff. April 1, 2016.*

SECTION .0300 - HEARINGS: TRANSFERS AND DISCHARGES

10A NCAC 14A .0301 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Agency" means the Hearing Officer and his office in the Division of Health Service Regulation, Department of Health and Human Services.
- (2) "Dismissal" means the dismissal of a request for a hearing if:
 - (a) the applicant withdraws the request in writing; or

- (b) the applicant fails to appear at a scheduled hearing without good cause.
- (3) "Division" means the North Carolina Division of Health Service Regulation of the Department of Health and Human Services.
- (4) "Facility" means a nursing facility which meets the requirements of the Social Security Act as defined in 42 CFR 483.5.
- (5) "Hearing Officer" means the person designated to preside over hearings between residents and nursing facility providers regarding transfers and discharges.
- (6) "Notice" means a written notification of transfer or discharge by the facility to the resident and either an immediate family member, if known, or if an immediate family member is not known, the authorized representative. The resident shall be handed the notice on the same day that it is dated. The notice must include:
 - (a) reason for the transfer or discharge;
 - (b) the effective date of the transfer or discharge;
 - (c) the location to which the resident is transferred or discharged;
 - (d) statement that the resident has the right to appeal to the Hearing Officer;
 - (e) the name, address, and telephone number of the state Long-Term Care Ombudsman;
 - (f) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;
 - (g) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;
 - (h) statement that the resident has the right to review his records not later than five days prior to a hearing; and
 - (i) statement that the appeal will be at no cost to the resident.
- (7) "Request for a Hearing" means a clear expression, in writing, by the resident or either an immediate family member, if known, or if an immediate family member is not known, the authorized representative, that he wants the opportunity to present his case to the hearing officer. The "Request for Hearing Form" will suffice as a clear, expression, in writing, that a hearing is desired.
- (8) "Request for Hearing Form" means a form which is to be given to the resident and either an immediate family member, if known, or if an immediate family member is not known, the authorized representative, simultaneously with the Notice of Transfer or Discharge. The request for hearing form must include at the least:
 - (a) the date of Notice of Transfer or Discharge;
 - (b) the date to be transferred or discharged;
 - (c) Division of Health Service Regulation's correct mailing address and phone number;
 - (d) resident's name, address, telephone number, and social security number;
 - (e) the nursing facility's name and address;
 - (f) name, address, and telephone number of authorized representative; and
 - (g) space to elect the option of a hearing by telephone or in person.
- (9) "Resident" means any person who is receiving treatment or long-term care in a facility.
- (10) "Serve" or "Service" means personal delivery, delivery by first class or certified United States Postal Service mail or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service. For purposes of service on the Division, the Hearing Officer of the Division shall be the designated agent.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; G.S. 143B-165(10); Eff. August 3, 1992.

(a) The Division has established an appeal process for nursing facility residents who have been notified of transfer or discharge. All residents who have been advised of the date of transfer or discharge in writing, may request that the Division Hearing Officer set a date for a fair hearing in accordance with and subject to these Rules.

(b) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer unless another specific statute or rule provides otherwise. Division hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by the provision of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at the hearing.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10); Eff. August 3, 1992.

10A NCAC 14A .0303 INITIATING A HEARING

(a) In order to initiate a hearing with the Hearing Officer, a resident must first have been served by the facility administrator with a written Notice of Transfer or Discharge and must file a Request for Hearing in accordance with the Rules in 10 NCAC 14A .0300. The Request for Hearing must be in writing and must be signed by the resident. A Request for Hearing form shall be provided to the resident by the facility for this purpose.

(b) The hearing is a mechanism for listening to appeals by residents concerning disputes over transfers and discharges. The hearing shall be narrowly focused on discharge and transfer issues between the nursing facility and the resident and shall not involve Medicaid matters such as eligibility, which is the responsibility of the Medicaid hearing officer.

(c) Should an appeal of the Notice of Transfer or Discharge be desired, a Request for a Hearing, accompanied by the Notice of Transfer or Discharge, shall be served to the Hearing Officer and must be received by him no later than 11 days from the date of the facility's Notice of Transfer or Discharge. If the request for hearing has not been received within 11 days, the resident shall waive his right to appeal. The resident must be notified of the option for the hearing to be in person (face-to-face) or by telephone.

(d) The facility administrator must make available to the resident information and records at least five working days prior to the hearing to enable an opportunity for review and preparation. The facility administrator must forward identical information relevant to the transfer or discharge to the agency, to be received at least five working days prior to the hearing. A resident must authorize release of his medical records to the hearing officer.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10); Eff. August 3, 1992.

10A NCAC 14A .0304 NOTICE OF HEARING

Upon receipt of a timely request for a hearing, the Hearing Officer shall promptly notify all parties (the facility administrator, the resident, and either an immediate family member, if known or if an immediate family member is not known, the authorized representative) of receipt of the Request and shall arrange with the parties a time, date, and telephone numbers (if by phone conference). If the hearing is to be conducted in person (face-to-face), hearings will be held in the Council Building, 701 Barbour Drive on the Dorothea Dix Campus in Raleigh, North Carolina, with time and date arranged with the parties by the hearing officer. These parties will be served notice of the date of hearing.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10); Eff. August 3, 1992.

10A NCAC 14A .0305 DOCUMENTS

All documents required to be filed pursuant to these Rules shall be served on all other parties by the filing party.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10); Eff. August 3, 1992.

10A NCAC 14A .0306 HEARING OFFICER'S FINAL DECISION

The Hearing Officer's final decision will either uphold or reverse the facility's decision. Copies of the final decision shall be served upon the parties.

History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); G.S. 143B-165(10);

Eff. August 3, 1992.

