

NORTH CAROLINA



REGISTER

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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

| TITLE | DEPARTMENT | LICENSING BOARDS | CHAPTER |
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| 4 | Commerce | Auctioneers | 4 |
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| 6 | Council of State | Certified Public Accountant Examiners | 8 |
| 7 | Cultural Resources | Chiropractic Examiners | 10 |
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| 9 | Governor | General Contractors | 12 |
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| 11 | Insurance | Dental Examiners | 16 |
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NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

| 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 th 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 | |
| 16:13 | 01/02/02 | 12/06/01 | 03/15/02 | 01/17/02 | 02/01/02 | 02/20/02 | 05/28/02 | 03/04/02 | 03/20/02 | 05/28/02 | 09/29/02 |
| 16:14 | 01/15/02 | 12/19/01 | 04/01/02 | 01/30/02 | 02/14/02 | 02/20/02 | 05/28/02 | 03/18/02 | 03/20/02 | 05/28/02 | 10/12/02 |
| 16:15 | 02/01/02 | 01/10/02 | 04/15/02 | 02/16/02 | 03/04/02 | 03/20/02 | 05/28/02 | 04/02/02 | 04/22/02 | 01/29/03 | 10/29/02 |
| 16:16 | 02/15/02 | 01/25/02 | 05/01/02 | 03/02/02 | 03/18/02 | 03/20/02 | 05/28/02 | 04/16/02 | 04/22/02 | 01/29/03 | 11/12/02 |
| 16:17 | 03/01/02 | 02/08/02 | 05/01/02 | 03/16/02 | 04/01/02 | 04/22/02 | 01/29/03 | 04/30/02 | 05/20/02 | 01/29/03 | 11/26/02 |
| 16:18 | 03/15/02 | 02/22/02 | 05/15/02 | 03/30/02 | 04/15/02 | 04/22/02 | 01/29/03 | 05/14/02 | 05/20/02 | 01/29/03 | 12/10/02 |
| 16:19 | 04/01/02 | 03/08/02 | 06/03/02 | 04/16/02 | 05/01/02 | 05/20/02 | 01/29/03 | 05/31/02 | 06/20/02 | 01/29/03 | 12/27/02 |
| 16:20 | 04/15/02 | 03/22/02 | 06/17/02 | 04/30/02 | 05/15/02 | 05/20/02 | 01/29/03 | 06/14/02 | 06/20/02 | 01/29/03 | 01/10/03 |
| 16:21 | 05/01/02 | 04/10/02 | 07/01/02 | 05/16/02 | 05/31/02 | 06/20/02 | 01/29/03 | 07/01/02 | 07/22/02 | 01/29/03 | 01/26/03 |
| 16:22 | 05/15/02 | 04/24/02 | 07/15/02 | 05/30/02 | 06/14/02 | 06/20/02 | 01/29/03 | 07/15/02 | 07/22/02 | 01/29/03 | 02/09/03 |
| 16:23 | 06/03/02 | 05/10/02 | 08/15/02 | 06/18/02 | 07/03/02 | 07/22/02 | 01/29/03 | 08/02/02 | 08/20/02 | 01/29/03 | 02/28/03 |
| 16:24 | 06/17/02 | 05/24/02 | 09/03/02 | 07/02/02 | 07/17/02 | 07/22/02 | 01/29/03 | 08/16/02 | 08/20/02 | 01/29/03 | 03/14/03 |
| 17:01 | 07/01/02 | 06/10/02 | 09/03/02 | 07/16/02 | 07/31/02 | 08/20/02 | 01/29/03 | 08/30/02 | 09/20/02 | 01/29/03 | 03/28/03 |
| 17:02 | 07/15/02 | 06/21/02 | 09/16/02 | 07/30/02 | 08/14/02 | 08/20/02 | 01/29/03 | 09/13/02 | 09/20/02 | 01/29/03 | 04/11/03 |
| 17:03 | 08/01/02 | 07/11/02 | 10/01/02 | 08/16/02 | 09/03/02 | 09/20/02 | 01/29/03 | 09/30/02 | 10/21/02 | 01/29/03 | 04/28/03 |
| 17:04 | 08/15/02 | 07/25/02 | 10/15/02 | 08/30/02 | 09/16/02 | 09/20/02 | 01/29/03 | 10/14/02 | 10/21/02 | 01/29/03 | 05/12/03 |
| 17:05 | 09/03/02 | 08/12/02 | 11/15/02 | 09/18/02 | 10/03/02 | 10/21/02 | 01/29/03 | 11/04/02 | 11/20/02 | 01/29/03 | 05/31/03 |
| 17:06 | 09/16/02 | 08/30/02 | 11/15/02 | 10/01/02 | 10/16/02 | 10/21/02 | 01/29/03 | 11/15/02 | 11/20/02 | 01/29/03 | 06/13/03 |
| 17:07 | 10/01/02 | 09/10/02 | 12/02/02 | 10/16/02 | 10/31/02 | 11/20/02 | 01/29/03 | 12/02/02 | 12/20/02 | 05/00/04 | 06/28/03 |
| 17:08 | 10/15/02 | 09/24/02 | 12/16/02 | 10/30/02 | 11/14/02 | 11/20/02 | 01/29/03 | 12/16/02 | 12/20/02 | 05/00/04 | 07/12/03 |
| 17:09 | 11/01/02 | 10/11/02 | 01/02/03 | 11/16/02 | 12/02/02 | 12/20/02 | 05/00/04 | 12/31/02 | 01/21/03 | 05/00/04 | 07/29/03 |
| 17:10 | 11/15/02 | 10/25/02 | 01/15/03 | 11/30/02 | 12/16/02 | 12/20/02 | 05/00/04 | 01/14/03 | 01/21/03 | 05/00/04 | 08/12/03 |
| 17:11 | 12/02/02 | 11/06/02 | 02/03/03 | 12/17/02 | 01/02/03 | 01/21/03 | 05/00/04 | 01/31/03 | 02/20/03 | 05/00/04 | 08/29/03 |
| 17:12 | 12/16/02 | 11/21/02 | 02/17/03 | 12/31/02 | 01/15/03 | 01/21/03 | 05/00/04 | 02/14/03 | 02/20/03 | 05/00/04 | 09/12/03 |

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.

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:CKD:SMC:nj
DJ 166-012-3
2002-2088

*Voting Section
950 Pennsylvania Ave., NW, Room 7254 NWB
Washington, D.C. 20530*

May 22, 2002

Mr. Gary O. Bartlett, Esq.
Director, State Board of Elections
6400 Mail Service Center
Raleigh, NC 27699-6400

Dear Mr. Bartlett:

This refers to the existing rules for voting systems, election recounts, election protests, and new elections in Chapters 2, 4, and 9 of 8 NCAC, their subsequent repeal; and the 2002 temporary rules for voting systems, election recounts, election protests, and new elections in Chapter 2, 4, and 9 of 8 NCAC for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 2, 2002.

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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:CKD:HCL:nj
DJ 166-012-3
2002-303

Voting Section
950 Pennsylvania Ave., NW, Room 7254 NWB
Washington, D.C. 20530

July 16, 2002

Mr. Gary O. Bartlett, Esq.
Executive Director
State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to the temporary rules for electronic transfer of voter information, and the procedures for voting, voting places, and precinct officials in Chapters 7B and 10B, respectively, of 8 NCAC for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 20, 2002, supplemental information was received on July 11, 2002.

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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:CKD:ALP:nj:jdh
DJ 166-012-3
2002-3030

*Voting Section – NWB.
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530*

July 17, 2002

Mr. Gary O. Bartlett, Esq.
Executive Director
State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Memorandum 2002-06, which pertains to the procedures for the order in which candidates' names appear on the ballot in primary elections, and the 2002 temporary rules regarding the certification of the ballot, the format of the ballot, the text and arrangement of referenda, the order of precedence for candidates, the procedures for ballot replacement, the provisional ballot procedures, the accuracy of the ballot and ballot counting procedures, and the use of paper ballots under certain circumstances in Chapter 6B of 8 NCAC for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 20, 2002.

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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

CHAPTER 52 - VETERINARY DIVISION

Notice of Rule-making Proceedings is hereby given by the North Carolina Board of Agriculture 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: 02 NCAC 09B .0116; 52A .0108-.0109; 52B .0212-.0213; 52C .0701 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-139; 106-307.5; 106-317; 106-549.22

Statement of the Subject Matter:

02 NCAC 09B .0116 - This Rule adopts by reference certain Federal regulations and other standards related to food safety under the Food, Drug and Cosmetics Act. The proposed amendment would adopt by reference rules of the United States Food and Drug Administration on processing of fruit and vegetable juices sold as beverages.

02 NCAC 52A .0108-.0109 - These Rules adopt by reference a sanitation handbook and an inspection manual published by the United States Department of Agriculture and applicable to meat and poultry processing plants. These items are now obsolete and are proposed for repeal.

02 NCAC 52B .0212-.0213; 52C .0701 - These Rules establish requirements for importation and production of cervidae. Proposed changes would establish a program to certify the status of cervidae herds with respect to Chronic Wasting Disease.

Reason for Proposed Action:

02 NCAC 09B .0116 - The Food, Drug and Cosmetics Act prohibits the sale of adulterated foods, which includes fruit and vegetable juices. The adoption of 21 C.F.R., Part 120, would establish standards for the safe processing of fruit and vegetable juices. Failure of the processor to follow these standards would render the juice products adulterated as defined in the Act.

02 NCAC 52A .0108-.0109 - The sanitation standards and inspection guidelines set forth in these Rules have been superceded by Federal standards adopted by reference at 02 NCAC 52D .0101.

02 NCAC 52B .0212-.0213; 52C .0701 - Chronic Wasting Disease affects both wild and domesticated cervidae herds. There is currently no means of determining the CWD status of cervidae herds. The proposed rule changes would establish a certification program.

Comment Procedures: Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice of Rule-making Proceedings is hereby given by the State Board of Examiners of Electrical Contractors 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 18B .0700, .0902 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 87-42; 87-43.2; 87-46; 87-47; 87-50

Statement of the Subject Matter: Consideration of definitions of terms in the disciplinary statutes, including, inter alia, malpractice, supervision, gross incompetence, gross negligence, gross misconduct; responsibility of multiple licensees in a firm; processing of complaints, and reciprocity.

Reason for Proposed Action: Questions have been raised in contested proceedings as to the meaning of various terms for purposes of application of the statutes. Additionally, procedures relating to hearings and compromise could be described more accurately than under the present rules. New reciprocity agreements have been negotiated with several states.

Comment Procedures: Comments may be submitted in writing to the Board addressed to Rulemaking Coordinator at State Board of Examiners of Electrical Contractors at 1200 Front Street, Suite 105, Raleigh, NC 27609 with a copy to Board counsel addressed to John N. Fountain, Young Moore and Henderson, P.O. Box 31627, Raleigh, NC 27622. Comments must be received by 5:00 p.m. on October 15, 2002.

CHAPTER 02 - COMMUNITY COLLEGES

Notice of Rule-making Proceedings is hereby given by the North Carolina State Board of Community Colleges 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: 23 NCAC 02D .0201-.0202; 02E .0405 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625

Statement of the Subject Matter:

23 NCAC 02D .0201 – Authority to establish tuition and fees.
23 NCAC 02D .0202 – Tuition and fees for curriculum programs.

Reason for Proposed Action:

23 NCAC 02D .0201 – The rule-making process for this Rule was initiated to clarify the circumstances under which the Board of Trustees of several community colleges may charge fees to students attending community colleges.

23 NCAC 02D .0202 – The rule-making process for this Rule was initiated to delete the provision concerning the student activity fee.

23 NCAC 02E .0405 – The rule-making process for this Rule was initiated to clarify the conditions under which community colleges may provide training for public law enforcement agencies, public fire and rescue agencies and emergency medical services agencies.

Comment Procedures: Written comments may be sent to Clay T. Hines, North Carolina Community College Systems, 5004 Mail Service Center, Raleigh, NC 27699-5004.

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

SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services, DHHS intends to adopt the rules cited as 10 NCAC 03R .2217, .6351-.6385 and .6389-.6395 and amend the rules cited as 10 NCAC 03R .1125-.1126, .1615-.1616, .1715, .1912, .1914, .2013, .2113-.2116, .2118-.2119, .2511, .2713-.2715, .2717, .3701-.3705. Notice of Rule-making Proceedings was published in the Register on April 16, 2001 and February 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 14, 2002

Time: 2:00 p.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 2002 State Medical Facilities Plan (SMFP) and the recommendations made by the State Health Coordinating Council. The 2002 SMFP is effective for one calendar year – beginning on January 1, 2002. The temporary rules (adopted effective January 1, 2002) 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, Chief of Budget & Planning/Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701. Comments will be received through October 14, 2002.*

Fiscal Impact

- State** 10 NCAC 03R .6374, .6378, .6382
- Local** 10 NCAC 03R .6374, .6378, .6382
- Substantive** (>\$5,000,000)
- None** 10 NCAC 03R .1125-.1126, .1615-.1616, .1715, .1912, .1914, .2013, .2113-.2116, .2118-.2119, .2217, .2511, .2713-.2715, .2717, .3701-.3705, .6351-.6373, .6375-.6377, .6379-.6381, .6383-.6385, .6389-.6395

CHAPTER 03 - FACILITY SERVICES

SUBCHAPTER 03R - CERTIFICATE OF NEED REGULATIONS

10 NCAC 03R .1125 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be clearly stated.

(c) An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within 45 minutes normal automobile driving time (one-way) from the facility, with the exception that this standard shall be waived for: applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are located in isolated or remote locations, fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

(d) An applicant proposing to establish a new nursing facility or adult care home shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.

(e) An applicant proposing to establish a new nursing facility or adult care home shall document that the proposed site and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.

(f) An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10 NCAC 03H or 10 NCAC 42D, whichever is applicable.

Authority G.S. 131E-177(1); 131E-183; 131E-183(b); 131E-175; 131E-176; S.L. 2001, c. 234.

10 NCAC 03R .1126 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.

(d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

Authority G.S. 131E-177(1); 131E-183; 131E-183(b); 131E-175; 131E-176; S.L. 2001, c. 234.

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

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 but excluding shared fixed cardiac catheterization or angioplasty equipment, shall be utilized at an annual rate of at least 60 percent of 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

- (3) 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;
- (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 excluding shared fixed and mobile cardiac catheterization or cardiac angioplasty equipment shall:

- (1) demonstrate that its existing items of cardiac catheterization and cardiac angioplasty equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated 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 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 the applicable State Medical Facilities Plan shall:

- (1) demonstrate that each proposed item of shared fixed cardiac catheterization or cardiac angioplasty equipment shall perform a combined total of at least 225 cardiac catheterization and angiography procedures during the fourth quarter of the third year following completion of the project; and
- (2) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(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;
- (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; 131E-183(b).

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; with the exception that the 30 minute transport requirement shall be waived for equipment that was identified as needed in the State Medical Facilities Plan based on an adjusted need determination or the determination of a need for shared-fixed cardiac catheterization equipment.

(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 .1700 - CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES

10 NCAC 03R .1715 REQUIRED PERFORMANCE STANDARDS

The applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) the applicant shall perform at least 4 diagnostic catheterizations per open heart surgical procedure during each quarter;
- (2) an applicant's existing and new or additional heart-lung bypass machines shall be utilized at an annual rate of 200 open heart surgical procedures per machine, measured during the twelfth quarter following completion of the project;
- (3) at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;
- (4) the applicant's projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at an annual rate of at least 150 open heart surgical procedures by the end of the third year following completion of the project;
- (5) the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and
- (6) heart-lung bypass machines that have been acquired for non-surgical use, or for non-heart surgical procedure use, and that are dedicated for services that are not related to the open heart surgery services, shall not be utilized in

the performance of open heart surgical procedures.

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

SECTION .1900 - CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

10 NCAC 03R .1912 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period.
- (2) "Complex Radiation treatment" is equal to 1.0 ESTVs and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to 15 minutes for the uncomplicated set-up and treatment of a patient on a modern megavoltage teletherapy unit including the time necessary for portal filming.
- (4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 1.0 ESTVs.
- (6) "Linear accelerator" means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.
- (7) "Linear accelerator service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.
- (9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) "Radiation therapy services" means those services which involve the delivery of precisely controlled and monitored doses of radiation to a well defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive

implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.

- (13) "Radiation therapy service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) "Simulator" means a machine that precisely reproduces the geometric relationships of the MRT equipment to the patient.
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 4.0 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) particle radiation therapy which equals 2.0 ESTVs;
 - (e) weekly radiation therapy management, conformal, which equals 1.5 ESTVs;
 - (f) limb salvage irradiation at lengthened SSD which equals 1.0 ESTV;
 - (g) additional field check radiographs which equals .50 ESTV;
 - (h) stereotactic radiosurgery treatment management which equals 3.0 ESTVs; and
 - (i) pediatric patient which equals 1.2 ESTVs.

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

10 NCAC 03R .1914 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:
 - (1) an applicant's existing linear accelerators located in the proposed service area performed at least 6,750 ESTV treatments per machine in the twelve months prior to the date the application was submitted;
 - (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,500 6,750 ESTV treatments during the third year of operation of the new equipment; and
 - (3) an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 6,750 ESTV treatments per machine during the third year of operation of the new equipment.
- (b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides

documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:

- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
- (2) the maximum number and type of procedures that the proposed equipment is capable of performing.

(d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

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

SECTION .2000 - CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

10 NCAC 03R .2013 PERFORMANCE STANDARDS

An applicant shall project, in the third year of operation, an annual unduplicated patient caseload for the county in which the facility will be located that meets or exceeds the minimum need used in the applicable State Medical Facilities Plan to justify the establishment of a new home health agency office in that county. An applicant shall not be required to meet this performance standard if the home health agency office need determination in the applicable State Medical Facilities Plan was not based on application of the standard methodology for a Medicare-certified home health agency office.

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

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 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) "Operating room" means 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 procedure performed in an operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours.
- (8) "Existing operating rooms" means those 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 operating rooms" means those 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.
- (10) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- (11) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of ambulatory surgical procedures.
- (12) "Shared operating room" means an 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 an outpatient or ambulatory surgical operating room, 3.5 surgical cases per day for a shared operating room, 2.7 surgical cases per day for an inpatient operating room, and 4.3 cases per day for an endoscopy procedure room.

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

10 NCAC 03R .2114 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, 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 operating rooms, 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 operating rooms;
- (2) the number and type of existing and proposed shared operating rooms;
- (3) the current and projected number of surgical procedures, identified by CPT code or ICD-9-CM procedure code, to be performed in the operating rooms;
- (4) the fixed and movable equipment to be located in each operating room;
- (5) the hours of operation of the proposed operating rooms;
- (6) if the applicant is an existing 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;
- (7) the projected average charge for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items in each charge; and
- (8) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

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

10 NCAC 03R .2115 NEED FOR SERVICES

(a) In projecting utilization for existing, approved, proposed and expanded 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 operating rooms, 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 surgical cases per operating room to be performed in the applicant's facility is

projected to be at least 2.7 surgical cases per day for each inpatient operating room, 4.3 surgical cases per day for each outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure room, and 3.5 surgical cases per day for each shared 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 outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure room, and 3.5 surgical cases per day for each shared 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 outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure 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.

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

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 operating rooms, 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.

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

10 NCAC 03R .2118 STAFFING

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, 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.

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

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 operating rooms, 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.

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

SECTION .2200 - CRITERIA AND STANDARDS FOR END-STAGE RENAL DISEASE SERVICES

10 NCAC 03R .2217 PERFORMANCE STANDARDS

(a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

(b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the first day of operation of the additional stations.

(c) An applicant shall provide all assumptions, including the specific methodology by which patient utilization is projected.

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

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

10 NCAC 03R .2511 PERFORMANCE STANDARDS

(a) An applicant shall not be approved unless the overall occupancy, over the nine months immediately preceding the submittal of the application, of the total number of intensive treatment beds and detoxification beds within the facility in which the beds are to be located, except in facilities with only detoxification beds, has been:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(b) An applicant shall not be approved unless the overall occupancy of the total number of intensive treatment beds and detoxification beds to be operated in the facility is projected, except in facilities with only detoxification beds, by the fourth quarter of the third year of operation following completion of the project, to be:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(c) An applicant proposing to add detoxification beds to an existing facility that includes only detoxification beds shall not be approved unless the overall occupancy of the total number of detoxification beds in the facility has been at least 75 percent for the nine months immediately preceding the submittal of the application.

(d) An applicant proposing to establish a new detoxification facility or add detoxification beds to an existing facility that includes only detoxification beds shall demonstrate that the overall occupancy of the total number of detoxification beds in the facility is reasonably projected to be 75 percent by the fourth quarter of the third year of operation following completion of the project.

(e) The applicant shall document the specific methodology and assumptions by which occupancies are projected, including the average length of stay and anticipated recidivism rate.

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

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.
- (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), and includes dedicated fixed breast MRI scanners.
- (5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly 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 the applicable State Medical Facilities Plan

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 .2714 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire an MRI scanner, including a Mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall also provide the following additional information:

- (1) documentation that the MRI scanner shall be available and staffed for use at least 66 hours per week, with the exception of a mobile MRI scanner;
- (2) projections of the annual number of procedures to be performed by type of service and the average charge for each proposed procedure for each of the first three years of operation after completion of the project. This information shall be provided separately for each proposed host facility if the application proposes the acquisition of a mobile MRI scanner;
- (3) documentation of the need for an additional MRI scanner in the proposed MRI service area and description of the methodology used to project need, including all assumptions regarding the population to be served;
- (4) documentation that the proposed MRI scanner, including a mobile MRI scanner, shall have affiliation agreements or referral agreements with respect to the following diagnostic modalities:
 - (A) radio isotopic imaging studies,
 - (B) diagnostic X-Ray studies,
 - (C) angiograms, including digital,
 - (D) diagnostic ultrasound studies, and
 - (E) computed tomography (full body);
- (5) except for proposed MRI scanners to be used exclusively for research purposes, documentation that all equipment, supplies and pharmaceuticals proposed for the service have been certified for clinical use by the U.S. Food and Drug Administration or shall be operated under an institutional review board whose membership is consistent with U.S. Department of Health and Human Service regulations, with the exception that this requirement does not apply to the use of gadolinium in children if written consent is obtained from the parents stating that they understand that gadolinium has been FDA approved for adults, but not for children at this time;

- (6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner; and
 - (7) copies of agreements that have been established to accommodate referrals from other facilities in the MRI service area.
- (c) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.
- (d) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall:
- (1) provide a copy of a contract or working agreement with a radiologist or practice group that is competent, qualified, and trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;
 - (2) document that the applicant performed mammograms continuously for the last year; and
 - (3) document that the applicant's existing mammography equipment is in compliance with the U. S. Food and Drug Administration Mammography Quality Standards Act.

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 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 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 for which the need determination in the State Medical Facilities Plan 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;
 - (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year for the proposed MRI scanner and an average of 2900 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
 - (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 State Medical Facilities Plan 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).

10 NCAC 03R .2717 REQUIRED STAFFING AND STAFF TRAINING

- (a) An applicant proposing to acquire an MRI scanner shall demonstrate that one board certified diagnostic radiologist shall be available to provide the proposed services who has had:
- (1) training in magnetic resonance imaging as an integral part of his or her residency training program; or
 - (2) six months of supervised MRI experience under the direction of a qualified diagnostic radiologist; or
 - (3) at least six months of fellowship training, or its equivalent, in MRI; or
 - (4) an appropriate combination of MRI experience and fellowship training equivalent to Subparagraph (a)(1), (2) or (3) of this Rule.
- (b) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall provide documentation that the radiologist is trained and has experience in interpreting images produced by an

MRI scanner configured exclusively to perform mammographic studies.

(c) The applicant shall provide evidence of the availability of two full-time MRI technologist-radiographers and that one of these technologists shall be present during the hours of operation of the MRI scanner.

(d) An applicant proposing to acquire an MRI scanner shall demonstrate that the following staff training is provided:

- (1) certification in cardiopulmonary resuscitation (CPR) and basic cardiac life support; and
- (2) an organized program of staff education and training which is integral to the services program and ensures improvement in technique and the proper training of new personnel.

(e) An applicant proposing to acquire a mobile MRI scanner shall document that the requirements in Paragraphs (a) and (c) of this Rule shall be met at each host facility.

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.
- (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) "Mobile PET Scanner" means a PET scanner and transporting equipment that is moved, at least weekly, to provide services at two or more host facilities.
- (5) "PET procedure" means a single discrete study of one patient involving one or more PET scans.
- (6) "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.
- (7) "PET scanner service area" means the PET Scanner Service Area as defined in the applicable State Medical Facilities Plan.
- (8) "Positron emission tomographic scanner" (PET) is defined in G.S. 131E-176(19a).
- (9) "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 .3702 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

- (1) The projected number of procedures to be performed and the projected number of patients to be served for each of the first three years following completion of the proposed project. Projections shall be listed by clinical area (e.g., oncology, cardiology), and all methodologies and assumptions used in making the projections shall be provided.
 - (2) Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the twelve months immediately prior to the date on which the application is filed:
 - (A) nuclear medicine imaging services;
 - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
 - (C) magnetic resonance imaging scans;
 - (D) computerized tomography scans;
 - (E) cardiac angiography;
 - (F) cardiac ultrasound; and
 - (G) neuroangiography.
 - (3) Documentation that the facility will:
 - (A) establish the clinical PET unit, and any accompanying equipment used in the manufacture of positron-emitting radioisotopes, as a regional resource that will have no administrative, clinical or charge requirements that would impede physician referrals of patients for whom PET testing would be appropriate;
 - (B) provide scheduled hours of operation for the PET scanner of a minimum of 12 hours per day, six days a week, except for mobile scanners; and (C) implement a referral system which shall include a feedback mechanism of providing patient information to the referring physician and facility.
 - (4) A description of the protocols that will be established to assure that all clinical PET procedures performed are medically necessary and cannot be performed using other, less expensive, established modalities.
- (c) An applicant proposing to acquire a mobile PET scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities at which the mobile PET scanner will be operated.
- (d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with

a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

(e) An applicant shall document that 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.

(f) An applicant shall document that 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:

- (1) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
- (2) quality control measures and assurance of PET tomograph and associated instrumentation;
- (3) radiation protection and shielding;
- (4) radioactive emission to the environment; and
- (5) radioactive waste disposal.

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

10 NCAC 03R .3703 REQUIRED PERFORMANCE STANDARDS

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

- (1) the proposed PET scanner, including mobile PET scanners and PET scanners not used solely for PET imaging, shall be utilized at an annual rate of at least 1,220 PET procedures by the end of the third year following completion of the project;
- (2) its existing PET scanners, excluding those used exclusively for research, performed an average of 1,220 procedures of any type per PET scanner in the last year; (3) its existing and approved PET scanners shall perform an average of at least 1,220 procedures of any type per PET scanner during the third year following completion of the project.

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

10 NCAC 03R .3704 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document how medical emergencies within the PET scanner unit will be managed in conformity with accepted medical practice at each facility where the PET scanner will be operated.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that radioisotopes shall be acquired from one or more of the following sources and shall identify the sources which will be utilized by the applicant:

- (1) an off-site medical cyclotron and radioisotope production facility that is located within two hours transport time to each facility where the PET scanner will be operated;
- (2) an on-site rubidium-82 generator; or

- (3) an on-site medical cyclotron for radio nuclide production and a chemistry unit for labeling radioisotopes.

(c) An applicant proposing to acquire an on-site cyclotron for radioisotope production shall document that these agents are not available or cannot be obtained in an economically cost effective manner from an off-site cyclotron located within 2 hours total transport time from the applicant's facility.

(d) An applicant proposing to develop new PET scanner services, including mobile PET scanner services, shall establish a clinical oversight committee at each facility where the PET scanner will be operated before the proposed PET scanner is placed in service that shall:

- (1) develop screening criteria for appropriate PET scanner utilization;
- (2) review clinical protocols;
- (3) review appropriateness and quality of clinical procedures;
- (4) develop educational programs; and
- (5) oversee the data collection and evaluation activities of the PET scanning service.

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

10 NCAC 03R .3705 REQUIRED STAFFING AND STAFF TRAINING

(a) An applicant proposing to acquire to acquire a PET scanner, including a mobile PET scanner, shall document that the scanner will be staffed by the following personnel:

- (1) One or more full-time nuclear medicine imaging physicians who:
 - (A) are licensed by the State to handle medical radioisotopes;
 - (B) have specialized in the acquisition and interpretation of nuclear images, including tomographic studies, for at least one year;
 - (C) have acquired knowledge about PET through experience or postdoctoral education; and
 - (D) have had practical training with an operational PET scanner;
- (2) Engineering and physics personnel with training and experience in the operation and maintenance of PET scanning equipment;
- (3) Radiation safety personnel with training and experience in the handling of short-lived positron emitting nuclides; and
- (4) Certified nuclear medicine technologists with training and experience in positron emission computed tomographic nuclear medicine imaging procedures.

(b) An applicant proposing to acquire a cyclotron shall document that the cyclotron shall be staffed by radiochemists or radiopharmacists who:

- (1) have at least one year of training and experience in the synthesis of short-lived positron emitting radioisotopes; and
- (2) have at least one year of training and experience in the testing of chemical,

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radiochemical, and radionuclidic purity of PET radiopharmaceutical synthesis.

(c) An applicant proposing to acquire a PET scanner, a mobile PET scanner, or a cyclotron, shall document that the personnel described in Paragraphs (a) and (b) of this Rule shall be available at all times that the scanner or cyclotron are operating.

(d) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that a program of continuing staff education will be provided that will insure the proper training of new personnel and the maintenance of staff competence as clinical PET applications, techniques and technology continue to develop and evolve.

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

SECTION .6300 - PLANNING POLICIES AND NEED DETERMINATION FOR 2001

10 NCAC 03R .6351 APPLICABILITY OF RULES RELATED TO THE 2002 STATE MEDICAL FACILITIES PLAN

Rules .6351 through .6354 and .6356 through .6385 and .6389 through .6395 of this Section apply to certificate of need applications for which the scheduled review period begins during calendar year 2002. In addition, Rule .6355 of this Section shall be used to implement procedures described within it during calendar year 2002.

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

10 NCAC 03R .6352 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) Acute Care Beds (in accordance with the need determination in 10 NCAC 03R .6356)

| Hospital Service System | CON Beginning Review Date |
|---------------------------|---------------------------|
| Brunswick County Hospital | July 1, 2002 |

(2) Operating Rooms (in accordance with the need determination in 10 NCAC 03R .6358)

| Ambulatory Surgery Service Area (Constituent Counties) | Certificate of Need Beginning Review Date |
|--------------------------------------------------------|-------------------------------------------|
| 8 (Bladen, Cumberland, Robeson, Sampson) | March 1, 2002 |
| 10 (Buncombe, Haywood, Madison, Mitchell, Yancey) | March 1, 2002 |
| 24 (Greene, Lenoir, Martin, Pitt) | July 1, 2002 |
| 27 (Hoke, Lee, Montgomery, Moore, Richmond, Scotland) | March 1, 2002 |

(3) Open Heart Surgery Services (in accordance with the need determination in 10 NCAC 03R .6359)

| County | CON Beginning Review Date |
|---------|---------------------------|
| Robeson | May 1, 2002 |

(4) Heart-Lung Bypass Machines (in accordance with the need determination in 10 NCAC 03R .6360)

| Hospital Service System | CON Beginning Review Date |
|--------------------------|---------------------------|
| Pitt County Memorial | May 1, 2002 |
| NorthEast Medical Center | August 1, 2002 |

(5) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6361)

| County | CON Beginning Review Date |
|--------|---------------------------|
| Gaston | April 1, 2002 |
| Wake | September 1, 2002 |

(6) Shared Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6362)

| Hospital Service System | CON Beginning Review Date |
|-------------------------|---------------------------|
|-------------------------|---------------------------|

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|-----------------|-------------------|
| Columbus County | September 1, 2002 |
|-----------------|-------------------|

(7) Radiation Oncology Treatment Center (in accordance with the need determination in 10 NCAC 03R .6368)

| Radiation Oncology Treatment Center Service Area | CON Beginning Review Date |
|--------------------------------------------------|---------------------------|
| 6 (Cleveland, Gaston, Lincoln, Rutherford) | June 1, 2002 |

(8) Mobile Dedicated Positron Emission Tomography (PET) Scanners (in accordance with the need determination in 10 NCAC 03R .6369)

| Positron Emission Tomography (PET) Scanners Planning Region | CON Beginning Review Date |
|-------------------------------------------------------------|---------------------------|
| 1 (HSAs I, II, III) | August 1, 2002 |
| 2 (HSAs IV, V, VI) | November 1, 2002 |

(9) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6370)

| Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties) | CON Beginning Review Date |
|-----------------------------------------------------------------------------|---------------------------|
| 4 (Ashe, Avery, Watauga) | August 1, 2002 |
| 6 (Rutherford, Cleveland) | April 1, 2002 |
| 8 (Gaston) | June 1, 2002 |
| 9 (Cabarrus, Montgomery, Rowan, Stanly) | June 1, 2002 |
| 10 (Iredell) | December 1, 2002 |
| 11 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin) | April 1, 2002 |
| 13 (Caswell, Durham, Granville, Person, Vance, Warren) | May 1, 2002 |
| 17 (Anson, Mecklenburg, Union) | October 1, 2002 |
| 18 (Cumberland, Hoke, Moore, Robeson, Sampson) | May 1, 2002 |
| 19 (Franklin, Harnett, Johnston, Wake) | November 1, 2002 |
| 23 (Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington) | November 1, 2002 |

(10) Dedicated Fixed Breast Magnetic Resonance Imaging (MRI) Scanner Need Determination (in accordance with 10 NCAC 03R .6371)

| Magnetic Resonance Imaging Scanners Service Area | CON Beginning Review Date |
|-----------------------------------------------------|---------------------------|
| 17 (Anson, Mecklenburg, Union) | December 1, 2002 |

(11) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6372)

| Magnetic Resonance Imaging Scanners Service Area | CON Beginning Review Date |
|---------------------------------------------------------------|---------------------------|
| 3 (Buncombe, Madison, McDowell, Mitchell, Yancey) | August 1, 2002 |
| 10 (Iredell) | April 1, 2002 |
| 15 (Davidson, Guilford, Randolph & Rockingham) | October 1, 2002 |
| 21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender) | September 1, 2002 |

(12) Adult Care Home Beds (in accordance with the need determination in 10 NCAC 03R .6374)

| County | CON Beginning Review Date |
|----------|---------------------------|
| Ashe | August 1, 2002 |
| Cherokee | June 1, 2002 |
| Dare | May 1, 2002 |

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| | |
|------------|-------------------|
| Gates | November 1, 2002 |
| Graham | April 1, 2002 |
| Greene | September 1, 2002 |
| Halifax | November 1, 2002 |
| Jones | September 1, 2002 |
| Macon | April 1, 2002 |
| Madison | June 1, 2002 |
| Mitchell | August 1, 2002 |
| Pender | September 1, 2002 |
| Tyrrell | May 1, 2002 |
| Washington | May 1, 2002 |

- (13) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6375)

| County | CON Beginning Review Date |
|------------|---------------------------|
| Montgomery | March 1, 2002 |
| Pamlico | December 1, 2002 |

- (14) Hospice Home Care Programs (in accordance with the need determination in 10 NCAC 03R .6378)

| County | CON Beginning Review Date |
|----------|---------------------------|
| Beaufort | March 1, 2002 |
| Craven | March 1, 2002 |
| Johnston | December 1, 2002 |
| Robeson | December 1, 2002 |
| Rowan | June 1, 2002 |
| Wilson | March 1, 2002 |

- (15) Single County New Hospice Inpatient Beds (in accordance with the need determination in 10 NCAC 03R .6379)

| County | CON Beginning Review Date |
|------------|---------------------------|
| Cleveland | October 1, 2002 |
| Cumberland | July 1, 2002 |
| Gaston | June 1, 2002 |
| Richmond | July 1, 2002 |
| Rutherford | October 1, 2002 |

- (16) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6382)

| Mental Health Planning Region | CON Beginning Review Date |
|-------------------------------|---------------------------|
| North Central Region | July 1, 2002 |

- (17) Adult Chemical Dependency (Substance Abuse) Treatment Beds, (in accordance with the need determination in 10 NCAC 03R .6382)

| Mental Health Planning Region | CON Beginning Review Date |
|-------------------------------|---------------------------|
| North Central Region | July 1, 2002 |

- (18) Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6383)

| Mental Health Planning Area | CON Beginning Review Date |
|-----------------------------|---------------------------|
| | |

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|----|-----------------------------------------------------------|--------------|
| 1 | (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain) | July 1, 2002 |
| 2 | (Buncombe, Madison, Mitchell, Yancey) | July 1, 2002 |
| 4 | (Henderson, Transylvania) | July 1, 2002 |
| 5 | (Alexander, Burke, Caldwell, McDowell) | July 1, 2002 |
| 6 | (Rutherford, Polk) | July 1, 2002 |
| 7 | (Cleveland, Gaston, Lincoln) | July 1, 2002 |
| 10 | (Rowan, Stanly, Cabarrus, Union) | July 1, 2002 |
| 11 | (Surry, Yadkin, Iredell) | July 1, 2002 |
| 13 | (Rockingham) | July 1, 2002 |
| 15 | (Alamance, Caswell) | July 1, 2002 |
| 16 | (Orange, Person, Chatham) | July 1, 2002 |
| 17 | Durham | July 1, 2002 |
| 18 | (Vance, Granville, Franklin, Warren) | July 1, 2002 |
| 19 | (Davidson) | July 1, 2002 |
| 21 | (Bladen, Columbus, Robeson, Scotland) | July 1, 2002 |
| 24 | (Johnston) | July 1, 2002 |
| 25 | (Wake) | July 1, 2002 |
| 26 | (Randolph) | July 1, 2002 |
| 29 | (Wayne) | July 1, 2002 |
| 30 | (Wilson, Greene) | July 1, 2002 |
| 31 | (Edgecombe, Nash) | July 1, 2002 |
| 32 | (Halifax) | July 1, 2002 |
| 33 | (Carteret, Craven, Jones, Pamlico) | July 1, 2002 |
| 34 | (Lenoir) | July 1, 2002 |
| 36 | (Bertie, Gates, Hertford, Northampton) | July 1, 2002 |
| 37 | (Beaufort, Hyde, Martin, Tyrrell, Washington) | July 1, 2002 |
| 38 | (Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans) | July 1, 2002 |
| 39 | (Duplin, Sampson) | July 1, 2002 |

- (19) There are 10 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 10 categories are:
- (A) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, 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; adult care home beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6389(b) or .6390; and relocations of nursing care beds under 10 NCAC 03R .6389(d) or 10 NCAC 03R .6389(f).
 - (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; transfers of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6389(e); transfers of ICF/MR beds from State Mental Retardation Centers to community facilities pursuant to Chapter 858 of the 1983 Sessions Laws.
 - (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 inpatient rehabilitation facilities; inpatient rehabilitation beds; licensed ambulatory surgical facilities; new operating rooms and relocations of existing operating rooms as defined in 10 NCAC 03R .6358(b).
 - (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 .6389(a); and conversion of acute care hospitals to long-term acute care hospitals.
 - (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,

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gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography 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 .6389(b) for exemption from need determinations in 10 NCAC 03R .6373 or 10 NCAC 03R .6390 for exemption from need determinations in 10 NCAC 03R .6374; relocations within the same county of existing health service facilities, beds or dialysis stations (excluding relocation of operating rooms as defined in 10 NCAC 03R .6358(b)) which do not involve an increase in the number of health service facility beds or stations; 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 .6385(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 Category J.

(J) Category J. Proposals for demonstration projects.

(20) A service, facility, or equipment for which a need determination is identified in Items (1) through (18) 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 (18) 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 .6376 or 10 NCAC 03R .6377.

| CON Beginning Review Date | Review Categories for HSA I, II, III | Review Categories for HSA IV, V, VI |
|------------------------------|-----------------------------------------|----------------------------------------|
| January 1, 2002 | -- | -- |
| February 1, 2002 | -- | -- |
| March 1, 2002 | A, E, G, I, J | A, C, E, F, G, H, I, J |
| April 1, 2002 | B, C, D, H, I | D |
| May 1, 2002 | -- | B, C, H, I |
| June 1, 2002 | A, B, C, F, H, I | -- |
| July 1, 2002 | C | A, C, E, F, I |
| August 1, 2002 | B, H, I | -- |
| September 1, 2002 | -- | B, C, H, I |
| October 1, 2002 | A, C, D, E, F, H, I | D |
| November 1, 2002 | -- | A, B, C, H, I |
| December 1, 2002 | C, H, I | F |

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.

(21) 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 15th day of the month preceding the "CON Beginning Review Date." In instances when the 15th 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 .6353 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)

| I | II | III | IV | V | VI |
|-----------|----------|----------|---------|--------|----------|
| County | County | County | County | County | County |
| Alexander | Alamance | Cabarrus | Chatham | Anson | Beaufort |

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

(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

| Area Number | Constituent Counties |
|-------------|--------------------------------------------------------|
| 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 |
| 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 |
| 19 | Davidson |
| 20 | Anson, Hoke, Montgomery, Moore, Richmond |
| 21 | Bladen, Columbus, Robeson, Scotland |
| 22 | Cumberland |
| 23 | Lee, Harnett |
| 24 | Johnston |
| 25 | Wake |

PROPOSED RULES

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

(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
- 29 Wayne
- 30 Wilson, Greene
- 31 Edgecombe, Nash
- 32 Halifax
- 33 Carteret, Craven, Jones, Pamlico
- 34 Lenoir
- 35 Pitt
- 36 Bertie, Gates, Hertford, Northampton

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- 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

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

| Area | Constituent Counties |
|------|---------------------------------------------------------|
| 1 | <u>Alamance</u> |
| 2 | <u>Alexander, Iredell</u> |
| 3 | <u>Alleghany, Surry, Wilkes</u> |
| 4 | <u>Anson, Gaston, Mecklenburg, Union</u> |
| 5 | <u>Ashe, Avery, Watauga</u> |
| 6 | <u>Beaufort, Hyde</u> |
| 7 | <u>Bertie, Gates, Hertford</u> |
| 8 | <u>Bladen, Cumberland, Robeson, Sampson</u> |
| 9 | <u>Brunswick, Columbus, Duplin, New Hanover, Pender</u> |
| 10 | <u>Buncombe, Haywood, Madison, Mitchell, Yancey</u> |
| 11 | <u>Burke, McDowell, Rutherford</u> |
| 12 | <u>Cabarrus, Rowan, Stanly</u> |
| 13 | <u>Caldwell, Catawba, Lincoln</u> |
| 14 | <u>Camden, Currituck, Dare, Pasquotank, Perquimans</u> |
| 15 | <u>Carteret, Craven, Jones, Onslow, Pamlico</u> |
| 16 | <u>Caswell, Chatham, Orange</u> |
| 17 | <u>Cherokee, Clay, Graham, Jackson, Macon, Swain</u> |
| 18 | <u>Chowan, Tyrrell, Washington</u> |
| 19 | <u>Cleveland</u> |
| 20 | <u>Davidson, Davie, Forsyth, Stokes, Yadkin</u> |
| 21 | <u>Durham, Granville, Person</u> |

PROPOSED RULES

| | |
|----|---------------------------------------------------------|
| 22 | <u>Edgecombe, Halifax, Nash, Northampton</u> |
| 23 | <u>Franklin, Harnett, Johnston, Wake</u> |
| 24 | <u>Greene, Lenoir, Martin, Pitt</u> |
| 25 | <u>Guilford, Randolph, Rockingham</u> |
| 26 | <u>Henderson, Polk, Transylvania</u> |
| 27 | <u>Hoke, Lee, Montgomery, Moore, Richmond, Scotland</u> |
| 28 | <u>Vance, Warren</u> |
| 29 | <u>Wayne</u> |
| 30 | <u>Wilson</u> |

(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

| Area Number | Constituent Counties |
|-------------|------------------------------------------------------------------------------------------|
| 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, Lee</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, 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> |

(g) Positron Emission Tomography (PET) Scanners Planning Regions. The DHHS has assigned the HSAs as outlined in 10 NCAC 03R .6353(a) to the following Positron Emission Tomography (PET) Scanners Planning Regions for purposes of the State Medical Facilities Plan.

POSITRON EMISSION TOMOGRAPHY (PET) SCANNERS PLANNING REGIONS

| Region Number | Constituent HSAs |
|---------------|------------------------|
| <u>1</u> | <u>HSAs I, II, III</u> |
| <u>2</u> | <u>HSAs IV, V, VI</u> |

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

10 NCAC 03R .6354 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 .6353(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 .6353(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 .6353(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 .6353(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 .6353(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 .6353(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 .6353(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 .6353(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 .6354(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 .6354(a).
- (r) A positron emission tomography scanner's service area and planning region is the health service area (HSA) in which the scanner is located and the planning region as defined in 10 NCAC 03R .6353(g). The health service areas are the multi-county groupings as defined in 10 NCAC 03R .6353(a).
- (s) An adult care home bed's service area is the adult care home bed planning area in which the bed is located. Each of the 100 counties in the State is a separate adult care home bed planning area.
- (t) An operating room's service area is the ambulatory surgical facility planning area in which the operating room is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6353(e).

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

10 NCAC 03R .6355 REALLOCATIONS AND ADJUSTMENTS

(a) REALLOCATIONS

- (1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 03R .6356, through .6384 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.

(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 Sub-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.

(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 .6356 through 10 NCAC 03R .6384 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;
- (F) mobile medical equipment; and
- (G) operating rooms as defined in 10 NCAC 03R .6358(b).

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 03R .6356 through .6384 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) addition or reduction in operating rooms as defined in 10 NCAC 03R .6358(b);
- (F) psychiatric beds licensed pursuant to G.S. 131E-184(c);
- (G) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
- (H) 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 .6356 through 10 NCAC 03R .6384 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

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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 .6356 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)

It is determined that there is need for 32 additional acute care beds in Brunswick Community Hospital's "Hospital Service System." It is determined that there is no need for additional acute care beds anywhere else in the State.

| Hospital Service System | Acute Care Bed Need Determination |
|------------------------------|-----------------------------------|
| Brunswick Community Hospital | 32 |

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

10 NCAC 03R .6357 INPATIENT REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

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

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

10 NCAC 03R .6358 OPERATING ROOM NEED DETERMINATIONS (REVIEW CATEGORY E)

(a) It is determined that there is need for eight additional operating rooms in four Ambulatory Surgery Service Areas as follows. It is determined that there is no need for additional operating rooms anywhere else in the State.

| Ambulatory Surgery Surgery Service Area | Counties | Operating Room Need Determination |
|--------------------------------------------|--------------------------------------------------|-----------------------------------|
| 8 | Bladen, Cumberland, Robeson, Sampson | 2 |
| 10 | Buncombe, Haywood, Madison, Mitchell, Yancey | 2 |
| 24 | Greene, Lenoir, Martin, Pitt | 1 |
| 27 | Hoke, Lee, Montgomery, Moore, Richmond, Scotland | 3 |

(b) "Operating room" means 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.

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

10 NCAC 03R .6359 OPEN HEART SURGERY SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is need for open heart surgery services with one heart-lung bypass machine in Robeson County. It is determined that there is no need for additional open heart surgery services anywhere else in the State.

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

10 NCAC 03R .6360 HEART-LUNG BYPASS MACHINES NEED DETERMINATIONS (REVIEW CATEGORY H)

It is determined that there is need for two additional heart-lung bypass machines in two hospital service systems as follows. It is determined that there is no need for additional heart-lung bypass machines anywhere else in the State, other than the additional heart-lung bypass machine identified as needed in 10 NCAC 03R .6359.

| Hospital Service System | Heart-Lung Bypass Machine Need Determination |
|--------------------------|----------------------------------------------|
| Pitt County Memorial | 1 |
| NorthEast Medical Center | 1 |

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

10 NCAC 03R .6361 FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)

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

| County | Fixed Cardiac Catheterization/Angioplasty |
|--------|-------------------------------------------|
|--------|-------------------------------------------|

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Equipment Need Determination

| | |
|--------|---|
| Gaston | 1 |
| Wake | 1 |

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

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

10 NCAC 03R .6362 SHARED FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for one unit of shared fixed cardiac catheterization/angioplasty equipment in Columbus County Hospital's "Hospital Service System." It is determined that there is no need for additional units of shared fixed cardiac catheterization/angioplasty equipment anywhere else in the State.

| | |
|--------------------------|-------------------------------------------------------------------------------|
| Hospital Service System | Shared Fixed Cardiac Catheterization/Angioplasty Equipment Need Determination |
| Columbus County Hospital | 1 |

(b) Shared fixed cardiac catheterization/angioplasty 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 .6363 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 .6364 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

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

(b) 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.

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

10 NCAC 03R .6365 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

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

(b) 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 .6366 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

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

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

10 NCAC 03R .6367 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).

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10 NCAC 03R .6368 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)

- (a) It is determined that there is a need for one additional Radiation Oncology Treatment Center in Radiation Oncology Treatment Center Service Area 6, provided however, that the new center shall be created by the relocation of one of the four linear accelerators that are currently in operation, or are approved for operation, in Radiation Oncology Treatment Center Service Area 6.
- (b) It is determined that there is no need for an additional radiation oncology treatment center in any other service area in the State.

| <u>Radiation Oncology Treatment Center Service Area</u> | <u>Radiation Oncology Treatment Center Need Determination</u> |
|---------------------------------------------------------|---------------------------------------------------------------|
| 6 (Cleveland, Gaston, Lincoln, Rutherford) | <u>1</u> |

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

10 NCAC 03R .6369 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

- (a) It is determined that there is a need for one mobile dedicated positron emission tomography (PET) scanner that would provide services at host sites located within Positron Emission Tomography (PET) Scanners Planning Region 1 consisting of HSAs I, II, and III, and there is a need for one mobile dedicated PET scanner that would provide services at host sites located within the Positron Emission Tomography (PET) Scanners Planning Region 2 consisting of HSAs IV, V, and VI. An applicant may propose to provide such services at host sites located anywhere within the specified region and is not required to propose a host site within each of the three HSAs constituting the region. Any applicant proposing to acquire a mobile dedicated PET scanner must demonstrate that each host site offers or contracts with a hospital that offers comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology.
- (b) It is determined that there is no need for additional fixed dedicated PET scanners anywhere in the State.
- (c) Dedicated PET Scanners are scanners used solely for PET imaging. Dedicated PET Scanners can be fixed or mobile.
- (d) Mobile PET Scanner means a PET scanner and transporting equipment which is moved to provide services at two or more host facilities.

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

10 NCAC 03R .6370 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

- (a) It is determined that there is a need for fourteen 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, other than the additional scanners provided in 10 NCAC 03R .6371 and 10 NCAC 03R .6372.

| <u>Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)</u> | <u>Fixed MRI Scanners Need Determination</u> |
|---------------------------------------------------------------------------------|----------------------------------------------|
| 4 (Ashe, Avery, Watauga) | <u>1</u> |
| 6 (Rutherford, Cleveland) | <u>1</u> |
| 8 (Gaston) | <u>2</u> |
| 9 (Cabarrus, Montgomery, Rowan, Stanly) | <u>1</u> |
| 10 (Iredell) | <u>1</u> |
| 11 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin) | <u>2</u> |
| 13 (Caswell, Durham, Granville, Person, Vance, Warren) | <u>1</u> |
| 17 (Anson, Mecklenburg, Union) | <u>1</u> |
| 18 (Cumberland, Hoke, Moore, Robeson, Sampson) | <u>2</u> |
| 19 (Franklin, Harnett, Johnston, Wake) | <u>1</u> |
| 23 (Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington) | <u>1</u> |

- (b) 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 .6371 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION FOR A DEDICATED FIXED BREAST MRI SCANNER (REVIEW CATEGORY H)

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(a) It is determined that there is a need for one dedicated fixed breast MRI scanner, exclusively used in mammographic studies in MRI Scanners Service Area 17 (Anson, Mecklenburg, Union Counties). The MRI will not be counted in the regular inventory of MRIs. The applicant shall demonstrate that the MRI scanner shall not be used for general diagnostic purposes and the projected costs for procedures to patients and payors shall be lower than the costs associated with conventional MRI procedures. It is determined that there is no need for an additional fixed MRI scanner in any other service area in the state other than the additional scanners provided in 10 NCAC 03 .6370 and 10 NCAC 03R .6372.

| Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties) | Dedicated Fixed Breast MRI Scanner Need Determination |
|-----------------------------------------------------------------------------|----------------------------------------------------------|
| 17 (Anson, Mecklenburg, Union) | 1 |

(b) 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 .6372 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for four 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, other than the additional scanners provided in 10 NCAC 03R .6370 and 10 NCAC 03R .6371.

| Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties) | Fixed MRI Scanners Need Determination |
|-----------------------------------------------------------------------------|------------------------------------------|
| 3 (Buncombe, Madison, McDowell, Mitchell, Yancey) | 1 |
| 10 (Iredell) | 1 |
| 15 (Davidson, Guilford, Randolph & Rockingham) | 1 |
| 21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender) | 1 |

(b) 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 .6373 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)

It is determined that there is no need for additional Nursing Care Beds anywhere in the State.

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

10 NCAC 03R .6374 ADULT CARE HOME BED NEED DETERMINATION (REVIEW CATEGORY B)

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

| County | Number of Adult Care Home Beds Needed |
|----------|------------------------------------------|
| Ashe | 60 |
| Cherokee | 120 |
| Dare | 10 |
| Gates | 30 |
| Graham | 10 |
| Greene | 30 |
| Halifax | 40 |
| Jones | 30 |
| Macon | 120 |
| Madison | 20 |
| Mitchell | 80 |

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|------------|----|
| Pender | 80 |
| Tyrrell | 20 |
| Washington | 10 |

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

**10 NCAC 03R .6375 MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION
(REVIEW CATEGORY F)**

It is determined that there is a need for one Medicare-certified home health agency or office in each of the following counties. It is determined that there is no need for additional Medicare-certified home health agencies or offices in any other county.

| Counties | Number of New Home Health Agencies/ Offices Needed |
|------------|-------------------------------------------------------|
| Montgomery | 1 |
| Pamlico | 1 |

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

**10 NCAC 03R .6376 DIALYSIS STATION NEED
DETERMINATION METHODOLOGY FOR REVIEWS
BEGINNING APRIL 1, 2002**

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar year 2002, and shall make a report of such determinations available to all who request it. The first report shall be called the North Carolina January 2002 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources are as follows:

- (1) Numbers of dialysis patients as of June 30, 2001, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) 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 (using the trend line ending with 12/31/00 data)
 - (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 June 30, 2001 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total June 30, 2002 patients.

(B) The percent of each county's total patients who were home dialysis patients on June 30, 2001 is multiplied by the county's projected total June 30, 2002 patients, and the product is subtracted from the county's projected total June 30, 2002 patients. The remainder is the county's projected June 30, 2002 in-center dialysis patients.

(C) The projected number of each county's June 30, 2002 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2002 in-center dialysis stations.

(D) From each county's projected number of June 30, 2002 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, 2002 projected station surplus or deficit.

(E) If a county's June 30, 2002 projected station deficit is 10 or greater and the January 2002 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2002 county station need determination is the same as the June 30, 2002 projected station deficit. If a county's June 30, 2002 projected station deficit is less than 10 or if the utilization of any dialysis facility in

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the county is less than 80%, the county's June 30, 2002 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 January 2002 Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

(A) Its utilization, reported in the January 2002 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 June 2001 TDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the January 2002 SDR (SDR₂). 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 SDR₁ 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 6 (the number of months from June 30, 2001 until December 31, 2001) for the January 2002 SDR.

(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 January 2002 SDR and that product is added to such reported number of in-center patients.

(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 stations as recorded in the January 2002 SDR and the number of pending new stations for which a certificate of need has been issued. 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 January 2002 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the April 1, 2002 Review Period 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 SDR</u> | <u>Receipt of CON</u> <u>Applications</u> | <u>Beginning Review</u> <u>Date</u> |
|-----------------------------------------|-------------------------------------------|-------------------------------------|----------------------------------------------|----------------------------------------|
| June 30, 2001 | Nov. 12, 2001 | Jan. 2, 2002 | March 15, 2002 | April 1, 2002 |

(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 projects need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

(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 .6377 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING OCTOBER 1, 2002

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar

year 2002, and shall make a report of such determinations available to all who request it. The second report shall be called the North Carolina July 2002 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients as of December 31, 2001, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) 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 (using the trend line ending with 12/31/01 data)

(A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1997 to the end of 2001 is multiplied by the county's December 31, 2001 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total December 31, 2002 patients.

(B) The percent of each county's total patients who were home dialysis patients on December 31, 2001 is multiplied by the county's projected total December 31, 2002 patients, and the product is subtracted from the county's projected total December 31, 2002 patients. The remainder is the county's projected December 31, 2002 in-center dialysis patients.

(C) The projected number of each county's December 31, 2002 in-center patients is divided by 3.2. The quotient is the projection of the county's December 31, 2002 in-center dialysis stations.

(D) From each county's projected number of December 31, 2002 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 December 31, 2002 projected station surplus or deficit.

(E) If a county's December 31, 2002 projected station deficit is ten or greater and the July 2002 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the December 31, 2002 county station need determination is the same as the December 31, 2002 projected station deficit. If a county's

December 31, 2002 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 December 31, 2002 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 July 2002 SDR is determined to need additional stations to the extent that:

(A) Its utilization, reported in the July 2002 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 January 2002 SDR (SDR_1) is subtracted from the number of in-center dialysis patients reported in the July 2002 SDR (SDR_2). 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_1 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 12 (the number of months from December 31, 2001 until December 31, 2002) for the July 2002 SDR.

(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 July 2002 SDR and that product is added to such reported number of in-center patients.

(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 stations as recorded in the July 2002 SDR and the number of pending new stations for which a certificate of need has been

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issued. 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 July 2002 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the October 1, 2002 Review Period shall be as follows:

| Data for Period Ending | Due Date for SEKC Report | Publication of SDR | Receipt of CON Applications | Beginning Review Date |
|------------------------|--------------------------|--------------------|-----------------------------|-----------------------|
| Dec. 31, 2001 | May 10, 2002 | July 1, 2002 | September 16, 2002 | October 1, 2002 |

(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.

stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

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

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it projects need for at least 10

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

10 NCAC 03R .6378 HOSPICE HOME CARE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is a need for one additional Hospice Home Care Program in each of the following counties. It is determined that there is no need for additional Hospice Home Care Programs in any other county.

| Counties | Number of New Hospice Home Care Programs Needed |
|----------|-------------------------------------------------|
| Beaufort | 1 |
| Craven | 1 |
| Johnston | 1 |
| Robeson | 1 |
| Rowan | 1 |
| Wilson | 1 |

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

10 NCAC 03R .6379 SINGLE COUNTY HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that the counties listed in this Rule need additional hospice inpatient beds as specified. It is determined that there is no need for additional single county hospice inpatient beds in any other county.

| County | Number of Hospice Inpatient Beds Needed |
|------------|-----------------------------------------|
| Cleveland | 2 |
| Cumberland | 8 |
| Gaston | 8 |
| Richmond | 11 |
| Rutherford | 4 |

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

10 NCAC 03R .6380 CONTIGUOUS COUNTY HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

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:

| County | Hospice Inpatient Bed Deficit |
|--------|-------------------------------|
|--------|-------------------------------|

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| | |
|--------------|---|
| Alexander | 1 |
| Anson | 1 |
| Beaufort | 1 |
| Bertie | 1 |
| Bladen | 1 |
| Brunswick | 1 |
| Burke | 2 |
| Cabarrus | 4 |
| Carteret | 1 |
| Catawba | 2 |
| Columbus | 1 |
| Craven | 1 |
| Davidson | 4 |
| Davie | 1 |
| Duplin | 1 |
| Durham | 5 |
| Edgecombe | 1 |
| Granville | 1 |
| Greene | 1 |
| Halifax | 1 |
| Harnett | 1 |
| Haywood | 2 |
| Hertford | 1 |
| Hoke | 1 |
| Iredell | 4 |
| Jackson | 1 |
| Johnston | 2 |
| Lee | 1 |
| Lenoir | 1 |
| Lincoln | 2 |
| McDowell | 1 |
| Macon | 1 |
| Madison | 1 |
| Martin | 1 |
| Mitchell | 1 |
| Montgomery | 1 |
| Moore | 3 |
| Nash | 2 |
| Northampton | 1 |
| Onslow | 1 |
| Pamlico | 1 |
| Pasquotank | 1 |
| Pender | 1 |
| Person | 1 |
| Pitt | 2 |
| Polk | 2 |
| Randolph | 4 |
| Robeson | 4 |
| Rockingham | 3 |
| Rowan | 4 |
| Sampson | 2 |
| Scotland | 4 |
| Stanly | 3 |
| Stokes | 2 |
| Surry | 4 |
| Transylvania | 1 |
| Union | 4 |
| Vance | 1 |
| Watauga | 1 |
| Wilkes | 2 |
| Wilson | 1 |

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| | |
|--------|---|
| Yadkin | 1 |
| Yancey | 1 |

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

10 NCAC 03R .6381 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 .6382 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)

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

(b) It is determined that there is a need for six additional chemical dependency (substance abuse) treatment beds for adults in the North Central Mental Health Planning Region. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adults in any other mental health planning region in the State, other than the additional beds provided in 10 NCAC 03R .6383.

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

10 NCAC 03R .6383 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, other than the additional beds provided in 10 NCAC 03R .6382.

| Mental Health Planning Areas | Mental Health Planning Regions | Number of Adult Detox-Only Beds Needed |
|--------------------------------|--------------------------------|----------------------------------------|
| 1 Smoky Mountain | W | 10 |
| 2 Blue Ridge | W | 10 |
| 4 Trend | W | 10 |
| 5 Foothills | W | 10 |
| 6 Rutherford-Polk | W | 10 |
| 7 Gaston-Lincoln-Cleveland | W | 10 |
| 10 Rowan-Stanly-Cabarrus-Union | W | 20 |
| 11 Surry-Yadkin-Iredell | NC | 10 |
| 13 Rockingham | NC | 10 |
| 15 Alamance-Caswell | NC | 10 |
| 16 O-P-C | NC | 10 |
| 17 Durham | NC | 10 |
| 18 V-G-F-W | NC | 10 |
| 19 Davidson | SC | 10 |
| 21 Southeastern | SC | 10 |
| 24 Johnston | SC | 7 |
| 25 Wake | SC | 10 |
| 26 Randolph | SC | 2 |
| 29 Wayne | E | 4 |
| 30 Wilson-Greene | E | 10 |
| 31 Edgecombe-Nash | E | 6 |
| 32 Halifax | E | 10 |
| 33 Neuse | E | 10 |
| 34 Lenoir | E | 10 |
| 36 Roanoke-Chowan | E | 4 |
| 37 Tideland | E | 5 |

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|-------------------|---|----|
| 38 Albemarle | E | 10 |
| 39 Duplin-Sampson | E | 10 |

(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 .6353(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 .6384 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 no need for additional Adult Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

(b) 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 .6385 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 .6356 through .6384.

- (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 .6356 through .6384 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,

PROPOSED RULES

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 .6356.

Licensed Acute Care Bed Capacity

- 1 - 49
- 50 - 99
- 100 - 199
- 200 - 699
- 700 +

Percent Occupancy

- 65%
- 70%
- 75%
- 80%
- 81.5%

(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.

Total Licensed Acute Care Beds

- 1 - 49
- 50 - 99
- 100 - 199
- 200 - 699
- 700 +

Target Occupancy (Percent)

- 65%
- 70%
- 75%
- 80%
- 81.5%

(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).

Services determines that the hospital is meeting the conditions outlined in 10 NCAC 03R .6389(a).

(2) "Hospital-based nursing care" is defined as 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. Nursing care beds developed under 10 NCAC 03R .6389(a) are intended to provide placement for residents only when placement in other nursing care beds is unavailable in the geographic area. Hospitals which develop nursing care beds under 10 NCAC 03R .6389(a) 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.

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

10 NCAC 03R .6389 POLICIES FOR NURSING CARE FACILITIES

(a) Provision Of Hospital-Based Nursing Care.

(1) 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 nursing care beds without regard to determinations of need in 10 NCAC 03R .6373 if the hospital:

- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2002; and
- (B) on January 1, 2002, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Health and Human

(3) For purposes of 10 NCAC 03R .6389(a), beds in hospital-based nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Nursing care beds in a "distinct part" shall be converted from the existing licensed acute care 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 reconverting beds to acute care shall be

- evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 03R .6385(d), without regard to the acute care bed need shown in 10 NCAC 03R .6356.
- (4) A certificate of need issued for a hospital-based nursing care unit shall remain in force as long as the following conditions are met:
- (A) the nursing care beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (B) 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;
- (C) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the nursing care unit.
- (5) The granting of beds for hospital-based nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.
- (6) 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:
- (A) applies for and receives a certificate of need for nursing care bed need determinations in 10 NCAC 03R .6373; or
- (B) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (C) currently operates nursing 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 nursing care beds under 10 NCAC 03R .6389(a). 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 nursing care beds under provisions of G.S. 131E-175 through G.S. 131E-190, may apply to develop beds under 10 NCAC 03R .6389(a). However, such hospitals shall not develop nursing care beds both to meet needs determined in 10 NCAC 03R .6373 and 10 NCAC 03R .6389(a).
- (7) Beds certified as a "distinct part" under 10 NCAC 03R .6389(a) shall be counted in the
- inventory of existing nursing care beds and used in the calculation of unmet nursing care bed need for the general population of a planning area. Applications for certificates of need pursuant to 10 NCAC 03R .6389(a) shall be accepted only for the March 1 review cycle. Nursing care beds awarded under 10 NCAC 03R .6389(a) shall be deducted from need determinations for the county as shown in 10 NCAC 03R .6373. The Department of Health and Human Services shall monitor this program and ensure that patients affected by 10 NCAC 03R .6389(a) are receiving services, and that conditions under which the certificate of need was granted are being met.
- (b) Plan Exemption For Continuing Care Retirement Communities.
- (1) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in 10 NCAC 03R .6373. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:
- (A) Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
- (i) 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;
- (ii) 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.
- (B) 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.

(C) Reflects the number of nursing care 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.

(D) Will not be certified for participation in the Medicaid program.

(2) One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. All nursing care beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

(c) Determination Of Need For Additional Nursing Care Beds In Single Provider Counties. When a nursing 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 care beds in order to bring the minimum number of nursing care beds available within the county to no more than 80 nursing care beds without regard to the nursing care bed need determination for that county as listed in 10 NCAC 03R .6373.

(d) 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. 131E, Article 6, Part A, provided that the conditions set forth in 10 NCAC 03R .6389(d) 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 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 .6373 shall be granted to a nursing facility for purposes of relocating existing licensed nursing care beds to another county provided that it complies with all of the criteria listed in 10 NCAC 03R .6389(d)(1)(A) through (E).

(3) Any certificate of need issued under 10 NCAC 03R .6389(d) 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 discharge arrangements acceptable to 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 10 NCAC 03R .6389(d)(3)(B), 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).

(e) Transfer Of Nursing Facility Beds From State Psychiatric Hospital Nursing Facilities To Community Facilities.

(1) 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 nursing facility 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 nursing facility 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.

- (2) 10 NCAC 03R .6389(e) does not allow the development of new nursing care beds. Nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10 NCAC 03R .6389(e)(1) shall be excluded from the inventory.

(f) 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 .6389(d). 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 .6390 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES - ADULT CARE HOME BEDS

(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for adult care without regard to the adult care home bed need shown in 10 NCAC 03R .6374. To qualify for such exemption, applications for certificates of need shall show that the proposed adult care home bed capacity:

- (1) Will only be developed concurrently with, or subsequent to, construction on the same site of 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.
- (2) Will provide for the provision of nursing services, medical services, or other health

related services as required for licensure by the Department of Insurance.

- (3) 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 or adult care 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 adult care home unit at the time the other spouse or sibling moves into a non-nursing or adult care unit, or when the medical condition requiring nursing or adult care home care was not known to exist or be imminent when the individual became a party to the continuing care contract.
- (4) Reflects the number of adult care home 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 adult care home care.
- (5) Will not participate in the Medicaid program or serve State-County Special Assistance recipients.

(b) One half of the adult care home beds developed under this exemption shall be excluded from the inventory used to project adult care home bed need for the general population.

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

10 NCAC 03R .6391 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 .6392 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 .6393 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES

(a) Transfer of Psychiatric 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 psychiatric beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital psychiatric beds which are relocated to community facilities shall be closed within 90 days following the date the transferred psychiatric beds become operational in the community. Facilities proposing to operate transferred psychiatric beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated psychiatric beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer psychiatric beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the psychiatric 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 .6385(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 .6394 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 .6395 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).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services intends to amend the rules cited as 10 NCAC 03R .3301-.3303, .3305 and repeal rule cited as 10 NCAC 03R .3304. Notice of Rule-making Proceedings was published in the Register on September 4, 2001 and June 3, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 18, 2002

Time: 2:00 p.m.

Location: NC Division of Facility Services, Council Building, Dorothea Dix Campus, Room 113, Raleigh, NC

Reason for Proposed Action: *The NC General Assembly recently ratified House Bill 452 (Session Law 2001-220) and House Bill 453 (Session Law 2001-211). These two pieces of legislation amended GS 143-56 and 143-50 to update existing EMS terminology, definitions, roles and responsibilities. As such temporary rules were adopted (effective January 1, 2002) by the NC Medical Care Commission at 10 NCAC 03D to ensure compliance with the new laws. A permanent amendment and a repeal to 10 NCAC 03R .3301-.3305 are needed to ensure consistency with the aforementioned rules as well as compliance with the new laws. This rule-making action deals with the certificate of need (CON) process for EMS air ambulances.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Mark Benton, Chief of Budget & Planning/Rule-making Coordinator, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701. Comments will be received through September 18, 2002.*

Fiscal Impact

State

- Local**
- Substantive** (>\$5,000,000)
- None**

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R - CERTIFICATE OF NEED REGULATIONS

SECTION .3300 - CRITERIA AND STANDARDS FOR AIR AMBULANCE

10 NCAC 03R .3301 DEFINITIONS

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

- (1) "Air ambulance" as defined in G.S. 131E-176(1a).
- (2) "Air ambulance service" means an entity engaged in the operation of an air ambulance transporting patients.
- (3) "Air ambulance service area" means a geographic area defined by the applicant from which the project's patients originate.
- (4) "Approved air ambulance" means either a rotary air ambulance or a fixed wing air ambulance that was not operational prior to the beginning of the review period but which had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (5) "Capacity of fixed wing air ambulance" means the maximum number of hours the aircraft can be operated as defined by the aircraft manufacturer.
- (6) "Existing air ambulance" means either a rotary air ambulance or a fixed wing air ambulance in operation prior to the beginning of the review period.
- (7) "Inter-facility patient transport" means the transport of a patient from one facility to another facility.
- (8) "Level 2 trauma center" as defined in North Carolina's Trauma Center Criteria developed by the OEMS pursuant to G.S. 131E-162(7a).
- (9) "Patient" as defined in G.S. 131E-155(6).
- (10) "Scene transport" means the transport of a patient from the scene of a medical emergency.

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

10 NCAC 03R .3302 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire an air ambulance shall use the Acute Care Facility/Medical Equipment Application Form.
- (b) The applicant shall also provide the following additional information:
 - (1) the number of air ambulance aircraft by type and make currently operated and to be operated in the "air ambulance" service area following completion of the proposed project;

- (2) if the applicant is a current air ambulance service provider, documentation of the applicant's experience in transporting patients via air ambulance during the past 12 months, including:
 - (A) the number of scene transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing); and
 - (B) the number of inter-facility patient transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing);
- (3) if the applicant is a health service facility proposing to establish a new air ambulance service, the applicant shall provide documentation of:
 - (A) the number of scene transports to their facility by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) during the past 12 months; and
 - (B) the number of inter-facility patient transports during the past 12 months by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) to their facility from other facilities and from their facility to other facilities;
- (4) the number of patients from the proposed air ambulance service area that are projected to require air ambulance service by type of aircraft and the patients' county of residence and county from which transported in each of the first 12 calendar quarters of operation following completion of the project, including the methodology and assumptions used for the projections;
- (5) the projected utilization of the air ambulance service per aircraft for each of the first 12 calendar quarters following completion of the proposed project by type of patient (e.g., neonatal, pediatric, cardiac), including the methodology and assumptions used for these projections;
- (6) documentation which demonstrates that existing air ambulance services in the State are unable to accommodate the applicant's projected need for an additional air ambulance;
- (7) as appropriate to the type of aircraft proposed, documentation of referral sources for air ambulance patients and evidence of the willingness of hospitals to participate;
- (8) documentation which demonstrates the applicant's capability to communicate with and access emergency transportation resources including, but not limited to ground mobile intensive care ambulance services;
- (9) evidence of the applicant's capability to provide air ambulance services on a 24 hour per day, seven day per week basis except as

- (10) precluded by weather, maintenance and other factors as applicable; documentation of appropriate inservice training or continuing education programs for staff;
- (11) documentation of written policies and procedures for the operation of the air ambulance service, which shall be in effect at the time the proposed air ambulance becomes operational, for at least the following:
 - (A) alternative arrangements for transport of a patient when patient transport cannot be provided by the applicant; e.g. a current Mutual Aid Agreement with one or more permitted air ambulance services;
 - (B) written criteria for patient transport;
 - (C) medical crew contact with medical control;
 - (D) operation of an audit and review panel;
 - (E) patient treatment protocols;
 - (F) patient transfer protocols;
 - (G) communication, including incoming calls, dispatch, and on-going communication with air ambulance flight and medical crew and other emergency medical service providers;
 - (H) role in disaster plans;
 - (I) coordination with local emergency medical service systems in the proposed air ambulance service area or other providers as appropriate given the type of aircraft and service proposed;
- (12) if the applicant is an existing air ambulance service provider, copies of the following, as applicable:
 - (A) the current permit(s) issued by the OEMS and evidence that the permit(s) has not been denied or revoked,
 - (B) the current FAA Part 135 or Part 91 Certificate, and
 - (C) the current FCC radio license;
- (13) if an applicant does not currently operate an air ambulance, evidence that the OEMS, FCC and FAA are aware of the proposed air ambulance and that the applicant expects to be able to obtain all required permits, licenses or certifications;
- (14) documentation of the aircraft selection analysis used by the applicant and reason for selection of the aircraft proposed;
- (15) documentation of a financial analysis of a lease versus purchase option for acquisition of the proposed aircraft and the method (e.g., hire own versus contract) of providing personnel to fly the aircraft and the reason for selection of the option proposed; and

- (16) if the applicant proposes the acquisition of a fixed wing air ambulance, documentation of the capacity of each existing fixed wing air ambulance based in the state.

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

10 NCAC 03R .3303 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire an air ambulance shall demonstrate that the project meets the following standards:

- (1) For the acquisition of a rotary air ambulance [unless 10 NCAC 03R .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service],
 - each rotary air ambulance proposed to be acquired by the applicant shall be utilized at an average rate of at least 60 patient requests per month, measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections);
- (2) For the acquisition of a rotary air ambulance [unless 10 NCAC 03R .3303(6) is applicable], an applicant proposing to add a rotary air ambulance to an existing rotary air ambulance service shall demonstrate that all of its existing rotary air ambulances have had at least 60 patient requests per month in the last year.
- (3) For the acquisition of a fixed wing air ambulance [unless 10 NCAC 03R .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service],
 - each fixed wing air ambulance proposed to be acquired by the applicant shall be utilized at an average of no less than 60% of capacity transporting patients (determined based on the type aircraft), measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).
- (4) For the acquisition of a fixed wing air ambulance [unless 10 NCAC 03R .3303(6) is applicable], an applicant proposing to add a fixed wing air ambulance to an existing fixed wing air ambulance service shall demonstrate that all of its existing fixed wing air

PROPOSED RULES

ambulances have been utilized at no less than 60% of capacity transporting patients for the last year.

- (5) For all proposed projects involving the development of a new air ambulance service (rotary or fixed wing), the new service shall be developed in conjunction with at least a level 2 designated trauma center and another air ambulance service shall not be based within 60 air miles of the base of the proposed new service.
- (6) For acquisition of an air ambulance that shall be utilized less than 25% of the time flown for purposes defined in G.S. 131E-176(1a), the applicant shall provide the following information:
 - (a) documentation that the aircraft shall be utilized less than 25% of the time flown in any given quarter for purposes defined in G.S. 131E-176(1a) (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and
 - (b) a detailed description of all circumstances and conditions under which the aircraft will be utilized including the number of hours the aircraft will be flown for each of these circumstances.

.0103-.0109, .0205-.0208, .0304-.0306, .0405-.0411, amend the rules cited as 15A NCAC 01C .0101, and repeal the rules cited as 15A NCAC 01C .0102, .0201-.0204, .0301-.0303, .0401-.0404, .0501-.0505. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 10, 2002

Time: 7:00 p.m.

Location: Ground Floor Hearing Room, Archdale Building, Raleigh, NC

Reason for Proposed Action: Several agencies that use the NCEPA rules felt that they were confusing and difficult to understand. This prompted DENR to revise the rules.

Comment Procedures: Please send all comments in written form to Kari Barsness, NCDENR, Office of the Secretary, 1601 MSC Center, Raleigh, NC 27699-1601 or Kari.Barsness@ncmail.net. Comments are accepted through September 16, 2002.

Fiscal Impact

- State**
- Local** 15A NCAC 01C .0408
- Substantive** (>\$5,000,000)
- None** 15A NCAC 01C .0101-.0109, .0201-.0208, .0301-.0306, .0401-.0407, .0409-.0411, .0501-.0505

CHAPTER 01 – DEPARTMENT RULES

SUBCHAPTER 01C - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 01C .0101 STATEMENT OF PURPOSE, POLICY, AND SCOPE

(a) The purpose of the rules in this Subchapter is to establish procedures within the Department of Environment and Natural Resources (DENR) for conforming with the North Carolina Environmental Policy Act (NCEPA).

- (1) Rules for implementation of the NCEPA (1 NCAC 25) are hereby incorporated by reference to include further amendments pursuant to G.S. 150B-21.6. Copies of these Rules can be obtained from the Department of Administration, State Clearinghouse, 1302 Mail Service Center, Raleigh, NC 27699-1302.
- (2) The DENR's procedures shall insure that environmental documents are available to public officials and citizens before decisions are made and before actions are taken. The information shall be of high quality and sufficient to allow selection among alternatives.

(b) The Secretary is the "responsible state official" for DENR. The Secretary may delegate responsibility for the implementation of the NCEPA to appropriate staff.

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

10 NCAC 03R .3304 REQUIRED SUPPORT SERVICES/EQUIPMENT

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

10 NCAC 03R .3305 REQUIRED STAFFING AND STAFF TRAINING

(a) The applicant shall demonstrate that the following staff shall be available to provide air ambulance services:

- (1) if applicable, personnel available as needed for transport of special care patients (e.g., neonatal, cardiac); and
- (2) personnel that are trained to operate the ground communication network.

(b) The applicant shall provide an organized program of staff education and training which is integral to the air ambulance service and ensures improvements in technique and the proper training of personnel.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR intends to adopt the rules cited as 15A NCAC 01C

(c) The provisions of the rules in this Subchapter, the state rules (1 NCAC 25), and the NCEPA shall be read together as a whole in order to comply with the spirit and letter of the law.

(d) These Rules establish the procedures for determining whether an environmental document is required when DENR is the State Project Agency.

Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10.

15A NCAC 01C .0102 AGENCY COMPLIANCE

Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10.

15A NCAC 01C .0103 DEFINITIONS

The definition of any word or phrase used in rules of this Subchapter is the same as given in G.S. 113A-9 and in 01 NCAC 25, including subsequent amendments and editions. The following words and phrases have the following meaning:

- (1) "Agency" means the Divisions and Offices of DENR, as well as the boards, commissions, committees, and councils of DENR having decision-making authority and adopting these Rules by reference, except where the context clearly indicates otherwise.
- (2) "Channel Disturbance" means activities that permanently remove or degrade the natural functions of the stream such as culverting, relocation, channelization or streambank stabilization methods including gabions, rip rap or similar hard structures.
- (3) "Cumulative Impacts" mean environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions. Cumulative impacts are the reasonably foreseeable impacts from individually minor but collectively significant activities.
- (4) "Direct Impacts" mean environmental impacts which are caused by an activity and occurring at the same time and place.
- (5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that the waste or any constituent part of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters, or beneath or on the surface of the land.
- (6) "Ecosystem" means all the interrelated organisms and their environment within a defined area.
- (7) "Hazardous Waste" means a waste, or combination of wastes, in any state or form including gas, liquid or solid, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness,

or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

- (8) "High Quality Waters (HQW)" mean a subset of waters with quality higher than the existing classification standards. These include those rated as excellent based on biological and physical/chemical characteristics through Division of Water Quality monitoring or special studies; native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission; primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission; all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality; and all Class SA waters.
- (9) "Inlet" means a short, narrow waterway between islands connecting a lagoon, estuary, sound or similar water body with the ocean.
- (10) "Instream Flow" means the amount of water needed in a stream to adequately provide for downstream uses occurring within the stream channel, including some or all of the following: aquatic habitat, recreation, wetlands maintenance, navigation, hydropower, riparian vegetation, and water quality.
- (11) "Land-Disturbing Activity" means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (12) "Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing an environmental document. The lead agency is a sub agency of the state project agency.
- (13) "Non-State Entity" means local governments, special purpose units of government, contractors, and individuals or corporations to whom NCEPA may apply.
- (14) "Perennial Stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

- (15) "Reclaimed Water Utilization" means the use of reclaimed water that meets the criteria provided in 15A NCAC 02H .0219(k) for beneficial uses in lieu of water from other sources.
- (16) "Resource" means any natural product or value, not necessarily economic, but including trees, minerals, wildlife, clean air and water, fisheries, ecosystems, landscapes and open space.
- (17) "River Basin" means the watershed of a major river system.
- (18) "Secondary Impacts" mean indirect impacts caused by and resulting from a specific activity that occur later in time or further removed in distance than direct impacts, but are reasonably foreseeable.
- (19) "Secretary" means the Secretary of DENR.
- (20) "State Project Agency" means the state department or council of state agency which has been designated pursuant to 01 NCAC 25 .0210(a) for ensuring compliance with NCEPA.
- (21) "Stream Enhancement" means the process of implementing certain stream rehabilitation practices in order to improve water quality or ecological function. These practices are typically conducted on the stream bank or in the flood prone area. Enhancement activities may also include the placement of in-stream habitat structures.
- (22) "Stream Restoration" means the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.
- (23) "Total Design Withdrawal" means the pumping rate at which water can be removed from the contributing stream. It is the sum of any pre-existing withdrawal capacity plus any withdrawal increase.
- (24) "Wetlands" mean "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands can include swamps, marshes, bogs and similar areas, as well as headwater and bottomland hardwood forests. Wetlands classified as waters of the state are restricted to waters of the United

States as defined by 33 CFR 328.3 and 40 CFR 230.3.

Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10.

15A NCAC 01C .0104 AGENCY COMPLIANCE

- (a) Each DENR agency shall interpret the provisions of the NCEPA as a supplement to its existing authority and as a mandate to view its policies and programs in the light of the NCEPA's comprehensive environmental objectives, except where existing law applicable to the DENR agency's operations expressly prohibits compliance or makes compliance impossible.
- (b) As part of making a decision on a project for which an environmental document has been prepared, the DENR agency decision-maker shall review the document and incorporate it as part of continuing deliberations. The resulting decision shall be made after weighing all of the impacts and mitigation measures presented in the environmental document, which will become part of the decision-making record.

Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10.

15A NCAC 01C .0105 LEAD AND COOPERATING AGENCY RESPONSIBILITY

Where DENR is the State Project Agency and more than one DENR agency must issue a permit or other authorization for the project requiring review under NCEPA, the Secretary shall appoint a lead DENR agency to be responsible for issuance of the environmental document. The lead and cooperating DENR agencies' responsibilities shall be established by the Secretary.

Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0106 SCOPING AND HEARINGS

DENR agencies shall utilize scoping and hearing processes in their NCEPA activities to the extent appropriate to the complexity, potential for environmental effects, and level of expressed interest associated with the proposed activity.

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0107 LIMITATION ON ACTIONS DURING NCEPA PROCESS

- (a) While work on an environmental document is in progress, no DENR agency shall undertake in the interim any action which might limit the choice among alternatives or otherwise prejudice the ultimate decision on the issue. A permit approval or other action to approve land disturbing activity or construction of part of the project or action, other than those actions necessary for gathering information needed to prepare the environmental document, limits the choice among alternatives and shall not be approved until the final environmental document for the action is published in the Environmental Bulletin pursuant to 01 NCAC 25 .0212 and adopted by the DENR agency through the procedures established by the Department of Administration's Rules for administering NCEPA and this Subchapter of the Department's rules.
- (b) If a DENR agency is considering a proposed action for which an environmental document is to be or is being prepared, the DENR agency shall promptly notify the initiating party that

the DENR agency cannot take final action until the environmental documentation is completed and available for use as a decision-making tool. The notification shall be consistent with the statutory and regulatory requirements of the DENR agency and may be in the form of a notification that the application is incomplete.

(c) When a DENR agency decides that a proposed activity, for which state actions are pending or have been taken, requires environmental documentation then the DENR agency should promptly notify all DENR action agencies of the decision. When statutory and regulatory requirements prevent a DENR agency from suspending action, the DENR agency shall deny any action for which it determines an environmental document is necessary but not yet available as a decision-making tool.

Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0108 EMERGENCIES

(a) Where emergency circumstances make it necessary to take an otherwise lawful action with potential environmental effects without observing the public review provisions of the NCEPA, the DENR agency taking the action should notify the Secretary and limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare.

(b) DENR agencies are encouraged to prepare and maintain environmental documents for repetitive emergency programs affecting the public, to review the scope of involved activities, identify specific effects to be expected, and mitigation measures that can be employed in various circumstances to assure protection of the public and long-term environmental productivity.

(c) The minimum criteria established pursuant to Section .0400 of this Chapter or the review processes for environmental assessments or environmental impact statements set out in Rules 01 NCAC 25 .0506 and .0605, may be altered where an emergency makes it necessary to take action or control or mitigate any threat to the public health, safety and welfare caused by the emergency. Rule 01 NCAC 25 .1002 establishes the procedures to supplement the provisions of this Chapter in an emergency consistent with the policies of NCEPA.

Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0109 NON-STATE INVOLVEMENT AND CONSULTANTS

(a) If a lead DENR agency requires a non-state entity to submit environmental information for use by the DENR agency in preparing an environmental document for the non-state entity's activity, then the DENR agency shall assist by outlining the types of information requested. The DENR agency shall independently evaluate the information provided and shall be responsible for its accuracy.

(b) If a lead DENR agency permits a non-state entity to prepare an environmental document, the lead DENR agency shall furnish guidance and participate in the preparation, and take responsibility for its scope, objectivity, content, and accuracy.

(c) An environmental document may be prepared by a consultant.

(d) The Environmental Assessment Guidance Document available through the State Clearinghouse and Rules 01 NCAC

25 .0400 through .1000 offer guidance in preparing environmental documents.

Authority G.S. 113A-4; 113A-5; 113A-6; 113A-9; 143B-10.

SECTION .0200 – PREPARATION OF ENVIRONMENTAL DOCUMENTS

15A NCAC 01C .0201 EARLY APPLICATION OF THE NCEPA

Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 143B-10.

15A NCAC 01C .0202 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0203 LEAD AND COOPERATING AGENCY RESPONSIBILITY

Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0204 SCOPING AND HEARINGS

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0205 IMPLEMENTATION

DENR agencies shall prepare environmental documents in accordance with the NCEPA, its related rules at 01 NCAC 25, the rules in this Subchapter, and procedures established by the Secretary. As set out in Rule .0108 of this Subchapter, consultants may prepare environmental documents.

Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 143B-10.

15A NCAC 01C .0206 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

(a) DENR agencies shall prepare an environmental assessment in accordance with the NCEPA and the related state rules at 01 NCAC 25 for those activities described in Section .0300 of this Subchapter, and for those activities above the thresholds set in DENR's minimum criteria described in Section .0400 of this Subchapter.

(b) An environmental assessment is not necessary if a DENR agency has decided to prepare an environmental impact statement, because the scope or complexity of the activity has a clear potential for environmental effects.

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0207 INCORPORATION BY REFERENCE

(a) DENR agencies shall incorporate material into environmental documents by reference to cut down on bulk without impeding DENR agency and public reviews of the action. The incorporated material shall be cited in the document and its contents briefly described.

(b) Incorporated-by-reference material must be reasonably made available by the applicant for inspection by reviewers and

potentially interested persons within the time allowed for comment.

Authority G.S. 113A-4; 113A-6; 113A-10; 143B-10.

15A NCAC 01C .0208 INCOMPLETE OR UNAVAILABLE INFORMATION

(a) Where a DENR agency is evaluating significant effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, the DENR agency should always make clear that such information is lacking or that uncertainty exists.

(b) If the information relevant to the effects is essential to a reasonable choice among alternatives and the overall costs of and time for obtaining it are not out of proportion to the potential environmental effects of the activity, the DENR agency should include the information in the environmental document.

(c) If the information relevant to the effects is essential to a reasoned choice among alternatives and the overall cost of and time for obtaining it are out of proportion to the potential environmental effects of the activity, or the means of obtaining it are not known (beyond the state of the art), then the DENR agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the DENR agency proceeds, it shall include within the environmental document:

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) the DENR agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

Authority G.S. 113A-4; 113A-6; 143B-10.

SECTION .0300 – ACTIVITIES WHICH REQUIRE ENVIRONMENTAL DOCUMENTATION

15A NCAC 01C .0301 IMPLEMENTATION

Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 143B-10.

15A NCAC 01C .0302 INCORPORATION BY REFERENCE

Authority G.S. 113A-4; 113A-6; 113A-10; 143B-10.

15A NCAC 01C .0303 INCOMPLETE OR UNAVAILABLE INFORMATION

Authority G.S. 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0304 ACTIVITIES ABOVE THE

MINIMUM CRITERIA

Any activity which is above the parameters of the minimum criteria set out in Section .0400 of this Subchapter is required to have environmental documentation under the NCEPA.

Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10.

15A NCAC 01C .0305 TYPES OF ACTIVITIES REQUIRING ENVIRONMENTAL DOCUMENTATION

Environmental documents shall be prepared for the following DENR agency activities, where it is deemed by the Secretary that a potential effect upon the environment of the state may result.

- (1) Proposed construction of facilities or infrastructures on lands and waters owned or managed by any DENR agency.
- (2) Specific programs conducted by DENR agencies on lands and waters or in the atmosphere owned or managed by the state.
- (3) Demolition of or additions, rehabilitation and/or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Cultural Resources that the structure lacks architectural or historical significance.
- (4) Ground disturbances involving National Register listed archaeological sites or areas around buildings 50 years old or older, except where agreement exists with the Department of Cultural Resources.

Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 113A-10; 143B-10.

15A NCAC 01C .0306 ACTIVITIES OF A SPECIAL NATURE

Any activity falling at or below the parameters of the minimum criteria set out in Section .0400 of this Subchapter shall not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of DENR may determine that environmental documents under the NCEPA are required in any case where one of the following findings applies to a proposed activity.

- (1) The proposed activity may have a potential for significant adverse effects on wetlands; surface waters such as rivers, streams and estuaries; parklands; game lands; prime or unique agricultural lands; or areas of recognized scenic, recreational, archaeological, ecological, scientific research or historical value, including secondary impacts; or would threaten a species identified on the Department of Interior's or the state's threatened and endangered species lists.
- (2) The proposed activity could cause significant changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, instream flow, air quality, or ground water

- impacts; or affect long-term recreational benefits, fish, wildlife, or their natural habitats.
- (3) The proposed activity has secondary impacts, or is part of cumulative impacts, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment.
 - (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been identified by the DENR agency or expressed to the DENR agency.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

**SECTION .0400 – ACTIVITIES, DESIGNATED BY
MINIMUM CRITERIA, WHICH DO NOT REQUIRE
ENVIRONMENTAL DOCUMENTATION**

15A NCAC 01C .0401 AGENCY DECISION-MAKING PROCEDURES

Authority G.S. 113A-2; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0402 LIMITATION ON ACTIONS DURING NCEPA PROCESS

Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0403 EMERGENCIES

Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10.

15A NCAC 01C .0404 NON-STATE INVOLVEMENT AND CONTRACTORS

Authority G.S. 113A-4; 113A-5; 113A-6; 113A-9; 143B-10.

15A NCAC 01C .0405 PURPOSE OF THE MINIMUM CRITERIA THRESHOLDS

- (a) This Section establishes minimum criteria to be used in determining when environmental documents are not required. The minimum criteria, as defined in state rules at 1 NCAC 25, shall be used by the Secretary and DENR agencies to provide sound decision-making processes by allowing separation of activities with a high potential for environmental effects from those with only a minimum potential.
- (b) The following minimum criteria are established to determine when environmental documentation under the NCEPA is not required. An activity must be at or below each applicable minimum criteria threshold to maintain this status. As set out in 15A NCAC 01C .0302, the Secretary may require environmental documentation for activities that would otherwise qualify under these minimum criteria thresholds.

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0406 SAMPLING, SURVEY, MONITORING, AND RELATED RESEARCH

ACTIVITIES

Sampling, survey, monitoring and research activities do not require the filing of environmental documentation. These activities include, but are not limited to the following:

- (1) Aerial photography projects involving the photographing or mapping of the lands of the state;
- (2) Biology sampling and monitoring of:
 - (a) Fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone; and
 - (b) Wildlife resources through the use of traditional techniques, including but not limited to traps, drugs, and firearms;
- (3) Soil survey projects involving the sampling or mapping of the soils of the state;
- (4) Establishing stream gaging stations for the purpose of measuring water flow at a particular site;
- (5) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality;
- (6) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state;
- (7) Placement and use of geodetic survey control points;
- (8) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment which have minimum long-term effects; and
- (9) Investigation and assessment of sites contaminated with regulated substances.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0407 STANDARD MAINTENANCE OR REPAIR ACTIVITIES

Standard maintenance or repair activities, if needed to maintain the originally defined function of an existing project or facility (but without expansion, increase in quantity, decrease in quality, use, or release of hazardous waste), do not require the filing of environmental documents. These activities include but are not limited to maintenance and repair of the following:

- (1) Housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process;
- (2) Roads, bridges, parking lots, and their related facilities;
- (3) Utilities on their existing rights-of-way;
- (4) Surface drainage systems;
- (5) Boat ramps, docks, piers, bulkheads, rip rap, breakwaters and associated facilities;

- (6) Diked, high ground dredge-material disposal areas;
- (7) Activities necessary to fulfill the existing requirements of in-effect permits for the protection of the environment and human health;
- (8) Other maintenance and repair activities on projects which are consistent with previously approved environmental documents; and
- (9) Routine grounds maintenance and landscaping of sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0408 MINOR CONSTRUCTION ACTIVITIES

This Section sets out the general and specific minimum criteria for construction activities. Construction and land disturbing activities must fall under both the general minimum criteria and any specific minimum criteria applicable to the project.

- (1) General criteria. The following categories of land disturbing activity do not require preparation of an environmental document.
 - (a) In the 20 coastal counties, land disturbing activity that:
 - (i) Is located more than 575 feet away from waters classified as High Quality Waters (HWQ) or impacts less than five acres located all or in part within 575 feet of waters classified as High Quality Waters (HWQ);
 - (ii) Is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B.0225; and
 - (iii) Impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B.0225;
 - (b) Land disturbing activity outside the 20 coastal counties that:
 - (i) Is located more than one mile from waters classified as HWQ or impacts less than five acres located within one mile of and draining to waters classified as HWQ;

- (ii) Is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B.0225;
 - (iii) Impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B.0225; and
 - (iv) Is located more than 25 feet from any waters classified as Trout (Tr) waters or impacts less than five acres located all or in part within 25 feet of any waters classified as Trout (Tr) waters.
- (c) Land disturbing activities associated with voluntary stream restoration or stream enhancement.
 - (d) Land disturbing activities impacting wetlands if the activity will result in the loss of one acre or less of Class WL wetlands.
 - (e) Land disturbing activities that impact less than 500 linear feet of perennial streams. Land disturbing activities that impact 500 linear feet or more of perennial streams do not require preparation of an environmental document if stream restoration or stream enhancement is performed.
- (2) Specific Criteria. Construction or expansion activities listed below require an environmental document if they exceed either the minimum criteria set out in Item (1) of this Rule or the thresholds established below:
 - (a) The following activities related to wastewater treatment systems.
 - (i) Relocation of discharge points within the same river basin;
 - (ii) New discharge facilities with a proposed permitted expansion of less than 500,000 gallons per day and producing an instream waste concentration of less than 33 percent during the 7-day 10-year low flow conditions;
 - (iii) Expansion of an existing discharge facility of less than 500,000 gallons per day additional flow;

PROPOSED RULES

- (iv) New surface irrigation, high rate infiltration, or subsurface waste water systems with a proposed permitted capacity not exceeding 100,000 gallons per day;
 - (v) Reclaimed water utilization systems with reclaimed water utilization being the sole disposal option with a proposed permitted capacity not exceeding 200,000 gallons per day;
 - (vi) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 500,000 gallons per day when the reclaimed water utilization system is required for compliance with any other wastewater disposal permit;
 - (vii) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 1,000,000 gallons per day when the reclaimed water utilization system is not required for compliance with any other wastewater disposal permit;
 - (viii) New reclaimed water utilization distribution lines;
 - (ix) New permits or modification to existing permits for land application of residuals utilization, where less than 10 acres not previously permitted is prior converted within three years or will be converted from a non-plantation forested area to application area;
 - (x) New or expanding surface disposal sites disposing less than 3,000 dry tons of residuals per year;
 - (xi) Gravity sewer extensions with less than three miles of new lines or lines of less than eighteen inches in diameter; and
 - (xii) New individual pump stations and associated force mains with a proposed permitted capacity of less than 1750 gallons per minute.
- (b) The following activities related to potable water systems:
- (i) Improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity and total design withdrawal less than one-fifth of the 7-day, 10-year low flow of the contributing stream;
 - (ii) Improvements not intended to add capacity to the facility;
 - (iii) Installation of appurtenances in existing rights-of-way for streets or utilities, or water lines and appurtenances less than five miles in length and having only directional bore stream crossings or no stream crossings; and
 - (iv) Construction of water tanks, or booster pumping or secondary or remote disinfection stations.
- (c) The following activities related to solid waste disposal:
- (i) Construction of solid waste management facilities, other than landfills exempt pursuant to G.S. 130A-294(a)(4), which store, treat, process incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste; and
 - (ii) Disposal of solid waste by land application on 100 total acres or less, where less than 10 percent of the total land application area is converted from a non-plantation forested area.
- (d) Development requiring a Coastal Area Management Act (CAMA) permit and/or State Dredge and Fill Law permit that does not involve:
- (i) Construction of a new marina, or a 25% or greater expansion in the number of slips at existing and operating marinas;
 - (ii) Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of

- any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these Rules.
- (iii) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects;
- (iv) A large scale beach nourishment or spoil deposition project. A project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;
- (v) The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any departmentally-approved best management practices developed for such activities;
- (vi) The construction over state owned submerged lands of private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and
- (vii) The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non-navigational purposes.
- (e) Construction of a minor source or modification of a minor source of air emissions as defined in 15A NCAC 2D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.
- (f) Construction relating to the reclamation of underground storage tanks and restoration of groundwater quality.
- (g) The construction, repair or removal of dams less than 25 feet in height and having less than 50 acre-feet of effective storage capacity.
- (h) Any new construction for a building which involves all of the following;
 - (i) A footprint of less than 10,000 square feet;
 - (ii) A location that is not a National Register Archaeological site; and
 - (iii) The building's purpose is not for storage of hazardous waste.
 - (i) Demolition of or additions, rehabilitation or renovations to a structure not listed in the National Register of Historic places or less than 50 years of age.
 - (j) Routine grounds construction and landscaping of sidewalks, trails, walls, gates and related facilities, including outdoor exhibits.
 - (k) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.
 - (l) Construction or remodeling of swimming pools.
 - (m) Construction or the expansion of a new two-lane road in accordance with accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0409 MANAGEMENT ACTIVITIES

Management activities do not require the filing of environmental documents. These activities include but are not limited to the following:

- (1) Replenishment of shellfish beds through the placement of seed oysters, seed clams or shellfish cultch on suitable marine or estuarine habitats.
- (2) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- (3) Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources Commission.
- (4) Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate DENR agency species management plans, watershed management plans, or other state agency approved resource management plans.

PROPOSED RULES

- (5) Reintroduction of native endangered or threatened species in accordance with state or federal guidelines or recovery plans.
- (6) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, or forestry management plans.
- (7) Forest products harvest in accordance with the United States Forest Service or the N.C. Division of Forest Resources forest products management plans.
- (8) Reforestation of woodlands in accordance with the United States Forest Service or the N.C. Division of Forest Resources woodlands management plans.
- (9) Use of forestry best management practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as 15A NCAC 11.
- (10) Control of forest or agricultural insects and disease outbreaks, by lawful application of labeled pesticides and herbicides by licensed applicators, on areas of no more than 100 acres.
- (11) Control of species composition on managed forestlands as prescribed by approved forest management plans by the lawful application of herbicides by licensed applicators.
- (12) Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful application of labeled herbicides by licensed applicators, on areas of no more than two acres or 25 percent of surface area, whichever is less, except in Primary Nursery Areas designated by the Marine Fisheries Commission, Inland Primary Nursery Areas designated by the Wildlife Resources Commission, and Anadromous Fish Spawning Areas designated by the Marine Fisheries Commission or the Wildlife Resources Commission.
- (13) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as set out at 1 NCAC 25 .0211.
- (14) Placement in the active surf zone of up to 100,000 cubic yards of material dredged during state-sponsored maintenance of navigation channels. This material must have amounts of coarse material (3/4 inch sieve) comparable to that of the existing surf zone substrate, must not exceed 5% fine gravel (#4 sieve), and must not exceed 20% fine-grained particles (#200 sieve). The dredging must occur during time periods acceptable to the NC Division of Marine Fisheries.
- (15) Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans.
- (16) Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose of suppressing wildland (brush, grass, or woodland) fires and prescribed burning.
- (17) Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wildland (brush, grass, or woodland) fires.
- (18) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less, and riparian and wetland areas will not be permanently effected.
- (19) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, downstream water quality and aquatic weed control.
- (20) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.
- (21) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.
- (22) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits.
- (23) Acquisition or acceptance of real property to be managed in accordance with plans for which environmental documents have been approved.
- (24) Care of all trees, plants, and groundcovers on public lands.
- (25) Care, including medical treatment, of all animals maintained for public display.
- (26) Activities authorized for control of mosquitoes such as the following:
 - (a) Mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines reviewed through the

- (b) Intergovernmental Review process as set out at 1 NCAC 25 .0211;
- (c) Mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the Intergovernmental Review process as set out at 1 NCAC 25 .0211;
- (d) Lawful application of chemicals approved for mosquito control by the United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and
- (e) Lawful use of established species to control mosquitoes.

- (f) directly related to approved navigation projects;
- (g) A large scale beach nourishment or spoil deposition project. A project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;
- (h) The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any Departmentally-approved best management practices developed for such activities;
- (i) The construction over state owned submerged lands or private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and
- (j) The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non-navigational purposes; and
- (k) Construction of piers and boat docks on all State Lakes when conducted in accordance with 15A NCAC 12C .0300.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0410 PRIVATE USE OF PUBLIC LANDS

Activities related to the private use of public lands, when conducted in accordance with permit requirements, do not require the filing of environmental documents. These activities include but are not limited to the following:

- (1) Use of pound nets;
- (2) Shellfish relaying and transplanting;
- (3) Harvest of shellfish during closed season.
- (4) Special fisheries management activities under 15A NCAC 03I .0012;
- (5) Aquaculture operations within coastal waters;
- (6) Scientific collecting within coastal waters;
- (7) Introduction and transfer of marine and estuarine organisms;
- (8) Development requiring a Coastal Area Management Act (CAMA) and/or a State Dredge and Fill Law permit that does not involve:
 - (a) Construction of a new marinas, or a 25% or greater expansion in the number of slips at existing and operating marinas;
 - (b) Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these rules;
 - (c) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0411 REMEDIATION ACTIVITIES

Activities that seek to clean up, remove, remediate, abate, contain or otherwise protect public health or the environment from the effect of contamination released to the environment do not require the filing of environmental documentation.

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

SECTION .0500 - MINIMUM CRITERIA

15A NCAC 01C .0501 PURPOSE

Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10.

15A NCAC 01C .0502 MAJOR ACTIVITIES

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 143B-10.

15A NCAC 01C .0503 EXCEPTIONS TO MINIMUM CRITERIA

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0504 NON-MAJOR ACTIVITY

Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

15A NCAC 01C .0505 NON-MAJOR HURRICANE RELIEF ACTIVITY

Authority G.S. 113A-4; 113A-6; 113A-11; 143B-10; S.L. Ex. Session 1999-463, Part IV, c.463, s. 4.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0221. Notice of Rule-making Proceedings was published in the Register on January 15, 2002.

Proposed Effective Date: *May 1, 2003*

Public Hearing:

Date: *September 26, 2002*

Time: *1:00 p.m.*

Location: *NC Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC*

Reason for Proposed Action: *Describes general activities for which a license is required and expectations to this Rule.*

Comment Procedures: *Comments regarding this action should be submitted to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129. Comments must be received in the Board of Nursing Office by September 26, 2002.*

Fiscal Impact

- State**
- Local**
- Substantive (>\$5,000,000)**
- None**

SECTION .0200 - LICENSURE

21 NCAC 36 .0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing as defined in 21 NCAC 36 .0401 and .0405. Tasks may be delegated to an unlicensed person which:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;

- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a duly licensed nurse. The restrictions, however, do not apply to care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(c) It shall be considered the practice of nursing for which a license is required to implement any treatment and pharmaceutical regimen which is likely to produce side or toxic effects, allergic reactions, or other unusual effects or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen.

- (1) The nurse who assumes responsibility for implementing a treatment and pharmaceutical regimen shall be accountable for:
 - (A) recognizing side effects;
 - (B) recognizing toxic effects;
 - (C) recognizing allergic reactions;
 - (D) recognizing immediate desired effects;
 - (E) recognizing unusual and unexpected effects;
 - (F) recognizing changes in client's condition that contraindicates continued administration of the medication;
 - (G) anticipating those effects which may rapidly endanger a client's life or well-being; and
 - (H) making judgments and decisions concerning actions to take in the event such untoward effects occur.
- (2) Exceptions to .0221(c)(1) are:
 - (A) persons who hold statutory authority to administer medications;
 - (B) clients themselves, their families or significant others, or caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required;
 - (C) administration of oral nutritional supplements;
 - (D) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present shall be carried out by a person licensed to make such assessments; and
 - (E) administration of commonly used cleansing enema solutions or suppositories with local effects only.

PROPOSED RULES

Authority G.S. 90-171.23(b); 90-171.43; 90-171.83.

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. Elkins II

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---------------------------------------------------------------------------------------|--------------------|------------|-------------------------|---------------------------------------------|
| <u>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry | 01 ABC 1325 | Chess | 05/21/02 | |
| Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm. | 01 ABC 1396 | Wade | 06/26/02 | |
| NC ABC Commission v. Headlights, Inc. T/A Headlights | 01 ABC 1473 | Wade | 06/28/02 | |
| <u>CRIME CONTROL AND PUBLIC SAFETY</u> | | | | |
| Hattie Holt v. NC Crime Victims Compensation Commission | 00 CPS 1067 | Conner | 05/30/02 | |
| Linda Hawley v. NC Crime Victims Compensation Commission | 02 CPS 0121 | Conner | 06/14/02 | |
| <u>HEALTH AND HUMAN SERVICES</u> | | | | |
| James Bell v. NC DHHS, Div. of Facility Services | 01 DHR 2340 | Elkins | 06/27/02 | |
| Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center | 01 DHR 2352 | Conner | 06/21/02 | |
| Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center | 02 DHR 0083 | Chess | 06/07/02 | |
| Birgit James v. NC Dept. of Health & Human Services | 02 DHR 0255 | Connor | 07/01/02 | |
| Geraldine Rountree Cooper v. DHHS, Div. of Facility Services | 02 DHR 0267 | Elkins | 07/15/02 | |
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| Isa Spaine v. NC Department of Health & Human Services | 02 DHR 0403 | Chess | 06/24/02 | |
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| San Antoni Equipment Co. v. NC Department of Administration | 02 DOA 0430 | Chess | 06/26/02 | |
| <u>JUSTICE</u> | | | | |
| <i>Alarm Systems Licensing Board</i> | | | | |
| Seth Paul Barham v. Alarm System Licensing Board | 02 DOJ 0552 | Gray | 06/12/02 | |
| Christopher Michael McVicker v. Alarm Systems Licensing Board | 02 DOJ 0731 | Gray | 06/07/02 | |
| <i>Private Protective Services Board</i> | | | | |
| Anthony Davon Webster v. Private Protective Services Board | 01 DOJ 1857 | Gray | 06/07/02 | |
| Benita Lee Luckey v. Private Protective Services Board | 02 DOJ 0530 | Elkins | 07/12/02 | |
| Orlando Carmichael Wall v. Private Protective Services Board | 02 DOJ 0729 | Gray | 06/18/02 | |
| Randall G. Bryson v. Private Protective Services Board | 02 DOJ 0730 | Gray | 06/07/02 | |
| Barry Snadon, Sr. v. Private Protective Services Board | 02 DOJ 0907 | Elkins | 07/12/02 | |
| <i>Sheriffs' Education & Training Standards Commission</i> | | | | |
| Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0004 | Mann | 06/28/02 | |
| Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm. | 02 DOJ 0057 | Gray | 07/15/02 | |
| Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0089 | Conner | 06/25/02 | |
| Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0304 | Reilly | 07/17/02 | |
| John R. Tucker v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0632 | Morrison | 06/26/02 | |
| Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm. | 02 DOJ 1420 | Wade | 06/27/02 | |
| Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm. | 02 DOJ 0171 | Mann | 06/04/02 | |
| <u>ENVIRONMENT AND NATURAL RESOURCES</u> | | | | |
| Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality | 01 EHR 0976 | Chess | 07/16/02 | |
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CONTESTED CASE DECISIONS

| | | | | | |
|-------------------------------------------------------------------------------------------------|----------------|--------------------------|----------|-------------------|-----|
| Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management | 02 EHR 0244 | Gray | 06/05/02 | | |
| J.L. Hope & wife, Ruth B. Hope v. NC DENR | 02 EHR 0395 | Mann | 06/10/02 | | |
| Linda L. Hamrick v. NC DENR | 02 EHR 0600 | Conner | 07/23/02 | | |
| County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality | 02 EHR 0690 | Chess | 06/17/02 | | |
| Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm. | 02 EHR 0777 | Wade | 07/11/02 | | |
| <u>ENGINEERS AND LAND SURVEYORS</u> | | | | | |
| NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner | 01 ELS 0078 | Lewis | 06/05/02 | | |
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| Laura C. Seamons v. NC DHS/Murdoch Center | 00 OSP 0522 | Wade | 06/28/02 | | |
| James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist. | 00 OSP 0722 | Wade | 06/28/02 | | |
| Andre Foster v. Winston-Salem State University | | 00 OSP 1216 ¹ | Mann | 06/03/0217:01 NCR | 93 |
| Berry Eugene Porter v. NC Department of Transportation | 01 OSP 0019 | Gray | 07/03/02 | | |
| Linda R. Walker v. Craven County Health Department | 01 OSP 0309 | Gray | 07/12/02 | | |
| J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services | 01 OSP 0734 | Morgan | 06/06/02 | | |
| Dennis Covington v. NC Ag. & Tech. State University | 01 OSP 1045 | Wade | 06/28/02 | | |
| Reginald Ross v. NC Department of Correction | 01 OSP 1122/23 | Wade | 06/28/02 | | |
| Andre Foster v. Winston-Salem State University | | 01 OSP 1388 | Mann | 06/03/0217:01 NCR | 93 |
| Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2 | 01 OSP 1405 | Wade | 06/28/02 | | |
| Wade Elms v. NC Department of Correction | 01 OSP 1594 | Gray | 06/27/02 | | |
| Wayne G. Whisemant v. Foothills Area Authority | 01 OSP 1612 | Elkins | 05/30/02 | 17:01 NCR | 103 |
| Gladys Faye Walden v. NC Department of Correction | 01 OSP 1741 | Mann | 07/12/02 | | |
| Joy Reep Shuford v. NC Department of Correction | 01 OSP 2179 | Overby | 06/25/02 | | |
| Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section) | 01 OSP 2241 | Mann | 06/05/02 | | |
| Bryan Aaron Yonish v. UNC at Greensboro | 01 OSP 2274 | Conner | 06/25/02 | | |
| Theresa Truner v. Albemarle Mental Health Center | 01 OSP 2331 | Gray | 07/11/02 | | |
| Mark Wayne Faircloth v. NC Forest Service | 01 OSP 2374 | Conner | 06/20/02 | | |
| Lashaundon Smith v. Neuse Correctional Institution | 02 OSP 0064 | Elkins | 07/03/02 | 17:03 NCR | 329 |
| Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways" | 02 OSP 0140 | Conner | 06/06/02 | | |
| Mark P. Gibbons v. NC Department of Transportation | 02 OSP 0147 | Conner | 06/14/02 | | |
| Cathy L. White v. NC Department of Corrections | 02 OSP 0246 | Elkins | 05/31/02 | | |
| Doris J. Berry v. NC Department of Transportation | 02 OSP 0247 | Elkins | 06/17/02 | | |
| William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm | 02 OSP 0270 | Elkins | 06/25/02 | | |
| Darrell Glenn Fender v. Avery/Mitchell Correctional Institution | 02 OSP 0290 | Mann | 06/14/02 | | |
| Alber L. Scott v. UNC General Administration | 02 OSP 0336 | Elkins | 06/10/02 | | |
| Michael Forreect Peeler v. NC Department of Transportation | 02 OSP 0478 | Conner | 07/01/02 | | |
| Shirley J. Davis v. NC Department of Correction | 02 OSP 0486 | Elkins | 07/11/02 | | |
| Alber L. Scott v. UNC General Administration | 02 OSP 0498 | Elkins | 06/10/02 | | |
| Michelle G. Minstrell v. NC State University | 02 OSP 0568 | Chess | 06/26/02 | | |
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| <u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u> | | | | | |
| NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden | 00 SAP 1573 | Chess | 05/10/02 | | |

¹ Combined Cases