

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

Volume 16, Issue 3  
Pages 194 - 281

August 1, 2001

This issue contains documents officially filed through July 11, 2001.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Linda Dupree, Editorial Assistant  
Dana Sholes, Editorial Assistant  
Rhonda Wright, Editorial Assistant

<b>I. EXECUTIVE ORDERS</b>	
Executive Orders 6 - 10 .....	194 - 196
<b>II. IN ADDITION</b>	
Voting Rights Letter.....	197
ENR – Environmental Management.....	199
ENR – Intent to Redevelop a Brownfields Property – Dabney Commons, LLC.....	198
<b>III. RULE-MAKING PROCEEDINGS</b>	
<b>Environment and Natural Resources</b>	
Environmental Management Commission .....	202 - 203
Health Services, Commission for .....	203 - 204
<b>Health and Human Services</b>	
Mental Health, Developmental Disabilities and Substance Abuse Services, Commission .....	200 - 201
Social Services Commission .....	201 - 202
<b>Licensing Boards</b>	
Acupuncture, Licensing Board .....	204
<b>IV. PROPOSED RULES</b>	
<b>Health and Human Services</b>	
Facility Services.....	205 - 233
<b>V. TEMPORARY RULES</b>	
<b>Health and Human Services</b>	
Facility Services.....	234 - 237
Vocational Rehabilitation, Division of.....	237 - 241
<b>Justice</b>	
Private Protective Services Board .....	241 - 242
<b>VI. APPROVED RULES .....</b>	<b>243 - 263</b>
<b>Agriculture</b>	
Structural Pest Control Division	
<b>Environment and Natural Resources</b>	
Wildlife Resources Commission	
<b>Health and Human Services</b>	
Children's Services	
Individual and Family Support	
<b>Licensing Boards</b>	
Dietetics/Nutrition, Board of	
Nursing, Board of	
<b>Transportation</b>	
Highway, Division of	
<b>VII. RULES REVIEW COMMISSION.....</b>	<b>264 - 267</b>
<b>VIII. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	268 - 270
Text of Selected Decisions	
00 OSP 1806.....	271 - 281
<b>IX. CUMULATIVE INDEX .....</b>	<b>1 - 56</b>

**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/31/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
16:05	09/04/01	08/13/01	11/15/01	09/19/01	10/04/01	10/22/01	05/00/02	11/05/01	11/20/01	05/00/02	06/01/02
16:06	09/17/01	08/24/01	12/03/01	10/02/01	10/17/01	10/22/01	05/00/02	11/16/01	11/20/01	05/00/02	06/14/02
16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/31/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
16:08	10/15/01	09/24/01	12/17/01	10/30/01	11/14/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	12/17/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	01/02/02	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
**(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 6  
AMENDING EXECUTIVE ORDER NO. 25  
CONCERNING REGIONAL POLICY FOR  
NORTH CAROLINA**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order 25, issued by Governor James G. Martin on February 21, 1986 is hereby amended as follows:

Section 4 subsections (b), (c) and (d) of Executive Order 25, are suspended to permit the Secretary of the Department of Administration to modify regional boundaries in response to the dissolution of the Pee Dee Council of Governments.

This Executive Order is effective immediately and shall expire on July 1, 2001.

Done in the Capital City of Raleigh, North Carolina, this the 24<sup>th</sup> day of April, 2001.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NUMBER 7  
TEACHER ADVISORY COMMITTEE**

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

There is hereby established a Teacher Advisory Committee ("Committee"). The Committee shall be composed of up to twenty members appointed by the Governor. The North Carolina Teacher of the Year shall serve *ex officio*. The appointed members shall serve one-year terms. Members may be reappointed. The Governor shall also appoint the Chair.

Section 2. Meetings.

- (a) The Committee shall meet at least once each quarter and may hold special meetings at any time at the call of the Chair or the Governor (or his designee).
- (b) The Committee must meet as a quorum. A quorum, for the purposes of this Order, is defined as a simple majority.

Section 3. Administration.

The Office of the Governor shall provide staff and administrative support services for the Committee.

Section 4. Duties.

- (a) Advise the Governor as to the experiences and concerns of teachers in the classrooms of North Carolina.
- (b) Assist the Governor in his efforts to improve teaching and learning in North Carolina's schools.
- (c) Recommend strategies for recruiting and retaining quality educators.
- (d) Identify, recognize, and celebrate entrepreneurial schools and school systems in North Carolina.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 6<sup>th</sup> day of July, 2001.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 8  
TRANSFER OF HURRICANE FLOYD RELIEF  
PROGRAMS TO THE DEPARTMENT OF CRIME  
CONTROL AND PUBLIC SAFETY**

WHEREAS, Article III, Section 5(10) of the Constitution of North Carolina authorizes and empowers the Governor to make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration; and

WHEREAS, the North Carolina General Assembly found that Hurricane Floyd was the worst natural disaster in the State's history and, pursuant to the Hurricane Floyd Recovery Act of 1999, S.L. No. 1999-463 E.S., Sec. 4.1 P. 1947 (1999), authorized the Governor to establish new programs and to modify and expand existing programs to provide necessary and appropriate relief and assistance from the effects of Hurricane Floyd; and

WHEREAS, the Hurricane Floyd Redevelopment Center focuses on relocating flood victims into safe, secure and sanitary housing, working with all local, state and federal government agencies assigned to emergency relief efforts, as well as volunteer and non-profit organizations, and monitors the allocation of funds from federal and state disaster assistance, and coordinates with local and state agencies to identify unmet needs; and

**EXECUTIVE ORDERS**

WHEREAS, Crisis Housing Assistance, as defined in the Hurricane Floyd Recovery Act of 1999, is administered by the Division of Community Assistance and the Housing and Business Redevelopment Office of the Department of Commerce to support crisis housing assistance to homeowners, renters, new homeowners, and for relocation; and

WHEREAS, this administration's goal is to streamline statewide relief responsibilities; and

WHEREAS, the consolidation in the Department of Crime Control and Public Safety of the Hurricane Floyd Related Crisis Housing Assistance Programs, as defined in the Hurricane Floyd Recovery Act of 1999, functions carried out by the Division of Community Assistance and the Housing and Business Redevelopment Office of Department of Commerce, and the statewide relief functions carried out by the Hurricane Floyd Redevelopment Center, will further this goal.

NOW, THEREFORE it is hereby ordered that,

Section 1. The Hurricane Floyd Redevelopment Center, now the North Carolina Redevelopment Center, of the Office of the Governor and the Department of Commerce, is hereby transferred to the Department of Crime Control and Public Safety.

Section 2. Pursuant to 4.1 of the Hurricane Floyd Recovery Act of 1999, Crisis Housing Assistance functions previously carried out by the Housing and Business Redevelopment Office and the Division of Community Assistance of the Department of Commerce shall be transferred to the North Carolina Redevelopment Center. This transfer shall not apply to the Crisis Housing Assistance for Affordable Rental Housing, Predevelopment and Land Acquisition administered by the N.C. Housing Finance Agency and the N.C. Community Development Initiative. These programs shall remain in the Department of Commerce.

Section 3. All appropriations, personnel and equipment for the agencies transferred above shall be reallocated to the Department of Crime Control and Public Safety.

Section 4. All rules, regulations and policies promulgated by the Office of the Governor, Housing and Business Redevelopment Office, Division of Community Assistance, the Hurricane Floyd Redevelopment Center and the Department of Commerce regarding Crisis Housing Assistance, shall continue to apply to the agencies transferred to the Department of Crime Control and Public Safety and shall remain in effect until such rules, regulations and policies are amended or rescinded by the Secretary of the Department of Crime Control and Public Safety.

Section 5. This order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 6<sup>th</sup> day of July, 2001.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 9  
TEMPORARY SUSPENSION OF  
MOTOR VEHICLE REGULATIONS  
IN ORDER FOR UTILITY VEHICLES TO  
RESPOND TO NATURAL DISASTERS  
AND OTHER EMERGENCIES**

WHEREAS, electric service is one of the most essential services required by modern society, and the public welfare is immediately threatened by any occurrences, natural or manmade, which interrupt the delivery of electricity and electrical services; and

WHEREAS, the citizens of North Carolina likely will suffer losses of harm if vehicles transporting equipment, supplies, or personnel to restore utilities in the aftermath of natural disasters and other emergencies in North Carolina are delayed.

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State IT IS ORDERED:

Section 1. When a natural disaster or other emergency has been declared by the Governor, the Division of Motor Vehicles shall waive the size and weight or restrictions and penalties therefore arising under N.C.G.S. §§ 20-88, 20-96, and 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for utility vehicles transporting equipment, supplies along our highways for the area covered by the disaster or emergency declaration.

Section 2. Notwithstanding the waivers set forth above, restrictions and penalties shall not be waived under the following conditions:

When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.

When the tandem axle weight exceeds 42,000 pounds gross weight and the single axle weight exceeds 22,000 pounds.

When the (vehicle/vehicle) combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under section 1 shall be exempt from the following registration requirements:

A. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required

because the exception in N.C.G.S. § 105-449.45 (a)(1) applies.

- B. The registration requirement under N.C.G.S. § 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance.
- C. Non-participants in North Carolina International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 5. The waiver of regulations under 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations) do not apply to the CDL and Insurance Requirements. This waiver shall be in effect for the duration of the emergency and for 30 days after the emergency is declared over.

Section 6. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the implementation of this rule without endangering motorist in North Carolina.

Section 7. The vehicles referenced herein shall be operated in a safe manner and shall follow all posted limits and laws including maintenance of required limits of insurance except those covered in this Executive Order.

Section 8. The provisions of this Executive Order shall remain in effect for 30 days after the Governor declares that the state of emergency or disaster in the State of North Carolina is over.

Section 9. Exemptions of this Executive Order shall apply to any utility motor vehicle responding to the emergency or disaster as long as it is clearly marked as a utility vehicle or carries signage indicating it is a utility vehicle.

This Executive Order is effective immediately upon the declaration of a state of disaster or emergency by the Governor.

Done in the Capital City of Raleigh, North Carolina, this 6<sup>th</sup> day of July, 2001.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 10  
AMENDING GOVERNOR HUNT'S  
EXECUTIVE ORDER NO. 136  
CONCERNING THE GOVERNOR'S  
ADVISORY COUNCIL  
ON HISPANIC/LATINO AFFAIRS**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order 136, issued by Governor James B. Hunt Jr. on June 5, 1998, is hereby amended as follows:

Section 1. Establishment

The ex-officio, non-voting members are:

- a. The Secretary of DOA
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;
- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Governor's Senior Advisor on Community Affairs;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- i. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- j. The Commissioner of Labor;
- k. The Attorney General
- l. The Superintendent of Public Instruction; and
- m. The Honorary Consul of Mexico

Other than the above amendments, Executive Order 136 remains in full force and effect.

Done in the Capital City of Raleigh, North Carolina, this the 6<sup>th</sup> day of July, 2001.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

**U.S. Department of Justice**

Civil Rights Division

---

JDR:GS:TGL:par  
DJ 166-012-3  
2001-1310  
2001-1489  
2001-1603

*Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128*

June 20, 2001

Linda A. Miles, Esq.  
City Attorney  
P.O. Box 3136  
Greensboro, NC 27402-3136

Dear Ms. Miles:

This refers to the 2001 redistricting plan, as amended on May 15, 2001, and 10 annexations (Ordinance Nos. 94, 96, 98, 100, 102, 104, 106, 108, 110, and 113 (2001) to the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on May 3, 20, and June 5, 2001; supplemental information was received from May 16 through May 29, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section



SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY

Dabney Commons, LLC

Pursuant to N.C.G.S. 130A-310.34, Dabney Commons, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Henderson, Vance County, North Carolina. The Property consists of approximately 21 acres and is located at 1703 Dabney Drive. The Property is bounded on the north by U.S. Highway 158 Bypass, on the southeast by U.S. Interstate 85, and on the southwest by Dabney Drive, beyond which is property in commercial retail use. Environmental contamination exists on the Property in soil and groundwater. Dabney Commons, LLC has committed itself to development of the Property for office, hotel and retail use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Dabney Commons, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the front desk of the offices of the City of Henderson located at 180 South Beckford Drive, Henderson, NC 27536, or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Head, Special Remediation Branch  
Superfund Section  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**CHAPTER 2 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02B – SURFACE WATER AND WETLAND STANDARDS**

**CORRECTIVE STATEMENT**

This is to notify interested persons that rule 15A NCAC 02B .0243 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS, which was published in the June 15, 2001 *NC Register*, contained a formatting error. The table of uses within the rule did not show all markings that should have been included. The misprint was due to the formatting of the *NC Register* document and is not due to any inaccuracies within the rule itself. The rule does appear correctly in the legally binding official code of the Office of Administrative Hearings (OAH) and is available for download from the OAH website.

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14V – RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

Notice of Rule-making Proceedings is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14V .0402. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143B-147

Statement of the Subject Matter: House Bill 1840 gives the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services the authority to adopt temporary rules regarding Residential Services for Children.

Reason for Proposed Action: Governor Hunt's initiative requires the agency to implement measures to improve the health, safety and welfare of clients. H.B. 1840 requires the Department of Health and Human Services to establish Residential Services for Children. It further requires that the program be implemented in consultation with the Office of Juvenile Justice and other affected State agencies. The purpose of the program is to provide appropriate and medically necessary residential treatment alternatives for children at risk of institutionalization or other out-of-home placement.

Comment Procedures: Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 27699-3012.

\*\*\*\*\*

SECTION .0400 – LICENSING PROCEDURES

Notice of Rule-making Proceedings is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14V .0402. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-3; 122C-23; 122C-26; 122C-27(55); 143B-147

Statement of the Subject Matter: S.B. 541 amended G.S. 130A-235 and affects the licensure process for 122C facilities. Sanitation inspections are no longer required for therapeutic homes which are currently licensed pursuant to 10 NCAC 14V .5300. Rule 10 NCAC 14V .0402 currently requires sanitation inspections for all 122C facilities to specifically exclude therapeutic homes in accordance with the recently passed Bill.

Reason for Proposed Action: An act to exempt single-family dwellings used as family foster homes or therapeutic homes from sanitation requirements.

Comment Procedures: Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 37699-3012.

\*\*\*\*\*

SECTION .3600 – OUTPATIENT NARCOTIC ADDICTION TREATMENT

Notice of Rule-making Proceedings is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14V .3600. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-26; 143B-147; C.F.R. Part 2 '291.50; 21 C.F.R. Part 1300

Statement of the Subject Matter: The current Federal Regulations have recently changed to allow various levels of eligibility for take-home supplies of Methadone. The Division does not support the levels of take-home supplies and will request temporary rules in order to oppose the recommended dosages.

Reason for Proposed Action: The current Federal Regulations have recently changed to allow various levels of eligibility for

take-home supplies of Methadone. The Division does not support the levels of take-home supplies and will request temporary rules in order to oppose the recommended dosages.

**Comment Procedures:** Anyone may submit written comments to Doug Baker, Substance Abuse Section of the Division of MHDDAS, 3008 MSC, Raleigh, NC 27699.

\*\*\*\*\*

**SECTION .4100 – THERAPEUTIC HOMES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS AND THEIR CHILDREN**

**Notice of Rule-making Proceedings** is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 14V .4100. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 143B-147; C.F.R. 96.124

**Statement of the Subject Matter:** House Bill 1840, Section 5.r \$5,000,000 TANF funds to DHHS, DMH/DD/SAS for the 2000-2001 fiscal year to be used to establish and expand regional residential substance abuse treatment and services for women with children.

**Reason for Proposed Action:** DMH/DD/SAS in consultation with local departments of social services, area mental health programs and other State and local departments of social services, area mental health programs and other State and local agencies or organizations shall coordinate this effort in order to facilitate the expansion of regionally based substance abuse services for women with children. These services shall be culturally appropriate and designed for the unique needs of TANF women with children. Provision includes language giving Secretary authority to enter into contracts with service providers in order to expedite the expansion of these services.

**Comment Procedures:** Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 37699-3012.

\*\*\*\*\*

**SECTION .5600 – SUPERVISED LIVING FOR INDIVIDUALS OF ALL DISABILITY GROUPS**

**Notice of Rule-making Proceedings** is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 14V .5600. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 122C-3(14)(e); 122C-24; 143B-147

**Statement of the Subject Matter:** Clarification of the licensure and definition of group homes for developmentally disabled adults.

**Reason for Proposed Action:** House Bill 387 of the 2001 Session of the General Assembly requires that the licensure of a group home for developmentally disabled adults pursuant to G.S. 131D, Article 1 be transferred to licensure as a supervised living facility for developmentally disabled adults under G.S. 122C-3(14)(e).

**Comment Procedures:** Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 37699-3012.

\*\*\*\*\*

**CHAPTER 41 – CHILDREN'S SERVICES**

**Notice of Rule-making Proceedings** is hereby given by Social Services Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 41F; 41N. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 131D-10.5; 143B-153

**Statement of the Subject Matter:** The Social Services Commission intends to amend rules in 10 NCAC 41F governing the licensure of family foster homes to update existing rules governing basic family foster care, and adopt new rules governing therapeutic family foster care. In addition, the Social Services Commission intends to amend rules in 10 NCAC 41N and adopt new rules governing staff and services delivery in child-placing agencies that intend to provide therapeutic foster care. Amendment of current rules and adoption of proposed rules will ensure that the latest child welfare practice standards are being implemented in family settings and that children with such needs are served in the least restrictive setting possible.

**Reason for Proposed Action:** For several years, the Division of Social Services has worked with the Division of Mental Health and other stakeholders to enhance service delivery to children in DSS custody who have mental health needs. In addition to enhanced funding and case management services for these children, it was recognized that revising licensure standards governing child-placing agencies and family foster homes would result in an increased number of children with mental health needs being served in family settings rather than

more restrictive residential settings. For the past year, a work group comprised of services providers from across the State and State staff from the Divisions of Social Services, Mental Health, Facility Services and Medical Assistance have met to propose revised licensure rules that would achieve compliance with best practice in this area.

**Comment Procedures:** Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919/733-3055.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by DENR – Environmental Management Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 02B .0302. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 143-214.1; 143-215.1; 143-215.3(a)(1)

**Statement of the Subject Matter:** The Environmental Management Commission (EMC) is proposing to reclassify a portion of the Hiwassee River in Cherokee County (Hiwassee River Basin) from Water Supply-IV (PA or Protected Area) to Water Supply-IV CA (Critical Area).

**Reason for Proposed Action:** McGill Associates, P.A. and the Town of Murphy have requested that a Hiwassee River segment above the town’s current intake in Cherokee County (Hiwassee River Basin) be reclassified to WS-IV CA. Reasons cited by the town and consultant for the reclassification are to relocate the raw water intake approximately 0.5 miles upstream of the existing intake, and a need to expand the existing critical area accordingly to incorporate existing and proposed intake facilities; the new intake is necessary due to construction of a new Department of Transportation (DOT) highway in the current intake’s CA and Division of Environmental Health (DEH) Public Water Supply (PWS) Section and town concerns

that the highway will contaminate the water supply. The new intake, which is proposed to be located upstream of the DOT road (bridge), is to be built and operational prior to construction of the new bridge per the DEH PWS Section and town. DOT will start bridge construction in June 2003. The DEH PWS Section will not allow the intake to be operational until the reclassification for the new intake is effective.

The river segment requested for reclassification is currently WS-IV and extends from the current WS-IV CA boundary on the river, which is also approximately 3000 feet due west of NC Highway 141 and where the proposed intake will be placed, to a point 0.5 miles linearly upstream on the Hiwassee River. The new WS-IV CA will be designated to the area measured 0.5 miles linearly upstream and draining to the intake. The current intake including its CA will stay intact. The remainder of the Protected Area (PA) for the existing intake that will not be reclassified to WS-IV CA will remain intact, too. Because the existing PA is measured as 10 miles as-the-crow flies from the existing intake by the town, rather than by the run-of-the-river which is how the area of a WS-IV PA has most recently been reinterpreted by the EMC, the PA affiliated with the proposed intake measured by the run-of-the-river method falls within the existing PA. Thus, the existing PA will serve as PA for the existing and new intakes.

No letter confirming that the water is suitable for treatment for potable use was required from the DEH PWS Section, and DWQ did not collect water samples from the waters to be reclassified in order to determine if these waters meet the water quality standards required by a WS-IV classification; this letter and sampling were not required because the waters proposed to be reclassified are located in a current water supply (WS-IV) watershed, and thus meet water quality standards for a water supply classification.

There are additional regulations that will be required by the reclassification (see table below). Please note that there are no current or planned dischargers or landfills in the proposed reclassification area, and that the current and proposed residential users in the affected area will not be impacted by the development regulations associated with the reclassification because no high density development provision is in their ordinance, plus very little development exists and very little development is projected in the affected area. Finally, Cherokee County, which is the only local government with jurisdiction in the proposed reclassification area, will be required to modify their water supply watershed protection ordinance within 270 days following the reclassification effective date. However, the county has opted to modify this ordinance as soon as possible as DWQ staff have stated the new intake can be established prior to the reclassification effective date if these modifications are in place.

<b>Classification</b>	<b>Area Affected</b>	<b>Low Density Development Option<sup>2</sup></b>	<b>High Density Development Option<sup>2,4</sup></b>	<b>Allowable Wastewater Discharges</b>	<b>Landfills Allowed</b>	<b>DOT BMPs</b>
<b>WS-IV Critical Area (Proposed)</b>	½ mile and Draining to Intake	1 DU / 0.5 acre or 24% BUA and 30’ Buffers	24-50% BUA and 100’ Buffers	Domestic and Industrial (new industrial discharges will require additional treatment)	No New Landfills	Required
<b>WS-IV Protected Area (Existing)</b>	Rest of Water Supply Watershed <sup>1</sup>	1 DU / 0.5 acre or 24% BUA and 30’ Buffers <sup>3</sup>	24-70% BUA and 100’ Buffers <sup>3</sup>	Domestic and Industrial	No Specific Restrictions	Required

RULE-MAKING PROCEEDINGS

DU = Dwelling Unit; BUA = Built Upon Area

<sup>1</sup>Measured as 10 miles run-of-river upstream and draining to intake

<sup>2</sup>Options for projects requiring a Sedimentation & Erosion Control Plan

<sup>3</sup>Optional: 3 DU / acre or 36% BUA w/o curb and gutter street system

<sup>4</sup>High Density Option requires control of runoff from first 1" of rainfall by engineered stormwater controls. Local governments must assume ultimate responsibility for operation/maintenance of these in a WS-IV.

**Comment Procedures:** The purpose of this announcement is to encourage those interested in this proposal to provide written comments. Written comment, data, or other information relevant to this proposal can be submitted. It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission whether in favor or opposed to any and all provisions of the proposal being noticed. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083, extension 369.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 18C .0408; .1505-.1506; .1515; .1519-.1523; .1525-.1526; .1607; .2003; and .2008. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 130A-315

**Statement of the Subject Matter:**

**15A NCAC 18C .0408** – National Primary Drinking Water Regulations: Lead Free Construction. Section .0408(d) specifies "By June 19, 1988, each public water system shall provide notice to all persons served by the system that they may be affected by lead contamination of their drinking water. The manner and form of the notice shall be in accordance with 40 C.F.R. 141.34 which is hereby adopted y reference in accordance with G.S. 150B-14(c)." Since 40 CFR 141.34 no longer exists, this section of North Carolina's rules needs to be deleted.

**15A NCAC 18C .1505-.1506; .1515; .1523; .1525-.1526** – National Primary Drinking Water Regulation: Public Notification Rule. This Rule revises the public notification regulations for implementation of the 1996 Federal Safe Drinking Water Act requirements. The rule specifies requirements that public water systems must follow regarding the form, manner, frequency, and content of a public notice. The revised regulations require faster notice in emergencies and fever notices overall, and will result in notices that better communicate the potential health risks from drinking water violations. North Carolina will be adopting the Federal rule by reference.

**15A NCAC 18C .1519-.1522; .1607** – National Primary Drinking Water Regulation: Radionuclides. EPA has finalized the maximum contaminant level goals (MCLGs), maximum contaminant levels (MCLs), and monitoring, reporting, and public notification requirements for radionuclides. This rule now includes requirements for uranium and includes revisions to the monitoring requirements for combined radium-226 and radium-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This Rule is applicable to community water systems. North Carolina will be adopting the Federal rule by reference.

**15A NCAC 18C .2003** - National Primary Drinking Water Regulation: Filter Backwash Recycling Rule. This Rule requires public water systems to institute changes, where necessary, to the return of recycle flows to the plant's treatment process. When recycling filter backwash water, contaminants may be reintroduced into the treatment process. Poor recycle practices can degrade influent water quality and impair treatment process performance. This regulation will improve plant performance by reducing the opportunity for recycle practices to adversely affect plant performance in a way that would allow microbes to pass through finished drinking water. North Carolina will be adopting the Federal rule by reference.

**15A NCAC 18C .2008** - National Primary Drinking Water Regulation: Disinfectants and Disinfection Byproducts. Rule .2008, Paragraph (f) needs to be revised to specify that travel trailer parks, campgrounds, and marine slips that are

\*\*\*\*\*

CHAPTER 18 – ENVIRONMENTAL HEALTH

**Notice of Rule-making Proceedings** is hereby given by DENR – Commission for Health Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 18A .0100; .0300-.0900. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 130A-230

**Statement of the Subject Matter:** New Federal requirements and changes in industry operations to compete in a global economy necessitate North Carolina Shellfish and Crustacea Meat Rules to be periodically revised and updated.

**Reason for Proposed Action:** The purpose of these Rule changes is to bring the shellfish rules into compliance with National Shellfish Sanitation Program Model Ordinance requirements and to have updated crustacea meat rules which will provide public health protection for the consumer and at the same time recognize the needs of the industry.

**Comment Procedures:** Comments may be submitted to Dave Clawson, Shellfish Sanitation Section, P.O. Box 769, Morehead City, NC 28557, 252-762-6827.

\*\*\*\*\*

CHAPTER 18 – ENVIRONMENTAL HEALTH

**Notice of Rule-making Proceedings** is hereby given by Commission for Health Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

community water systems, but do not serve 25 or more of the same persons more than six months of the year should be regulated as transient, non-community systems for the purpose of the rule.

**Reason for Proposed Action:**

**15A NCAC 18C .0408** – Since 40 CFR 141.34 no longer exists, Rule .0408, Paragraph (d) of 15A NCAC 18C needs to be removed.

**15A NCAC 18C .1505-.1506; .1515; .1523; .1525-.1526** – In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Public Notification Rule was promulgated on May 4, 2000.

**15A NCAC 18C .1519-.1522; .1607** - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Radionuclides was promulgated on December 7, 2000.

**15A NCAC 18C .2003** - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Filter Backwash Recycling Rule was promulgated on June 8, 2001.

**15A NCAC 18C .2008** – In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. Rule .2008, Paragraph (f) of 15A NCAC 18C, as currently written, exempts travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year from

the requirements of this year from the requirements of this Rule. By Federal law, these units should be regulated as transient, non-community systems, therefore, revision to this Rule is necessary.

**Comment Procedures:** Send comments to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or phone (919) 715-3225.

---

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 01 – NORTH CAROLINA ACUPUNCTURE LICENSING BOARD**

**Notice of Rule-making Proceedings** is hereby given by the North Carolina Acupuncture Licensing Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 21 NCAC 01 .0601 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 90-454

**Statement of the Subject Matter:** Inactive status

**Reason for Proposed Action:** To clarify the correct procedure for requesting inactive status, remaining on inactive status, and returning to active status from inactive status.

**Comment Procedures:** Written comments should be submitted to Diana Mills, 893 U.S. Hwy 70 West, Suite 202, Garner NC 27529.

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services intends to adopt the rules cited as 10 NCAC 03R .6301-.6307, .6309-.6346, amend the rules cited as 10 NCAC 03R .1613, .1615-.1616, .2502, .2713, .2715, .3701, .3703, and repeal the rule cited as 10 NCAC 03R .6308. Notice of Rule-making Proceedings was published in the Register on April 17, 2000, January 16, 2001, and May 15, 2001 for 10 NCAC 03R .1613, .1615, .2502, .2713, .2715, .3701, .3703, .6301-.6346 and March 1, 2001 for 10 NCAC 03R .1616.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: August 31, 2001

Time: 10:00 a.m.

Location: Division of Facility Services, Council Building, Room 201, 701 Barbour Dr. (Dorothea Dix Campus), Raleigh, NC

Reason for Proposed Action: The permanent adoption to these Rules are necessary to ensure compliance with the 2001 State Medical Facilities Plan (SMFP) and the recommendations made by the State Health Coordinating Council. The 2001 SMFP is effective for one calendar year beginning on January 1, 2001. The temporary rules (adopted effective January 1, 2001) will expire prior to the end of the calendar year if permanent rules are not adopted.

Comment Procedures: Questions or comments concerning the rules should be directed to Mark Benton, Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701. Comments will be accepted through August 31, 2001.

Fiscal Impact

- State 10 NCAC 03R .6322, .6326, .6329
Local 10 NCAC 03R .6322, .6326, .6329
Substantive (>\$5,000,000)
None 10 NCAC 03R .1613, .1615, .1616, .2502, .2713, .2715, .3701, .3703, .6301-.6321, .6323-.6325, .6327-.6328, .6330-.6346

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

SECTION .1600 - CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

10 NCAC 03R .1613 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved" means the equipment was not in operation prior to the beginning of the review period and had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws e-7, s. 12, need.
(2) "Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means 1370 1500 diagnostic-equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at 1.75 diagnostic-equivalent procedures. One cardiac catheterization procedure performed on a patient age 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
(3) "Cardiac angioplasty equipment" shall have the same meaning as defined in G.S. 131E-176(2e).
(4) "Cardiac catheterization equipment" shall have the same meaning as defined in G.S. 131E-176(2f).
(5) "Cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a single episode of diagnostic or therapeutic catheterization which occurs during one visit to a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart



## PROPOSED RULES

- catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker insertion, or procedures performed in dedicated angiography or electrophysiology rooms.
- (6) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the performance of cardiac catheterization procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.
  - (7) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 90 road miles.
  - (8) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
  - (9) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic and therapeutic cardiac catheterization procedures, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.
  - (10) "Diagnostic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects or diseases in the coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.
  - (11) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.
  - (12) "Existing" means the equipment was in operation prior to the beginning of the review period.
  - (13) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1991) report.
  - (14) "Mobile equipment" means cardiac angioplasty equipment or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.
  - (15) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.
  - (16) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 45 road miles.
  - (17) "Therapeutic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of treating or resolving certain anatomical or physiological conditions which have been determined to exist in the heart or coronary arteries or veins of the heart, but not the pulmonary artery.

Authority G.S. 131E-177(1); 131E-183.

### 10 NCAC 03R .1615 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant shall demonstrate that the project is capable of meeting the following standards:
  - (1) each proposed item of cardiac catheterization equipment or cardiac angioplasty equipment, including mobile equipment shall be utilized at an annual rate of at least 60 percent of ~~capacity~~ capacity excluding procedures not defined as cardiac catheterization procedures in 10 NCAC 03R .1613(5), measured during the fourth quarter of the third year following completion of the project;
  - (2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures, during the third year of operation following completion of the project;
  - (3) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;

## PROPOSED RULES

- (4) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;
- (b) An applicant proposing to acquire mobile cardiac catheterization or mobile cardiac angioplasty equipment shall:
- (1) demonstrate that each existing item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
  - (2) demonstrate that the utilization of each existing or approved item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed cardiac catheterization, cardiac angioplasty, or mobile equipment;
  - (3) demonstrate that each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area of each host facility shall have been performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the 12 month period preceding the submittal of the application;
  - (4) demonstrate that each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area of each host facility shall be performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation; and
  - (5) provide documentation of all assumptions and data used in the development of the projections required in this Rule.
- (c) An applicant proposing to acquire cardiac catheterization or cardiac angioplasty equipment ~~that is not excluding shared fixed and~~ mobile cardiac catheterization or cardiac angioplasty equipment shall:
- (1) demonstrate that ~~each of~~ its existing items of cardiac catheterization and cardiac angioplasty equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated ~~at a level at an average~~ of at least 80% of capacity during the twelve month period reflected in the most recent licensure renewal application form on file with the Division of Facility Services;
  - (2) demonstrate that ~~each of~~ its existing items of cardiac catheterization equipment or cardiac angioplasty equipment, except mobile equipment, shall be utilized at an average annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project; and
  - (3) provide documentation of all assumptions and data used in the development of the projections required in this Rule.
- (d) An applicant proposing to acquire shared fixed cardiac catheterization or cardiac angioplasty equipment as defined in 10 NCAC 03R .6333(c) shall:
- (1) demonstrate that greater than 200 cardiac catheterization procedures have been performed for each eight hours per week on a mobile cardiac catheterization unit that was operated at a single mobile site in the hospital service system in which the proposed equipment will be located, during the 12 month period reflected in the 2000 Licensure Application or 1999 Inventory of Cardiac Catheterization Equipment on file with the Division of Facility Services; and
  - (2) provide documentation of all assumptions and data used in the development of the projections required in this Rule.
- ~~(d)~~(e) If the applicant proposes to perform cardiac catheterization procedures on patients age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:
- (1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients age 14 and under; and
  - (2) the proposed project shall be performing at an annual rate of at least 100 cardiac catheterization procedures on patients age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization procedures for patients age 14 and under.

Authority G.S. 131E-177(1); 131E-183.

### 10 NCAC 03R .1616 REQUIRED SUPPORT SERVICES

- (a) If the applicant proposes to perform therapeutic cardiac catheterization procedures, the applicant shall demonstrate that open heart surgery services are provided within the same facility.
- (b) If the applicant proposes to perform diagnostic cardiac catheterization procedures, the applicant shall document that its patients will have access to a facility which provides open heart surgery services, and that the patients can be transported to that facility within 30 minutes and with no greater risk than if the procedure had been performed in a hospital which provides open heart surgery ~~services.~~ services; with the exception that the 30 minute transport requirement may be waived for equipment that was identified as needed in the 2001 State Medical Facilities Plan based on an adjusted need determination.
- (c) The applicant shall provide documentation to demonstrate that the following services shall be available in the facility:
- (1) electrocardiography laboratory and testing services including stress testing and continuous cardiogram monitoring;
  - (2) echocardiography service;
  - (3) blood gas laboratory;
  - (4) pulmonary function unit;

- (5) staffed blood bank;
- (6) hematology laboratory/coagulation laboratory;
- (7) microbiology laboratory;
- (8) clinical pathology laboratory with facilities for blood chemistry;
- (9) immediate endocardiac catheter pacemaking in case of cardiac arrest; and
- (10) nuclear medicine services including nuclear cardiology.

Authority G.S. 131E-177(1); 131E-183(b).

**SECTION .2500 - CRITERIA AND STANDARDS FOR SUBSTANCE ABUSE/CHEMICAL  
DEPENDENCY TREATMENT BEDS**

**10 NCAC 03R .2502 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Chemical dependency treatment beds" shall have the same meaning as defined in G.S. 131E-176(5b).
- (2) "Detoxification beds" means chemical dependency treatment beds that are used during the period of time when the patient is withdrawing from psycho-active substances under medical direction.
- (3) "Intensive treatment beds" means chemical dependency treatment beds that are not detoxification beds.
- ~~(4)~~ ~~"Service Area" means the geographical area from which the proponent draws or proposes to draw its clients.~~
- ~~(5)~~(4) "Clinical staff members" means the employees of a chemical dependency treatment program who provide treatment or rehabilitation services to a patient.
- ~~(6)~~(5) "Aftercare plan" means a component of a treatment plan which provides continued contact with the patient after completion of the structured treatment process in order to maintain or improve on the patient's recovery progress.

Authority G.S. 131E-177(1); 131E-183.

**SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER**

**10 NCAC 03R .2713 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12-need.~~
- (2) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (3) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (4) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
- (5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved to provide services at two or more host facilities.
- (6) "MRI procedure" means a single discrete MRI study of one patient.
- (7) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in 10 NCAC 03R ~~.6253(f)~~ .6304 which are the same for both mobile and fixed MRI scanners.
- (8) "MRI study" means one or more scans relative to a single diagnosis or symptom.

Authority G.S. 131E-177(1); 131E-183(b).

**10 NCAC 03R .2715 REQUIRED PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:

- (1) demonstrate that all existing MRI scanners, except those moved to provide services at more than one site, operating in the MRI service area(s) in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year;
- (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed MRI scanner will be located.
- (3) demonstrate that all MRI scanners, except mobile, located in the proposed MRI service area(s) in which the proposed MRI scanner will be located, shall be performing at least 2900 MRI procedures per year in the applicant's third year of operation;
- (4) demonstrate that all mobile MRI scanners located in the MRI service area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the proposed MRI service

## PROPOSED RULES

- area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the MRI service area(s) in the applicant's third year of operation;
- (5) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner ~~that is not a mobile MRI scanner for which the need determination in the SMFP was based on the utilization of fixed MRI scanners~~, shall:
- (1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed ~~an average of~~ at least 2900 MRI procedures ~~per scanner~~ in the last ~~year, with the exception that applicants proposing to acquire an MRI scanner to replace MRI services provided pursuant to a service agreement with a mobile provider shall demonstrate that 2080 MRI procedures were performed at the applicant's facility in the last year;~~ year;
  - (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per ~~year, year~~ for ~~the proposed MRI scanner and an average of 2900 procedures per scanner for all other each MRI scanner-scanners~~ or mobile MRI ~~scanner-scanners~~ to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
  - (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (c) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the SMFP was based on utilization of mobile MRI scanners, shall:
- (1) project annual utilization in the third year of operation of at least 2080 MRI procedures per year, for the proposed MRI scanner and an average of 2900 MRI procedures per scanner for all other MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
  - (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

Authority G.S. 131E-177(1); 131E-183(b).

### SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER

#### 10 NCAC 03R .3701 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved positron emission tomography (PET) scanner" means a PET scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12. need.~~
- (2) "Cyclotron" means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.
- (3) "Existing PET scanner" means a PET scanner in operation prior to the beginning of the review period.
- (4) "PET procedure" means a single discrete study of one patient involving one or more PET scans.
- (5) "PET scan" means an image-scanning sequence derived from a single administration of a PET radiopharmaceutical, equated with a single injection of the tracer. One or more PET scans comprise a PET procedure.
- (6) "PET scanner service area" means ~~a geographic area defined by the applicant from which patients to be admitted to the service will originate.~~ the Pet Scanner Service Area as defined in 10 NCAC 03R .6304(r).
- (7) "Positron emission tomographic scanner" (PET) is defined in G.S. 131E-176(19a).
- (8) "Radioisotope" means a radiochemical which directly traces biological processes when introduced into the body.

Authority G.S. 131E-177(1); 131E-183(b).

#### 10 NCAC 03R .3703 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire a PET scanner shall demonstrate that:

- (1) all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations;
- (2) ~~each the proposed~~ PET scanner ~~proposed for clinical use~~ shall be utilized at an annual rate of at least ~~1,524~~ 1,220 clinical procedures ~~within its proposed PET scanner service area~~ by the end of the third year following completion of the project. The applicant shall describe all assumptions and methodologies used in making these projections;
- (3) ~~if the PET scanner will be used for clinical purposes, all its~~ existing clinical PET scanners ~~operating in the applicant's proposed~~ PET scanner service area ~~in which the proposed PET scanner will be located~~ performed ~~1,524~~ an average of 1,220 clinical procedures per scanner during the twelve ~~months immediately prior to the date on which the application was filed;~~ month period reflected in the 2000 Licensure Application on file with the Division of Facility Services;

**PROPOSED RULES**

- (4) ~~if the PET scanner will be used for clinical purposes, all its~~ existing and approved ~~clinical~~-PET scanners ~~in the applicant's in the~~ PET scanner service area ~~will~~ shall perform an average of at least ~~1,524~~ 1,220 clinical procedures per PET scanner during the third year following completion of the project. All assumptions and methodologies used in making these projections shall be described in the application; and
- (5) each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturers specifications, and licensing requirements. The following shall be addressed:
  - (a) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
  - (b) quality control measures and assurance of PET tomograph and associated instrumentation;
  - (c) radiation protection and shielding;
  - (d) radioactive emission to the environment; and
  - (e) radioactive waste disposal.

Authority G.S. 131E-177(1); 131E-183(b).

**SECTION .6300 - PLANNING POLICIES AND NEED DETERMINATION FOR 2001**

**10 NCAC 03R .6301 APPLICABILITY OF RULES RELATED TO THE 2001 STATE MEDICAL FACILITIES PLAN**  
Rules .6301 through .6304 and .6306-.6307, and .6309 through .6346 of this Section apply to certificate of need applications for which the scheduled review period begins during calendar year 2001. In addition, Rule .6305 of this Section shall be used to implement procedures described within it during calendar year 2001.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6302 CERTIFICATE OF NEED REVIEW SCHEDULE**

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

- (1) Heart-Lung Bypass Machine (in accordance with the need determination in 10 NCAC 03R .6310):

<u>Hospital Service System</u>	<u>CON Beginning Review Date</u>
<u>Gaston Memorial</u>	<u>August 1, 2001</u>

- (2) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6311)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Pasquotank</u>	<u>March 1, 2001</u>
<u>Johnston</u>	<u>July 1, 2001</u>

- (3) Shared Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6312)

<u>Hospital Service System</u>	<u>CON Beginning Review Date</u>
<u>Lake Norman Regional</u>	<u>April 1, 2001</u>

- (4) Positron Emission Tomography Scanners (in accordance with the need determination in 10 NCAC 03R .6314)

<u>Health Service Area (HSA)</u>	<u>CON Beginning Review Date</u>
<u>I</u>	<u>October 1, 2001</u>
<u>III</u>	<u>April 1, 2001</u>
<u>IV</u>	<u>July 1, 2001</u>
<u>V</u>	<u>November 1, 2001</u>
<u>VI</u>	<u>March 1, 2001</u>

**PROPOSED RULES**

(5) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6320)

<u>Magnetic Resonance Imaging Scanners Service Area</u>	<u>CON Beginning Review Date</u>
<u>3 (Buncombe, Madison, McDowell, Mitchell, Yancey)</u>	<u>August 1, 2001</u>
<u>13 (Caswell, Durham, Granville, Person, Vance, Warren)</u>	<u>November 1, 2001</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>October 1, 2001</u>
<u>19 (Franklin, Harnett, Johnston, Lee, Wake)</u>	<u>March 1, 2001</u>
<u>21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)</u>	<u>July 1, 2001</u>

(6) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6321)

<u>Magnetic Resonance Imaging Scanners Service Area</u>	<u>CON Beginning Review Date</u>
<u>15 (Davidson, Guilford, Randolph &amp; Rockingham)</u>	<u>August 1, 2001</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>April 1, 2001</u>

(7) Nursing Care Beds (in accordance with the need determination in 10 NCAC 03R .6322)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Davie</u>	<u>August 1, 2001</u>
<u>Wayne</u>	<u>May 1, 2001</u>

(8) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6323)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Pamlico</u>	<u>November 1, 2001</u>

(9) Hospice Home Care Program Need Determination (in accordance with the need determination in 10 NCAC 03R .6326)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Wake</u>	<u>May 1, 2001</u>

(10) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6329)

<u>Mental Health Planning Region</u>	<u>CON Beginning Review Date</u>
<u>Western Region</u>	<u>June 1, 2001</u>

(11) Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6330)

<u>Mental Health Planning Area</u>	<u>CON Beginning Review Date</u>
<u>1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)</u>	<u>June 1, 2001</u>
<u>4 (Henderson, Transylvania)</u>	<u>June 1, 2001</u>

**PROPOSED RULES**

<u>5</u>	<u>(Alexander, Burke, Caldwell, McDowell)</u>	<u>June 1, 2001</u>
<u>6</u>	<u>(Rutherford, Polk)</u>	<u>June 1, 2001</u>
<u>7</u>	<u>(Cleveland, Gaston, Lincoln)</u>	<u>June 1, 2001</u>
<u>10</u>	<u>(Rowan, Stanly, Cabarrus, Union)</u>	<u>June 1, 2001</u>
<u>11</u>	<u>(Surry, Yadkin, Iredell)</u>	<u>June 1, 2001</u>
<u>13</u>	<u>(Rockingham)</u>	<u>June 1, 2001</u>
<u>15</u>	<u>(Alamance, Caswell)</u>	<u>June 1, 2001</u>
<u>16</u>	<u>(Orange, Person, Chatham)</u>	<u>July 1, 2001</u>
<u>18</u>	<u>(Vance, Granville, Franklin, Warren)</u>	<u>July 1, 2001</u>
<u>19</u>	<u>(Davidson)</u>	<u>June 1, 2001</u>
<u>21</u>	<u>(Bladen, Columbus, Robeson, Scotland)</u>	<u>July 1, 2001</u>
<u>24</u>	<u>(Johnston)</u>	<u>July 1, 2001</u>
<u>25</u>	<u>(Wake)</u>	<u>July 1, 2001</u>
<u>29</u>	<u>(Wayne)</u>	<u>July 1, 2001</u>
<u>30</u>	<u>(Wilson, Greene)</u>	<u>July 1, 2001</u>
<u>31</u>	<u>(Edgecombe, Nash)</u>	<u>July 1, 2001</u>
<u>32</u>	<u>(Halifax)</u>	<u>July 1, 2001</u>
<u>33</u>	<u>(Carteret, Craven, Jones, Pamlico)</u>	<u>July 1, 2001</u>
<u>34</u>	<u>(Lenoir)</u>	<u>July 1, 2001</u>
<u>36</u>	<u>(Bertie, Gates, Hertford, Northampton)</u>	<u>July 1, 2001</u>
<u>37</u>	<u>(Beaufort, Hyde, Martin, Tyrrell, Washington)</u>	<u>July 1, 2001</u>
<u>38</u>	<u>(Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)</u>	<u>July 1, 2001</u>
<u>39</u>	<u>(Duplin, Sampson)</u>	<u>July 1, 2001</u>

(12) Intermediate Care Facilities for the Mentally Retarded (in accordance with need determination in 10 NCAC 03R .6331.

<u>Mental Health Planning Area</u>	<u>CON Beginning Review Date</u>
<u>Statewide demonstration project, in any HSA except HSA IV</u>	<u>February 1, 2001</u>

(13) There are 11 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 03R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The 11 categories are:

- (a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Categories J and K, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (b) Category B. Proposals for nursing care beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6337; and relocations of nursing care beds under 10 NCAC 03R .6339 or 10 NCAC 03R .6341.
- (c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities.
- (d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.
- (e) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.
- (f) Category F. Proposals for new Medicare-certified home health agencies or offices, new hospices, new hospice inpatient facility beds, and new hospice residential care facility beds.
- (g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 03R .6336.
- (h) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography

**PROPOSED RULES**

- scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).
- (i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 03R .6337 for exemption from need determinations in 10 NCAC 03R .6322; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; relocations of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6340; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 03R .6332(c) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of replacement equipment that does not result in an increase in the inventory; and any other proposal not included in Categories A through H and Categories J and K.
  - (j) Category J. Proposals for demonstration projects.
  - (k) Category K. Proposals for conversion of acute care hospitals to long-term acute care hospitals.
- (14) A service, facility, or equipment for which a need determination is identified in Items (1) through (13) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as specified in these items, even though the following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (13) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 03R .6324 or 10 NCAC 03R .6325.

<u>CON Beginning Review Date</u>	<u>Review Categories for HSA I, II, III</u>	<u>Review Categories for HSA IV, V, VI</u>
<u>January 1, 2001</u>	<u>D</u>	<u>D</u>
<u>February 1, 2001</u>	<u>A, E, G, I, J</u>	<u>J</u>
<u>March 1, 2001</u>	<u>=</u>	<u>A, E, G, H, I</u>
<u>April 1, 2001</u>	<u>B, F, H, I</u>	<u>=</u>
<u>May 1, 2001</u>	<u>=</u>	<u>B, F, I</u>
<u>June 1, 2001</u>	<u>A, C, I, K</u>	<u>K</u>
<u>July 1, 2001</u>	<u>=</u>	<u>A, C, H, I</u>
<u>August 1, 2001</u>	<u>B, E, H, I</u>	<u>=</u>
<u>September 1, 2001</u>	<u>D</u>	<u>B, D, E, I</u>
<u>October 1, 2001</u>	<u>A, F, H, I</u>	<u>=</u>
<u>November 1, 2001</u>	<u>=</u>	<u>A, F, H, I</u>
<u>December 1, 2001</u>	<u>C, I</u>	<u>C, I</u>

- For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is considered to be in HSA III and Caswell County in MRI Area 13 is considered to be in HSA IV.
- (15) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15<sup>th</sup> day of the month preceding the "CON Beginning Review Date." In instances when the 15<sup>th</sup> day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6303 MULTI-COUNTY GROUPINGS**

(a) Health Service Areas. The Department of Health and Human Services (DHHS) has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

**HEALTH SERVICE AREAS (HSA)**

<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>
<u>Alexander</u>	<u>Alamance</u>	<u>Cabarrus</u>	<u>Chatham</u>	<u>Anson</u>	<u>Beaufort</u>



**PROPOSED RULES**

<u>Alleghany</u>	<u>Caswell</u>	<u>Gaston</u>	<u>Durham</u>	<u>Bladen</u>	<u>Bertie</u>
<u>Ashe</u>	<u>Davidson</u>	<u>Iredell</u>	<u>Franklin</u>	<u>Brunswick</u>	<u>Camden</u>
<u>Avery</u>	<u>Davie</u>	<u>Lincoln</u>	<u>Granville</u>	<u>Columbus</u>	<u>Carteret</u>
<u>Buncombe</u>	<u>Forsyth</u>	<u>Mecklenburg</u>	<u>Johnston</u>	<u>Cumberland</u>	<u>Chowan</u>
<u>Burke</u>	<u>Guilford</u>	<u>Rowan</u>	<u>Lee</u>	<u>Harnett</u>	<u>Craven</u>
<u>Caldwell</u>	<u>Randolph</u>	<u>Stanly</u>	<u>Orange</u>	<u>Hoke</u>	<u>Currituck</u>
<u>Catawba</u>	<u>Rockingham</u>	<u>Union</u>	<u>Person</u>	<u>Montgomery</u>	<u>Dare</u>
<u>Cherokee</u>	<u>Stokes</u>		<u>Vance</u>	<u>Moore</u>	<u>Duplin</u>
<u>Clay</u>	<u>Surry</u>		<u>Wake</u>	<u>New Hanover</u>	<u>Edgecombe</u>
<u>Cleveland</u>	<u>Yadkin</u>		<u>Warren</u>	<u>Pender</u>	<u>Gates</u>
<u>Graham</u>				<u>Richmond</u>	<u>Greene</u>
<u>Haywood</u>				<u>Robeson</u>	<u>Halifax</u>
<u>Henderson</u>				<u>Sampson</u>	<u>Hertford</u>
<u>Jackson</u>				<u>Scotland</u>	<u>Hyde</u>
<u>McDowell</u>					<u>Jones</u>
<u>Macon</u>					<u>Lenoir</u>
<u>Madison</u>					<u>Martin</u>
<u>Mitchell</u>					<u>Nash</u>
<u>Polk</u>					<u>Northampton</u>
<u>Rutherford</u>					<u>Onslow</u>
<u>Swain</u>					<u>Pamlico</u>
<u>Transylvania</u>					<u>Pasquotank</u>
<u>Watauga</u>					<u>Perquimans</u>
<u>Wilkes</u>					<u>Pitt</u>
<u>Yancey</u>					<u>Tyrrell</u>
					<u>Washington</u>
					<u>Wayne</u>
					<u>Wilson</u>

(b) Mental Health Planning Areas. The DHHS has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING AREAS

<u>Area Number</u>	<u>Constituent Counties</u>
<u>1</u>	<u>Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain</u>
<u>2</u>	<u>Buncombe, Madison, Mitchell, Yancey</u>
<u>3</u>	<u>Alleghany, Ashe, Avery, Watauga, Wilkes</u>
<u>4</u>	<u>Henderson, Transylvania</u>
<u>5</u>	<u>Alexander, Burke, Caldwell, McDowell</u>
<u>6</u>	<u>Rutherford, Polk</u>
<u>7</u>	<u>Cleveland, Gaston, Lincoln</u>
<u>8</u>	<u>Catawba</u>
<u>9</u>	<u>Mecklenburg</u>
<u>10</u>	<u>Cabarrus, Rowan, Stanly, Union</u>
<u>11</u>	<u>Surry, Yadkin, Iredell</u>
<u>12</u>	<u>Forsyth, Stokes, Davie</u>
<u>13</u>	<u>Rockingham</u>
<u>14</u>	<u>Guilford</u>
<u>15</u>	<u>Alamance, Caswell</u>
<u>16</u>	<u>Orange, Person, Chatham</u>
<u>17</u>	<u>Durham</u>
<u>18</u>	<u>Vance, Granville, Franklin, Warren</u>
<u>19</u>	<u>Davidson</u>
<u>20</u>	<u>Anson, Hoke, Montgomery, Moore, Richmond</u>
<u>21</u>	<u>Bladen, Columbus, Robeson, Scotland</u>
<u>22</u>	<u>Cumberland</u>
<u>23</u>	<u>Lee, Harnett</u>
<u>24</u>	<u>Johnston</u>

**PROPOSED RULES**

- 25 Wake
- 26 Randolph
- 27 Brunswick, New Hanover, Pender
- 28 Onslow
- 29 Wayne
- 30 Wilson, Greene
- 31 Edgecombe, Nash
- 32 Halifax
- 33 Carteret, Craven, Jones, Pamlico
- 34 Lenoir
- 35 Pitt
- 36 Bertie, Gates, Hertford, Northampton
- 37 Beaufort, Hyde, Martin, Tyrrell, Washington
- 38 Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
- 39 Duplin, Sampson

(c) Mental Health Planning Regions. The DHHS has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)

Western (W)

- 1 Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
- 2 Buncombe, Madison, Mitchell, Yancey
- 3 Alleghany, Ashe, Avery, Watauga, Wilkes
- 4 Henderson, Transylvania
- 5 Alexander, Burke, Caldwell, McDowell
- 6 Rutherford, Polk
- 7 Cleveland, Gaston, Lincoln
- 8 Catawba
- 9 Mecklenburg
- 10 Cabarrus, Rowan, Stanly, Union

North Central (NC)

- 11 Surry, Yadkin, Iredell
- 12 Forsyth, Stokes, Davie
- 13 Rockingham
- 14 Guilford
- 15 Alamance, Caswell
- 16 Orange, Person, Chatham
- 17 Durham
- 18 Vance, Granville, Franklin, Warren

South Central (SC)

- 19 Davidson
- 20 Anson, Hoke, Montgomery, Moore, Richmond
- 21 Bladen, Columbus, Robeson, Scotland
- 22 Cumberland
- 23 Lee, Harnett
- 24 Johnston
- 25 Wake
- 26 Randolph

Eastern (E)

- 27 Brunswick, New Hanover, Pender
- 28 Onslow

**PROPOSED RULES**

- 29 Wayne
- 30 Wilson, Greene
- 31 Edgecombe, Nash
- 32 Halifax
- 33 Carteret, Craven, Jones, Pamlico
- 34 Lenoir
- 35 Pitt
- 36 Bertie, Gates, Hertford, Northampton
- 37 Beaufort, Hyde, Martin, Tyrrell, Washington
- 38 Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
- 39 Duplin, Sampson

(d) Radiation Oncology Treatment Center Planning Areas. The DHHS has assigned the counties of the state to the following Radiation Oncology Treatment Center Planning Areas for purposes of the State Medical Facilities Plan:

RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS

<u>Area Number</u>	<u>Constituent Counties</u>
<u>1</u>	<u>Cherokee, Clay, Graham, Jackson, Macon, Swain</u>
<u>2</u>	<u>Buncombe, Haywood, Madison, McDowell, Mitchell, Yancey</u>
<u>3</u>	<u>Ashe, Avery, Watauga</u>
<u>4</u>	<u>Henderson, Polk, Transylvania</u>
<u>5</u>	<u>Alexander, Burke, Caldwell, Catawba</u>
<u>6</u>	<u>Rutherford, Cleveland, Gaston, Lincoln</u>
<u>7</u>	<u>Mecklenburg, Anson, Union</u>
<u>8</u>	<u>Iredell, Rowan</u>
<u>9</u>	<u>Cabarrus, Stanly</u>
<u>10</u>	<u>Alleghany, Forsyth, Davidson, Davie, Stokes, Surry, Wilkes, Yadkin</u>
<u>11</u>	<u>Guilford, Randolph, Rockingham</u>
<u>12</u>	<u>Alamance, Chatham, Orange</u>
<u>13</u>	<u>Durham, Caswell, Granville, Person, Vance, Warren</u>
<u>14</u>	<u>Moore, Hoke, Lee, Montgomery, Richmond, Scotland</u>
<u>15</u>	<u>Cumberland, Bladen, Sampson, Robeson</u>
<u>16</u>	<u>New Hanover, Brunswick, Columbus, Pender</u>
<u>17</u>	<u>Wake, Franklin, Harnett, Johnston</u>
<u>18</u>	<u>Lenoir, Duplin, Wayne</u>
<u>19</u>	<u>Craven, Carteret, Onslow, Jones, Pamlico</u>
<u>20</u>	<u>Nash, Halifax, Wilson, Northampton, Edgecombe</u>
<u>21</u>	<u>Pitt, Beaufort, Bertie, Greene, Hertford, Hyde, Martin, Washington</u>
<u>22</u>	<u>Pasquotank, Camden, Chowan, Currituck, Dare, Gates, Perquimans, Tyrrell</u>

(e) Ambulatory Surgical Facility Planning Areas. The DHHS has assigned the counties of the state to the following Ambulatory Surgical Facility Planning Areas for purposes of the State Medical Facilities Plan:

AMBULATORY SURGICAL FACILITY PLANNING AREAS

<u>Area</u>	<u>Constituent Counties</u>
<u>1</u>	<u>Alamance</u>
<u>2</u>	<u>Alexander, Iredell</u>
<u>3</u>	<u>Alleghany, Surry, Wilkes</u>
<u>4</u>	<u>Anson, Gaston, Mecklenburg, Union</u>
<u>5</u>	<u>Ashe, Avery, Watauga</u>
<u>6</u>	<u>Beaufort, Hyde</u>
<u>7</u>	<u>Bertie, Gates, Hertford</u>
<u>8</u>	<u>Bladen, Cumberland, Robeson, Sampson</u>
<u>9</u>	<u>Brunswick, Columbus, Duplin, New Hanover, Pender</u>
<u>10</u>	<u>Buncombe, Haywood, Madison, Mitchell, Yancey</u>
<u>11</u>	<u>Burke, McDowell, Rutherford</u>
<u>12</u>	<u>Cabarrus, Rowan, Stanly</u>

**PROPOSED RULES**

- 13 Caldwell, Catawba, Lincoln
- 14 Camden, Currituck, Dare, Pasquotank, Perquimans
- 15 Carteret, Craven, Jones, Onslow, Pamlico
- 16 Caswell, Chatham, Orange
- 17 Cherokee, Clay, Graham, Jackson, Macon, Swain
- 18 Chowan, Tyrrell, Washington
- 19 Cleveland
- 20 Davidson, Davie, Forsyth, Stokes, Yadkin
- 21 Durham, Granville, Person
- 22 Edgecombe, Halifax, Nash, Northampton
- 23 Franklin, Harnett, Johnston, Wake
- 24 Greene, Lenoir, Martin, Pitt
- 25 Guilford, Randolph, Rockingham
- 26 Henderson, Polk, Transylvania
- 27 Hoke, Lee, Montgomery, Moore, Richmond, Scotland
- 28 Vance, Warren
- 29 Wayne
- 30 Wilson

(f) Magnetic Resonance Imaging (MRI) Scanners Service Areas for both fixed and mobile MRI scanners. The DHHS has assigned the counties of the state to the following Magnetic Resonance Imaging Scanners Service Areas for purposes of the State Medical Facilities Plan for both fixed and mobile MRI scanners.

**MAGNETIC RESONANCE IMAGING PLANNING AREAS**

<u>Area Number</u>	<u>Constituent Counties</u>
1	<u>Cherokee, Clay, Graham, Jackson, Macon, Swain</u>
2	<u>Haywood</u>
3	<u>Buncombe, Madison, McDowell, Mitchell, Yancey</u>
4	<u>Ashe, Avery, Watauga</u>
5	<u>Alexander, Burke, Caldwell, Catawba, Lincoln</u>
6	<u>Cleveland, Rutherford</u>
7	<u>Henderson, Polk, Transylvania</u>
8	<u>Gaston</u>
9	<u>Cabarrus, Montgomery, Rowan, Stanly</u>
10	<u>Iredell</u>
11	<u>Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin</u>
12	<u>Alamance</u>
13	<u>Durham, Caswell, Granville, Person, Vance, Warren</u>
14	<u>Chatham, Orange</u>
15	<u>Davidson, Guilford, Randolph, Rockingham</u>
16	<u>Richmond, Scotland</u>
17	<u>Anson, Mecklenburg, Union</u>
18	<u>Cumberland, Hoke, Moore, Robeson, Sampson</u>
19	<u>Franklin, Harnett, Johnston, Lee, Wake</u>
20	<u>Lenoir, Wayne, Wilson</u>
21	<u>Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender</u>
22	<u>Carteret, Craven, Jones, Onslow, Pamlico</u>
23	<u>Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington</u>
24	<u>Edgecombe, Halifax, Nash, Northampton</u>
25	<u>Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans, Tyrrell</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

**10 NCAC 03R .6304 SERVICE AREAS AND PLANNING AREAS**

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed planning areas are the hospital service systems which are defined as follows:

- (1) hospitals that are in the same city or within 10 miles of one another are in the same hospital service system;
- (2) hospitals that are under common ownership and within the same county are in the same hospital service system; or

- (3) a 10-mile radius around a hospital that is not included in one of the groups of hospitals described in Subparagraphs (1) or (2) of this Rule is a hospital service system.
- (b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10 NCAC 03R .6303(a).
- (c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(e).
- (d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(d).
- (e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(f).
- (f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.
- (g) A Medicare-certified home health agency office's service area is the Medicare-certified home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate Medicare-certified home health agency office planning area.
- (h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.
- (i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.
- (j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.
- (k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).
- (l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).
- (m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).
- (n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).
- (o) A heart-lung bypass machine's service area is the heart-lung bypass machine planning area in which the heart-lung bypass machine is located. The heart-lung bypass machine planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).
- (p) A unit of fixed cardiac catheterization and cardiac angioplasty equipment's service area is the fixed cardiac catheterization and cardiac angioplasty equipment planning area in which the equipment is located. Each of the 100 counties in the State is a separate fixed cardiac catheterization and cardiac angioplasty equipment planning area.
- (q) A unit of shared fixed cardiac catheterization and cardiac angioplasty equipment's service area is the shared fixed cardiac catheterization and cardiac angioplasty planning area in which the equipment is located. The shared fixed cardiac catheterization and cardiac angioplasty planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).
- (r) A positron emission tomography scanner's service area is the health service area (HSA) in which the scanner is located. The health service areas are the multi-county groupings as defined in 10 NCAC 03R .6303(a).

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).*

**10 NCAC 03R .6305 REALLOCATIONS AND ADJUSTMENTS**

**(a) REALLOCATIONS**

- (1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 03R .6306, .6307, and .6309 through .6331 indicate that need exists after the inventories are revised and the need determinations are recalculated.
- (2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.
- (3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Dialysis Report.
- (4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny the application has been appealed shall not be reallocated until the appeal is resolved.

**PROPOSED RULES**

- (A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a)(3) of this Rule.
- (B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.
- (5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
- (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,
- (B) the date on which an appeal of the withdrawal is finally resolved against the holder, or
- (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.
- Notice of the scheduled review period for the reallocated services or beds shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.
- (6) Need Determinations for which No Applications are Received
- (A) Services or Beds with Scheduled Review in the Calendar Year on or Before September 1: The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.
- (B) Services or Beds with Scheduled Review in the Calendar Year After September 1: Except for dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of new applications.
- (7) Need Determinations not Awarded because Application Disapproved
- (A) Disapproval in the Calendar Year prior to August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.
- (B) Disapproval in the Calendar Year on or after August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.
- (8) Reallocation of Decertified ICF/MR Beds. If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following Parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.
- (A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.
- (B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.

**PROPOSED RULES**

(C) The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.

**(b) CHANGES IN NEED DETERMINATIONS**

(1) The need determinations in 10 NCAC 03R .6306, .6307, and .6309 through 10 NCAC 03R .6331 shall be revised continuously by the Medical Facilities Planning Section throughout the calendar year to reflect all changes in the inventories of:

(A) the health services listed at G.S. 131E-176 (16)f;

(B) health service facilities;

(C) health service facility beds;

(D) dialysis stations;

(E) the equipment listed at G.S. 131E-176 (16)f1; and

(F) mobile medical equipment;

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 03R .6306, .6307, and .6309 through .6331 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.

(2) Inventories shall be updated to reflect:

(A) decertification of Medicare-certified home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;

(B) delicensure of health service facilities and health service facility beds;

(C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16) f1 and G. S. 131E-176(16) (s);

(D) elimination or reduction of a health service as listed at G.S. 131E-176(16) (f);

(E) psychiatric beds licensed pursuant to G.S. 131E-184(c);

(F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and

(G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.

(3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 03R .6306, .6307, and .6309 through 10 NCAC 03R .6331 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

(4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6306 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)**

It is determined that there is no need for additional acute care beds anywhere in the State.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6307 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)**

It is determined that there is no need for additional rehabilitation beds in any HSA.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6308 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)**

It is determined that there is a need for one additional ambulatory surgical facility with two operating rooms in Ambulatory Surgery Service Area 24. It is determined that there is no need for additional Ambulatory Surgical Facilities in any other Ambulatory Surgical Facility Planning Area.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6309 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)**

It is determined that there is no need for additional open heart surgery services anywhere in the State.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6310 HEART-LUNG BYPASS MACHINES NEED DETERMINATION (REVIEW CATEGORY H)**

**PROPOSED RULES**

It is determined that there is a need for one additional heart-lung bypass machine in the Gaston Memorial Hospital Service System. It is determined that there is no need for additional heart-lung bypass machines anywhere else in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6311 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)**

(a) It is determined that there is a need for one additional fixed unit of cardiac catheterization equipment in Pasquotank County and for one additional fixed unit of cardiac catheterization equipment in Johnston County. It is determined that there is no need for additional fixed units of cardiac catheterization equipment in any other county.

(b) It is determined that there is no need for additional fixed cardiac angioplasty equipment anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6312 SHARED FIXED CARDIAC CATHETERIZATION EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is a need for one unit of shared fixed cardiac catheterization equipment as defined in 10 NCAC 03R .6333(c) in the Lake Norman Regional Hospital Service System. It is determined that there is no need for additional units of shared fixed cardiac catheterization equipment anywhere else in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6313 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional burn intensive care services anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6314 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)**

(a) It is determined that there is a need for one additional fixed positron emission tomography (PET) scanner in each of the following health service areas (HSAs). It is determined that there is no need for an additional fixed PET scanner in health service area II.

<u>Health Service Area (HSA)</u>	<u>PET Scanner Need Determination</u>
<u>I</u>	<u>1</u>
<u>III</u>	<u>1</u>
<u>IV</u>	<u>1</u>
<u>V</u>	<u>1</u>
<u>VI</u>	<u>1</u>

(b) Any hospital in the HSA may apply for a certificate of need to acquire this fixed PET scanner provided there is documentation that the applicant is providing open heart surgery, and comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology, is serving patients from a multi-county area and is a teaching site for providing post graduate medical education.

(c) The provider with utilization at or above 80% capacity during the 12 month period reflected in the 2000 Hospital Licensure Application, and any other hospital within the same HSA may apply for a certificate of need to purchase one additional fixed PET scanner for which a need is determined, provided there is documentation that the applicant is providing open heart surgery and comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology, and, is serving patients from a multi-county area, and is a teaching site for providing post graduate medical education.

(d) It is determined that there is no need for mobile PET scanners anywhere in the State.

(e) It is determined that there is no need for coincidence cameras anywhere in the State.

(f) It is determined that there is no need for hybrid machines anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6315 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services anywhere in the State.



**PROPOSED RULES**

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6316 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for new solid organ transplantation services anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6317 GAMMA KNIFE UNIT NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional gamma knife units anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6318 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional lithotripters anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6319 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional Radiation Oncology Treatment Centers in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6320 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)**

It is determined that there is a need for eight additional fixed Magnetic Resonance Imaging (MRI) Scanners based on fixed MRI Scanner utilization in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R .6321.

<u>Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)</u>	<u>MRI Scanners Need Determination</u>
<u>3 (Buncombe, Madison, McDowell, Mitchell, Yancey)</u>	<u>3</u>
<u>13 (Caswell, Durham, Granville, Person, Vance, Warren)</u>	<u>1</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>2</u>
<u>19 (Franklin, Harnett, Johnston, Lee, Wake)</u>	<u>1</u>
<u>21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)</u>	<u>1</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6321 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)**

It is determined that there is a need for two additional fixed Magnetic Resonance Imaging (MRI) Scanners based on utilization of mobile MRI Scanners in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R .6320.

<u>Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)</u>	<u>MRI Scanners Need Determination</u>
<u>15 (Davidson, Guilford, Randolph &amp; Rockingham)</u>	<u>1</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>1</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6322 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)**

It is determined that the counties listed in this Rule need additional Nursing Care Beds as specified. It is determined that there is no need for additional Nursing Care Beds in any other county.

<u>Number of Nursing Care</u>
-------------------------------

**PROPOSED RULES**

<u>County</u>	<u>Beds Needed</u>
<u>Davie</u>	<u>30</u>
<u>Wayne</u>	<u>60</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6323      MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION  
(REVIEW CATEGORY F)**

It is determined that there is a need in Pamlico County for one Medicare-certified home health agency or office. It is determined that there is no need for additional Medicare-certified home health agencies or offices in any other county.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6324      DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS  
BEGINNING JANUARY 1, 2001**

(a) The Medical Facilities Planning Section (MFPS) issued an "Amended September 2000 Semiannual Dialysis Report" on October 12, 2000. Data used for need determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) as of June 30, 2000 supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need
  - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1995 to the end of 1999 is multiplied by the county's June 30, 2000 total number of patients in the Amended SDR, and the product is added to each county's most recent total number of patients reported in the Amended SDR. The sum is the county's projected total June 30, 2001 patients.
  - (B) The percent of each county's total patients who were home dialysis patients on June 30, 2000 is multiplied by the county's projected total June 30, 2001 patients, and the product is subtracted from the county's projected total June 30, 2001 patients. The remainder is the county's projected June 30, 2001 in-center dialysis patients;
  - (C) The projected number of each county's June 30, 2001 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2001 in-center dialysis stations;
  - (D) From each county's projected number of June 30, 2001 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2001 projected station surplus or deficit.
  - (E) If a county's June 30, 2001 projected station deficit is 10 or greater and the Amended SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2001 county station need determination is the same as the June 30, 2001 projected station deficit. If a county's June 30, 2001 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's June 30, 2001 station need determination is zero.

(2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the Amended September Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the Amended SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
  - (i) The facility's number of in-center dialysis patients reported in the March 2000 SDR (SDR<sub>1</sub>) is subtracted from the number of in-center dialysis patients reported in the Amended SDR (SDR<sub>2</sub>). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate;
  - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
  - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the Amended SDR until the end of calendar 2000;

**PROPOSED RULES**

- (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the Amended SDR and that product is added to such reported number of in-center patients; and
- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the Amended SDR. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the Amended September 2000 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the January 1, 2001 Review Period shall be as follows:

<u>Data for Period Ending</u>	<u>Corrected SEKC Report</u>	<u>Publication of Amended SDR</u>	<u>Receipt of CON Applications for Need Determinations affected by Amended Patient Data</u>	<u>Beginning Review Date for Need Determinations affected by Amended Patient Data</u>
<u>June 30, 2000</u>	<u>Oct. 4, 2000</u>	<u>Oct. 12, 2000</u>	<u>December 15, 2000</u>	<u>January 1, 2001</u>

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.

(f) Home patients shall not be included in determination of need for new stations.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6325 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING SEPTEMBER 1, 2001**

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations once during calendar year 2001, and shall make a report of such determinations available to all who request it. This report shall be called the North Carolina 2001 Transitional Dialysis Report (TDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc. as of December 31, 2000 for the June 2001 TDR;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need
  - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1996 to the end of 2000 is multiplied by the county's 2000 year end total number of patients in the TDR, and the product is added to each county's most recent total number of patients reported in the TDR. The sum is the county's projected total 2001 patients;
  - (B) The percent of each county's total patients who were home dialysis patients at the end of 2000 is multiplied by the county's projected total 2001 patients, and the product is subtracted from the county's projected total 2001 patients. The remainder is the county's projected 2001 in-center dialysis patients;
  - (C) The projected number of each county's 2001 in-center patients is divided by 3.2. The quotient is the projection of the county's 2001 in-center dialysis stations;
  - (D) From each county's projected number of 2001 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's 2001 projected surplus or deficit; and
  - (E) If a county's 2001 projected station deficit is ten or greater and the TDR shows that utilization of each dialysis facility in the county is 80% or greater, the 2001 county station need determination is the same as the 2001 projected station deficit. If a county's 2001 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's 2001 station need determination is zero.
- (2) Facility Need

**PROPOSED RULES**

A dialysis facility located in a county for which the result of the County Need methodology is zero in the TDR is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the current TDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
  - (i) The facility's number of in-center dialysis patients reported in the previous SDR (SDR<sub>1</sub>) is subtracted from the number of in-center dialysis patients reported in the current TDR. The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate;
  - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
  - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current TDR until the end of calendar 2001;
  - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current TDR and that product is added to such reported number of in-center patients; and
  - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the current TDR. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the "North Carolina 2001 Transitional Dialysis Report" and for receipt of certificate of need applications based on that report shall be as follows:

<u>Data for</u> <u>Period Ending</u>	<u>Due Date for</u> <u>SEKC Report</u>	<u>Publication</u> <u>of TDR</u>	<u>Receipt of</u> <u>CON Applications</u>	<u>Beginning</u> <u>Review Date</u>
<u>Dec. 31, 2000</u>	<u>May 10, 2001</u>	<u>June 1, 2001</u>	<u>August 15, 2001</u>	<u>September 1, 2001</u>

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.

(f) Home patients shall not be included in determination of need for new stations.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6326 HOSPICE HOME CARE NEED DETERMINATION (REVIEW CATEGORY F)**

It is determined that there is a need in Wake County for one additional Hospice Home Care Program. It is determined that there is no need for additional Hospice Home Care Programs in any other county.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6327 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)**

(a) Single Counties. Single counties with a deficit projected in the State Medical Facilities Plan of six or more hospice inpatient facility beds are determined to have a bed need equal to the projected deficit. It is determined that there is no need for additional single county hospice inpatient facility beds.

(b) Contiguous Counties. It is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient facility beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

<u>County</u>	<u>Hospice Inpatient Bed Deficit</u>
<u>Alexander</u>	<u>1</u>
<u>Beaufort</u>	<u>1</u>
<u>Bladen</u>	<u>1</u>

**PROPOSED RULES**

<u>Brunswick</u>	<u>1</u>
<u>Cabarrus</u>	<u>1</u>
<u>Columbus</u>	<u>1</u>
<u>Craven</u>	<u>1</u>
<u>Cumberland</u>	<u>4</u>
<u>Davidson</u>	<u>2</u>
<u>Duplin</u>	<u>1</u>
<u>Durham</u>	<u>3</u>
<u>Edgecombe</u>	<u>1</u>
<u>Gaston</u>	<u>4</u>
<u>Halifax</u>	<u>1</u>
<u>Haywood</u>	<u>1</u>
<u>Hertford</u>	<u>1</u>
<u>Iredell</u>	<u>1</u>
<u>Jackson</u>	<u>1</u>
<u>Johnston</u>	<u>1</u>
<u>Lenoir</u>	<u>1</u>
<u>Lincoln</u>	<u>1</u>
<u>McDowell</u>	<u>1</u>
<u>Mecklenburg</u>	<u>4</u>
<u>Mitchell</u>	<u>1</u>
<u>Moore</u>	<u>2</u>
<u>Nash</u>	<u>1</u>
<u>Onslow</u>	<u>1</u>
<u>Pitt</u>	<u>1</u>
<u>Polk</u>	<u>1</u>
<u>Randolph</u>	<u>3</u>
<u>Richmond</u>	<u>5</u>
<u>Robeson</u>	<u>2</u>
<u>Rockingham</u>	<u>2</u>
<u>Rowan</u>	<u>2</u>
<u>Rutherford</u>	<u>2</u>
<u>Sampson</u>	<u>1</u>
<u>Scotland</u>	<u>2</u>
<u>Stanly</u>	<u>1</u>
<u>Stokes</u>	<u>1</u>
<u>Surry</u>	<u>2</u>
<u>Transylvania</u>	<u>1</u>
<u>Union</u>	<u>2</u>
<u>Watauga</u>	<u>1</u>
<u>Wilkes</u>	<u>1</u>
<u>Wilson</u>	<u>1</u>
<u>Yadkin</u>	<u>1</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6328 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)**

It is determined that there is no need for additional psychiatric beds in any Mental Health Planning Region.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6329 CHEMICAL DEPENDENCY (SUBSTANCE ABUS E) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) It is determined that there is a need for six additional chemical dependency (substance abuse) residential treatment beds for adolescents in the Western Mental Health Planning Region. It is determined that there is no need for additional chemical dependency (substance abuse) residential treatment beds for adolescents in any other mental health planning region in the State.

(b) It is determined that there is no need for additional chemical dependency (substance abuse) residential treatment beds for adults anywhere in the State.

(c) It is determined that there is no need for additional chemical dependency (substance abuse) inpatient treatment beds for adolescents anywhere in the State.

**PROPOSED RULES**

(d) It is determined that there is no need for additional chemical dependency (substance abuse) inpatient treatment beds for adults anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 04R .6330 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) ADULT DETOX-ONLY BED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) Adult Detox-Only Beds. It is determined that there is a need for additional detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. It is determined that there is no need for additional detox-only beds for adults in any other mental health planning area.

<u>Mental Health Planning Areas</u>	<u>Mental Health Planning Regions</u>	<u>Number of Detox-Only Beds Needed</u>
<u>1 Smoky Mountain</u>	<u>W</u>	<u>10</u>
<u>4 Trend</u>	<u>W</u>	<u>10</u>
<u>5 Foothills</u>	<u>W</u>	<u>10</u>
<u>6 Rutherford-Polk</u>	<u>W</u>	<u>10</u>
<u>7 Gaston-Lincoln-Cleveland</u>	<u>W</u>	<u>10</u>
<u>10 Rowan-Stanly-Cabarrus-Union</u>	<u>W</u>	<u>10</u>
<u>11 Surry-Yadkin-Iredell</u>	<u>NC</u>	<u>2</u>
<u>13 Rockingham</u>	<u>NC</u>	<u>10</u>
<u>15 Alamance-Caswell</u>	<u>NC</u>	<u>6</u>
<u>16 O-P-C</u>	<u>NC</u>	<u>2</u>
<u>18 V-G-F-W</u>	<u>NC</u>	<u>10</u>
<u>19 Davidson</u>	<u>SC</u>	<u>10</u>
<u>21 Southeastern</u>	<u>SC</u>	<u>5</u>
<u>24 Johnston</u>	<u>SC</u>	<u>7</u>
<u>25 Wake</u>	<u>SC</u>	<u>10</u>
<u>29 Wayne</u>	<u>E</u>	<u>4</u>
<u>30 Wilson-Greene</u>	<u>E</u>	<u>10</u>
<u>31 Edgecombe-Nash</u>	<u>E</u>	<u>6</u>
<u>32 Halifax</u>	<u>E</u>	<u>10</u>
<u>33 Neuse</u>	<u>E</u>	<u>10</u>
<u>34 Lenoir</u>	<u>E</u>	<u>10</u>
<u>36 Roanoke-Chowan</u>	<u>E</u>	<u>4</u>
<u>37 Tideland</u>	<u>E</u>	<u>5</u>
<u>38 Albemarle</u>	<u>E</u>	<u>10</u>
<u>39 Duplin-Sampson</u>	<u>E</u>	<u>10</u>

(b) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.

(c) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:

- (1) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 03R .6303(c); and
- (2) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6331 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) Adult Intermediate Care Beds for the Mentally Retarded. It is determined that there is a need for 15 additional Adult Intermediate Care Beds for the Mentally Retarded (ICF/MR beds). The 15 beds are part of a demonstration project for adults with autism. The project is available statewide, in any HSA except HSA IV.

## PROPOSED RULES

(b) The beds are reallocated for development of a program on a single site, not in Health Service Area IV, that shall combine a residential setting with a vocational training setting for adults with autism. The program shall also provide opportunities for training of professionals from across the State, and shall include the study of treatment methods and collection of data regarding the success of treatment in the development of adults with autism. The beds shall be available to serve a population from across the State. The program shall have an established relationship with an academic or medical teaching facility to insure the collection of data and the training of professionals to care for adults with autism, in conjunction with the goals and objectives of that institution. The program shall maintain a collaborative working relationship with the original demonstration project developed in Chatham County. The program shall combine treatment, social skills training, vocational training, research and the training of professionals.

(c) The project shall operate for minimum of five years from the certification of all 15 of the ICF/MR beds in order to obtain adequate data. The approved applicant shall collect and submit periodic progress reports for monitoring purposes to the Certificate of Need Section and the Medical Facilities Planning Section, in the manner and at such times as specified. Additionally, at the end of five years of operation, the approved applicant shall arrange for an independent evaluation of the effectiveness of the program focusing on qualitative, as well as quantitative factors. The evaluation report shall be submitted to the North Carolina State Health Coordinating Council to be used in assessing the efficacy of authorizing the continued operation of the project.

(d) Beds allocated for this demonstration project are not to be counted in the inventory for projecting future unmet need and are not to count against the ICF/MR need shown in other portions of the State Medical Facilities Plan.

(e) Child/Adolescent Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Child/Adolescent Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### 10 NCAC 03R .6332 POLICIES FOR GENERAL ACUTE CARE HOSPITALS

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 03C .3102(d) and Section .6200.

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in Paragraph (d) of this Rule are assumed to have underutilized space. Any such hospital proposing new construction must clearly and convincingly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 03R .6306 through .6331.

(1) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:

(A) serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education;

(B) houses extensive basic medical science and clinical research programs, patients and equipment; and

(C) serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

(2) Exemption from the provisions of 10 NCAC 03R .6306 through .6331 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

(A) necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or

(B) necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or

(C) necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(3) A project submitted by an Academic Medical Center Teaching Hospital under this policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital.

(4) Any health service facility or health service facility bed that results from a project submitted under this policy after January 1, 1999 shall be excluded from the inventory of that health service facility or health service facility bed in the State Medical Facilities Plan.

(d) Reconversion to Acute Care. Facilities that have redistributed beds from acute care bed capacity to psychiatric, rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 03R .6306.

Licensed Acute Care Bed Capacity

Percent Occupancy

**PROPOSED RULES**

<u>1 - 49</u>	<u>65%</u>
<u>50 - 99</u>	<u>70%</u>
<u>100 - 199</u>	<u>75%</u>
<u>200 - 699</u>	<u>80%</u>
<u>700 +</u>	<u>81.5%</u>

(e) Replacement of Acute Care Bed Capacity. The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets which follow. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

<u>Total Licensed Acute Care Beds</u>	<u>Target Occupancy (Percent)</u>
<u>1 - 49</u>	<u>65%</u>
<u>50 - 99</u>	<u>70%</u>
<u>100 - 199</u>	<u>75%</u>
<u>200 - 699</u>	<u>80%</u>
<u>700 +</u>	<u>81.5%</u>

(f) Heart-Lung Bypass Machines for Emergency Coverage. To protect cardiac surgery patients, who may require emergency procedures while scheduled procedures are underway, a need is determined for one additional heart-lung bypass machine whenever a hospital is operating an open heart surgery program with only one heart-lung bypass machine. The additional machine is to be used to assure appropriate coverage for emergencies and in no instance shall this machine be scheduled for use at the same time as the machine used to support scheduled open heart surgery procedures. A certificate of need application for a machine acquired in accordance with this provision shall be exempt from compliance with the performance standards set forth in 10 NCAC 03R .1715(2).

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6333 POLICIES FOR CARDIAC CATHETERIZATION EQUIPMENT AND SERVICES**

(a) Mobile cardiac catheterization equipment, as defined in 10 NCAC 03R .1613(14), and services shall only be approved for development on hospital sites.

(b) Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac catheterization equipment, as that term is defined in 10 NCAC 03R .1613(14).

(c) Shared fixed cardiac catheterization equipment means fixed equipment that is used to perform both cardiac catheterization procedures and angiography procedures.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6334 POLICIES FOR TRANSPLANTATION SERVICES**

(a) Allogeneic Bone Marrow Transplantation Services. Allogeneic bone marrow transplants shall be provided only in facilities having the capability of doing human leucocyte antigens (HLA) matching and of management of patients having solid organ transplants. At their present stage of development it is determined that allogeneic bone marrow transplantation services shall be limited to Academic Medical Center Teaching Hospitals.

(b) Solid Organ Transplantation Services. Solid organ transplant services shall be limited to Academic Medical Center Teaching Hospitals at this stage of the development of this service and availability of solid organs.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6335 POLICY FOR MRI SCANNERS**

Magnetic Resonance Imaging Scanners. "Fixed magnetic resonance imaging (MRI) scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10 NCAC 03R .2713(5).

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6336 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM CARE NURSING CARE**

(a) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and in 10 NCAC 03R .1100, to convert up to 10 beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 03R .6322 if the hospital:

- (1) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2001; and
- (2) on January 1, 2001, had a licensed acute care bed capacity of 150 beds or less.



## PROPOSED RULES

The certificate of need shall remain in force as long as the Department of Health and Human Services determines that the hospital is meeting the conditions outlined in this Rule.

(b) "Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

(c) For purposes of this Rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconvertng beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 03R .6332(d), without regard to the acute care bed need shown in 10 NCAC 03R .6306.

(d) A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (1) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (2) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law; and
- (3) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

(e) The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.

(f) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (1) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 03R .6322; or
- (2) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (3) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E-175 through 131E-190, may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 03R .6322 and this Rule.

(g) Beds certified as a "distinct part" under this Rule shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the February 1 review cycle from counties in HSA I, II, III and only for the March 1 review cycle from counties in HSA IV, V and VI. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 03R .6322. The Department of Health and Human Services shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

### **10 NCAC 03R .6337 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES**

(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 03R .6322. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

- (1) Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
  - (A) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms; and
  - (B) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.
- (2) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.

- (3) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
- (4) Will not be certified for participation in the Medicaid program.
- (b) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. All long-term nursing beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6338 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES**

When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to no more than 80 nursing beds without regard to the nursing bed need determination for that county as listed in 10 NCAC 03R .6322.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6339 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS**

A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. Chapter 131E, Article 6, Part A, provided that the conditions set forth in this Rule and in 10 NCAC 03R .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
  - (a) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
  - (b) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
  - (c) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide long-term nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
  - (d) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
  - (e) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10 NCAC 03R .6322 shall be granted to a nursing facility for purposes of relocating existing licensed nursing beds to another county provided that it complies with all of the criteria listed in this Rule.
- (3) Any certificate of need issued under this Rule shall be subject to the following conditions:
  - (a) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make acceptable discharge arrangements for residents not desiring to transfer to the new facility; and
  - (b) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
  - (c) subsequent to providing the letter to the Licensure and Certification Section described in Subparagraph (3)(b) of this Rule, the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**10 NCAC 03R .6340 POLICY FOR TRANSFER OF BEDS FROM STATE PSYCHIATRIC HOSPITAL NURSING FACILITIES TO COMMUNITY FACILITIES**

(a) Beds in State Psychiatric Hospitals that are certified as nursing facility beds may be relocated to licensed nursing facilities. However, before nursing facility beds are transferred out of the State Psychiatric Hospitals, appropriate services shall be available in the community. State hospital nursing facility beds that are relocated to licensed nursing facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Licensed nursing facilities proposing to operate transferred beds shall commit to serve the type of residents who are normally placed in nursing facility beds at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by State psychiatric hospitals in nursing facility beds, a certificate of need application to transfer nursing facility beds from a State hospital shall include a written memorandum of agreement between the Director of the applicable State psychiatric hospital; the Chief of Adult Community Mental Health Services and the Chief of Institutional Services in the Division of MH/DD/SAS; the Secretary of Health and Human Services; and the person submitting the proposal.

(b) This Rule does not allow the development of new nursing care beds. Long-term nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10 NCAC 03R .6340(a) shall be excluded from the inventory.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6341 POLICIES FOR RELOCATION OF NURSING FACILITY BEDS**

Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in 10 NCAC 03R .6339. Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins, and
- (2) demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6342 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES**

(a) Need Determination Upon Termination of County's Sole Medicare-Certified Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of Medicare-Certified home health services and to decertify the office; and

- (1) the agency is the only Medicare-Certified home health agency with an office physically located in the county; and
- (2) the agency is not being lawfully transferred to another entity; need for a new Medicare-Certified home health agency office in the county is thereby established through this paragraph. Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one Medicare-Certified home health agency office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to Medicare-Certified home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

(b) Need Determination for at Least One Medicare-Certified Home Health Agency per County. When a county has no Medicare-Certified home health agency office physically located within the county's borders, need for a new Medicare-Certified home health agency office in the county is thereby established through this Paragraph.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6343 POLICY FOR RELOCATION OF DIALYSIS STATIONS**

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Dialysis Report, and
- (2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Dialysis Report.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6343 POLICY FOR RELOCATION OF DIALYSIS STATIONS**

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Dialysis Report, and
- (2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Dialysis Report.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6344 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES**

(a) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the

community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 03R .6332(d) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6345 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES**

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for chemical dependency treatment beds, as defined in G. S. 131E-176(5b), shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

**10 NCAC 03R .6346 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED**

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for intermediate care beds for the mentally retarded shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Rule-making Agency:** *Division of Facility Services*

**Rule Citation:** *10 NCAC 03R .2113-.2116, .2118-.2119, .6347*

**Effective Date:** *July 1, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 131E-176(25); 131E-177(1); 131E-183; 131E-183(b)*

**Reason for Proposed Action:**

*10 NCAC 03R .2113-.2116, .2118-.2119 – SB 714 amends the existing Certificate of Need by bringing all operating rooms under the Certificate of Need (CON) process. Prior to the legislation, only Ambulatory Surgical Facilities were subject to CON review.*

*10 NCAC 03R .6347 – The adoption of this Rule is needed to correct an earlier rule-making action which repealed 10 NCAC 03R .6308 in its entirety. The agency had subsequently determined that a full repeal of this Rule was not necessary. Rather, we should have repealed only part of the rule, but kept the language stating "no need for additional Ambulatory Surgical Facilities in any Ambulatory Surgical Facility Area. This rule-making process is necessary to correct an earlier oversight by adding language back to the 2001 SMFP rules with the adoption of a new rule at 10 NCAC 03R .6347. Temporary rule-making is necessary because the process does not provide the Department with the time necessary to utilize the permanent rule-making process.*

**Comment Procedures:**

*10 NCAC 03R .2113-.2116, .2118-.2119 – Questions or comments concerning these Rules should be directed to Mark T. Benton, Rule-Making Coordinator, or Lee Hoffman, Chief, Certificate of Need Section, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701.*

*10 NCAC 03R .6347 – Questions or comments concerning this Rule should be directed to Mark Benton, Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701.*

**CHAPTER 03 – FACILITY SERVICES**

**SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS**

**SECTION .2100 – CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES AND OPERATING ROOMS**

**10 NCAC 03R .2113 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an ~~ambulatory surgical~~ operating room during a single operative encounter.
- (2) "Ambulatory surgical service area" means a single or multi-county area as used in the development of the ambulatory surgical facility need determination in the applicable State Medical Facilities Plan.
- (3) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.
- (4) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1a).
- (5) "~~Ambulatory surgical operating room~~ Operating room" means ~~a dedicated or shared operating room in a licensed ambulatory surgical facility, or a general acute care hospital licensed under G.S. 131E, Article 5, Part A, that is fully equipped to perform surgical procedures and is constructed to meet the specifications and standards, including fire and life safety code requirements, appropriate to the type of facility as utilized by the Construction Section of the Division of Facility Services. Ambulatory surgical operating rooms exclude operating rooms dedicated for the performance of inpatient surgical procedures, cast rooms, procedures rooms that do not meet operating room specifications, suture rooms, YAG laser rooms, and cystoscopy and endoscopy procedure rooms that do not meet the specifications of an operating room. an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.~~
- (6) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1b).
- (7) "Ambulatory surgical procedure" means a ~~surgical~~ procedure performed in ~~a surgical~~ an operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours. ~~Ambulatory surgical procedures exclude those procedures which are generally performed more than 50 percent of the time in a physician's office.~~

TEMPORARY RULES

- (8) "Existing ambulatory—surgical—operating rooms" means those ambulatory—surgical operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.
(9) "Approved ambulatory—surgical—operating rooms" means those ambulatory—surgical operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified. The term also means those operating rooms which the Certificate of Need Section determined were not subject to certificate of need review and which were under construction prior to the date the applicant's proposal was submitted to the Agency.
(10) "Dedicated ambulatory surgical operating room" means an ambulatory—surgical operating room used solely for the performance of ambulatory surgical procedures.
(11) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
(12) "Shared surgical—operating room" means an ambulatory—surgical operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
(13) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
(14) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
(15) "Practical utilization" is 4.3 surgical cases per day for a dedicated ambulatory surgical operating room and 3.5 surgical cases per day for a shared surgical—operating room.

Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2001.

10 NCAC 03R .2114 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ambulatory—surgical operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
(2) otolaryngology;
(3) plastic surgery;
(4) general surgery;
(5) ophthalmology;
(6) orthopedic;
(7) oral surgery; and
(8) other specialty area identified by the applicant.

(b) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ambulatory—surgical operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the following information regarding the services to be offered in the facility following completion of the project:

- (1) the number and type of existing and proposed dedicated inpatient and ambulatory surgical operating rooms;
(2) the number and type of existing and proposed shared ambulatory—surgical operating rooms;
(3) the number and type of shared ambulatory—surgical—operating rooms that are proposed to be converted to dedicated ambulatory surgical operating rooms;
(4) the current and projected number of surgical procedures, identified by CPT code or ICD-9-CM procedure code, to be performed in the ambulatory—surgical operating rooms;
(5) the fixed and movable equipment to be located in each ambulatory—surgical operating room;
(6) the hours of operation of the ambulatory—surgical program; proposed operating rooms;
(7) if the applicant is an existing ambulatory surgical facility, the average charge for the 20 surgical procedures most commonly performed in the facility during the preceding twelve months and a list of all services and items included in each charge;
(8) the projected average charge for the 20 surgical procedures which the applicant projects will be performed most often in the proposed ambulatory—surgical program—facility and a list of all services and items in each charge; and

History Note: Filed as Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177(1); 131E-183; Eff. November 1, 1990; Amended Eff. January 4, 1994; March 1, 1993; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000;

- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

*Amended Eff. January 4, 1994; March 1, 1993;*  
*Temporary Amendment Eff. July 1, 2001.*

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. January 4, 1994;*  
*Temporary Amendment Eff. July 1, 2001.*

**10 NCAC 03R .2115 NEED FOR SERVICES**

- (a) In projecting utilization for existing, approved, proposed and expanded ~~ambulatory~~-surgical programs, a program shall be considered to be open five days per week and 52 weeks a year.
- (b) A proposal to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant documents that the average number of ~~ambulatory surgical~~ cases per ~~ambulatory surgical~~ operating room to be performed in the applicant's ~~proposed ambulatory surgical program are projected to be operating at~~ facility is projected to be at least 2.7 surgical cases per day for each dedicated inpatient operating room, 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared ~~surgical operation operating~~ room during the fourth quarter of the third year of operation following completion of the project.
- (c) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared ~~surgical~~ operating room .
- (d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty areas as proposed in the application is projected to be operating at 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. The applicant shall document the assumptions and provide data supporting the methodology used for the projections.

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;*

**10 NCAC 03R .2116 FACILITY**

- (a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.
- (b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.
- (c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.
- (d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas will be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.
- (e) The applicant shall provide a floor plan of the proposed facility clearly identifying the following areas:
- (1) receiving/registering area;
  - (2) waiting area;
  - (3) pre-operative area;
  - (4) operating room by type;
  - (5) recovery area; and
  - (6) observation area.
- (f) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:
- (1) physicians;
  - (2) ancillary services;
  - (3) support services;
  - (4) medical equipment;
  - (5) surgical equipment;
  - (6) receiving/registering area;
  - (7) clinical support areas;
  - (8) medical records;
  - (9) waiting area;
  - (10) pre-operative area;
  - (11) operating rooms by type;
  - (12) recovery area; and
  - (13) observation area.

**TEMPORARY RULES**

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001.*

**10 NCAC 03R .2118 STAFFING**

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify, justify and document the availability of the number of current and proposed staff to be utilized in the following areas:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) operating room; and
- (5) other.

(b) The applicant shall identify the number of physicians who currently utilize the facility and estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the ambulatory surgical service area in which the facility is, or will be, located or will have written referral procedures with a physician who is an active member in good standing at a general acute care hospital in the ambulatory surgical service area.

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001.*

**10 NCAC 03R .2119 RELATIONSHIP TO SUPPORT AND ANCILLARY SERVICES**

(a) An applicant proposing to establish a new ambulatory surgical facility, increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or add a specialty to a specialty ambulatory surgical program shall provide written policies and procedures demonstrating that the facility will have patient referral, transfer, and followup procedures.

(b) The applicant shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services;
- (2) support services;
- (3) ancillary services; and
- (4) public transportation.

*History Note: Filed as a Temporary Amendment Eff.*

*September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001.*

**SECTION .6300 - PLANNING POLICIES AND NEED DETERMINATION FOR 2001**

**10 NCAC 03R .6347 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)**

It is determined that there is no need for additional Ambulatory Surgical Facilities in any Ambulatory Surgical Facility Planning Area.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. July 1, 2001.*

\*\*\*\*\*

**Rule-making Agency:** DHHS – Division of Vocational Rehabilitation

**Rule Citation:** 10 NCAC 20A .0102; 20C .0304; .0314

**Effective Date:** July 3, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 143-545.1; 143-546.1

**Reason for Proposed Action:**

*10 NCAC 20A .0102; 20C .0304 – To decrease the expenditures in training programs as required by the budgetary actions outlined in item 7. Division staff developed more stringent requirements for providing training services to clients. These requirements affect the public and must be included in rules. Temporary rule action is necessary to implement the requirements as soon as possible to address the funding problems.*

*10 NCAC 20C .0314 – To decrease the expenditures for computers and software in training programs as required by the budgetary actions outlined in item 7. Division staff developed more stringent requirements for purchasing computers and software that clarify such purchases must be required by the individual's disability. Temporary action is necessary to implement the requirements as soon as possible to address the funding problems.*

**Comment Procedures:** *Written comments concerning this rule-making action may be submitted with 60 days after the date of publication in this issue in the North Carolina Register. Comments must be submitted to Jackie Stalnaker, Rule-making Coordinator, Division of Vocational Rehabilitation Services, 2801 Mail Service Center, Raleigh, NC 27699-2801.*

**CHAPTER 20 – VOCATIONAL REHABILITATION**



SUBCHAPTER 20A – GENERAL INFORMATION

SECTION .0100 – INFORMATION REGARDING RULES

10 NCAC 20A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

- (1) "Division" means the Division of Vocational Rehabilitation Services of the Department of ~~Human Resources of Health and Human Services.~~
- (2) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (3) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division Director and chaired by the ~~Chief of Operations~~Head of Casework Services to review for approval or disapproval:
  - (a) amounts for residence or job site modifications that exceed standard amounts specified in 10 NCAC 20C .0316; and
  - (b) purchase of vehicles as set forth in 10 NCAC 20C .0316.
- (4) "Functional Capacity" means the ability to perform in the following areas:
  - (a) communication;
  - (b) interpersonal skills;
  - (c) mobility;
  - (d) self-care;
  - (e) self-direction;
  - (f) work skills; and
  - (g) tolerance.
- (5) "Individual with a severe disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
- (6) "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits three or more functional capacities in terms of an employment outcome.
- (7) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.
- (8) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.
- (9) Transferable work skills means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

*History Note: Authority G.S. 143-545.1; 150B-21.6; P.L. 102-569, s. 7(15); s. 101(a)(5)(A); Eff. February 1, 1976; Amended Eff. February 1, 1996; October 1, 1994; April 1, 1988; Temporary Amendment Eff. July 3, 2001.*

SUBCHAPTER 20C – PROGRAM RULES

SECTION .0300 – SCOPE AND NATURE OF SERVICES

10 NCAC 20C .0304 VOCATIONAL AND OTHER TRAINING

(a) Vocational and other training may be provided only to those clients determined eligible for rehabilitation services or for extended evaluation. These services shall be provided only to extent necessary to achieve the ~~job choice, vocational rehabilitation objective, and to the extent that entry level qualifications of the job, profession, or employment are achieved.~~ Training shall be provided in accredited public or private facilities, but the Division's funding for ~~training expenses tuition and fees~~ shall be ~~limited to the rates as~~ specified in Rule .0205 of this Subchapter.

(b) Vocational and other training may include on-the-job training; training at community rehabilitation programs; supported employment training; and postsecondary training. Postsecondary training may include

- (1) vocational training at business schools, trade schools, community colleges, technical institutes, nonprofit schools, or proprietary schools, or
- (2) college or university training including college parallel programs at community colleges and graduate school.

(c) Vocational and other training services may be provided to clients who require these services in order to become employed and when direct job placement for an individual with transferable work skills is not a suitable option due to disability-related issues. Specific criteria for sponsorship of all types of training include:

- (1) Clients with Prior Work Experience:
  - (A) If the individual's disability creates impediments to performance in the client's current or previous occupation and the client does not possess transferable work skills that will match requirements of a new occupation, the client may be considered for sponsorship of training.
  - (B) If the client's disability is such that it does not interfere with satisfactory performance in the current or previous occupation, the client shall not be considered for sponsorship of training.

- (2) Clients with No Substantial Work Experience:
  - (A) If the client's disability will place the client at a greater disadvantage in securing employment than peers who are not disabled, the client may be considered for sponsorship of training.
  - (B) If the client's disability is expected to prevent the client from holding employment compatible with the client's capabilities, the client may be considered for sponsorship of training.
- (3) Clients with previously acquired academic or vocational skills who are unable to take advantage of these skills vocationally because of the onset or progressive nature of their disability may be considered for further training contingent upon the job choice.
- (4) Based on objective data and input from the client, the Division shall determine that the individual has the capacity to perform the essential functions of the job upon completion of training.
- (5) The client and counselor shall complete an Individualized Plan for Employment (IPE) in which the job choice requires the training.

(d) Postsecondary Training

- (1) In addition to meeting the general requirements for sponsorship of training specified in Paragraph (c) of this Rule, an individual shall meet the following requirements for the Division to sponsor postsecondary training:
  - (A) The Division shall obtain, analyze, and include in the client record objective data that ensures that the individual is capable of successfully completing the training program. Sources of data shall include, but not be limited to, SAT scores, placement test scores, secondary transcripts for those just out of high school, previous postsecondary transcripts, vocational evaluations and other psychometric assessments.
  - (B) Attendance Requirements
    - (i) The individual shall attend the training program on a full-time basis.
    - (ii) If there are factors related to the individual's disability and/or need to work that may interfere with full-time attendance as defined by the training program, part-time attendance may be authorized if the counselor submits appropriate justification and the unit

- manager approves part-time attendance.
- (iii) The unit manager may approve extension of a community college program from four to five semesters and extension of a college or university program from eight to ten semesters. The unit manager may approve attendance at summer school if such attendance will decrease the number of full-time semesters or quarters necessary to complete the training program. Exceptions regarding attendance beyond the limits set in this paragraph shall be approved by both the unit manager and the Chief of Operations.
- (iv) Clients attending posts econdary programs other than a college or university program shall meet the institution's requirements for full-time attendance or secure approval for an exception from the unit manager.
- (v) If a student drops enough courses to change the courseload from full-time to part-time without prior approval of the Division, sponsorship shall be discontinued after the counselor notifies the student at least one quarter or semester before termination. The student may have one grading period to correct the courseload deficiency.
- (C) The Division may sponsor an individual in a non-degreed curriculum on a limited basis. These courses must be completed as follows:
  - (i) The Division may sponsor an individual as a "special student" or a student in a "provisional status" when the individual cannot be accepted into a degreed program and there is strong evidence that such a plan is feasible according to the postsecondary training policy in this Rule. The

Division shall limit the sponsorship to 24 semester hours. Semester hours for these courses shall also be considered part of the 10 semesters for postsecondary training that is the Division's maximum limit.

(ii) The Division may sponsor remedial training courses if the individual is accepted into a degreed curriculum contingent upon completion of these courses or as a part of a comprehensive assessment as outlined in 34 C.F.R. 361.5(b)(6). The Division shall sponsor no more than three remedial courses over a period of two semesters over the life of the case. An exception may be granted if more courses are needed because the individual has a most significant disability and the exception is approved in writing by the Chief of Operations.

(D) The Division may sponsor individuals enrolled in licensed or accredited distance learning programs when such programs are not available through traditional on-campus programs or when the individual has special disability-related problems that prevent him or her from participating in an on-campus program. The individual's participation in such a program shall be approved in writing by the unit manager. The Division shall not sponsor programs where the entire package or curriculum must be purchased initially. The Division may assist with required software for distance learning but shall purchase computer equipment only as permitted under Rule .0314 of this Section.

(E) The client shall meet the academic standards imposed by the postsecondary school and demonstrate steady progress toward completion of the training program. If the school does not have specific academic standards for completion of the program, the Division shall require the client to have at a minimum a 2.00 grade point average at entry into the junior year for the

agency to continue sponsorship. If the individual is in the community college system, he or she shall have a 2.00 average at the end of the second semester or the average required by the school or particular curriculum in order to graduate from the program. In other programs such as proprietary schools, the client shall meet the requirements of each specified progress period that will enable the student to graduate or achieve the competency-based requirements at regular intervals set by the school. If the client's grades fall below the minimum grade point average or other requirements set in this paragraph, the counselor shall notify the client of the pending loss of Division assistance at least one quarter or semester before terminating assistance. The client may then have one grading period to improve to an acceptable level. Failure to maintain the prescribed academic standards shall mean the loss of Division assistance with tuition, fees, books, interpreter services, maintenance, personal attendant services, and other authorized services directly related to the course of study.

(F) Graduate training may be sponsored for those individuals who require this level of training to reach the job choice. For those individuals who are either in or entering undergraduate school, graduate training shall be included as part of the original or amended IPE and shall be indicated when the client generally declares his or her major in undergraduate school. For those individuals who have an undergraduate degree and require graduate training due to their disability, graduate training may be sponsored subject to the unit manager's approval.

(2) Counselors shall thoroughly review in-state opportunities and discuss them with the client prior to considering out-of-state vendors. The unit manager shall approve all out-of-state training.

(e) The Division shall not sponsor the following:

(1) professional improvement courses (including computer certification courses) after a client has completed the level of training for the job outlined in the original or amended Individual Plan for Employment and secured a job that meets the requirements in the IPE;

(2) training at the preparatory school level;

- (3) training when the individual cannot demonstrate that sufficient funds are available from other resources to cover expenses that are not covered by the Division; or
- (4) programs that cannot be sponsored in semester or other increments but must be purchased as a complete program package.

*History Note:* G.S. 143-545.1; 143.546.1;  
 34 C.F.R. 361.5(b)(6) 34 C.F.R.; 361.48; 34 C.F.R.; 361.54;  
 P.L. 105-220 s. 103(a);  
 Eff. February 1, 1976;  
 Amended Eff. March 1, 1990;  
Temporary Amendment Eff. July 3, 2001.

**10 NCAC 20C .0314 OCCUPATIONAL LICENSES, TOOLS, EQUIPMENT, AND SUPPLIES**

(a) Assistance in obtaining occupational licenses, tools, equipment, initial stocks and supplies may be provided to clients determined eligible for rehabilitation services. Occupational licenses, permits, or other forms of written authority required by state, county, city or other governmental units in order for clients to participate in employment may be included, but privilege licenses shall not be included. Occupational tools or other placement equipment and supplies, including livestock, may be provided to the extent necessary for suitable and practical placement of the client.

- (b) The Division may assist in the purchase of computers if assistive technology is required by the client for purposes of augmentative communication, environmental controls, or when voice recognition or equivalent adaptive input devices are required for the individual to complete the IPE/IPIL.
- (c) The Division shall not purchase upgrades or improved versions of assistive technology unless the progression of the individual's disability requires such an upgrade.
- (d) Division assistance with software shall be limited to five hundred dollars (\$500.00) unless the software is required for the purposes outlined in Paragraph (b) of this Rule.

*History Note:* Authority G. S. 143-545.1; 143-546.1;  
 34 C.F.R. 361.48;  
 Eff. February 1, 1976;  
Temporary Amendment Eff. July 3, 2001.

**TITLE 12 - DEPARTMENT OF JUSTICE**

**Rule-making Agency:** *NC Private Protective Services Board*

**Rule Citation:** *12 NCAC 07D .0902*

**Effective Date:** *July 17, 2001*

**Findings Reviewed and Approved by:** *Julian Mann, III*

**Authority for the rulemaking:** *G.S. 74C-5; 74C-13*

**Reason for Proposed Action:** *The Private Protective Services Board has revamped its firearms training program for certified instructors. The certified firearms instructors are, of course, those individuals who train the armed security officers how to*

*handle firearms. The Board considers firearms training as one of its most important functions as the public health, safety, and welfare is directly impacted by the competency of the certified firearms trainers and the armed security officers that work posts across the State. The Board is changing its training program whereby the training will be done by the NC Justice Academy. Because the State Budget and Justice Department policies do not allow the Justice Academy to handle cash funds, the Board proposes, through this temporary rule, to accept the course fee from each student and pass the funds along to the Justice Academy. The Board will not keep any of the course fee.*

**Comment Procedures:** *Written comments may be provided to the board by submission to W. Wayne Woodard, Administrator, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

**CHAPTER 07 – PRIVATE PROTECTIVE SERVICES**

**SUBCHAPTER 07D – PRIVATE PROTECTIVE SERVICES BOARD**

**SECTION .0900 – FIREARMS TRAINER CERTIFICATE**

**12 NCAC 07D .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE**

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) one recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;
- (5) the applicant's non-refundable registration fee; ~~and~~
- (6) a certificate of successful completion of the training required by 12 NCAC 07D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the ~~application.~~ application; and
- (7) actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the NC Justice Academy and collected by the Private Protective Services Board.

**TEMPORARY RULES**

---

*History Note:* Authority G.S. 74C-5; 74C-13;  
Eff. June 1, 1984;

*Amended Eff. August 1, 1998; December 1, 1995; July 1, 1987;  
December 1, 1985;*  
*Temporary Amendment Eff. July 17, 2001.*

**APPROVED RULES**

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of June 21, 2001 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
02	NCAC	34	.0502*	15:08 NCR
10	NCAC	41S	.0102*	15:12 NCR
10	NCAC	41S	.0201-.0202*	15:12 NCR
10	NCAC	41S	.0204*	15:12 NCR
10	NCAC	41S	.0305-.0306*	15:12 NCR
10	NCAC	41S	.0402*	15:12 NCR
10	NCAC	41S	.0405*	15:12 NCR
10	NCAC	41S	.0503*	15:12 NCR
10	NCAC	41S	.0506*	15:12 NCR
10	NCAC	41S	.0612*	15:12 NCR
10	NCAC	41S	.0614*	15:12 NCR
10	NCAC	41S	.0704-.0705*	15:12 NCR
10	NCAC	41S	.0707*	15:12 NCR
10	NCAC	41S	.0713*	15:12 NCR
10	NCAC	41T	.0106*	15:12 NCR
10	NCAC	41T	.0201	15:12 NCR
10	NCAC	42B	.2407*	15:15 NCR
10	NCAC	42C	.2406*	15:15 NCR
10	NCAC	42D	.1832*	15:15 NCR
15A	NCAC	10B	.0203*	15:10 NCR
15A	NCAC	10C	.0211*	15:10 NCR
15A	NCAC	10H	.0301*	15:10 NCR
19A	NCAC	02D	.0607*	15:19 NCR
21	NCAC	17	.0102	15:10 NCR
21	NCAC	17	.0103*	15:10 NCR
21	NCAC	17	.0108*	15:10 NCR
21	NCAC	17	.0110*	15:10 NCR
21	NCAC	17	.0111	15:10 NCR
21	NCAC	17	.0113	15:10 NCR
21	NCAC	17	.0301	15:10 NCR
21	NCAC	17	.0401-.0402*	15:10 NCR
21	NCAC	36	.0404	15:19 NCR

**TITLE 2 – DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES**

**02 NCAC 34 .0502 PESTICIDES FOR  
SUBTERRANEAN TERMITE PREVENTION AND/OR  
CONTROL**

- (a) Through June 30, 1999, any pesticide may be used for the prevention or control of subterranean termites provided that it bears an EPA-approved label for such use and the pesticide is applied according to the directions of its label.
- (b) Effective July 1, 1999, only those products which bear an

EPA-approved label for such use and for which the Committee has received the following information may be used for subterranean termite control:

- (1) A statement from the pesticide registrant that the termiticide is primarily intended, either for use:
- (A) as a supplement to or in combination with other treatment(s); or
  - (B) by itself, as the sole source of termite control; and
- (2) For termiticides under Part (b)(1)(B) of this

Rule, data to support all efficacy claims made on the label, labeling and any promotional materials distributed by the registrant or manufacturer.

(c) Effective July 1, 2002, only those products approved by the Committee based on the data submitted pursuant to Subparagraph (b)(2) of this Rule may be used for the prevention or control of subterranean termites. The Committee shall approve the product if the data submitted substantially supports the efficacy claims.

(d) Termiticides intended for use as a supplement to or in combination with other termiticides may not be used alone without first disclosing the registrants' recommendations to the property owner or agent.

(e) A list of approved termiticides may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control Division, P.O. Box 27647, Raleigh, NC 27611 or by calling (919) 733-6100.

*History Note: Authority G.S. 106-65.29; Eff. July 1, 1976; Readopted Eff. November 22, 1977; Amended Eff. July 1, 2002; July 1, 1998; August 1, 1980.*

**TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10 NCAC 41S .0102 LICENSING PROCESS**

(a) The license process shall consist of an application phase, an investigatory phase and a decision making phase.

(b) Application Phase. An applicant must apply for a license to operate a residential child-care facility to the Department of Health and Human Services, Division of Social Services, prior to the first child being accepted for full-time care. An applicant must apply for renewal of a license to operate a residential child-care facility to the Department of Health and Human Services, Division of Social Services, prior to the expiration of the current license.

(c) Investigatory Phase. During this phase, the applicant must submit to the Division of Social Services, Children's Services Section information on the proposed program and projected methods of operation. For proposed private and public residential child-care facilities, the Division of Social Services, Children's Services staff, together with those seeking licensure, complete this phase. For agency residential child-care facilities, the supervising agency shall complete this phase.

(d) Decision Regarding Licensure. An applicant must submit all the materials required by Subchapters 41S and 41T, if applicable, to the Division of Social Services, Children's Services Section prior to the decision to issue a license to operate.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0201 DEFINITIONS**

In addition to the definitions found in G.S. 131D-10.2, the following definitions apply to the rules in Subchapters 41S and 41T:

- (1) Case Plan means a written document, the Family Services Case Plan, which describes the social and child welfare services and activities to be provided by the county department of social services or other state and local agencies for the purpose of achieving a permanent family relationship for the child.
- (2) Child-Caring Institution means a residential child-care facility utilizing permanent buildings located on one site for 10 or more foster children.
- (3) Children's Foster Care Camp means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (4) Direct Service Personnel means staff responsible for the direct services provided to children and their families including, but not limited to, child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.
- (5) Director means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential child care and services.
- (6) Emergency Shelter Care means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with 10 NCAC 41T .0200.
- (7) Family Time means specific period arranged for a child who resides in a residential child-care facility to spend with kin either on-site or away from the residential child-care facility.
- (8) Foster Child means an individual less than 18 years of age who has not been emancipated under North Carolina law, or one who is 18 to 21 years of age and continues to reside in the residential child-care facility, who is dependent, neglected, abandoned, destitute, orphaned, delinquent, or otherwise in need of care away from home and not held in detention.
- (9) Full License means a license issued for one year when all minimum licensing requirements are met.
- (10) Group Home means a residential child-care facility operated either under public or private auspices which receives for 24-hour care no more than nine children. This number includes the caregivers' own relatives residing in the home under the ages of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of 12. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.
- (11) Individualized Service Plan means a written document which describes a child's needs, goals and objectives in a residential child-care

- facility and the direct services staff tasks and assignments to meet a child's and family's needs, goals and objectives.
- (12) License means permission granted in writing to a corporation, agency or county government by the Department of Health and Human Services to engage in the provision of full-time child care or child-placing activities based upon an initial determination, and annually thereafter, that such corporation, agency, or a county government has met and complied with minimum standards set forth in this Subchapter.
- (13) Private Agency Residential Child-Care Facility means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.
- (14) Private Residential Child-Care-Facility means a residential child-care facility under the control, management and supervision of a private non-profit or for-profit corporation, sole proprietorship or partnership which operates independently of a licensed child-placing agency or any other residential child-care facility.
- (15) Provisional License means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.
- (16) Public Agency Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county department of social services.
- (17) Public Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county government other than a county department of social services.
- (18) Visiting Resource means volunteers from the community whose homes children visit on the weekends, holiday or vacations.
- (19) Volunteer means a person working in a staff position for an agency who is not paid.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0202 RESPONSIBILITY TO DIVISION OF SOCIAL SERVICES**

- (a) The residential child-care facility shall annually submit to the Division of Social Services the information and materials required by rules in Subchapters 41S and 41T to document compliance and to support issuance of a license.
- (b) The residential child-care facility shall submit to the Division of Social Services an annual statistical report of program activities as required in Subchapters 41S and 41T.

- (c) The residential child-care facility shall provide written notification to the Division of Social Services of a change in the director.
- (d) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.
- (e) The current license of a residential child-care facility shall be posted at all times in a conspicuous place within the facility.
- (f) When there is a report alleging abuse or neglect in a residential child-care facility, the director or his designee shall immediately notify the Division of Social Services.
- (g) The residential child-care facility shall submit to the Division of Social Services a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information, shall be reviewed and evaluated by the Division of Social Services and used in consultation and technical assistance to the residential child-care facility to improve services to protect children in placement in the residential child-care facility.
- (h) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of child abuse or neglect involving staff. The policies and procedures must include:
- (1) A provision for reporting any allegations of abuse or neglect to the appropriate county department of social services for investigation in accordance with G.S. 7B-301.
  - (2) A provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body or advisory board.
  - (3) A provision for promptly notifying the Division of Social Services of any allegations of abuse or neglect of any child in care.
  - (4) A provision for preventing a recurrence of the alleged incident pending investigation.
  - (5) A provision for written notification to the Division of Social Services of any findings of such an investigation of child abuse or neglect, specifying only whether there was substantiation or unsubstantiation of the case.
- (i) When there is a death of a child who is a resident of a residential child-care facility, the director or his designee shall immediately notify the licensing authority.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0204 LICENSURE PROCEDURES**

- (a) Private Residential Child-Care Facility Licensure Procedures.
- (1) The following materials shall be submitted to the Division of Social Services during the application phase:
    - (A) Articles of Incorporation;
    - (B) Bylaws; and
    - (C) Governing board list with names, addresses, occupations, length of time and terms on the board, and board



- positions held and number of terms, if applicable.
- (2) The following materials shall be submitted to the Division of Social Services during the investigatory phase before an initial license can be issued, with the exception of Part (K) of this Subparagraph which will be maintained at the facility for review:
- (A) License Application and Summary.
  - (B) Program policies and procedures stating the purpose, outlining admission criteria, as well as defining areas of responsibilities for services which the facility will assume for children in care and for services to be provided by the referring agency or individual, and discharge criteria.
  - (C) Description of the child-care program and evaluation method.
  - (D) Program forms.
  - (E) Budget outlining anticipated costs and sources of revenue for the first year of operation.
  - (F) Personnel policies.
  - (G) Organizational chart.
  - (H) Job descriptions.
  - (I) Staff resumes.
  - (J) Full and part-time staff work schedules.
  - (K) Medical reports including TB skin test results on full and part-time direct care personnel and any relatives in the home. The medical reports must be completed by a licensed medical provider within six months prior to the license date.
  - (L) Fire and Building Safety Inspection Report (for fewer than seven residents, for seven to nine residents or 10 or more residents), completed and approved by the county building inspector or fire marshal.
  - (M) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian.
  - (N) Floor plan indicating room dimensions, usage of each room, window and door locations and sizes and method of heating.
  - (O) Written approval from the Division of Facility Services for a design capacity of seven to nine residents or 10 or more residents.
- (3) Division of Social Services shall make one or more visits to the residential child-care facility to complete the licensing study.
- (4) Based on information obtained during the investigatory phase, Division of Social Services staff shall evaluate the residential child-care facility's proposed program and methods of operation to determine compliance with rules in Subchapters 41S and 41T.
- (5) The Division of Social Services shall notify the residential child-care facility in writing of the licensure decision, conditions of the license and any recommendations regarding the child-care program.
- (b) Licensure Procedures for Private Agency, Public Agency and Public Residential Child-Care Facilities.
- (1) The following materials shall be submitted to the Division of Social Services before a license may be issued, with the exception of Part (I) of this Subparagraph which will be maintained at the facility for review:
- (A) License Application and Summary.
  - (B) Program policies and procedures stating purpose, outlining admission criteria, as well as defining areas of responsibilities and discharge criteria.
  - (C) Description of the child-care program and evaluation method.
  - (D) Program forms.
  - (E) Budget outlining anticipated costs and sources of revenue for the first year of operation.
  - (F) Job descriptions.
  - (G) Staff resumes.
  - (H) Full and part-time staff work schedules.
  - (I) Medical reports including TB skin test results on full and part-time direct care personnel and any relatives in the home. The medical reports must be completed by a licensed medical provider within six months prior to the license date.
  - (J) Fire and Building Safety Inspection Report (for fewer than seven residents, seven to nine residents, or 10 or more residents), completed and approved by the county building inspector or fire marshal.
  - (K) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian.
  - (L) Floor plan indicating room dimensions, usage of each room, window and door locations and sizes and method of heating.
  - (M) Written approval from the Division of Facility Services for a design capacity of seven to nine residents or 10 or more residents.
- (2) Department of Health and Human Services staff shall notify the residential child-care facility in writing of the licensure decision, conditions of the license, and any recommendations regarding the residential child-care program.
- (c) Licensure Procedures Following First Year of Operation for all residential child-care facilities.

- (1) Prior to the license expiration date, the Division of Social Services shall notify the residential child-care facility in writing of the licensure renewal requirements.
- (2) The following materials shall be submitted to the Division of Social Services before a license for a residential child-care facility can be renewed, with the exception of, Parts (E) and (F) of this Subparagraph, which will be maintained at the facility for review:
  - (A) License Application and Summary.
  - (B) Governing board list with names, addresses, occupations, length of time and terms on the board, and board positions held and number of terms, if applicable.
  - (C) Budget outlining anticipated costs and sources of revenue of the next operating year, with estimation of daily cost of care per child for past year.
  - (D) Annual statistical report of program activities as required by Rule .0202 of this Section.
  - (E) Biennial medical reports including TB skin test results on full and part-time direct care personnel staff and any relatives in the facility. The medical reports must be completed by a licensed medical provider.
  - (F) Health Questionnaire including TB skin test results on the year when the physical examination is not required.
  - (G) Fire and Building Safety Inspection Report (for fewer than seven residents, seven to nine residents, or 10 or more residents), completed and approved by the county building inspector or fire marshal.
  - (H) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian.
  - (I) Updated or revised materials to include, but not limited to, policies, procedures, forms, or amendments to Bylaws or Articles.
  - (J) Independent annual financial audit, if a private residential child-care facility.
- (3) With the exception of residential child-care facilities which are accredited by the Council on Accreditation, the Division of Social Services shall annually conduct onsite visits to private residential child-care facilities and conduct desk reviews of the licensure materials of private agency, public agency or public residential child-care facilities to determine if minimum licensure standards for residential child-care facilities continue to be met.

- (4) For residential child-care facilities which are accredited by the Council on Accreditation, the Division of Social Services shall conduct onsite visits to these residential child-care facilities every other year in accordance with the agreement between the Division of Social Services and the Council on Accreditation.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0305 RECORDKEEPING AND REPORTING**

- (a) The residential child-care facility's policy on confidentiality shall:
  - (1) identify the individuals with access to or control over confidential information;
  - (2) specify that persons who have access to records be persons authorized by law specifically including the client, the parent or legal custodian when the client is a minor, staff and auditing, licensing, or accrediting personnel or those persons for whom the agency has obtained a signed consent for release of confidential information; and
  - (3) require that when client information is disclosed a signed consent for release of information is obtained on a consent for release form.
- (b) The residential child-care facility shall:
  - (1) provide a secure place for the storage of records with confidential information;
  - (2) inform any individual with access to confidential information of the provisions of this Rule;
  - (3) ensure that, upon employment and whenever revisions are made, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
  - (4) permit a child to review his case record in the presence of facility personnel on the facility premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record unless facility personnel determines the information in the child's case record would be harmful to the child;
  - (5) in cases of perceived harm to the child, document in writing any refusals to share information with the child, parent or legal custodian;
  - (6) maintain a confidential case record for each child;
  - (7) maintain confidential personnel records for all employees; and
  - (8) maintain confidential records for all volunteers.
- (c) The residential child-care facility may destroy in office a closed record in which a child has been discharged for a period of three years or may destroy in office a record

three years after a child has reached age 18, unless included in a federal fiscal or program audit that is unresolved, then may destroy in office when released from all audits.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0306 CLIENT RIGHTS**

(a) The residential child-care facility shall develop and implement policies and procedures to protect the individual rights and dignity of children and families.

(b) The residential child-care facility shall have a client's and family's rights policy which includes that each child has the right to:

- (1) privacy;
- (2) be provided adequate food, clothing, and shelter;
- (3) have access to family time and have telephone conversations with family members, when not contraindicated in the child's intervention plan or individualized service plan;
- (4) have personal property and a space for storage;
- (5) express opinions on issues concerning the child's care or treatment;
- (6) receive care in a manner that recognizes variations in cultural values and traditions;
- (7) be free from coercion by facility personnel with regard to religious decisions. The facility shall have a process to assure that, whenever practical, the wishes of the parents with regard to a child's religious participation are ascertained and followed;
- (8) not be identified in connection with publicity for the facility which shall bring the child or the child's family embarrassment; and
- (9) not be forced to acknowledge dependency on or gratitude to the facility.

(c) The residential child-care facility shall have a policy which prohibits direct involvement by a child in funds solicitation for the facility.

(d) The residential child-care facility shall have a policy which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the child and the child's legal custodian.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0402 PERSONNEL DEPLOYMENT**

(a) The residential child-care facility shall ensure that the deployment of personnel supports the stated mission of the facility.

(b) There shall be a written job description for each position, which includes duties, responsibilities, qualifications, and to whom the position is responsible. Job descriptions shall be consistent with duties being performed.

(c) The residential child-care facility shall have procedures for annual evaluation of the work performance of each employee which provides for employee participation in the process.

(d) The residential child-care facility shall have an organizational plan which delineates the number of staff and levels of supervisors/managers, taking into account the complexity and size of the workload of each staff. The plan must demonstrate supervision of staff in accordance with the rules in Subchapters 41S and 41T, if applicable.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0405 PERSONNEL POSITIONS**

(a) Director. There shall be a full-time director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time director for an agency with one or more facilities licensed for less than 20 children.

(b) A director shall have management skills that enable the utilization of the residential child-care facility's human and financial resources and the coordination of the facility's services with those provided by other community resources.

(c) The director shall:

- (1) Be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing board and licensing requirements.
- (2) Explain licensing standards, residential child-care standards and the residential child-care facility's services to the board, the facility's constituency, other human service agencies and the public;
- (3) Initiate and carry out the program of residential child-care as approved by the governing board;
- (4) Report to the governing board on all phases of operation at least quarterly;
- (5) Delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) Establish and oversee fiscal practices, present the annual operating budget and quarterly reports to the governing board;
- (7) Evaluate, at least annually, the training needs of the staff; plan and implement staff training and consultation to address identified needs;
- (8) Employ and discharge staff and meet on a regular basis with administrative and management staff to review, discuss and formulate policies and procedures;
- (9) Supervise staff who report directly to the director; and
- (10) Conduct an annual individual written evaluation of each staff member who reports directly to the director. This evaluation shall contain both a review of job responsibilities and goals for future job performance.

(d) Clerical, Maintenance and Other Support Personnel. The residential child-care facility shall employ or contract qualified

**APPROVED RULES**

personnel to perform all clerical, support and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting and financial functions.

(f) Direct Service Personnel.

(1) Direct service personnel, hired after the effective date of these Rules, shall:

(A) Have education or experience to meet the responsibilities of the job.

(B) Have a physical examination by a licensed medical provider prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease which may pose a significant risk of transmission in the residential child-care facility. After the initial examination, the cost of the physical examinations as required by licensure shall be at the expense of the facility.

(C) Have a TB skin test, unless the medical provider advises against this test, prior to assuming the position and annually thereafter.

(2) Standards for direct service personnel in the living unit:

(A) There shall be at least one direct service personnel assigned to every 10 children six years of age and older and at least one direct care personnel assigned for every five children younger than six years of age. Supervisory personnel within voice range shall be allowed to be included in the child to staff ratio;

(B) The residential child-care facility shall ensure that direct service personnel receive supervision and training in the areas of, first aid and CPR, child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct service personnel in accordance with the needs of the client population, including, training in child sexual abuse;

(C) The residential child-care facility shall ensure that direct service personnel receive supervision in food preparation and nutrition when meals are prepared in the living unit; and

(D) Any duties other than direct services duties assigned to direct service personnel shall be specified in writing

and assigned in accordance with the residential child-care program.

(3) Standards for supervisory personnel:

(A) There shall be at least one supervisor for every 15 direct service personnel.

(B) Supervisory staff shall be selected on the basis of the knowledge, experience and competence required to manage direct service personnel.

(4) Standards for other direct service personnel: For residential child-care facilities that employ staff as social workers, the following applies:

(A) There shall be at least one social worker assigned for every 16 children. Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
0	0-5
1	6
2	7-12
3	13-18
There shall be one additional supervisor for every one to six additional social workers.	

(B) The residential child-care facility shall ensure that staff employed as social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse;

(C) Staff employed as social workers shall be familiar with community resources for children and their families in addition to the agency's services; and

(D) Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance with the residential child-care program.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0503 ADMISSION AGREEMENT**

(a) At admission, the residential child-care facility must develop a written agreement between the parents or legal custodian and the facility which specifies the services to be provided by the facility and the responsibilities of the parents or legal custodian which includes the following:

(1) statement of consent for placement by the parents or legal custodian, with the date of admission;

(2) plan for providing admission information on the child's care, developmental, educational,

medical, and psychological needs to the parent(s) or legal custodian, the frequency of service plan reviews, and receipt of program information required by 10 NCAC 41S .0307(a) and 10 NCAC 41S .0504(a);

- (3) statement of facility responsibility for working with the child's parents;
- (4) statement related to the provision of religious training and practices and consent to these by the parents or legal custodian;
- (5) plan for family time;
- (6) fees and plan for payment of care;
- (7) plan for discharge to include projected length of stay; and
- (8) statement of facility responsibility for aftercare services.

(b) For foster children 18 years of age and older residing in the residential child-care facility or reentering the facility, the facility shall obtain a voluntary placement consent signed by the foster child which specifies the conditions for residential care and services.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0506 CLIENT RECORDS**

(a) The residential child-care facility shall maintain a client record for each child which contains the following:

- (1) documentation of placement authority by legal custodian;
- (2) written placement consent and agreement;
- (4) intake study and related documents;
- (5) completed application for services;
- (3) documentation that verifies the child's birth;
- (6) pre-admission physical examination records;
- (7) immunization records;
- (8) intervention plan and reviews;
- (9) written service plan and review;
- (10) documentation of all family time, including duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement;
- (11) consents for release of information;
- (12) consent for emergency medical treatment;
- (13) consents for field trips;
- (14) consents for time-limited audio-visual recording signed by both the child and legal custodian;
- (15) ongoing record of medical and dental care;
- (16) documentation of medical insurance;
- (17) physical restraint and incident reports; and
- (18) discharge summary.

(b) The residential child-care facility shall maintain client records for the purpose of:

- (1) protecting the legal rights of the child, the parents and legal custodian, and the facility;
- (2) documenting service provision to the child and family, including an evaluation of effectiveness of services provided; and

(3) providing a source of information about individual children, as well as information for the facility in planning its program of care and services.

(c) Staff entries in client records shall be dated and either initialed or signed.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0612 WORK**

(a) The residential child-care facility shall provide opportunities for each child to learn the value of work and the development of good work habits.

(b) The residential child-care facility shall comply with the provisions of the NC Wage and Hour Act concerning age, abilities, hours of labor and hazardous occupations in the assignment of work to children.

(c) The residential child-care facility shall not substitute children for employed staff in assigning work.

(d) The residential child-care facility shall not require children to be solely responsible for any major phase of operation or maintenance of the home such as cooking, laundering, housekeeping, farming, or repair work.

(e) The residential child-care facility shall not require a child to work for the purpose of paying the facility for his cost of care except when a child preparing for independent living enters into an agreement with the facility in which he is paid for his work and assumes a gradual degree of responsibility for his own needs.

(f) The residential child-care facility shall provide children who are on work assignments with adult supervision.

(g) The residential child-care facility shall ensure that children's work assignments do not interfere with school, recreation, study period, adequate sleep, community contacts and family time.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0614 INCIDENT REPORTS**

(a) The residential child-care facility shall have written policies and procedures for reporting critical incidents.

(b) The residential child-care facility shall document critical incidents, including accidents or injuries to the child, acts of physical aggression by children, use of physical restraints by staff, and children who run away from the facility, which include:

- (1) Name of child or children involved;
- (2) Date and time of incident;
- (3) Brief description of incident;
- (4) Action taken by staff;
- (5) Need for medical attention;
- (6) Name of staff involved and person completing the report;
- (7) Name of child's legal custodian notified and date and time of notification; and
- (8) Signature of supervisory or administrative staff reviewing the report.

(c) When there is a death of a child who is a resident of a residential child-care facility, the director or his designee shall immediately notify the legal custodian and the licensing authority.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0704 FIRE AND BUILDING SAFETY**

(a) Each building shall have a non-pay telephone available at all times. Emergency telephone numbers shall be posted at the telephone.

(b) Care must be exercised by the staff in allowing children to use matches or to handle combustible materials.

(c) Emergency plans and fire evacuation plans approved by the local fire authority must be developed and posted on each floor of each building.

(d) Fire drills must be held monthly at different times during the day and quarterly at night for both children and staff. Documentation of fire drills must be kept.

(e) The staff and children residing in a facility must be trained in the proper reporting of a fire and the ways of escaping from a fire. New residents must be instructed within the first day upon admittance.

(f) For every 2,500 square feet of floor area or portion thereof and for each floor there must be at least one fire extinguisher. Fire extinguishers must be provided in accordance with the standards of the National Fire Protection Association Standard for Portable Fire Extinguishers NFPA Number 10. They must be inspected annually and kept charged and filled at all times in accordance with NFPA Number 10. NFPA Number 10 is hereby incorporated by reference including subsequent amendments and additions. The NFPA Number 10 may be obtained from NFPA, 11 Tracy Drive, Avon, Massachusetts, 02322 at a cost of twenty-four dollars and seventy-five cents (\$24.75).

(g) When there are seven or more children residing in the residential child-care facility, each floor level must be separated from other floors in accordance with the requirements of the applicable building code, and by not less than walls and a solid core, self-closing, 20 minute fire-rated door.

(h) Each floor level must be provided with a minimum of two remotely-located. exits as determined by the code enforcement official.

(i) Fire exits and all exit-access paths including doors, hallways, and stairs, must be well lighted and kept clear of obstructions.

(j) No locks shall be installed on exit or room doors which would prevent occupants from getting out of the building by the simple operation of a single knob or lever.

(k) Emergency lighting must be provided for exiting from the building.

(l) Windows in children's bedrooms must be openable without the use of keys or special tools.

(m) Fire alarm and smoke detector systems must be installed in each residential child-care facility in accordance with the North Carolina State Building Code, be audible throughout the building, be kept in working order and be readily identifiable by the staff and children.

(n) All electrical and heating equipment must be UL listed or be listed by a testing agency recognized by the NC Department of Insurance; the electrical wiring in the building must conform to

the requirements stated in the National Electrical Code for the applicable occupancy. The National Electrical Code is hereby incorporated by reference including subsequent amendments and additions. The National Electrical Code may be obtained from the Department of Insurance, Code Council Section, 410 Boylan Avenue, Raleigh, North Carolina 27603 at a cost of forty-five dollars (\$45.00).

(o) Hot water at fixtures used by residents for bathing or hand-washing must be maintained at a minimum of 100 degrees Fahrenheit and a maximum of not more than 116 degrees Fahrenheit.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0705 GENERAL SANITATION**

(a) The water supply, sewage disposal, solid waste disposal, and food service must meet applicable rules of the Commission for Health Services.

(b) Kitchens providing food service to 13 or more children must meet the requirements of "Rules Governing the Sanitation of Hospitals, Nursing Homes, Rest Homes, Sanitariums, and Educational and Other Institutions" adopted by the Commission for Health Services in 15A NCAC 18A .1300.

(c) Kitchens providing food service to no more than 12 children must meet the requirements of "Rules Governing the Sanitation of Residential Care Facilities" adopted by the Commission for Health Services in 15A NCAC 18A .1300.

(d) Laundry facilities must be provided.

(e) To assure compliance with all local and state sanitation regulations, construction plans for a new residential child-care facility for seven or more residents, renovations of an existing building for a residential child care facility, or the reconstruction of an existing residential child care facility must be submitted to and approved by the county health department in which the facility is located.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0707 SLEEPING AREAS**

(a) Bedrooms in existing facilities licensed before October 31, 1977 must provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single-occupancy bedrooms. Floor area shall not include closets or wardrobes.

(b) Except as provided in Paragraph (c) of this Rule, bedrooms in facilities licensed or developed after October 31, 1977 must provide a minimum of 80 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 100 square feet of floor space in single-occupancy bedrooms. Floor area shall not include closets or wardrobes.

(c) Bedrooms in facilities housing children with a maximum stay of not more than 15 days must provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single-occupancy bedrooms. Floor area shall not include closets or wardrobes.

- (d) The only door access to a bedroom must not be through another room.
- (e) No child may share a bedroom with a staff member.
- (f) No bedroom shall house more than four children.
- (g) Children of different sexes more than five years of age must not share a bedroom.
- (h) Each child must have a bed of his or her own.
- (i) Bunk beds shall be limited to no more than one bed above the other bed with at least four feet vertical clearance between the lower and upper beds.
- (j) Individual beds must be at least three feet apart at the head, foot and sides; bunk beds must be at least five feet apart, horizontally, at the head, foot and sides.
- (k) Each bed must be provided with a mattress in good repair.
- (l) No day-bed, convertible sofa or other bedding of a temporary nature may be used.
- (m) Bedrooms must be provided with a minimum of 48 cubic feet of closet or wardrobe space per child and four cubic feet of drawer space per child.
- (n) Each bedroom must be provided with window area equal to eight percent of the floor area of the room.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41S .0713 VEHICLES USED FOR TRANSPORTATION OF CHILDREN**

- (a) Vehicle Requirements.
  - (1) Vehicles must comply with all motor vehicle laws and regulations for the State of North Carolina.
  - (2) Motor vehicles must be maintained in a safe operating condition, must be properly registered, and must have current, valid inspection stickers for the State of North Carolina.
  - (3) A first-aid kit must be in all motor vehicles.
  - (4) The bed of an open body or a stake bed vehicle must not be used for transporting children.
- (b) Driver Requirements. The name of and a photostatic copy of a valid driver's license for each person transporting children shall be maintained in a separate file.
- (c) Safety Practices.
  - (1) The interior of each vehicle must be maintained in a clean and safe condition with clear passage to operable doors.
  - (2) The driver must assure that all passengers follow current North Carolina laws regarding seat belt usage and shall adhere to child passenger restraint laws when transporting children.
  - (3) The driver shall not transport more persons, including children and adults, than allowed by the design capacity of the vehicle.
  - (4) Children shall have at least one 30 minute rest stop for every four hours of continuous travel.
  - (5) Children shall not be transported for more than 10 hours in any 24-hour period.
- (d) Transportation Records. Insurance verification and the vehicle identification certificate must be kept in the vehicle in

- accordance with State law. Emergency medical information must be kept in the vehicle for each child occupying the vehicle.
- (e) Insurance. If the residential child-care facility's transportation services are provided by a private individual, a firm under contract, or by another arrangement, the facility must maintain a file copy of the individual's or firm's insurance coverage.
- (f) Emergency Transportation. The residential child-care facility must have a plan for transporting children in case of an emergency.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 41T .0106 BUILDINGS AND GROUND EQUIPMENT**

- (a) Facilities.
  - (1) All sleeping units must provide at least the following space:
    - (A) 50 square feet per person;
    - (B) Three feet between the head, feet and sides of beds and sleepers; and
    - (C) 30 inches between sides of beds.
  - (2) All camper sleeping facilities shall be limited to one level structures.
  - (3) Any structure, sleeping or otherwise, with an occupancy of more than 12 persons, including staff, shall have at least two separate and independent means of exit.
  - (4) Open flame lighting shall not be used in sleeping shelters for lighting and heating.
- (b) Grounds:
  - (1) There shall be potable water available at each camp site.
  - (2) At each children's camp there shall be provided a minimum of:
    - (A) one shower head for each 20 children;
    - (B) one flush toilet for each 20 children;
    - (C) one urinal for each 30 male children (urinals may not be substituted for flush toilets);
    - (D) one handwashing facility, adjacent to toilet facilities, for each 20 children; and
    - (E) a wilderness latrine facility approved pursuant to the rules of the Commission for Health Services.
- (c) Equipment:
  - (1) Laundry facilities or equipment shall be available at each camp for all staff and children.
  - (2) Gasoline, kerosene, and other flammable materials shall be stored in covered safe containers, plainly labeled for contents.
  - (3) Power tools:
    - (A) All power tools, including mowers and trimmers, must have safety devices and be used according to manufacturer's instruction, maintained in good repair, and used

- only by those persons trained and experienced in their safety.
- (B) Campers shall receive safety instructions before using such equipment.
- (C) When campers are using such equipment, a trained and responsible adult must be present.
- (D) When not in use, all power tools shall be stored in a locked place not occupied by children.
- (4) Fire extinguishers shall be available in all areas so designated by fire safety officials, shall be properly charged and shall have current inspection labels.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 1, 2002.*

**10 NCAC 42B .2407 RESPITE CARE**

Respite care shall be controlled by 10 NCAC 42C .2406 and all the rules of this Subchapter except for Rules 42B .1702, .1707, .1802, .2001, .2402 and .2403.

*History Note: Authority G.S. 131D-2; 143B-165; S.L. 2000-50; Temporary Adoption Eff. November 1, 2000; Eff. July 1, 2002.*

**10 NCAC 42C .2406 RESPITE CARE**

- (a) For the purposes of this Subchapter, respite care is defined as supervision, personal care and services provided for persons admitted to an adult care home on a temporary basis for temporary caregiver relief, not to exceed 30 days.
- (b) Respite care is not required as a condition of licensure. However, respite care is subject to the requirements of this Subchapter except for Rules .2402, .2404, .2506, .3101, .3701, .3702 and .3802(a).
- (c) The number of respite care residents and adult care home residents shall not exceed the facility's licensed bed capacity.
- (d) The respite care resident contract shall specify the rates for respite care services and accommodations, the date of admission to the facility and the proposed date of discharge from the facility. The contract shall be signed by the administrator or designee and the respite care resident or his responsible person and a copy given to the resident and responsible person.
- (e) Upon admission of a respite care resident into the facility, the facility shall assure that the resident has been tested for tuberculosis disease within the past 12 months and that there are current physician orders for any medications, treatments and special diets for inclusion in the respite care resident's record. The facility shall assure that the respite care resident's physician or prescribing practitioner is contacted for verification of orders if the orders are not signed and dated within seven calendar days prior to admission to the facility as a respite care resident or for clarification of orders if orders are not clear or complete. Tests for tuberculosis disease shall comply with control measures adopted by the Commission for Health Services as specified in 15A NCAC 19A .0205 including subsequent amendments and

editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.

- (f) The facility shall complete an assessment which allows for the development of a short-term care plan prior to or upon admission to the facility with input from the resident or responsible person. The assessment shall address respite resident needs, including identifying information, hearing, vision, cognitive ability, functional limitations, continence, special procedures and treatments as ordered by physician, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The facility may develop and use its own assessment instrument or use the assessment instrument approved by the Department for initial admission assessments as stated in Rule .3701 of this Subchapter. The care plan shall be signed and dated by the facility's administrator or designated representative and the respite care resident or responsible person.
- (g) The respite care resident's record shall include a copy of the signed respite care contract; the assessment and care plan; documentation of a tuberculosis test according to Paragraph (e) of this Rule; documentation of any contacts (office, home or telephone) with the resident's physician or other licensed health professionals from outside the facility; physician orders; medication administration records; a statement, signed and dated by the resident or responsible person, indicating that information on the home as required in Rule .2405 of this Subchapter has been received; a written description of any acute changes in the resident's condition or any incidents or accidents resulting in injury to the respite care resident, and any action taken by the facility in response to the changes, incidents or accidents; and how the responsible person or his designated representative can be contacted in case of an emergency.

(h) The respite care resident's responsible person or his designated representative shall be contacted and informed of the need to remove the resident from the facility if one or more of the following conditions exists:

- (1) the resident's condition is such that he is a danger to himself or poses a direct threat to the health of others as documented by a physician; or
- (2) the safety of individuals in the home is threatened by the behavior of the resident as documented by the facility.

Documentation of the emergency discharge shall be on file in the facility.

*History Note: Authority G.S. 131D-2; 143B-165; S.L. 2000-50; Temporary Adoption Eff. November 1, 2000; Eff. July 1, 2002.*

**10 NCAC 42D .1832 RESPITE CARE**

- (a) Respite care shall be controlled by 10 NCAC 42C .2406 and all the rules of this Subchapter except for Rules 42D .1802, .1808, .1827, and .1828. Rule .1801 of this Subchapter shall apply to respite care except that Rules 42C .2402 and .2404 as referenced in Rule 42D .1801 of this Subchapter do not apply.
- (b) If the facility is staffing to census, the respite care residents shall be included in the daily census for determination of



appropriate staffing levels according to the rules of this Subchapter.

*History Note: Authority G.S. 131D-2; 143B-165; S.L. 2000-50; Temporary Adoption Eff. November 1, 2000; Eff. July 1, 2002.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**15A NCAC 10B .0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus\*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond\*\*, Robeson, Sampson, Scotland\*\*, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:  
 Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95.  
 Harnett: That part west of NC 87.  
 Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.  
 \*\*Refer to 15A NCAC 10D .0103(f) (54)(B) for seasons on Sandhills Game Land.

(B) Saturday before Thanksgiving through the third Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery,

Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

(D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95;

Harnett: That part east of NC 87;

Moore: That part north of NC 211 and west of US 1.

(E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

(F) Saturday before Thanksgiving through the fifth Saturday after Thanksgiving Day in all of Gaston and Lincoln counties.

(G) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of

- Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. For purposes of this Rule, "youth" shall mean persons who shall be 12 years old and less than 16 years old by the hunt date. All youth must be have completed a hunter safety course and be certified. A youth must be accompanied by an adult. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Polk, Transylvania, and Yancey counties and the following parts of counties:  
 Robeson: That part south of NC 211 and west of I-95.  
 Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, and Watauga and the following parts of counties:  
 Camden: That part south of US 158.  
 Dare: Except the Outer Banks north of Whalebone.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Rutherford, counties and in the following parts of counties:  
 Columbus: That part west of US 74, SR 1005, and SR 1125.  
 Cumberland: That part west of I-95.  
 Harnett: That part west of NC 87.  
 Moore: All of the county except that part north of NC 211 and west of US 1.  
 Robeson: All of the county except that part south of NC 211 and west of I-95.  
 Scotland: That part north of US 74.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:  
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.  
 Camden: That part north of US 158.  
 Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.  
 Cumberland: That part east of I-95.  
 Currituck: All of the county except the Outer Banks.  
 Dare: That part of the Outer Banks north of Whalebone.  
 Harnett: That part east of NC 87.  
 Henderson: That part east of NC 191 and north and west of NC 280.  
 Moore: That part north of NC 211 and west of US 1.
- (c) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln Counties.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
- (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.

(B) The second Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln counties.

(C) Monday on or nearest October 8 to the following Friday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.

(D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

(A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.

(B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.

(C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas,

(2) Restrictions

(A) Dogs may not be used for hunting deer during the bow and arrow season.

(B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.

(C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle -Loading Rifles and Shotguns)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

(A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule,

regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

(f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

*History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 1, 2002.*

**15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES**

It is unlawful to transport, purchase, possess, or sell any species of piranha, "walking catfish" (*Clarias batrachus*), black carp (*Mylopharyngodon piceus*) or white amur or "grass carp" (*Ctenopharyngodon idellus*), or to stock any of them in the public or private waters of North Carolina, except that the triploid grass carp certified to be sterile by genetic testing at a federal, state, or university laboratory may be bought, possessed and stocked locally for control of aquatic vegetation under a permit issued by the Executive Director and containing such conditions and limitations as he may deem necessary or advisable under the circumstances.

*History Note: Authority G.S. 113-134; 113-292; Eff. February 1, 1976; Amended Eff. September 1, 1984; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 1, 2002.*

**15A NCAC 10H .0301 GENERAL REQUIREMENTS**

**(a) Captivity Permit**

- (1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled, injured or orphaned wild animal or wild bird (except wild turkey, deer or black bear) may be taken and kept in possession for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission, or a wildlife enforcement officer of the Commission, for a captivity permit.

Deer, Wild Turkey, and Black Bear. Captivity permits shall not be issued for crippled, injured or orphaned black bear. No

person shall keep a crippled, injured or orphaned black bear in possession for longer than a 24 hour period. Captivity permits for crippled, injured, or orphaned deer shall only be issued to rehabilitators predesignated by the Commission to provide temporary care for fawn deer. No captivity permits shall be issued for holding wild turkeys.

- (3) Application and Term. A captivity permit shall be issued without charge and may be issued upon informal request by mail, telephone, or other means of communication; but such permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release to the wild; or to obtain a captivity license as provided by Paragraph (b) of this Rule, if such a license is authorized, or to make a proper disposition of the animal or bird, as determined by the Executive Director, if the application for such license is denied, or when an existing captivity license is not renewed or is terminated.

**(b) Captivity License**

- (1) Requirement. Except as provided in Paragraph (a) of this Rule, no person shall keep any species of wild animal which is or once was native to this State or any deer, elk, or other member of the family Cervidae; or any coyote, wolf, or other nonindigenous member of the family Canidae; or any species of wild bird which naturally occurs or historically occurred in this State, either resident or migratory, without first having obtained from the Wildlife Resources Commission a license to hold the particular species of animal or bird in captivity. No wildlife captivity license shall be issued for exotic wild animals, non-indigenous wild animals, or native big game species when the reason for holding such wild animals is release for hunting. No captivity license shall be issued for holding wild turkeys.

Acquisition of Wildlife. Notwithstanding the provisions of Subparagraph (a)(2) of this Rule, captivity licenses may not be issued if the wild animal or wild bird was acquired unlawfully or merely as a pet.

- (2) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity which shall comply with the minimum standards set forth in Rule .0302 of this Section, and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (3) Term of License
  - (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating

on December 31 of the year for which issued.

- (B) **Rehabilitable Wildlife.** When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license which is issued shall be for a period less than one year as rehabilitation may require. Captivity licenses shall not be issued for rehabilitation of deer, turkey, and black bear.
- (C) **Concurrent Federal Permit.** No State captivity license for an endangered or threatened species or a migratory bird shall be operative to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for its retention.

(c) **Nontransferability.** No license or permit issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.

(d) **Sale or Transfer of Captive Wildlife.** It is unlawful for any person to transfer or receive any wild animal or wild bird which is being held under a captivity permit issued under Paragraph (a) of this Rule, except that any such animal or bird may be surrendered to an agent of the Wildlife Resources Commission. It is unlawful for any person holding a captivity license issued under Paragraph (b) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird to another person who has obtained a license to hold it in captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be transmitted to the Wildlife Resources Commission. It is unlawful for any person to release into the wild for any purpose or allow to range free any species of deer, elk or other members of the family Cervidae or any wolf, coyote, or other nonindigenous member of the family Canidae.

(e) **Applicability of Section.** The following licenses include authority for incidental transportation and possession of wildlife covered under the license:

- (1) Wildlife and fish collection licenses [G.S. 113-272.4; 15A NCAC 10B .0119; 15A NCAC 10C .0214];
- (2) Controlled hunting preserve license [G.S. 113-273(g); 15A NCAC 10H .0100];
- (3) Commercial trout pond license [G.S. 113-273(c); 15A NCAC 10H .0400];
- (4) Fish propagation license [G.S. 113-273(e); 15A NCAC 10H .0700];
- (5) Falconry permit and license [G.S. 113-270.3(b)(5); 15A NCAC 10H .0800];
- (6) Game bird propagation license [G.S. 113-273(h); 15A NCAC 10H .0900]; and
- (7) Furbearer propagation license [G.S. 113-273(i); 15A NCAC 10H .1100].

*History Note: Authority G.S. 113-134; 113-272.5; 113-274; 113-292; Eff. February 1, 1976; Amended Eff. April 1, 1991; September 1, 1990; June 1, 1990; July 1, 1988; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 1, 2002.*

---

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS**

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13 feet 6 inches high, 16 feet wide unit and a 3 inches gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14 feet across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in this Rule. A 14 feet wide mobile/modular home unit with a roof overhang not to exceed a total of 12 inches may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12 inches of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4 inches, which is required to be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6 feet to 8 feet above the road surface with a 5 inches amber flashing beacon mounted on the top of each extender. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall not be issued vehicle specific to exceed a width in excess of 15 feet for all movements unless authorized by the Central Permit Office or the State Maintenance and Equipment Engineer after analysis of the proposed load and evaluation of the proposed route of travel. Exception: A mobile/modular unit with maximum measurements of 13 feet 6 inches high, 16 feet wide unit and a 3 inches gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual oversize/overweight permit may be issued valid for unlimited movement without an escort on all North Carolina

highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations transporting general commodities which has a minimum extreme wheelbase of 51 feet and which does not exceed: width of 12 feet; height of 13 feet, 6 inches; length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed: width of 10 feet; height of 13 feet, 6 inches; length of 45 feet with front and rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet 6 inches; and a weight as set forth in G.S. 20-118(b)(3). Mobile/modular homes with a maximum height of 13 feet 6 inches being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14 feet unit with an allowable roof overhang not to exceed a total of 12 inches. These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14 feet unit with a total roof overhang not to exceed 12 inches and a height of 13 feet 6 inches. The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.

- 3 or more axle group      60,000 lbs.
  - 3 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration
  - 4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration
  - 5 axle single vehicle may have a maximum gross weight up to 94,5000 lbs. based on an analysis of weight distribution and axle configuration
  - 5 axle vehicle combination may have a maximum gross weight up to 112,000 lbs. based on the extreme axle measurement
  - 6 axle single vehicle may have a maximum gross weight up to 108,000 lbs. based on an analysis of weight distribution and axle configuration
  - 6 axle vehicle combination may have a maximum gross weight up to 120,000 lbs. based on the extreme axle measurement
  - 7 axle single vehicle may have a maximum gross weight up to 122,000 lbs. based on an analysis of weight distribution and axle configuration
  - 7 axle vehicle combination may have a maximum gross weight up to 132,000 lbs. based on the extreme axle measurement
  - 7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.
- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:
- |             |               |
|-------------|---------------|
| Single axle | 37,000 pounds |
| Tandem axle | 50,000 pounds |
- 2 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration
  - 3 axle single vehicle may have a maximum gross weight up to 80,000 lbs. based on an analysis of weight distribution and axle configuration
  - 4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration.
- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:
- (A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;
  - (B) Is licensed for the maximum allowable weight for a 51 feet

extreme wheelbase measurement specified in G.S. 20-118;

- (C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;
- (D) Is a vehicle combination with at least five axles;
- (E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

(e) Overlength permits shall be limited as follows:

- (1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.
- (2) Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.
- (3) Front overhang may not exceed the length of 3 feet specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3 feet, an overlength permit may be issued.

(f) An Overheight Permit Application for heights in excess of 14 feet must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16 feet wide mobile/modular unit with a maximum 3 inches gutter edge shall not exceed a height of 13 feet 6 inches while traveling on North Carolina highways. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(g) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16 feet wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width,

height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2 inches by 12 inches to be displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24" from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8 inches in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

(h) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

(i) Additional safety measures are as follows:

- (1) A yellow banner measuring a total length of 7 feet x 18 inches high bearing the legend "Oversize Load" in 10 inches black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize -ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;
- (2) Red flags measuring 18 inches square shall be displayed on all sides at the widest point of load for all loads in excess of 8 feet 6 inches wide but the flags shall be so mounted as to not increase the overall width of the load;
- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(j) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(k) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(l) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(m) The Department of Transportation may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

*History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990; Filed as a Temporary Rule Eff. December 31, 2000; October 1, 2000; Amended Eff. December August 1, 2002.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 17 - BOARD OF DIETETICS/NUTRITION**

**21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE**

Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S. 90-352.

*History Note: Filed as a Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Authority G.S. 90-356; 90-357; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0003 Eff. February 1, 1995; Amended Eff. July 1, 2002.*

**21 NCAC 17 .0108 DISAPPROVED APPLICATION**

The Board shall not approve an applicant for licensure if the applicant:

- (1) Has not completed the requirements in G.S. 90-350 through G.S. 90-369 including academic, experience and examination requirements;
- (2) Has failed to remit any applicable fees;
- (3) Has failed to comply with requests for supporting documentation; and
- (4) Has presented false information on application documents required by the Board to verify applicant's qualifications for licensure.

*History Note: Filed as a Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Authority G.S. 90-356; 90-358; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0008 Eff. February 1, 1995; Amended Eff. July 1, 2002.*

**21 NCAC 17 .0110 LICENSURE CERTIFICATE**

(a) The Board shall prepare and provide to each licensee a license certificate and license identification card. The identification card shall contain the person's name, license number and date of expiration.

(b) License certificates shall be signed by the Chair, Secretary and Treasurer and be affixed with the seal of the Board. Identification cards shall bear the signature of the Chair.

(c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be surrendered to the Board on demand.

(d) Licensees shall comply with G.S. 90-640, Article 37, which specifies the wearing of a name badge. The license certificate must be displayed in a public manner as follows:

- (1) The license certificate shall be displayed in the primary place of employment of the licensee; or
- (2) In the absence of a primary place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current, Board issued license identification card.

(e) Neither the licensee nor anyone else shall display a photocopy of a license identification card in lieu of the original license certificate or license identification card.

(f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by Board.

(g) The Board shall replace a lost, damaged or destroyed license certificate or identification card upon receipt of a written request from the licensee and payment of the duplicate license fee.

(h) The licensee must submit a written request within 30 days of a name change to the Board who shall re-issue a license certificate and license identification card. Requests shall be accompanied by duplicate license fee and documentation reflecting the change.

*History Note: Filed as a Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Authority G.S. 90-356; 90-362; Eff. June 1, 1992;*



*Recodified from 21 NCAC 17 .0010 Eff. February 1, 1995;  
Amended Eff. July 1, 2002.*

**21 NCAC 17 .0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS/NUTRITION**

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

- (1) "Certified Dietary Manager" means an individual who is certified by the Certifying Board of the Dietary Managers.
- (2) "Dietetic Technician Registered" or "DTR" means an individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association.
- (3) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist shall:
  - (A) be available for consultation on delegated nutrition care activities being performed by the person being supervised; and
  - (B) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
  - (C) provide supervision that is characterized by a first-hand association.
- (4) "Nutrition care activities" means activities performed by unlicensed personnel which are delegated by licensed dietitians/nutritionists in accordance with Paragraphs (c) and (d) of this Rule and which support the provision of nutrition care services as referenced in G.S. 90-352(4). Nutrition care activities include the provision of nutrition care to prevent a medical condition, illness or injury and the provision of weight control programs or services.

(b) Unlicensed personnel aiding the practice of dietetics/nutrition may include but are not limited to the following:

- (1) a Certified Dietary Manager;
- (2) a Dietetic Technician Registered; or
- (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and d.

(c) The licensed dietitian/nutritionist may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel. The licensed dietitian/nutritionist is responsible for supervision of the nutrition care activities of the unlicensed personnel and maintains responsibility for nutrition care activities performed by all personnel to whom the care is delegated. The acts and functions included in the scope of employment or contract of persons providing nutrition care services include, but are not limited to, community nutrition, food service, nutrition care activities, weight control services and nutrition information or education and shall be documented in writing.

(d) The following variables are to be considered by the licensed dietitian/nutritionist in determining whether or not an activity may be delegated to unlicensed personnel:

- (1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;
- (2) verification of competence of the unlicensed personnel;
- (3) the variables in each service setting which include but are not limited to:
  - (A) the complexity and frequency of nutrition care needed by a given client population;
  - (B) the acuity and stability of the client's condition;
  - (C) the accessible resources; and
  - (D) established policies, procedures, practices, and channels of communication which lend support to the types of nutrition care activities being delegated, or not delegated, to unlicensed personnel.

*History Note: Authority G.S. 90-356(2); 90-368(4);  
Eff. March 1, 1996;  
Amended Eff. July 1, 2002.*

**21 NCAC 17 .0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION**

(a) The following terms and phrases shall have the meanings specified:

- (1) "Nutrition information" means nonfraudulent nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on valid scientific evidence, reports and studies. Nutrition information is not based on an individual nutrition assessment as referenced in G.S. 90-352 or medical nutrition therapy as referenced in 21 NCAC 17 .0101(11) and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a medical condition, illness, or injury for a specific person or group as referenced in G.S. 90-352 and 21 NCAC 17 .0101(12).
- (2) "Reported or historical use" means information about food, food materials or dietary supplements which is based on the following:
  - (A) historical or methodological studies or research conducted by experts in the field using sound scientific methods with randomized controlled clinical trials; or
  - (B) reports on valid scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

**APPROVED RULES**

---

(b) The Board shall deem an individual who provides nutrition information or education to be in compliance with G.S. 90-368(9) when:

- (1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The person does not provide nutrition care services or nutrition care activities which have not been delegated to him/her by a licensed dietitian/nutritionist;
- (3) The person provides nutrition information on or about food, food materials or dietary supplements, and does not provide nutrition information on the nutritional needs of the consumer;
- (4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements or other goods to be provided or

sold, and does not provide nutrition information in connection with the marketing and distribution of nutrition services;

- (5) The person provides nonfraudulent nutrition information which is based on scientific reports and studies, is not false or misleading, and is safe; and
- (6) The person provides the nutrition information on food, food materials, nutraceuticals, dietary supplements or other goods in accordance with federal, state and local laws, regulations and ordinances, including but not limited to G.S. 90, Article 25.

*History Note: Authority G.S. 90-356(2); 90-368;  
Eff. March 1, 1996;  
Amended Eff. July 1, 2002.*

## RULES REVIEW COMMISSION

*This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, August 16, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, August 10, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

### RULES REVIEW COMMISSION MEMBERS

#### Appointed by Senate

Paul Powell - Chairman  
Robert Saunders  
Laura Devan  
Jim Funderburke  
David Twiddy

#### Appointed by House

John Arrowood - 1<sup>st</sup> Vice Chairman  
Jennie J. Hayman 2<sup>nd</sup> Vice Chairman  
Walter Futch  
Jeffrey P. Gray  
George Robinson

### RULES REVIEW COMMISSION MEETING DATES

August 16, 2001  
September 20, 2001

October 18, 2001  
November 15, 2001

### RULES REVIEW COMMISSION

July 19, 2001

#### MINUTES

The Rules Review Commission met on Thursday morning, July 19, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jeffrey Gray, George Robinson, Jim Funderburk, Robert Saunders, Laura Devan and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Kim Dove	NC Board of Dietetics/Nutrition
Ben F. Massey, Jr.	NC Board of Physical Therapy Examiners
Harry Wilson	State Board of Education
Esther High	DHHS/Department of Social Services
Howard Kramer	NC Board of Nursing Attorney
John Silverstein	NC Board of Physical Therapy Examiners Attorney
Charlotte Hall	DMH/DD/SAS
John Womble	DMH/DD/SAS
Emily Lee	NC Dept. of Transportation
Dedra Alston	DENR
Scott Perry	Criminal Justice Education & Training Standards Commission
Donna Byrd	Criminal Justice Education & Training Standards Commission
Henry Jones	NC Board of Dietetics/Nutrition Attorney
Kris Horton	DHHS/Department of Social Services

#### APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the June 21, 2001, meeting. The minutes were approved as written.

#### FOLLOW-UP MATTERS

7 NCAC 4S .0104: Department of Cultural Resources – No action was taken.

10 NCAC 45G .0306: DHHS/Commission for MH/DD/SAS – The rule was approved conditioned upon receiving a technical change.

10 NCAC 45H .0203, .0204: DHHS/Commission for MH/DD/SAS – No response was received and no action was taken.

## **RULES REVIEW COMMISSION**

---

15A NCAC 6G .0101, .0102: DENR-Soil and Water Conservation Commission – The rewritten rules submitted by the agency were approved by the Commission.

15A NCAC 6G .0103, .0104, .0105, .0106: DENR/Soil and Water Conservation Commission – The rules submitted by the agency were approved by the Commission.

15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334: Commission for Health Services – The Commission continued its objection to rule .3334 due to lack of statutory authority and ambiguity. In (b), it is not clear how total demerit point scores are determined or what is meant by “6 demerit-point items.” There is no authority cited to set these criteria by use of a form as this rule apparently does. Rule .3319 was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received. All other rewritten rules submitted by the agency were approved.

19A NCAC 2D .1003: Department of Transportation – The rewritten rule submitted by the agency was approved by the Commission.

21 NCAC 17 .0101; .0104; .0105; .0107; .0109; .0114; .0115; .0116; .0302; .0303; .0304: NC Board of Dietetics/Nutrition – The rewritten rules submitted by the agency were approved by the Commission.

21 NCAC 36 .0405: NC Board of Nursing – The rewritten rule submitted by the agency was approved by the Commission.

### **LOG OF FILINGS**

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

12 NCAC 9B .0101: Criminal Justice Education & Training Standards Commission – The Commission objected to the rule due to lack of necessity. Because the agency has no limitations on what drugs may be tested for, there is no need for the exception clause in (5)(f).

12 NCAC 9C .0403: Criminal Justice Education & Training Standards Commission – The Commission voted to return the rule to the agency for failure to comply with Administrative Procedure Act. Commissioners Gray, Powell and Devan were opposed.

12 NCAC 9D .0202: Criminal Justice Education & Training Standards Commission – The Commission voted to return the rule to the agency for failure to comply with Administrative Procedure Act.

16 NCAC 6D .0305: State Board of Education – The Commission objected to the rule due to ambiguity. It is not clear in what courses an end of course test is required.

16 NCAC 6G .0305: State Board of Education – The Commission voted to extend the period of review to give the agency an opportunity to examine numerous ambiguities in the rule and see if they can be explained or more clearly written.

21 NCAC 48A .0105: NC Board of Physical Therapy Examiners – The Commission objected to the rule due to ambiguity. In (14), it is not clear what aspects of a treatment session the board would consider “appropriate” for the continued involvement of the supervisory licensee.

21 NCAC 48B .0101: NC Board of Physical Therapy Examiners – The Commission objected to the rule due to lack of statutory authority and necessity. This rule is either beyond the authority of the Board by prohibiting employment whether or not the person begins practice or unnecessary as repeating the statutes if by employment they mean practice. This objection applies to existing language in the rule.

21 NCAC 48B .0104: NC Board of Physical Therapy Examiners – The Commission objected to this rule due to lack of statutory authority. There does not appear to be authority for this rule. The authority cited allows physical therapists and physical therapy assistants from other states to teach or participate in physical therapy education projects, demonstrations or courses, not provide services to athletic teams.

21 NCAC 48C .0101: NC Board of Physical therapy Examiners – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 48C .0102: NC Board of Physical Therapy Examiners – The Commission objected to the rule due to ambiguity. In (c), it is not clear what responsibilities are appropriate for a physical therapist to delegate to physical therapist assistants. It is also not clear how much supervision is appropriate for students. In (h), it is not clear that the physical therapist may be directly available as well as available by telecommunication. This objection applies to existing language.

21 NCAC 48D .0109: NC Board of Physical Therapy Examiners – This rule was withdrawn by the agency.

21 NCAC 48E .0110: NC Board of Physical Therapy Examiners – The Commission objected to the rule due to ambiguity. In (c)(2), it is not clear what standards the Board will use in determining that a credentialing service is acceptable.

21 NCAC 48G .0204: NC Board of Physical Therapy Examiners - The Commission objected to the rule due to ambiguity. While the Board has discretion in establishing how a lapsed license may be revived, it is not clear what standards the Board will use in setting conditions, restriction and course requirements under this rule.

21 NCAC 48G .0405: NC Board of Physical Therapy Examiners - The Commission objected to the rule due to lack of statutory authority and ambiguity. This rule at least implicitly violates the Public Records Law. While the reprimand is called private, in fact it is a public record available to anyone. It is also not clear how it could not be considered a disciplinary action. Any action, no matter how small, taken against a licensee is, by definition, a disciplinary action. This objection applies to existing language in the rule.

21 NCAC 48G .0504: NC Board of Physical Therapy Examiners - The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority for the provision in (d) about a “confidential” advisory letter. Any letter sent is a public record. There is also no authority for the Board to suggest that a licensee modify or eliminate legal conduct or practices. In (f), it is not clear how there can be probable cause for taking disciplinary action, but no hearing be warranted. This seems contradictory. In (i), it is not clear how a letter of caution could not be considered disciplinary action. This objection applies to existing language in the rule.

**RULES REVIEW COMMISSION**

21 NCAC 48G .0602: NC Board of Physical Therapy Examiners - The Commission objected to the rule due to ambiguity. In (a)(1), it is not clear how a reprimand could not be considered disciplinary action. It is even called discipline in G.S. 90-270.26(2).

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Staff Director, Joe DeLuca reported on the NASS Conference that he attended. He stated that he would get a written report out at a later date. He also gave Commissioners copies of a letter he received concerning the Pharmacy Board lawsuit for their information.

Chairman Powell read a letter to the Commission from the North Carolina Board of Ethics concerning Commissioner Jeffrey Gray. The NC Board of Ethics found that Mr. Gray has no actual conflict of interest but does have the potential for conflict interest.

The next meeting will be on Thursday, August 16, 2001.

The meeting adjourned at 12.27 p.m.

Respectfully submitted,  
Lisa Johnson

**Commission Review/Administrative Rules  
Log of Filings (Log #178)  
June 21, 2001 through July 20, 2001**

**DENR/ENVIRONMENTAL MANAGEMENT COMMISSION**

Definitions	15A	NCAC 02D .1401	Amend
Applicability	15A	NCAC 02D .1402	Amend
Compliance Schedule	15A	NCAC 02D .1403	Amend
Recordkeeping Reporting Monitoring	15A	NCAC 02D .1404	Amend
Utility Boilers	15A	NCAC 02D .1406	Amend
Boilers and Indirect-Fired Process Heaters	15A	NCAC 02D .1407	Amend
Stationary Combustion Turbines	15A	NCAC 02D .1408	Amend
Stationary Internal Combustion Engines	15A	NCAC 02D .1409	Amend
Emission Averaging	15A	NCAC 02D .1410	Amend
Seasonal Fuel Switching	15A	NCAC 02D .1411	Amend
Petition for Alternative Limitations	15A	NCAC 02D .1412	Amend
Sources not Otherwise Listed in This Section	15A	NCAC 02D .1413	Amend
Turn-up Requirements	15A	NCAC 02D .1414	Amend
Test Methods and Procedures	15A	NCAC 02D .1415	Amend
Emission Allocations for Utility Companies	15A	NCAC 02D .1416	Amend
Emission Allocations for Large Combustion	15A	NCAC 02D .1417	Amend
New Electric Generating Units, Large Boilers and	15A	NCAC 02D .1418	Amend
Nitrogen Oxide Budget Trading Program	15A	NCAC 02D .1419	Amend
Periodic Review and Reallocations	15A	NCAC 02D .1420	Amend
Allocations for New Growth of Major Point	15A	NCAC 02D .1421	Amend
Compliance Supplement Pool Credits	15A	NCAC 02D .1422	Amend
Large Internal Combustion Engines	15A	NCAC 02D .1423	Amend

**DENR/WILDLIFE RESOURCES COMMISSION**

Shining Lights In Deer Areas	15A	NCAC 10B .0115	Amend
------------------------------	-----	----------------	-------

**TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES**

Safety of Operation and Equipment	19A	NCAC 03D .0801	Amend
Purpose of Regulations	19A	NCAC 03J .0101	Amend
Definitions	19A	NCAC 03J .0102	Amend
Requirements	19A	NCAC 03J .0201	Amend
Original Application	19A	NCAC 03J .0202	Amend
Renewal Applications	19A	NCAC 03J .0203	Amend
Duplicate Copies	19A	NCAC 03J .0204	Amend
Branch Offices	19A	NCAC 03J .0206	Amend
Surrender of Licenses	19A	NCAC 03J .0207	Amend
Inspections	19A	NCAC 03J .0305	Amend
Course of Instruction	19A	NCAC 03J .0306	Amend

**RULES REVIEW COMMISSION**

---

Reports To Be Submitted	19A	NCAC 03J .0308	Amend
Vehicle Equipment	19A	NCAC 03J .0401	Amend
Registration Insurance Inspection	19A	NCAC 03J .0402	Amend
Requirements	19A	NCAC 03J .0501	Amend
Original Application	19A	NCAC 03J .0502	Amend
Renewal Application	19A	NCAC 03J .0503	Amend
Duplicate Copies	19A	NCAC 03J .0504	Amend
Surrender of Licenses	19A	NCAC 03J .0507	Amend
Requirements	19A	NCAC 03J .0601	Amend
Prohibited Contract Provisions	19A	NCAC 03J .0602	Amend
Filing of Contract With The Division	19A	NCAC 03J .0603	Amend
Contract Provisions	19A	NCAC 03J .0604	Amend
Advertising	19A	NCAC 03J .0703	Amend
Grounds for Revocation or Suspension	19A	NCAC 03J .0801	Amend
Instructor License Suspension or Revocation	19A	NCAC 03J .0802	Amend
Requirements	19A	NCAC 03J .0901	Amend
Original Application	19A	NCAC 03J .0902	Amend
Renewal Application	19A	NCAC 03J .0903	Amend
Duplicate Copies	19A	NCAC 03J .0904	Amend
Surrender of Licenses	19A	NCAC 03J .0906	Amend
<b>STATE BOARDS/DENTAL EXAMINERS, BOARD OF</b>			
Location	21	NCAC 16A .0104	Amend
<b>STATE BOARDS/NC BOARD OF PHYSICAL THERAPY EXAMINERS</b>			
Grounds for Probation	21	NCAC 48G .0401	Amend
<b>DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION</b>			
State Personnel Commission Procedures	25	NCAC 01B .0437	Amend
Unlawful Workplace Harassment	25	NCAC 01C .0214	Amend
Appeals	25	NCAC 01J .0603	Amend

---

**AGENDA**  
**RULES REVIEW COMMISSION**  
**August 16; 2001**

- I.** Call to Order and Opening Remarks
- II.** Review of minutes of last meeting
- III.** Follow Up Matters
  - A. DHHS/Commission for MH/DD/SAS - 10 NCAC 45G .0306 Objection on 6/21/01 (DeLuca)
  - B. DHHS/Commission for MH/DD/SAS - 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
  - C. Criminal Justice Education & Training Standards Commission - 12 NCAC 9B .0101 Objection on 07/19/01 (Bryan)
  - D. Commission for Health Services - 15A NCAC 18A .3334 Objection on 04/19/01; 07/19/01 (Bryan)
  - E. State Board of Education - 16 NCAC 6D .0305 Objection on 07/19/01 (Bryan)
  - F. State Board of Education - 16 NCAC 6G .0305 Extend Period of Review on 07/19/01 (Bryan)
  - G. NC Board of Physical Therapy Examiners - 21 NCAC 48A .0105 Objection on 07/19/01 (Bryan)
  - H. NC Board of Physical Therapy Examiners - 21 NCAC 48B .0101; .0104 Objection on 07/19/01 (Bryan)
  - I. NC Board of Physical Therapy Examiners - 21 NCAC 48C .0102 Objection on 07/19/01 (Bryan)
  - J. NC Board of Physical Therapy Examiners - 21 NCAC 48E .0110 Objection on 07/19/01 (Bryan)
  - K. NC Board of Physical Therapy Examiners - 21 NCAC 48G .0204; .0405; .0504; .0602 Objection on 07/19/01 (Bryan)
- IV.** Review of rules (Log Report #178)
- V.** Commission Business
- VI.** Next meeting: Thursday; September 20; 2001

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

### OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

### ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A.B. (Butch) Elkins*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
<b><u>BOARD OF GEOLOGISTS</u></b>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<b><u>BOARD OF MORTUARY SCIENCE</u></b>				
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
<b><i>Child Support Enforcement Section</i></b>				
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01	
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01	
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01	
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 <sup>1</sup>	Wade	05/30/01	
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 <sup>1</sup>	Wade	05/30/01	
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01	
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01	
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01	
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01	
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01	
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01	
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01	
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01	
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01	
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01	
Carey Austin Spencer v. Department of Health & Human Services	01 CSE 0277	Conner	07/09/01	
Nathaniel Gunter v. Department of Health & Human Services	01 CSE 0333	Morrison	06/25/01	
Harvey L Hughes Sr. v. Department of Health & Human Services	01 CSE 0366	Gray	06/29/01	
Denise Renee Nunn v. Department of Health & Human Services	01 CSE 0368	Morrison	06/05/01	
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01	
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01	
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01	
Johnny Caldwell v. Department of Health & Human Services	01 CSE 0415	Conner	07/09/01	
Timothy Ray Ledford v. Department of Health & Human Services	01 CSE 0416	Elkins	06/29/01	
Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01	
Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01	
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01	

**CONTESTED CASE DECISIONS**

Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Thomas J Lipka v. Department of Health & Human Services	01 CSE 0609	Elkins	06/27/01
Boyd H Tucker v. NC Child Support Centralized Collection	01 CSE 0618	Wade	05/31/01
Joseph E Rudd Jr. v. Department of Health & Human Services	01 CSE 0621	Gray	05/29/01
Kirk M White v. Department of Health & Human Services	01 CSE 0625	Lassiter	06/05/01
Kevin R Ross v. Department of Health & Human Services	01 CSE 0631	Elkins	06/05/01
Kelvin R Leonard v. Department of Health & Human Services	01 CSE 0633	Elkins	06/05/01
Steven Rodger Malysz v. Department of Health & Human Services	01 CSE 0649	Gray	06/05/01
Lynn S Jowers v. Department of Health & Human Services	01 CSE 0688	Elkins	06/25/01
Jeffery D Bolton v. Department of Health & Human Services	01 CSE 0777	Gray	06/29/01

Constance Drye v. Department of Health & Human Services	01 DCS 0707	Wade	06/25/01
---	-------------	------	----------

**CULTURAL RESOURCES**

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
---	-------------	------	----------

**HEALTH AND HUMAN SERVICES**

Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
Renita Lewis-Walters v. (ADATC), Dept. of Health & Human Services	01 DHR 0286	Morrison	06/08/01
Duane E McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01

***Division of Child Development***

Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
---	-------------	------	----------

***Division of Social Services***

Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01
Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01
Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01
John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01

***Division of Facility Services***

Donna Kay Pittman v. DHHS, Division of Facility Services	00 DHR 0086	Overby	06/29/01
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01

**JUSTICE**

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01
--	-------------	------	----------

***Alarm Systems Licensing Board***

Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01
Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01
Arthur Eugene Corpening v. Alarm Systems Licensing Board	01 DOJ 0789	Morrison	06/13/01

***Private Protective Services Board***

Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01

***Sheriffs' Education & Training Standards Commission***

Joshua Craig Brothers v. NC Sheiffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01
--	-------------	--------	----------

**ENVIRONMENT AND NATURAL RESOURCES**

Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01	
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR 40
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01	



**CONTESTED CASE DECISIONS**

---

Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn 01 EHR 0730 Morrison 06/26/01  
NC DENR

**MISCELLANEOUS**

Tony L. Arnett v. Administrative Office of the Courts 00 MIS 0424 Wade 06/26/01

**OFFICE OF STATE PERSONNEL**

Debbie Whitley v. Wake County Department of Health 96 OSP 1997 Chess 05/22/01  
Timothy Ramey v. NC Department of Correction 99 OSP 1085 Chess 06/27/01  
Miriam Dukes v. Albemarle Mental Health Center Bd of Directors 00 OSP 0234 Wade 05/22/01  
A. Mark Esposito v. Dept. of Transportation 00 OSP 1333 Gray 06/13/01  
Bobbie D Sanders v. UNC-CH 00 OSP 1806 Chess 06/21/01  
Robert J Lane v. NC Department of Correction, Central Engineering 00 OSP 1841 Elkins 06/26/01  
Natalynn P. Tollison v. NCSU *et al* 00 OSP 1909 Wade 06/01/01  
Jerrelle B Jones v. DHHS, O'Berry Center 01 OSP 0003 Lassiter 06/26/01  
Lonnie Sessions v. Columbus Correction Inst. 01 OSP 0240 Gray 05/23/01  
Lee Woodburn v. NC State University 01 OSP 0275 Lassiter 06/21/01  
William David Fox v. NC Department of Transportation 01 OSP 0853 Morrison 07/02/01

16:03 NCR 271



3. The State Personnel Commission and the Office of Administrative Hearings have jurisdiction over her claims that she was discriminated and retaliated against when she applied for a promotion at UNC-CH in June 2000.
4. At the time, Petitioner was a Computer Consultant II, Position No. 37601, in the Office of Research Services (ORS), headed by Dr. Robert Lowman. Petitioner was at grade level 72 with a salary of \$42,909.
5. The ORS is part of a four-office department that shared two computer support staff—Petitioner and her immediate supervisor, Peter Schledorn. Mr. Schledorn reported to Dr. Lowman. The other three offices are the Office of Information and Communications (OIC), headed by Mr. Neil Caudle; the Office of Technology Development (OTD), headed by Dr. Fran Meyer and, since 5 September 2000, by Mr. Mark Crowell; and the Proposal Development Initiative (PDI), headed by Ms. Jackie Resnick.
6. Respondent created a third computer support position in 1999. It was designated a Computer Consultant IV, Pos. No. 52293, and was filled on 5 April 1999 by Kathryn Graham.
7. Although the third computer support position was in the budget of the OTD under Dr. Meyer, Mr. Caudle of the OIC directly supervised Ms. Graham. Mr. Caudle wrote that Ms. Graham's primary responsibility was to provide computer services to three offices: the OTD, OIC and the PDI in a 16 March 1999 memo. The memo he headed "Kathryn Graham's Role" also instructed that Petitioner "will continue to provide user support for basic PC hardware and software installation, maintenance and troubleshooting" for all four offices. (Pet. Ex. 2)
8. Respondent paid Ms. Graham \$47,096 for the Grade 77 Position. (Pet. Ex. 4)
9. On 24 April 2000 Dr. Meyer wrote to Linda Dykstra, the supervisor of the four office heads. She informed Ms. Dykstra that Ms. Graham had resigned and would be leaving on 2 May 2000 and that Dr. Lowman, Ms. Resnick, Mr. Caudle and she had met that morning and "agreed on the type of person we want and now are ready to move forward with the process of replacing Kathy." (Pet. Ex. 6)
10. On 24 April 2000 Ms. Dykstra replied to Dr. Meyer "to remind you that the 3<sup>rd</sup> computer person in ORS/OTD/PDI/OIC area was to be a temporary fix with the assumption that one of the two other folks would be replaced. I would be more comfortable with a plan you proposed if it also incorporated the initial intention in your long term strategy." Dr. Meyer passed on Ms. Dykstra's comment about replacing "one of the two other folks" to Dr. Lowman and Mr. Caudle. (Pet. Ex.7)
11. On 26 April 2000 Dr. Lowman wrote to the "two other folks"—Mr. Schledorn and Petitioner. Dr. Lowman requested they come to a directors' meeting "with a plan" to "provide for coverage of Kathy's major functions after her departure." (Pet. Ex. 7.1)
12. Petitioner and her supervisor incorporated all of the duties of the Computer Consultant IV position into their daily activities from 2 May 2000 until the position was filled again in early November 2000.
13. In July 2000, Petitioner received four "outstandings" on her four principal functions and an overall "outstanding" on her Performance Review.
14. In June 2000 Ms. Graham's vacant position was posted. The Office of State Personnel's minimum training and experience requirements for a Computer Consultant IV position were graduation from a four-year college and three and one-half years of experience in data processing; or an equivalent combination of training and experience. (Pet Ex. 9, last paragraph)
15. Petitioner graduated from Chapel Hill High School. She was hired by the owner of the Chapel Hill Weekly, Mr. Orville Campbell, as a typesetter when she was 17 and still in high school. She has worked for 30 years. She is now 47. She has a daughter who is 27 and a son who is 19. She began working with computers in 1978 when she worked for the Town of Chapel Hill, and has worked continuously with them for 23 years. (Pet. Ex. 11)
16. From 1986 until the present, she has set up and administered six different Local Area Network (LAN) configurations. (Pet. Ex. 11)
17. From 1986 through 1995, she was the Administrative Secretary V, then the Information Systems Coordinator II, and then the Computer Systems Administrator I all at the Center for Early Adolescence at UNC-CH. These positions were progressively more responsible and she was successful in each. Her work required her to:
  - Schedule and oversee the installation of all computer hardware at the Center to ensure minimal system downtime, correct placement and operation of the computer network;

- Oversee the installation of the systems conduit and dedicated electrical outlets, the system cabling, and maintain diagrams of computer placement to ensure good network operation and minimal time spent by repair people in tracking and repair of components;
- Maintain all computer records;
- Compile and revise annually the service contract;
- Determine network system upgrades and necessary computer hardware;
- Consult with computer vendors, attend seminars and read to ensure up-to-date and efficient computer system operation;
- To conduct general in-house maintenance for computers and printers on LAN;
- Serve as the computer consultant to the Center's project team meetings to recommend appropriate software applications;
- Program data base applications to meet the developing needs of the project teams;
- Design and implement two database front ends; one to replace a system supplied by a consultant that was unsatisfactory, and the other designed from scratch.
- Provide technical support for the data analysis in the various studies of the Center;
- Coordinate meetings between the Center's staff and campus groups;
- Obtain funding sources by setting up a modem connection to the UNC Office of Research Services' electronic data base;
- Maintain centralized floppy and hard copy files for Center proposals and projects;
- Provide technical support and computer equipment contracts for the Missouri office of the Center's Director of National Initiatives. (Pet. Ex. 11)

18. When Respondent phased out the Center for Early Adolescence in May 1995, Petitioner transferred to the Office of Research Services (ORS). She was a Computer Systems Administrator I for three years and now a Computing Consultant II for the last three years. During these six years she has provided Novell networking support, installed IBM compatible hardware and software, and provided trouble shooting for the ORS, the OTD, the OIC and the PDI.
19. Petitioner's more than 15 years of direct experience in data processing met the OSP minimal qualifications of a combination of education and experience.
20. A young man who was in his mid-twenties, Mr. Andrew Johns, also applied for this position. He had graduated from high school in 1994 and from college in 1998 with a degree in Chemistry and Visual Communication.
21. His first full-time job came in September 1998 as a Computing Consultant I for the Administrative Information Service at the University. In December 1998 he was made a Computing Consultant II and was in that position when he applied for the position at issue here in June 2000. He had about 21 months experience as a LAN administrator, did PC and Server Support, Application Support, Network Support and Troubleshooting. (Res. Ex. A)
22. Mr. Johns had a four-year college degree and less than two years of full-time work experience in data processing when he applied for the job.
23. The OSP minimum training and experience requirements for a Computer Consultant IV ("CC IV") position are graduation from a four-year college and three and one-half years of experience in data processing; or an equivalent combination of training and experience. (Pet Ex. 9, last paragraph)
24. Mr. Johns did not have three and one-half years of experience in data processing. (Res. Ex. A)
25. During the summer of 2000 Dr. Fran Meyer left as the OTD Director and Mr. David Parker assumed her responsibilities until the position was refilled.
26. Mr. Caudle managed the selection process for the CC IV position in the summer of 2000. (Pet. Ex. 13.1 & 14)
27. In early August Mr. Caudle gave Mr. Schledorn about 50 applications to review.
28. Petitioner asked her supervisor, Mr. Schledorn, whether her application was included in the group Mr. Caudle gave to Mr. Schledorn. It was not. Petitioner checked with the Human Resources about her application. Human Resources forwarded it to Mr. Schledorn.

29. Mr. Schledorn first listed the characteristics or desired experiences that related to the job description for the CC IV position and the “way the job played out in real life, the sort of needs that [Ms. Graham] had to fulfill, which were rather different especially in the way the time percentages worked out.”
30. Based on this skill set, Mr. Schledorn read each of the applications looking for administrative experience on NetWare networks, administrative experience on NT networks and work stations, training and certification in these operating systems, programming experience, and familiarity with the local networks at UNC and at Bynum Hall. (II-302-3)
31. Mr. Schledorn did not recommend Mr. Johns for an interview because Mr. Johns had no training and certification in the NetWare and NT operating systems and no programming experience. (II-303)
32. Mr. Schledorn recommended Petitioner for an interview because of her experience in NetWare and NT and her certification in NetWare and significant formal training in NT. None of the other 50 applicants had this experience and training. She also had a “good deal of experience” with the local network that the CC IV person would utilize.
33. Besides Ms. Sanders, Mr. Schledorn also recommended two men for interviews: Mr. Kents and Mr. West. (II-305)
34. On 7 August 2000, Mr. Caudle called a meeting of the three other Office directors to update the job description that was used when “we hired Kathryn Graham” and to “select applicants we wish to interview.” (Pet. Ex. 14)
35. The meeting was held on Friday morning, 18 August 2000. (Pet Ex. 17) The decision was to interview four male applicants. (II-283)
36. On 21 August 2000 Mr. Caudle phoned Mr. Johns at 10 a.m. and Mr. Kintz at 3 p.m. (Pet. Ex. 15)
37. On 22 August 2000 Mr. Caudle informed the other Directors that Mr. West had withdrawn, a second male applicant could not be reached, and so they would only interview Mr. Johns on 29 August and Mr. Kintz on 30 August. (Pet. Ex 17)
38. On 22 August 2000 Mr. Caudle instructed Mr. Schledorn to interview the two men for 30 minutes each before the directors interviewed them. (Pet. Ex. 17)
39. Mr. Caudle stopped by Mr. Schledorn’s office, which was shared with Ms. Sanders, to discuss the two male applicants’ interviews. Mr. Caudle said he thought it would have been “discourteous to talk to Peter about this in front of Bobbie.” (II-239)
40. Mr. Schledorn asked Mr. Caudle why Bobbie Sanders’ name was not on the list. “The explanation I was given was that they were looking for somebody who could provide, I believe his words were, full service, and they didn’t think Bobbie was capable of providing that.” (II 282-3)
41. Mr. Caudle believed Ms. Sanders failed to meet the minimum requirements because she only had a high school degree. (II-205) He believed that the B.A. requirement was “a very legitimate qualification, that it should be required for this kind of job,” (II-205) that this was the University policy, and it was certainly his opinion. (II-206)
42. There was no B.A. requirement for a CC IV position.
43. At the hearing, Mr. Caudle calculated that Mr. Johns met the OSP requirement of a college degree plus 3 ½ years of data processing experience because Mr. Johns had “two years of full-time work” from September 1998 to June 2000 and “three and a half years of half-time work, which I calculated to be equivalent to over a year and a half or almost two years of full-time work.” (II-202)
44. Mr. Johns’ application indicated he maintained a part-time job of 20 hours a week at the School of Journalism from January 1995 through June 1998 with no breaks while he was pursuing his four-year double major B.A. program. (Res. Ex. A)
45. Mr. Caudle did not tell Petitioner or her Supervisor that he believed she was not qualified because she did not have a college degree.
46. Shortly after Mr. Caudle told Mr. Schledorn that only two men were going to be interviewed for the job, Mr. Schledorn heard Mr. Caudle talking with Ms. Sanders outside of Mr. Schledorn’s office. The ‘complaints on Neil’s [Caudle] part’ were “loud enough they made an impression on me.” (II-276) Mr. Caudle said he wanted two large machines moved out of the library and Mr. Schledorn said he heard Mr. Caudle say that “if they didn’t get out quickly, he’d move them out of the library area himself.” (II-279)

47. Mr. Schledorn heard Mr. Caudle also say he did not like equipment being stored in a work station in the grants office across the hall because he was hiring someone for that position and they would be moving in there soon. (Pet. Ex 17.1)
48. Petitioner also recalled Mr. Caudle asking her whether the space was open in the room marked 300-E on Pet. Ex. 1. “There were some surplus computers that were there, and he asked me to get them out because he was getting ready to hire somebody for the position, which if he was talking about that area, he was talking about the . . . Computer Consultant IV position.” (I 33)
49. Mr. Caudle was referring to room 300-E, where Ms. Graham had a workstation. This position had been vacant for several months and Mr. Caudle was getting ready to hire someone for it. (II-279 & 280, Pet. Ex. 1)
50. At the hearing, Mr. Caudle admitted he spoke in a firm voice to Ms. Sanders about moving boxes and he was getting ready to hire someone. (II 222-223)  
He said he needed space in the library for a graduate student he was hiring for part-time work. (II –268) Mr. Caudle denied this was his way of informing Petitioner she was not getting the job. Ms. Sanders and Mr. Schledorn both believed this was Mr. Caudle’s way of informing her she had not been selected and was not even going to be interviewed. (Pet. Ex. 17.1)
51. On Friday the 25<sup>th</sup> of August, three days after he had told her to be sure Ms. Graham’s old workstation was cleared out because he was “getting ready to hire someone for the position,” Petitioner wrote to Mr. Caudle and said she “would appreciate the opportunity to have an interview.” (Pet. Ex. 17.2)
52. In the morning of 28 August 2000, Dr. Lowman, wrote that “now that her promotion into the third position seems foreclosed,” because the other Directors were now saying that Petitioner lacked programming experience. (Pet. Ex. 18)
53. Sometime before 12:30 p.m. on 28 August 2000, Dr. Lowman and Mr. Schledorn. discussed the fact that the two male applicants who were being interviewed had less programming experience than Petitioner. If that was the reason given for not interviewing Petitioner it raised a “red flag.” Dr. Lowman said he would tell the other directors they are “risking a grievance if they refuse to interview Bobbie on those grounds.” (Pet. Ex. 20)
54. At 1 p.m. on 28 August 2000, Mr. Caudle wrote to Petitioner saying “we would like to invite you to an interview for this position.” (Pet. Ex. 19.1) Mr. Caudle testified this was a “courtesy” interview.
55. The next day, 29 August 2000, Mr. Schledorn interviewed Petitioner and the two male candidates. He kept his interview notes on the three interviews. (Pet. Ex. 21)
56. On the evening of 29 August 2000, Mr. Schledorn wrote a comparative analysis of the three interviewees for Mr. Caudle and the other directors. In regard to the three candidates’ “Networking/User Service Experience,” Mr. Schledorn summarized his findings: *Only one candidate [Petitioner] is experienced in the Network Operation system we’re currently using. . . . All are experienced in supporting NT 4 on the desktop. Sanders [Petitioner] has greater experience than the other two candidates with system administration, with Johns placing second.*
57. In regard to the three candidates’ “Programming Experience,” Mr. Schledorn summarized his findings: *All of the candidates are weakest in programming skills, but all express a desire to learn more in this area. The only applicant to bring actual production projects to life is Sanders.*
58. In regard to the three candidates’ “Unix Experience,” Mr. Schledorn summarized his findings: *All three candidates report a user-level knowledge of UNIX, mostly from using University tools such as ISIS and other public systems. In addition, Sanders is a user on Research and has some limited training in dealing with emergencies. All would require training to take over any UNIX administration, though Sanders would have a slight lead in that area.*
59. Mr. Schledorn summarized his ranking of the candidates as:

1. Sanders
2. Johns
3. Kintz

*I feel this is a clear ranking, due to the edges possessed by Sanders in various areas. The other two candidates are strong, especially Johns, but in my view Sanders clearly comes closest to the person needed to fill the position. She has an especially rich and varied set of work experiences, and a great deal more system administration and user support experience than the other two candidates. Furthermore, her familiarity with the Third Floor Bynum network will save time—she will not*

*have to gain familiarity with the network, desktops and personnel before she begins acquiring additional knowledge. In my view, this makes her the most qualified of the candidates interviewed by a comfortable margin. (Pet. Ex. 22)*

60. Mr. Mark Crowell's first day at work was 5 September 2000. (I-47)
61. Mr. Crowell met with his new supervisor and Mr. Caudle on either the 6<sup>h</sup> or 11<sup>th</sup> of September 2000 to discuss the Computing Consultant IV position.
62. Mr. Caudle told Mr. Crowell that there were three candidates who had been interviewed and that "if Bobbie Sanders was not chosen for the position, she would probably file a grievance." (I-52)
63. Because of this warning, Mr. Crowell was "extra diligent" in the interview process. (I-53)
64. Mr. Crowell had regular interactions with Petitioner during the first few weeks of his employment as she helped him get his electronic equipment operative. He "tried to interact with her as I would had I not known that she was likely to file a grievance." (I-59)
65. Mr. Crowell had no interactions with the two male candidates. (I-60)
66. Mr. Crowell set up interviews with the two men and Petitioner.
67. On 18 September 2000 Mr. Schledorn offered to provide a reference for Ms. Sanders, as her supervisor. (Pet Ex 28)
68. On 18 September 2000 Mr. Crowell told Mr. Schledorn that Mr. Crowell "will probably want to look at references after the interviews. I'll also be sure to get a copy of any overviews of the candidates prepared after the earlier/initial round of interviews." (Pet. Ex. 29)
69. Petitioner listed five references. None was called by either Mr. Caudle or Mr. Crowell.
70. The references of Petitioner's supervisor for six years were never checked by Mr. Caudle or later, by Mr. Crowell.
71. On 18 September 2000 Mr. Crowell interviewed Ms. Sanders. He took notes from this interview. (I-89)
72. Mr. Crowell took no notes when he interviewed the two male candidates. (I-89)
73. Mr. Crowell had no documentation about his interviews with the two male candidates and did not know how he interviewed them. (I-91)
74. When Mr. Crowell interviewed Ms. Sanders, he did not have a copy of the job description for the Computer Consultant IV position. He did not have one in the office at that time. He had "looked at" a job description, but he could not recall when he looked at it, although he recalled it was "before the interviews." (I-91)
75. Mr. Crowell recalled he thought the job description was "outdated in some ways." (I-92)
76. Mr. Crowell "preferred" a college graduate, somebody that would present a good face for the University when talking to vendors, who would be impressive and present a good image for his department. (I- 92, 93) Mr. Crowell felt Mr. Johns was a "superior candidate in those aspects." (I-95)
77. At 9:33 a.m. on 3 October 2000 Mr. Crowell received the comparative analysis that Mr. Schledorn had made of the three candidates. (Pet. Ex. 31, I 65)
78. Mr. Crowell testified that this was an "unsolicited analysis" from Mr. Schledorn. (I-87) and that he "frankly wasn't interested in [Mr. Schledorn's] overviews because the job was going to report to me." (I-88)
79. Mr. Crowell testified that he had already decided to offer the position to Mr. Johns when he received Mr. Schledorn's analysis and that he "really disagreed" with Mr. Schledorn's analysis. (I-75)
80. There is evidence that Mr. Crowell wrote to Mr. Schledorn on 31 October 2000 that "your review and commentary regarding the candidates was very helpful in assessing their respective strengths and backgrounds. I very much appreciate your efforts and want you to know that your comments were weighed heavily in the decision making process." (Pet. Ex. 36.1)

81. Mr. Crowell testified that he “honestly could not” tell whether Mr. Schledorn was trying to “set me up” when Mr. Schledorn sent him the comparative analysis but that he was sure Mr. Schledorn was trying to set him up when Mr. Schledorn wrote on 2 November 2000 that he was “disappointed that you didn’t ask me for a supervisor’s reference for her.” (Pet. Ex. 37)
82. At 1:35 p.m. on 3 October 2000 Mr. Crowell sent a memo to Ms. Resnick, Mr. Caudle, Dr. Lowman, and Mr. Parker saying he had interviewed the three candidates, that he had checked the references of the two male candidates, that Mr. Johns’ references were “particularly outstanding,” and he would “like to move ahead toward an offer to Mr. Johns as quickly as possible.” (Pet. Ex. 32)
83. At 1:48 p.m. on 3 October 2000 Ms. Resnick replied to Mr. Crowell that “perhaps we can talk about this issue” at lunch. (Pet. Ex. 33)
84. At 1:56 p.m. on 3 October 2000 Mr. Caudle replied to Mr. Crowell that Mr. Caudle agreed “completely with your choice.” (Pet. Ex 34)
85. At 4:02 p.m. on 3 October 2000 Dr. Lowman replied to Mr. Crowell that because Ms. Sanders is an employee “of long standing, we should talk about the ‘end game’ here, so that if she is not the final pick, she is told privately of the final decision in a manner that respects her dignity and privacy. There is an unfortunate history in the case of this employee that I would sincerely like to keep from being repeated.” (Pet. Ex. 35)
86. Mr. Crowell forwarded Mr. Schledorn’s comparative analysis to a member of Mr. Crowell’s staff, Mr. Sedam. Mr. Sedam had not interviewed any of the three candidates and Mr. Crowell did not know whether Mr. Sedam knew either of the male candidates. (I-66)
87. Mr. Sedam inserted some comments in Mr. Schledorn’s comparative analysis and sent them back to Mr. Crowell on 4 October 2000 at 8:38 a.m. (Res. Ex. E, I-73)
88. Mr. Sedam’s comments were more positive about Mr. Johns and more negative about Petitioner than Mr. Schledorn’s analysis. For example, in the area that Mr. Schledorn called “Programming Skills” Mr. Schledorn pointed out the three candidates were all weak in this area, all wanted to learn more in this area, and that Ms. Sanders was the only applicant to “bring actual production projects to life.” Mr. Sedam wrote: “If Bobbie has done anything in here recently I’ve never seen it. . . . Maybe Bobbie has done this but I don’t see it in Peter’s description. . . . Johns seems to really win this one—by far.”
89. Similarly, Mr. Schledorn had commented that none of the three candidates was “a professional programmer, but Sanders comes closest with her practical experience in table design and in bringing a project into working order and maintaining it as a live application.” Mr. Sedam wrote (emphasis his): “I REALLY disagree here. I think Johns’ experience with ‘webby’ programs is a \*huge\* benefit to us, especially if we’re moving more to the Internet for applications...which we are.” (Pet. Ex. 24.1 was identified by Mr. Crowell as accurately representing Mr. Schledorn’s comparative analysis of the three candidates after he interviewed them, with Mr. Sedam’s comments inserted and encircled for convenience. I-70)
90. Mr. Crowell had Mr. Sedam’s comments when Mr. Crowell made his decision. (I-67) Mr. Crowell testified that Mr. Sedam’s comments did not “influence” his decision, “they simply reinforced it.” (I-71)
91. Mr. Crowell had no discussions with Mr. Sedam about the basis for his comments. (I-67)
92. Mr. Crowell selected Mr. Johns, a male in his mid-20’s.

Based on the findings of fact and applicable constitutional principles, statutes, rules and regulations, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. Petitioner was a career state employee when she applied for and was not considered for a Computer Consultant IV position in August 2000 by Respondent. The State Personnel Commission and the Office of Administrative Hearings have jurisdiction over her claims that she was discriminated and retaliated against in her non-selection because of her sex, her age, her sex-plus-age and her opposing what she believed to be sex and age discrimination in Respondent’s decision to exclude her from even interviewing for the position in August 2000.

**Sex, Age and Sex Plus Discrimination Claim**



2. North Carolina courts look to federal employment discrimination law for guidance in establishing evidentiary standards. *North Carolina v. Gibson*, 308 N.C. 130, 301 S.E. 2d 78 (1983).
3. Direct guidance as to the proper evidentiary standards in employment discrimination case was recently given by U.S. Supreme Court in *Reeves v. Sanderson*, \_\_\_ U.S. \_\_\_, 147 L. Ed. 2d 105, 2000 U.S. Lexis 3966, 120 S. Ct. 2097, 12 June 2000.
4. *Reeves* held that:

*The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.*

*In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider the party's dishonesty about a material fact as "affirmative evidence of guilt."*

*Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for the decision (Reeves at 2108-2109).*

5. Under G.S. 126-16 and 126-36, it is unlawful for the employer to deny a state employee a promotion because of her sex, her age, or her sex plus her age.
6. "The question facing triers of fact in discrimination cases is both sensitive and difficult. . . . There will seldom be 'eyewitness' testimony as to the employer's mental processes." *Postal Service Bd. Of Governors v. Aikens*, 460 U.S. 711, 716, 75 L. Ed. 2d 403, 103 S. Ct. 1478 (1983).
7. Petitioner "has the initial burden of proving, by a preponderance of the evidence, a prima facie case of discrimination." Petitioner, a woman who is over 40 years of age, met her prima facie burden by proving: [1] she applied for and was qualified for an available position, [2] that she was rejected, and that [3] after she was rejected [the employer] filled the position with a male who was in his twenties. *N.C. Department of Correction v. Hodge*, 99 N.C. App. 602, 611 394 S.E. 2d 285, 1990.
8. An inference of discrimination, therefore, arose. (Hodge at 611)
9. To rebut this inference, the burden of persuasion then shifted to respondent to present evidence that Petitioner was rejected for a legitimate, nondiscriminatory reason. *Id.*
10. The selection of state employee applicants is governed by 25 NCAC 1H. 0606 which provides

*(a) The selection of applicants for vacant positions will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.*

*(b) Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Personnel will provide technical assistance, upon request, to agencies wishing to design or review selection procedures.*

11. Respondent initially chose not to even consider Petitioner at all for the position. She had been "foreclosed" from the position. Only after she asked for an interview did Respondent grant her a "courtesy" or pretextual interview.
12. To eliminate gender and age stereotypes and other preconceptions, employment selections should be predominantly based on objective factors, including applicants' comparative experience, credentials, training and other objective qualifications that relate to the "position to be filled" as provided for in 25 NCAC 1H. 0606.
13. Respondent admittedly relied on subjective factors for its decision, including producing no evidence that such objective factors were the basis for the selection of the recently graduated young male over the older female.

14. The only “relative consideration of their qualifications for the position to be filled” (25 NCAC 1H. 0606) was done by Mr. Schledorn. Mr. Schledorn found that Petitioner was the most qualified. Mr. Schledorn took and maintained his notes from each interview, he based his questions and analysis on the job description and the skill sets that were required by the position, he asked each of the interviewees the same set of questions directly based on the job description, and found Petitioner the most qualified.
15. Respondent failed to reasonably document, in fact failed to document at all, the basis for its hiring decision. There was no documentation that verified an “advantage was granted” to the most qualified, nor was there any documentation to “explain their basis for the selection” of a candidate who was not found to be most qualified.
16. The University did not follow the procedure required by 25 NCAC 1H. 0606. Petitioner was initially denied even the opportunity to interview for the position. Respondent proffered three different reasons for this denial: She could not provide full service; she did not have a college degree; and she lacked programming experience. After Petitioner objected to the denial of the interview and after Dr. Lowman pointed out that the two male applicants also lacked programming experience and Respondent was “risking a grievance if they refuse to interview Bobbie on those grounds” (Pet. Ex. 20), Respondents granted her what was called a courtesy interview. Respondent did not tell Petitioner the interview was a “courtesy” interview.
17. Respondent’s two interviews of Petitioner were pretextual. They both were done in bad faith. There was no evidence in the record that indicated she ever had a chance to be fairly considered for the promotion.
18. Respondent did not standardize Petitioner’s interviews with those of the two male candidates.
19. Respondent did not comply with the first part of 25 NCAC 1H. 0606, which provides that: *Advantage will be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decisions to verify this reasonably document[ed] hiring decisions to verify this advantage was granted and explain their basis for selection.* Advantage here was given to a young male applicant who had less than two years of relevant work experience after college. Respondent did not document why it believed the successful applicant was the “most qualified.”
20. Respondent did not comply with the second part of 25 NCAC 1H. 0606 that provides: *Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Personnel will provide technical assistance, upon request, to agencies wishing to design or review selection procedures.* Respondent produced no evidence the procedures and methods it used to fill the CC IV were “validly related to the duties and responsibilities of the vacancy to be filled.”
21. Mr. Schledorn was the only person who compared the candidates’ skills related to the duties and responsibilities of the vacancy to be filled. The final decision-maker could not remember when he saw the description.
22. Respondent excluded Petitioner from the first round of interviews. When she found that she had been denied this opportunity, she objected and her supervisor pointed out that Respondent was risking a grievance. Thereafter, Respondent granted her a gratuitous, pretextual, “courtesy” interview. The evidence showed she had already been “foreclosed” from obtaining the job. The second decision-maker was prejudiced against Petitioner on his first day on the job. He admitted he could not un-ring this bell. He believed that people were trying to “set him up.”
23. For evidence to be sufficient to infer discriminatory motive, decision-makers rely on any number of circumstantial factors. Some factors triggered by the facts here include: A hostile attitude of the decision maker. (*Jetstream AERO Services, Inc. v. New Hanover County*, No. 88-1748, 1989 WL 100644 (4<sup>th</sup> Cir. 15 August 1989)); Disparate and unequal treatment among employees. (*Abasiokong v. City of Shelby*, 744 F.2d 1055 (4<sup>th</sup> Cir.1984); *Krieger v. Gold*, 863 F.2d 1091 (2<sup>nd</sup> Cir. 1988); *Ramsuer v. Chase*, 865 F. 2d 460 (2<sup>nd</sup> Cir. 1989)); Inadequate or bad faith investigation of allegations regarding an adverse action. (*Martinez v. El Paso*, 710 F.2d 1102, 1104 (5<sup>th</sup> Cir. 1983)); Deviations from regular and routine procedures or failure to adhere to procedural guidelines and delayed articulation of alleged justification. (*Lindahl v. Air France*, 930 F. 2d 1434 (9<sup>th</sup> Cir. 1991)).
24. The hostile disparate treatment of Petitioner, a forty-plus female, from the treatment afforded the similarly situated young male as described in the Findings of Facts, plus Respondent’s pretextual reasons for denying Petitioner the opportunity to even interview for the job, convince the undersigned that the actual reason Respondent denied Petitioner a fair chance at the promotion was because of her sex and her age.

**Retaliation Claim**

25. For evidence to be sufficient to infer a retaliatory motive, decision-makers rely on several factors including:

- A. A hostile attitude of the decision-maker. *Jetstream AERO Services, Inc. v. New Hanover County*, No. 88-1748, 1989 WL 100644 (4<sup>th</sup> Cir. 15 August 1989)
- B. After employee objects to alleged discrimination, suddenly her performance is being scrutinized carefully and is allegedly declining, this is evidence of improper motive.
- C. Inadequate or bad faith investigation of allegations regarding the adverse action, or failing to review and consider all facts purportedly in the employee's favor, suggesting arbitrariness. *Martinez v. El Paso*, 710 F.2d 1102, 1104 (5<sup>th</sup> Cir. 1983)
- D. Temporal proximity; the timing of the adverse action immediately following engaging in protected activity. *Warren v. Halstead Indus.* 802 F. 2d 746.758 (4<sup>th</sup> Cir. 1986), *aff'd en banc*, 835 F.2d 535 (4<sup>th</sup> Cir 1988) *cert. denied*, 487 U.S. 1218 (1988)

26. Here, Petitioner found out, during the week of 21 August 2000 that Respondent was not going to interview her for the promotion in question. She protested to her supervisor. His supervisor then told the other decision makers that she was going to grieve the denial of an interview. The decision-makers then conducted two courtesy, pretextual interviews, having already predetermined that Petitioner was not qualified. A significant motivating factor in Respondent denying Petitioner a fair chance at the promotion was because she had opposed her exclusion from the first round of interviews due to her sex and age.

**Remedies**

27. 25 N.C.A.C. 1B.0434 provides:

*In those cases in which the State Personnel Commission finds an act of discrimination or unlawful workplace harassment prohibited by G.S. 126-16, G.S. 126-36 or G.S. 126-36.1, the Commission may order reinstatement, back pay, transfer, promotion or other appropriate remedy. The Commission shall also have the authority in such cases to order other corrective remedies to ensure that the same or similar discriminatory acts do not recur.*

--Amended Effective 1 August 2000.

28. 25 N.C.A.C. 1B.0422 provides:

*Front pay is the payment of an amount to an employee above his/her regular salary, such excess amount representing the difference between the employee's salary in his/her current position and a higher salary determined to be appropriate due to a finding of discrimination. ...*

--Effective 1 September 1987.

29. These rules provide the State Personnel Commission with special legal and equitable powers when discrimination has been found. The SPC may order *a higher salary determined to be appropriate due to a finding of discrimination* (.0422); it may order *back pay, transfer, promotion or other appropriate remedy*; and it may order *other corrective remedies to ensure that the same or similar discriminatory acts do not recur*. (.0434)

30. The monetary loss directly attributable to the discrimination was the difference between the salary paid Petitioner and what she would have been paid had she not been discriminated and retaliated against, plus Petitioner's litigation costs to correct this discriminatory practice.

**RECOMMENDED DECISION**

The undersigned administrative law judge recommends that Respondent:

- (a) reinstate Petitioner to the position that she should have been promoted into in accordance with 25 NCAC 1B.0422 and 25 NCAC 1B.0434,
- (b) provide Petitioner front pay from the date she was excluded on 21 August 2000 including all raises and other benefits to which she would have been entitled,
- (c) award Petitioner reasonable attorney fees pursuant to 25 NCAC 1B.0414 upon submission by the Petitioner's counsel of a Petition for Attorney Fees with an accompanying itemized statement of the fees and costs incurred in representing the Petitioner.

**CONTESTED CASE DECISIONS**

---

**ORDER**

It is hereby ordered that the agency making the final decision in this case serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. 150B-36(b).

**NOTICE**

The agency making the final decision in this case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision, pursuant to N.C. Gen. Stat. 150B-36(a).

The agency making the final decision is required to serve a copy of the final decision on all parties and to furnish a copy of the final decision to the parties or their attorneys of record and to the Office of Administrative Hearings, pursuant to N.C. Gen. Stat. 150B-36(b). The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 21 day of June 2001.

\_\_\_\_\_  
Sammie Chess, Jr.  
Administrative Law Judge