

**Fiscal Impact Analysis of Permanent Rule
Readoption and Adoption – 10A NCAC 21A**

Agency Proposing Rule Change

North Carolina Department of Health and Human Services, Division of Medical Assistance

Contact Persons

Lotta Crabtree, Associate Director of Appeals – (919) 855-4055

Lori Anne Caskey, Appeals Chief – (919) 855-3261

Virginia Niehaus, Rulemaking Coordinator – (919) 855-4111

Impact Summary

Federal Government:	No Impact
State Government:	No Impact
Local Government:	No Impact
Private Individuals/Entities:	No Impact
Substantial Impact:	No

Title of Rule Changes and Citations

10A NCAC 21A – General Administration

Section .0300 – Appeals

- 10A NCAC 21A .0301 – Notice (Readopt)
- 10A NCAC 21A .0302 – Good Cause for Delayed Hearings (Readopt)
- 10A NCAC 21A .0303 – Appeal Decision (Readopt)

See proposed text of these rules in Appendix 1.

Authorizing Statutes

NCGS §§ 108A-54, 108A-54.1B, 108A-79

Background

Under authority of NCGS § 150B-21.3A, Periodic Review and Expiration of Existing Rules, the Department of Health and Human Services, Rule Review Commission, and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC. 21A – General Program Administration. The following rules were classified as necessary with substantial public interest: 10A NCAC 21A .0301, .0302, and .0303.

The agency is presenting 21A .0301 and .0302 for readoption with minor, non-substantive changes that clarify existing language, and 21A .0303 for readoption with minor substantive changes to clarify the process for presenting an oral or written argument for or against an appeal decision. Pursuant to NCGS § 150B-21.3A(d)(2), an agency is not required to prepare a fiscal note if a rule is readopted without substantive change or if the rule is amended to impose a less

stringent burden on regulated persons, but the agency has prepared brief statements on 21A .0301 and .0302 to explain these non-substantive changes.

Rule Summaries and Anticipated Fiscal Impact

Rule .0301 - Notice

10A NCAC 21A .0301 provides that no action involving termination or modification of assistance will become effective until 10 days after the notice is mailed or delivered, except in certain circumstances where the modification is beneficial to the applicant or beneficiary or permitted by federal law. The changes are not substantive and are meant to update terminology and references to state law, respectively.

Fiscal Impact

All changes to this rule are minor, non-substantive, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0302 - Good Cause for Delayed Hearings

10A NCAC 21A.0302 permits a hearing to be delayed for good cause. The minor changes and additions to this rule are not substantive, do not change how the rule is implemented, and are intended only to clarify existing language.

Fiscal Impact

All changes to this rule are minor, non-substantive, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0303 - Appeal Decision

10A NCAC 21A. 0303 mandates the process for applicant or beneficiary eligibility appeal decisions. Changes to renumbered paragraphs (e), (f), (g), and (h) of this rule are minor, non-substantive changes that do not change how the rule is implemented and are intended only to clarify existing language. Changes to renumbered paragraph (i) are to clarify the state law that currently applies and to remove an incorrect requirement that the agency provide notice of the appellant's right to request a state agency hearing, since this decision is the result of the state agency hearing. Changes to paragraph (c) and the addition of paragraph (d) clarify that the "contact" required may, as indicated by paragraph (b), be "written" or "oral" and, if timely, the appellant may request an extension to submit an argument. This is a clarification of existing language to provide clearer guidance to regulated persons on how to respond to a tentative decision.

Fiscal Impact

As indicated above, changes to renumbered paragraphs (e), (f), (g), (h), and (i) are minor, non-substantive, technical changes with no fiscal impact. The changes to paragraph (c) and the addition of paragraph (d) are substantive, but do not have a fiscal impact. The current rule requires appellants to contact the Chief Hearing Officer within 10 days. This revised rule assists appellants in understanding *how* to contact the Chief Hearing Officer regarding the decision. It

will not impact the number of arguments received nor place a greater fiscal burden on staff or appellants. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

1 10A NCAC 21A .0301 is proposed for readoption without substantive changes as follows:

2

3

SECTION .0300 - APPEALS

4

5 **10A NCAC 21A .0301 NOTICE**

6 In cases involving termination or modification of assistance, no action shall become effective until ten business work
7 days after the notice is mailed or delivered, except ~~that it may be effective immediately~~ when:

8 (1) modification ~~Modification results in an increase in benefits is beneficial~~ to the applicant or
9 beneficiary; client; or

10 (2) permitted pursuant to Federal regulations at 42 C.F.R. 431.213, which is adopted and incorporated
11 by reference with subsequent changes or amendments and available free of charge at
12 <https://www.ecfr.gov/>. ~~are adopted by reference pursuant to 150B-14(e).~~

13

14 *History Note: Authority G.S. 108A-54; 108A-54.1B; ~~108A-79~~ 108A-79(b); ~~150B-14(e)~~; 42 C.F.R. 431.211; 42*
15 *C.F.R. 431.213;*
16 *Eff. September 1, 1984;*
17 *Amended Eff. August 1, 1990; ~~1990~~.*
18 *Readopted Eff. March 31, 2018.*

19

20

1 10A NCAC 21A .0302 is proposed for readoption without substantive changes as follows:

2

3 **10A NCAC 21A .0302 GOOD CAUSE FOR DELAYED HEARINGS**

4 (a) A local appeal hearing under G.S. 108A-79 shall be delayed for good cause as provided in G.S. 108A-79(e).

5 (b) A ~~State~~ state appeal hearing under G.S. 108A-79 may be delayed for as much as 30 calendar days when there is
6 good cause. ~~The postponement may not exceed 30 calendar days.~~

7 (c) Good cause exists when:

8 (1) ~~the~~There is a death in the appellant's family;

9 (2) ~~the~~The appellant or someone in his or her family is ill;

10 (3) ~~the~~The appellant is unable to obtain representation;

11 (4) ~~the~~The appellant's representative has a conflict with the scheduled date;

12 (5) ~~the~~The appellant receives a notice of action proposing a reduction or termination of assistance after
13 the ten business work day notice expires;

14 (6) ~~the~~The appellant is unable to obtain transportation; or

15 (7) ~~the~~The hearing officer determines that the hearing should be delayed for some other reason in the
16 interests of justice or to promote judicial economy. ~~other circumstances satisfactory to the hearing~~
17 ~~officer.~~

18

19 *History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-79;*

20 *Eff. September 1, 1984;*

21 *Amended Eff. August 1, 1990; ~~1990~~.*

22 *Readopted Eff. March 31, 2018.*

23

24

1 10A NCAC 21A .0303 is proposed for readoption with substantive changes as follows:

2

3 **10A NCAC 21A .0303 APPEAL DECISION**

4 (a) The hearing officer shall make a tentative decision ~~that which~~ shall be served upon the county department and the
5 appellant by mail. Decisions reversing ~~proposing to reverse~~ the county department's action shall be sent by certified
6 mail to the county ~~department.~~ ~~department while decisions~~ Decisions affirming the county department's actions shall
7 ~~will~~ be sent by certified mail to the appellant.

8 (b) The county and the appellant may present oral and written argument, for and against the decision ~~decision.~~ by
9 contacting the Chief Hearing Officer. ~~Written argument may be submitted to or contact made with the Chief Hearing~~
10 ~~officer to request a hearing for oral argument.~~

11 (c) If a written argument or a request for oral argument is not received by the Chief Hearing Officer ~~is not contacted~~
12 within 10 calendar days of the date the notice of the tentative decision is signed, the tentative decision shall become
13 final.

14 (d) If a request for a time extension to submit an argument is received by the Chief Hearing officer within 10 calendar
15 days of the date the notice of the tentative decision is signed, an extension may be granted for good cause or in the
16 interests of justice.

17 ~~(e)(d)~~ If the party that requested oral argument fails to appear ~~at the hearing~~ for the scheduled oral argument, the
18 tentative decision shall become ~~becomes~~ final.

19 ~~(f)(e)~~ If oral or and written arguments are ~~presented,~~ presented within the timeframes established in paragraphs (c)
20 and (d) of this rule, then all such arguments shall be considered and a final decision shall be rendered.

21 ~~(g)(f)~~ The final decision shall be served upon ~~mailed to~~ the appellant and any the county department by certified mail.

22 ~~(h)(g)~~ A decision upholding the appellant shall be put into effect within two weeks after the county department's
23 receipt of the final decision ~~decision.~~ by certified mail.

24 ~~(i)(h)~~ As provided for in 42 C.F.R. 431.245 ~~431.245,~~ and G.S. 108A-79(k), the decision shall contain the appellant's
25 right to ~~request a State agency hearing and seek judicial review.~~ review to the extent that either is available to him.

26

27 *History Note:* Authority G.S. 108A-54; 108A-54.1B; 108A-79; 42 C.F.R. 431.244; 42 C.F.R. 431.245; 42 C.F.R.
28 431.246;

29 *Eff. September 1, 1984;*

30 *Amended Eff. September 1, 1992; 1992.*

31 *Readopted Eff. March 31, 2018.*

32



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DAVE RICHARD
DEPUTY SECRETARY FOR MEDICAL ASSISTANCE

MEMORANDUM

TO: Office of State Budget and Management

FROM: Virginia R. Niehaus, DMA Rulemaking Coordinator

DATE: October 25, 2017

RE: Federal Certification for N.C. Department of Health and Human Services,
Division of Medical Assistance (DMA) Rule Readoption
Subchapter 21A – General Program Administration

Rule-making Coordinator's Certificate

As Required by GS 150B-19.1(g)
For Proposed Permanent and Temporary Rules Adopted to
Implement a Federal Law or which upon Receipt of Federal Funds is Conditioned

10A NCAC 21A .0301 and .0303 are proposed for readoption to be compatible with federal regulations governing Medicaid fair hearings for applicants and beneficiaries. These rules apply to Medicaid beneficiaries who are appealing eligibility determinations and set out state requirements for notice and appeal decisions.

Regulation by the State of North Carolina of Medicaid applicant and beneficiary appeals is subject to the provisions of 42 CFR Part 431, Subpart E (Fair Hearings for Applicants and Beneficiaries). The readoption of the above-named rules is necessary to comply with these federal regulations.