

G.S. 150B-21.3A Report for 26 NCAC Chapter 03, HEARINGS DIVISION

Agency - Administrative Hearings, Office of

Comment Period - 10/01/2015 through 11/30/2015

Date Submitted to APO - May 23, 2016

Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
SECTION .0100 - HEARING PROCEDURES	26 NCAC 03 .0101	GENERAL	Amended Eff. November 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0102	DEFINITIONS AND CONSTRUCTION	Amended Eff. November 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0103	COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE	Amended Eff. June 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0104	ORDER FOR PREHEARING STATEMENTS	Amended Eff. October 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0105	DUTIES OF THE ADMINISTRATIVE LAW JUDGE	Amended Eff. November 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0106	CONSENT ORDER: SETTLEMENT: STIPULATION	Amended Eff. November 1, 1987	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0107	SETTLEMENT CONFERENCE	Amended Eff. April 1, 2001	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0108	PREHEARING CONFERENCE	Amended Eff. February 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0109	NOTICE OF HEARING	Amended Eff. October 1, 1991	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0110	DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE	Amended Eff. November 1, 1987	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0111	CONSOLIDATION OF CASES	Amended Eff. January 1, 1987	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0112	DISCOVERY	Amended Eff. February 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0113	SUBPOENAS	Amended Eff. October 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0114	SANCTIONS	Amended Eff. January 1, 1989	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0115	MOTIONS	Amended Eff. November 1, 1987	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0116	TIME	Eff. August 1, 1986	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0117	INTERVENTION	Amended Eff. November 1, 1987	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

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	26 NCAC 03 .0118	CONTINUANCES	Temporary Amendment Eff. March 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0119	SECURE LEAVE PERIODS FOR ATTORNEYS	Eff. August 1, 2000	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0120	RIGHTS AND RESPONSIBILITIES OF PARTIES	Amended Eff. May 1, 2009, Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0121	WITNESSES	Recodified from Rule .0120 Eff. August 1, 2000	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0122	EVIDENCE	Recodified from Rule .0121 Eff. August 1, 2000	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0123	OFFICIAL RECORD	Amended Eff. April 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0124	VENUE	Recodified from Rule .0123 Eff. August 1, 2000	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0125	CONDUCT OF HEARING	Recodified from Rule .0124 Eff. August 1, 2000	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0127	ADMINISTRATIVE LAW JUDGE'S DECISION	Amended Eff. November 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0128	EX PARTE COMMUNICATIONS	Recodified from Rule .0127 Eff. August 1, 2000	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0129	RECONSIDERATION OR REHEARING	Amended Eff. April 1, 2001	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0130	AVAILABILITY OF COPIES	Recodified from Rule .0129 Eff. August 1, 2000	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	26 NCAC 03 .0131	FINAL DECISIONS IN CONTESTED CASES	Amended Eff. November 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0200 - MEDIATION SETTLEMENT CONFERENCE	26 NCAC 03 .0201	ORDER FOR MEDIATED SETTLEMENT CONFERENCE	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0202	SELECTION OF MEDIATOR	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0203	MEDIATION SETTLEMENT CONFERENCE	Amended Eff. April 1, 2001	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0204	DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0205	SANCTIONS FOR FAILURE TO ATTEND	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

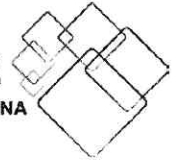
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	26 NCAC 03 .0206	AUTHORITY AND DUTIES OF MEDIATORS	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0207	COMPENSATION OF THE MEDIATOR	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0208	MEDIATOR	Amended Eff. April 1, 2001	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0400 – SIMPLIFIED PROCEDURES FOR MEDICAID APPLICANT AND RECIPIENT APPEALS	26 NCAC 03 .0401	MEDICAID HEARING PROCEDURES RULES	Amended Eff. April 1, 2014	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 C.F.R. 431 Subpart E	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	26 NCAC 03 .0402	MEDIATION SETTLEMENT CONFERENCE RULES	Eff. August 1, 2009	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 C.F.R. 431 Subpart E	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note



November 30, 2015

Bill Culpepper
General Counsel
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609
bill.culpepper@oah.nc.gov

VIA ELECTRONIC MAIL

Re: Comments on Periodic Rule Review Report, 26 NCAC 03, Hearings Division

Dear Mr. Culpepper -

Disability Rights NC is our state's federally mandated protection and advocacy organization. We work to protect the legal rights of North Carolinians with disabilities. We are a non-profit legal organization representing clients in a broad range of matters related to their disabilities, including employment, education, housing, abuse, and health care matters. We welcome the opportunity to comment on the N.C. Office of Administrative Hearings' agency report on the review of state rules governing administrative hearings.

We note that the agency has determined several rules to be unnecessary and not implementing or conforming to federal regulation. We urge the agency to reconsider these determinations under Goldberg v. Kelly, 397 U.S. 254 (1970), and the requirements of Title XIX of the Social Security Act and implementing regulations, which authorize Federal grants to states for medical assistance.

Federal law requires fair hearings for applicants and beneficiaries of medical assistance programs under 42 C.F.R. 431 Subpart E. More specifically, in reference to 26 NCAC 03.109, Notice of Hearing, we note 42 C.F.R. 435.918, which governs when and how e-filing can be effectuated in notices (e.g., it cannot be exclusive or mandatory).

We appreciate the opportunity to comment on this plan and ask that the State seriously consider our analysis. We are available to discuss our concerns and proposals further and look forward to continuing to work with the State as the plan evolves. If you have any questions or concerns, please do not hesitate to contact me at 919-856-2195 or mercedes.restucha@disabilityrightsncc.org.

Sincerely,

Vicki Smith
Executive Director

*North Carolina's Protection
and Advocacy System*

3724 National Drive
Suite 100
Raleigh, NC 27612

919-856-2195 www.disabilityrightsncc.org
877-235-4210
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919-856-2244 fax

Masich, Molly

From: Culpepper, Bill
Sent: Monday, December 07, 2015 4:30 PM
To: Masich, Molly
Cc: Culpepper, Bill; Anderson, Robin A
Subject: OAH response to Comments on Periodic Rule Review Report, 26 NCAC 03, Hearings Division by Disability Rights North Carolina

This is the response to the November 30, 2015 comments made in letter form by Disability Rights North Carolina (DRNC) to the Office of Administrative Hearings (OAH) regarding OAH's pending Periodic Rule Review Report to the Rules Review Commission. The subject comments are to the 26 NCAC 03, Hearings Division portion of the review report.

OAH has determined that six (6) administrative rules in 26 NCAC 03 (to wit: 26 NCAC 03 .0109, .0110, .0124, .0128, .0129 and .0130) are unnecessary rules in that each of said rules is either obsolete, redundant, or otherwise not needed. DRNC appears to object to the unnecessary rule determination for these six (6) rules, but no specific reasons are given by DRNC as to why these rules are not either obsolete, redundant, or otherwise not needed. OAH has fully analyzed these rules and the determination that each of the subject rules is either obsolete, redundant, or otherwise not needed, and therefore unnecessary, remains unchanged.

In its comments, DRNC states: "Federal law requires fair hearings for applicants and beneficiaries of medical assistance programs under 42 C.F.R. 431 Subpart E." OAH has two (2) administrative rules (to wit: 26 NCAC 03 .0401 and .0402) that pertain to Medicaid Applicant and Recipient Appeals. It is correct that these two rules "Implement or Conform to Federal Regulation", to wit: 42 C.F.R. 431 Subpart E as is set forth in DRNC's letter of comments. Therefore, the OAH Periodic Rule Review Report should be modified by citing these federal regulations as applying to the two aforementioned Medicaid administrative rules.

Bill Culpepper
General Counsel
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919.431.3067
919.431.3100 (Fax)

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January 15, 2016

Bill Culpepper
General Counsel
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609
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VIA ELECTRONIC MAIL

Re: Comments on Periodic Rule Review Report, 26 NCAC 03, Hearings Division

Dear Mr. Culpepper -

I write to follow up on the letter submitted by Disability Rights NC on November 30, 2015 concerning the proposed revisions to the state rules governing administrative hearings. Since then, we have consulted with the staff at the Office of Administrative Hearings about those concerns raised in that letter. Having discussed the purpose and effect of the proposed revisions with your staff, we are satisfied that the revised rules are in compliance with the federal statutes and rules governing the Medicaid program.

More specifically, the concerns raised in our earlier letter related to the proposed deletion of certain rules. As explained by your staff, Rules 26 NCAC 03.0109 and .0124 are already excepted from Medicaid appeals; Rules 26 NCAC 03.0110 and .0128 simply restate statutory provisions of Chapter 150B; and Rules 26 NCAC 03.0129 and .0130 are rendered obsolete or redundant by statutory revisions to Chapter 150B or other administrative rules.

We have appreciated the opportunity to comment on this plan and the willingness of the Office of Administrative Hearings to take the time to explain the reasoning behind the proposed revisions.

Sincerely,



John R. Rittelmeyer
Director of Special litigation