

1 10A NCAC 14A .0103 is readopted with changes as published in 33:15 NCR 1542-1544 as follows:

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3 **10A NCAC 14A .0103 DECLARATORY RULINGS**

4 (a) The Director of the Division of Health Service Regulation may ~~make~~ issue declaratory rulings. All requests for
5 declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 809 Ruggles
6 Drive, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

7 (b) All requests for a declaratory ruling ~~must~~ shall include the following information:

8 (1) the name and address of the petitioner;

9 (2) a statement of all relevant facts if the person aggrieved requests a declaratory ruling as to the
10 applicability to a statute, rule, or order of the Division;

11 ~~(2)~~ (3) the statute or rule to which the petition relates;

12 (4) a statement regarding the petitioner's opinion as to any conflict or inconsistencies, if any, within the
13 Division regarding an interpretation of the law or a rule adopted by the Division to which the petition
14 relates;

15 ~~(3)~~ (5) a concise statement of the manner in which the petitioner is aggrieved by the rule or ~~statute~~ statute,
16 or its potential application to ~~him; him or her; and~~

17 ~~(4)~~ (6) the consequences of a failure to issue a declaratory ~~ruling; ruling; and~~

18 (7) the petitioner's opinion as to the potential impact of the declaratory ruling on the public.

19 (c) Whenever the Director ~~believes~~ finds for good cause that the issuance of a declaratory ruling will not serve the
20 public interest, exists to deny the request for declaratory ruling, he or she may ~~refuse~~ deny the request to issue ~~one~~ a
21 declaratory ruling. When good cause is deemed to exist, In such a case, the Director shall notify the petitioner in
22 writing of his the decision in writing stating reasons to deny the request for declaratory ruling and shall state the reason
23 for the ~~denial of a declaratory ruling; denial.~~

24 (d) ~~The Director may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling; Good~~
25 cause for the denial of a declaratory ruling request [includes, but is not limited to:] may include one of the following:

26 (1) the person submitting the request is not a person aggrieved; [or]

27 (2) there is no conflict or inconsistency within the Division regarding an interpretation of the law or a
28 rule adopted by the Division; [or]

29 ~~(1)~~ (3) if a situation where there has been similar controlling factual determination in a contested ~~case; case;~~
30 or

31 (4) if the request for declaratory ruling involves a factual context ~~being raised for a declaratory ruling~~
32 was ~~that was~~ specifically considered upon adoption of the rule being questioned as ~~evidence~~
33 evidenced by the rulemaking record; or

34 (5) the factual representations are not specific to the statute or rule being questioned; [or]

35 (6) issuing the declaratory ruling will not serve the public interest; or

36 ~~(2)~~ (7) if circumstances stated in the request or otherwise known to the agency show that a contested case
37 hearing would presently be appropriate.

1 ~~(e) Where a declaratory ruling is deemed to be in the public interest, the Director shall issue the ruling within 60 days~~
 2 ~~of receipt of the petition.~~

3 ~~(f) (e)~~ A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as
 4 may be appropriate ~~the Director may~~ determine select in a particular ~~case,~~ case if additional information may assist
 5 in determining whether to grant or deny the petition.

6 ~~(g) (f)~~ The Director may issue notice to persons who might be affected by the ruling that written comments may be
 7 submitted or oral presentations received at a scheduled ~~hearing,~~ hearing if the Director finds such comments or
 8 presentations may provide additional information that will assist in determining whether to grant or deny the petition.

9 ~~(h) A record of all declaratory ruling procedures shall be maintained for as long as the ruling has validity. This record~~
 10 ~~will contain:~~

11 ~~(1) the original request,~~

12 ~~(2) reasons for refusing to issue a ruling,~~

13 ~~(3) all written memoranda and information submitted,~~

14 ~~(4) any written minutes or audio tape or other record of the oral hearing, and~~

15 ~~(5) a statement of the ruling.~~

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

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 20 *History Note: Authority G.S. ~~143B-10; 150B-4;~~*

21 *Eff. November 1, 1989;*

22 *Amended Eff. November 1, ~~2010; 2010;~~*

23 *Readopted Eff. July 1, 2019.*