

**Fiscal Impact Analysis of Permanent Rule Readoption
10A NCAC 14A, Section .0300, Hearings, Transfers and Discharges**

Agency Proposing Rule Change

North Carolina Medical Care Commission

Contact Persons

Nadine Pfeiffer, Rule Review Manager, (919) 855-3811
Beverly Speroff, Assistant Chief, (919) 855-4555
Becky Wertz, Section Chief, (919) 855-4850

Impact Summary

Federal government impact:	No Impact
State government impact:	No Impact
Local government impact:	No Impact
Substantial impact:	No Impact

Title of Rules

10A NCAC 14A .0301 Definitions (readopt with substantive changes).
10A NCAC 14A .0302 General (readopt with substantive changes).
10A NCAC 14A .0303 Initiating a Hearing (readopt with substantive changes).
(See proposed rules in Appendix.)

Statutory Authority

42 U.S.C. 1395i-3(c)(2)(B)(iii)
42 U.S.C. 1396r (e)(3)
42 U.S.C. 1396r (f) (3)
42 C.F.R. 483.15(c)
G.S. 143B-165(10)

Introductory Note

There are 427 nursing homes that participate in Medicare and Medicaid in North Carolina. Before these homes issue a discharge notice to a resident residing in the certified portion of the home, a discharge notice must be issued to the resident that includes the right to appeal the discharge. This information must include the contact information for the entity that receives the appeal requests and how to receive the form. In North Carolina, the DHHS Hearing Office (which is under the Division of Medical Assistance) is the entity that receives nursing home appeals. The Medical Care Commission (MCC) determined it was necessary to readopt 10A NCAC 14A .0301 - .0303 and to refer to the existing DHHS hearing office process.

Background

The rules in 10A NCAC 14A have not been amended since their initial effective date of August 3, 1992. The Division of Medical Assistance (DMA) adopted rules entitled, 10A NCAC 22H .0200 – Hearings: Transfer and Discharges effective April 1, 1994. These are the rules that have been implemented over the past 23 years.

Under authority of N.C.G.S. 150B-21-3A, Periodic review and expiration of existing rules, the MCC, Rules Review Commission and the Joint Legislative Administrative Procedure Oversight Committee approved the final Subchapter report with classifications for the rules located at 10A NCAC 14A – Rulemaking – on May 23, 2017, November 16, 2017, and January 9, 2018, respectively. The following rules were classified as “Necessary with Substantive Public Interest” in this report: 10A NCAC 14A .0301, .0302, and .0303. Therefore, in accordance with G.S. 150B-21.3A(c)(2)(g), these rules, must be readopted as though the rules were new rules.

The MCC determined readoption of rules 10A NCAC 14A .0301 - .0303 was needed to carry out the flow of authority from the Federal nursing home requirements, to the Division of Health Service Regulation Director rules and then to the DMA DHHS Hearing Unit process.

Rule Summary and Anticipated Fiscal Impact

10A NCAC 14A .0301 Definitions

The agency is proposing to readopt the rule with substantive changes. Definitions that no longer appeared in any subsequent rules were deleted. We clarified that the Hearing Officer was located at the Hearing Unit. We added a definition for the Hearing Unit. We referenced the federal definition for Notice and deleted the definition in the rule. We updated authorities in the history note.

Fiscal Impact

There is no Federal, State or local fiscal impact associated with the readoption of this rule. The readoption simply cleans up the code and continues the same process for hearings that has been in existence since 1994.

10A NCAC 14A .0302 General

The agency is proposing to readopt the rule with substantive changes. We have clarified that it is not the Division of Health Service Regulation that is establishing the appeal process and that it is not the Division of Health Service Regulation’s Hearing Officer and finally that it is not the Division of Health Service Regulation’s hearings. We deleted paragraph (b) because it was confusing.

Fiscal Impact

There is no Federal, State or local fiscal impact associated with the readoption of this rule. The readoption simply cleans up the code and continues the same process for hearings that has been in existence since 1994.

10A NCAC 14A .0303 Initiating A Hearing

The agency is proposing to readopt the rule with substantive changes. We have clarified that a request for hearing must be filed in accordance with 10A NCAC 22H, Section .0200. We have deleted all process steps for initiating a hearing in this rule.

Fiscal Impact

There is no Federal, State or local fiscal impact associated with the readoption of this rule. The readoption simply cleans up the code and continues the same process for hearings that has been in existence since 1994.

10A NCAC 14A .0301 is proposed for readoption with substantive changes as follows:

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)(1) "Facility" means a nursing facility which meets the requirements of the Social Security Act as is defined in 42 CFR 483.5. 483.5 which is herein incorporated by reference, including subsequent amendments and editions. The Code of Federal Regulations may be accessed free of charge at http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08.
- (5)(2) "Hearing Officer" means the person at the Hearing Unit designated to preside over hearings between residents and nursing facility providers regarding transfers and discharges.
- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance of the Department of Health and Human Services.
- (6)(4) "Notice" means a written notification of transfer or ~~discharge~~ discharge, as required by 42 CFR 483.15 (c), 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: the resident's representative as defined in 42 CFR 483.5.
- (a) ~~the 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) ~~a 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) — a statement that the resident has the right to review his records not later than five days prior to a hearing; and~~

~~(i) — a statement that the appeal will be at no cost to the resident.~~

~~(7)(5) "Request for a Hearing" means a clear expression, in writing, written expression by the resident ~~or~~ or, either an immediate family member, if known, or if an immediate family member is not known, the authorized or, legal representative, that he or she wants the opportunity to present his or her case to the hearing officer. 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 that 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) — the Division of Health Service Regulation's correct mailing address and phone number;~~

~~(d) — the resident's name, address, telephone number, and social security number;~~

~~(e) — the nursing facility's name and address;~~

~~(f) — the name, address, and telephone number of authorized representative; and~~

~~(g) — space to elect the option of a hearing by telephone or in person.~~

~~(9)(6) "Resident" means any person who is receiving treatment or long-term care in a facility.~~

~~(10)(7) "Serve" or "Service" means personal delivery, delivery by first class or certified United States Postal Service ~~mail~~ 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 G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 CFR 483.15(c); G.S. 143B-165(10); Eff. August 3, 1992-1992; Readopted Eff. January 1, 2019.

10A NCAC 14A .0302 is proposed for readoption with substantive changes as follows:

10A NCAC 14A .0302 GENERAL

~~(a) The Division has established an appeal process for nursing facility residents who have been notified of transfer or discharge. All residents who have~~ Any resident who has been advised of the date of a transfer or discharge in ~~writing.~~ writing may request that the ~~Division~~ Hearing Officer set a date for a ~~fair~~ hearing in accordance with ~~and~~ subject to these Rules. Hearing procedures are held in accordance with rules in 10A NCAC 22H, Section .0200, which is herein incorporated by reference, including subsequent amendments and editions. These rules may be accessed free of charge at <http://reports.oah.state.nc.us/ncac.asp>.

~~(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 G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.12; CFR 483.15(c); G.S. 143B-165(10); Eff. August 3, 1992-1992;
Readopted Eff. January 1, 2019.*

10A NCAC 14A .0303 is proposed for readoption with substantive changes as follows:

10A NCAC 14A .0303 INITIATING A HEARING

~~(a) In order to initiate a hearing with the Hearing Officer, hearing, a resident must first have been served by the facility administrator with a written Notice of Transfer or Discharge notice and must shall file a Request for Hearing in accordance with the Rules in 10 NCAC 14A .0300; rules in 10A NCAC 22H, Section .0200. 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 G.S. 143B-165(10); 42 U.S.C.S. 1396r(e)(3) and (f)(3); U.S.C. 1395i-3(c)(2)(B)(iii); 42 U.S.C. 1396r(e)(3); 42 U.S.C. 1396r(f)(3); 42 C.F.R. 483.12; CFR 483.15(c); G.S. 143B-165(10); Eff. August 3, 1992; 1992; Readopted Eff. January 1, 2019.