



NC DEPARTMENT OF
**HEALTH AND
 HUMAN SERVICES**
 Division of Mental Health, Developmental
 Disabilities and Substance Use Services

ROY COOPER • Governor
KODY H. KINSLEY • Secretary
MARK T. BENTON • Chief Deputy Secretary for Health
KELLY CROSBIE • Director

November 20, 2023

MEMORANDUM

TO: Rules Review Commission
 Office of Administrative Hearings

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FROM: I. Azell Reeves, Chair
 Commission for MH/DD/SAS

Kelly Crosbie, Director
 Division of MH/DD/SUS

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RE: Request for Extension of Review of 10A NCAC Subchapter 27G
 G.S. 150B-21.3, Periodic Review and Expiration of Existing Rules

G.S. 150B-21.3A(d) requires the Rules Review Commission (RRC) to establish a schedule for the review and readoption of existing rules on a decennial basis assigning each Title of the North Carolina Administrative Code a date by which the review is to be completed. The RRC adopted Rule 26 NCAC 05 .0211, *Schedule*, effective April 1, 2014, which governed the periodic review process spanning 2014-2023. This schedule required that the Determination Report for Rules 10A NCAC Subchapter 27G be submitted to the RRC for review in May 2019. G.S. 150B-21.3A(c)(1) requires agencies subject to the same to conduct a review of its existing rules at least once every 10 years per the schedule established by the RRC. Consistent with the RRC's 2014-2023 schedule, the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) and the Division of Mental Health, Developmental Disabilities, and Substance Use Services (Division) completed their review of Rules 10A NCAC Subchapter 27G submitting Determination Reports to the RRC in May 2019. Despite the requirement of a decennial review of existing rules, the RRC's 2024-2027 Periodic Review Schedule, updated September 22, 2023, requires a review of these same rules in July 2024, five years following the initial review.

G.S. § 150B-21.3A(d)(1) grants the Rules Review Commission broad authority to modify the schedule established for the review and readoption of existing rules on a decennial basis and extend the time for review in appropriate circumstances. Rule 10A NCAC 05 .0204, *Extension of Time*, permits an agency head to submit a written request for an extension of time from the RRC. In accordance with Rule 10A NCAC 05 .0204, the Commission and the Division jointly request an extension of the July 2024 schedule recently established for the periodic review and expiration of existing rules as it relates Rules 10A NCAC Subchapter 27G. The rules in this subchapter were adopted pursuant to the authority of the Commission and/or the authority of the Secretary of the Department of Health and Human Services delegated to the Division Director.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE USE SERVICES

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The Commission and the Division request a waiver of this timeframe based upon consideration of the following factors:

1. While G.S. 150B-21.3A(c) requires that an *agency* conduct a review of its existing rules *at least once every 10 years*, per G.S.150B-21.3A(d), the *RRC's schedule* is to provide for the review and readopting of existing rules *on a decennial basis*. The RRC's July 2024 due date is only five years following the initial review of the rules in Subchapter 27G.
2. Collectively, the rules in Chapter 27 govern mental health, developmental disabilities, and substance use community facilities and services while the rules in Subchapter 27 G govern mental health, developmental disabilities, and substance use services, the Local Management Entities/Managed Care Organizations which oversee delivery of these programs and services, as well as the facilities and agencies providing the same. The rules in Subchapter 27G also govern the licensure process implemented by the Division of Health Service Regulation (DHSR) in accordance with G.S. § 122C. Subchapter 27G includes not only general rules (i.e., core rules) governing all mental health, developmental disabilities, and substance use services but also program specific rules applicable to specific programs and services (e.g., Substance Use Intensive Outpatient Program) as well as programs and facilities governing more than one disability type. Consequently, a review of the rules in Subchapter 27G involves, at a minimum, staff of the Division, members of the Commission, staff of DHSR, and consultation with staff of the recently established Division of Child and Family Well-being.
3. The Division and the Division of Health Benefits are collectively engaged in the implementation of the Centers for Medicare and Medicaid Services 1115 Substance Use Disorder Demonstration Waiver. This will require amendment of a minimum of eight existing licensure rules as well as adoption of at least five new rules governing the licensure process. Coincident with planning for the implementation of this Waiver, the divisions are also in consultation regarding the creation of disability-specific rules in an effort to more effectively address the unique service needs pertinent to each.
4. The community mental health, developmental disabilities, and substance abuse service delivery system is in a period of transition as we prepare to move to a Tailored Plan approach for the delivery of State-funded services.
5. With the exception of Subchapter 27G, the remaining rules in Chapter 27 are scheduled for review beginning in February 2025 through April 2026 which permits reviews 7, 8, and 10 years following their initial review.
6. Subchapter 27G, the largest of Chapter 27, is scheduled for the earliest review at five years (July 2024). The majority of the rules in this subchapter were adopted per the Commission's authority. The Commission meets on a quarterly basis; it's unlikely that this timeframe will permit completion of a thorough review of these rules.
7. The Commission and the Division completed their review of all rules adopted per its authority within the timeframe required by the previously adopted RRC schedule and requested no waivers in the conduct of that process.
8. The Commission and the Division anticipate that the extension of the current time for review of the rules in Subchapter 27G permits reviews mindful of the impact of their decisions upon the remaining rules in the Chapter as well as upon the transitioning mental health, developmental disabilities, and substance abuse service delivery system in its entirety.
9. Under the current periodic review process, all rules determined necessary will require readoption. An extension of the current review period for the rules in Subchapter 27G will permit a more efficient readoption process as it will permit the changes required by implementation of Tailored Plans and the CMS 1115 SUD Demonstration Waiver to be incorporated at the time of that readoption.

In conclusion, for the aforementioned reasons, the Commission and the Division respectfully request that the review of the rules in Subchapter 27G be rescheduled for July 2026 to permit the review of these rules

coincident with that of the remaining rules in Chapter 27. Please do not hesitate to contact us or our Rulemaking Coordinator, Denise Baker, should you have any questions related to this request: reev5205@bellsouth.net; kelly.crosbie@dhhs.nc.gov; denise.baker@dhhs.nc.gov.

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