

1 **10A NCAC 68 .0108 DECLARATORY RULINGS**

2 (a) The director of the division shall have the power to make a declaratory ruling on the validity of a rule adopted by  
3 the director, or on the applicability of a rule or statute adopted by either the director or the commission. The  
4 commission shall have the power to make a declaratory ruling on the validity of a rule adopted by the commission.

5 (b) All requests for declaratory rulings shall be by written petition and shall be submitted to:

6 ~~Special Assistant to the Director~~  
7 Division of Social Services  
8 Department of Health and Human Services  
9 ~~325 North Salisbury Street~~  
10 2401 Mail Service Center  
11 Raleigh, North Carolina 27699-2401

12 (c) Every request for a declaratory ruling must include the following information:

- 13 (1) the name and address of the petitioner,  
14 (2) the statute or rule to which the petition relates,  
15 (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its  
16 potential application to him or her, and  
17 (4) the consequences of a failure to issue a declaratory ruling.

18 (d) Whenever the person or group with the power to make a declaratory ruling believes for a good reason that the  
19 issuance of a declaratory ruling would be undesirable, that person or group may refuse to issue one. Such refusal shall  
20 be followed, within ~~60~~30 days of the receipt of the petition, by the issuance of written notification to the petitioner  
21 and to the hearing office. The notice shall state the decision and the reasons therefore.

22 (e) The person or group with the power to make a declaratory ruling may refuse to consider the validity of a rule and  
23 issue a declaratory ruling.

- 24 (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that  
25 such a ruling would be warranted;  
26 (2) unless the rulemaking record evidences a failure by the agency to consider specified relevant factors;  
27 (3) if there has been a similar controlling factual determination in a contested case, or if the factual  
28 context being raised for a declaratory ruling was specifically considered upon adoption of the rule  
29 being questioned as evidenced by the rulemaking record; or  
30 (4) if circumstances stated in the request or otherwise known to the agency show that a contested case  
31 hearing would presently be appropriate.

32 (f) Where the person or group with the power to make a declaratory ruling does not deem undesirable the issuance of  
33 such a ruling, the declaratory ruling shall be issued within ~~60~~45 days after receipt of the petition.

34 (g) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may  
35 be deemed appropriate, in the discretion of the person or group that is to issue the ruling.

36 (h) The person or group that is to issue a declaratory ruling may issue notice to persons who might be affected by the  
37 ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

38 (i) A record of all declaratory ruling proceedings shall be maintained by the ~~Special Assistant~~ Director and shall be  
39 available for public inspection during regular business hours. This record shall contain:

- 1 (1) the original request,
- 2 (2) the reasons for refusing to issue a ruling,
- 3 (3) all written memoranda and information submitted,
- 4 (4) any recording or transcript of any oral hearing, and
- 5 (5) a statement of the ruling.

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7 *History Note: Authority G.S. 143B-153; ~~150B-17~~; 150B-4;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. October 31, 1977;*

10 *Amended Eff. March 1, ~~1990~~-1990;*

11 *Readopted Eff. July 1, 2019.*

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