



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

Pat McCrory  
Governor

Richard O. Brajer  
Secretary DHHS

Mark Payne  
Assistant Secretary for Audit and  
Health Service Regulation

**MEMORANDUM**

**DATE:** August 15, 2016  
**TO:** Interested Parties  
**FROM:** Nadine Pfeiffer, Rule Review Manager *NP*  
**RE:** Proposed Repeal of Certificate of Need Rules  
10A NCAC 14C Certificate of Need Regulations

GS 150B-21.2 requires a rule-making body to notify certain individuals of its intent to adopt a permanent rule. It also requires notification of the date, time and location of the public hearing on the rule and any fiscal note that has been prepared in connection with the proposed rule.

The North Carolina Department of Health and Human Services/Director, DHSR has submitted form OAH 0300 to the Codifier of Rules, Office of Administrative Hearings, indicating its intent to repeal the following six rules:

- 10A NCAC 14C Certificate of Need Regulations
- 10A NCAC 14C .1801 Purpose and Scope
- 10A NCAC 14C .1802 Definitions
- 10A NCAC 14C .1804 Performance Standards
- 10A NCAC 14C .3101 Purpose and Scope
- 10A NCAC 14C .3102 Definitions
- 10A NCAC 14C .3104 Need for Services

The CON application forms authorized by G.S. 131E-182(b) request information from the applicants which is designed to address the review criteria found in G.S. 131E-183(a). The rules proposed to be repealed place a burden on applicants establishing diagnostic centers as they require applicants to demonstrate that every other provider of the same service has and will continue to operate at 80% of capacity, this data of which is not publicly available, and non-specific to the type of major medical equipment the applicant is seeking and provide no guidance to the applicant as to what is required. Therefore these rules are not needed in order for the agency to determine whether or not an application is conforming to the statutory review criteria. The proposed rule repeals also place an unnecessary burden and cost on applicants and to the Department. The rules are proposed to be repealed because they are unnecessary. In accordance with G.S. 150B-21.4(d), a fiscal note is not required for a repeal of a rule.



**Office of the Director**

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The proposed rule text is attached to this memo and will be published in the August 15, 2016 edition of the N.C. Register which can be found at the Office of Administrative Hearings web site at <http://www.ncoah.com/rules/register>.

A public hearing is scheduled for October 6, 2016 at 10:00 a.m. in Room 026, Edgerton Building, 809 Ruggles Drive, Raleigh, NC 27603. The building is located on the Dorothea Dix campus. The Division is accepting public comments on these rules from August 15, 2016 – October 14, 2016. Comments will also be accepted in person at the public hearing. The proposed effective date of these rules is December 1, 2016.

A copy of the proposed rules, and instructions for submitting comment can be found at the Division of Health Service Regulation web site at [www2.ncdhhs.gov/dhsr/ruleactions.html](http://www2.ncdhhs.gov/dhsr/ruleactions.html). If you have questions related to the proposed rules please contact the Healthcare Planning and Certificate of Need Section at (919) 855-3873

#### Enclosures

cc: Mark Payne, Assistant Secretary for Audit and Health Service Regulation  
Joel Johnson, Assistant General Counsel, DHHS  
Martha Frisone, Assistant Chief, Certificate of Need  
Emery Milliken, Deputy Director, DHSR