

1 10A NCAC 22H .0304 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0304 HEARING PROCEDURES**

4 (a) Upon ~~timely~~ receipt of a Hearing Request Form, ~~request for a hearing~~, the Hearing Unit shall notify the Division
5 of MH/DD/SAS of the request.

6 (b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be
7 conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall
8 be held in Raleigh, North Carolina.

9 (c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person
10 requesting the hearing by certified mail and forward identical information to the Hearing Unit, to be received by both
11 the requestor and the Hearing Unit at least five business working days prior to the hearing.

12 (d) The hearing officer may grant continuances for good cause, ~~continuances~~.

13 (e) The hearing officer may dismiss a request for a hearing if the evaluated individual or legal representative fails to
14 appear at a scheduled hearing.

15 (f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to
16 appear at a scheduled hearing.

17 (g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and
18 District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes
19 shall not apply in any hearings held by the Division Hearing Officer, ~~Officer unless another specific statute or other~~
20 ~~rule provides otherwise~~. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall
21 not be governed by the provisions of that chapter unless otherwise stated in these Rules. The hearing officer may use
22 the North Carolina Rules of Evidence for guidance in conducting hearings. Parties may be represented by counsel or
23 other representative at the hearing.

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25 *History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F), (f)(3)~~; 42 U.S.C.S. 1396r(e)(3),
26 ~~(e)(7)(F), (f)(3)~~; 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E; 42 C.F.R. 483.200; 42 C.F.R.
27 483.204; 42 C.F.R. 483.206;
28 Eff. October 1, 1994; 1994.
29 Readopted Eff. May 1, 2018.