

NORTH CAROLINA

IN THIS ISSUE



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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
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
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6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
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NORTH CAROLINA REGISTER
 Publication Schedule for January 2003 – December 2003

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	
17:13	01/02/03	12/06/02	03/03/03	01/17/03	02/03/03	02/20/03	05/00/04	03/03/03	03/20/03	05/00/04	09/29/03
17:14	01/15/03	12/19/02	03/17/03	01/30/03	02/14/03	02/20/03	05/00/04	03/17/03	03/20/03	05/00/04	10/12/03
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17:16	02/17/03	01/27/03	05/01/03	03/04/03	03/19/03	03/20/03	05/00/04	04/21/03	04/21/03	05/00/04	11/14/03
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17:18	03/17/03	02/24/03	06/02/03	04/01/03	04/16/03	04/21/03	05/00/04	05/16/03	05/20/03	05/00/04	12/12/03
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18:12	12/15/03	11/20/03	02/16/04	12/30/03	01/14/04	01/20/04	05/00/04	02/13/04	02/20/04	05/00/04	09/10/04

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

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

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

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

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

EXECUTIVE ORDERS

**EXECUTIVE ORDER NO. 45
WAIVER OF THE RULES AND
REGULATIONS LIMITING THE
HOURS OF OPERATORS OF CERTAIN
COMMERCIAL VEHICLES AND
THE WEIGHT RESTRICTIONS
ON CERTAIN VEHICLES**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes the Governor, with the concurrence of the Council of State, to procure, transport, store, maintain or distribute materials; and

WHEREAS, the rapid restoration of electrical power is an essential need of the public during the winter and any interruptions threatens the public welfare; and

WHEREAS, the Federal Motor Carrier Safety regulations, 49 CFR 350, limits the hours operators of commercial vehicles may drive; and

WHEREAS, 49 CFR 395 allows the Governor to suspend the rules and regulations limiting the hours operators of commercial vehicles may drive for the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less, if the Governor declares a state of emergency.

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

Section 1. The regulations under 49 C.F.R. 395 (Federal Motor Carrier Safety Regulations) as it relates to driver's hours of service are waived for 30 days or the duration of the emergency, whichever is less.

Section 2. For a period of 30 days or the duration of the emergency, whichever is less, vehicles of the type used in power restoration shall be exempt from going through North Carolina weigh station as prescribed in N.C.G.S. 21-118.1.

Section 3. The State Highway Patrol to waive size and weight restrictions and penalties therefore arising under N.C.G.S. 20-88 and N.C.G.S. 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. 20.86.1, 20-382, 105-

449.47,105-449.49 for vehicles transporting equipment and supplies to restore utilities in the State of North Carolina.

Section 4. Notwithstanding the waivers set forth above, size and weight restrictions and penalties shall not be waived under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.
- (B) When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.
- (C) When vehicle/vehicle combination exceeds 12 feet in width and a total overall combination vehicle length of 65 feet from bumper to bumper.

Section 5. Vehicles referenced under Section 3 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (B) The registration requirement under N.C.G.S. 20-382 concerning intrastate and interstate for-hire authority; however, vehicles shall maintain the required limits of insurance.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Proclamation.

Section 6. The size and weight exemptions for the vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts in the State of North Carolina.

Section 8. The State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, 3, 4, 6, and 7 in a manner, which would best accomplish the implementation of these waivers without endangering motorists in North Carolina.

Section 9. This Executive Order shall become effective immediately.

EXECUTIVE ORDERS

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the great Seal of the State of North Carolina at the Capital in Raleigh this sixteenth day of February in the year of our Lord two thousand and three.

ELAINE F. MARSHALL
SECRETARY OF STATE

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 47
WAIVER OF THE RULES AND REGULATIONS
LIMITING THE HOURS OF OPERATORS
OF CERTAIN COMMERCIAL VEHICLES AND
THE WEIGHT RESTRICTIONS ON CERTAIN
VEHICLES**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes the Governor, with the concurrence of the Council of State, to procure, transport, store, maintain or distribute materials; and

WHEREAS, the rapid restoration of electrical power is an essential need of the public during the winter and any interruptions threatens the public welfare; and

WHEREAS, the Federal Motor Carrier Safety regulations, 49 CFR 350, limits the hours operators of commercial vehicles may drive; and

WHEREAS, 49 CFR 395 allows the Governor to suspend the rules and regulations limiting the hours operators of commercial vehicles may drive for the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less, if the Governor declares a state of emergency.

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

Section 1. The regulations under 49 C.F.R. 395 (Federal Motor Carrier Safety Regulations) as it relates to driver's hours of service are waived for 30 days or the duration of the emergency, whichever is less.

Section 2. For a period of 30 days or the duration of the emergency, whichever is less, vehicles of the type used in power restoration shall be exempt from going through North Carolina weigh station as prescribed in N.C.G.S. §21-118.1.

Section 3. The State Highway Patrol to waive size and weight restrictions and penalties therefore arising under N.C.G.S. §20-

**EXECUTIVE ORDER NO. 46
IMMEDIATE ELIGIBILITY FOR
UNEMPLOYMENT BENEFITS IN WAKE OF
MAJOR INDUSTRIAL DISASTER IN LENOIR COUNTY**

WHEREAS, on January 29, 2003, a major industrial disaster occurred in Lenoir County at the facility of West Pharmaceutical Services that substantially destroyed all of the physical facilities of the West Pharmaceutical Services plant; and,

WHEREAS, employment compensation for the employees of West Pharmaceutical Services will end on February 28, 2003; and,

WHEREAS, I have created a task force to coordinate state assistance to West Pharmaceutical Services and its employees,

NOW THEREFORE, as part of the assistance effort, I hereby direct and authorize the Employment Security Commission to waive the "waiting week" provided for in N.C.G.S. § 96-13(c), for the receipt of unemployment insurance benefits for employees affected by this major industrial disaster, and hereby direct and authorize the Chairman of the Employment Security Commission to implement regulations prescribing the procedure for the waiver of the waiting week in accordance with N.C.G.S. § 96-4(b).

This Executive Order is intended to, and does, satisfy the third condition set forth in the amendments to N.C.G.S. § 96-13, approved by the General Assembly in February 2003 in the wake of the West Pharmaceutical Services disaster.

This Executive Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 27th day of February 2003.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

EXECUTIVE ORDERS

88 and N.C.G.S. §20-118, and certain registration requirements and penalties therefore arising under N.C.G.S §§20.86.1, 20-382, 105-449.47,105-449.49, for vehicles transporting equipment and supplies to restore utilities in the State of North Carolina.

Section 4. Notwithstanding the waivers set forth above, size and weight restrictions and penalties shall not be waived under the following conditions

- (A) When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.
- (B) When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.
- (C) When vehicle/vehicle combination exceeds 12 feet in width and a total overall combination vehicle length of 65 feet from bumper to bumper.

Section 5. Vehicles referenced under Section 3 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.

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

Section 6. The size and weight exemptions for the vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. §20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. §136-72.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts in the State of North Carolina.

Section 8. The State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, 3, 4, 6, and 7 in a manner, which would best accomplish the implementation of these waivers without endangering motorists in North Carolina.

Section 9. This Executive Order shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the great Seal of the State of North Carolina at the Capital in Raleigh this twenty-seventh day of February in the year of our Lord two thousand and three.

Michael F. Easley
Governor

Elaine F. Marshall
Secretary of State

ATTEST:

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

U.S. Department of Justice

Civil Rights Division

JDR:GS:ALF:par
DJ 166-012-3
2002-5321

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

January 22, 2003

T.C. Morphis, Jr., Esq.
The Brough Law Firm
1829 E. Franklin St., Suite 800-A
Chapel Hill, NC 27514

Dear Mr. Morphis:

This refers to two annexations (Ordinance Nos. 02-19 and 02-20 and their designation to Ward 4 of the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on December 23, 2002 and January 6, 2003.

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

Sincerely,

Joseph D. Rich
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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919/733-3055.

CHAPTER 41 – CHILDREN'S SERVICES

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

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

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

Citation to Existing Rule Affected by this Rule-making: 10A NCAC 39-47 - Other rules may be proposed in the course of the rule-making process.

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

Authority for the Rule-making: G.S. 130A-5; 130A-27; 130A-88; 130A-124; 130A-131; 130A-134; 130A-137; 130A-366

Statement of the Subject Matter: The Social Services Commission intends to amend or adopt rules in 10 NCAC 41F, 41N and 41S that govern the licensure of family foster homes, residential child care facilities and child-placing agencies in order to be in compliance with Session Law 2002-164 (SB 163). Rules will be amended or adopted to ensure that children who are living away from home in group homes or therapeutic homes are tracked, that facilities/agencies report data on the quality of care and children needing or receiving mental health treatment services to area mental health programs and that agencies or individuals that have had licenses revoked or received violations are not allowed to start a new service for 60 months. Rule changes or additions will ensure that the provisions in Session Law 2002-164 (SB163) are being implemented. Implementation of these provisions will ensure that children in out of home care are better protected.

Statement of the Subject Matter: Operations of the various public health programs under the legal jurisdiction of the Division of Public Health, including those rules to be approved by the Commission for Health Services. The titles of the rules include Adult Health, Dental Health, Epidemiology, Laboratory Services, Personal Health, Postmortem Medicolegal Examinations, Public Health Programs, Local Standards for Health Departments, and Information Services.

Reason for Proposed Action: Session Law 2002-164 (SB 163) is very broad in scope affecting all agencies that serve children in the state. Session Law 2002-164 (SB163) requires that the Departments of Health and Human Services, Public Instruction and Juvenile Justice and Delinquency Prevention work together to 1) track all children placed away from their homes; 2) monitor the quality of care of such placements; 3) report these findings to the General Assembly; 4) prohibit persons or agencies/facilities from starting a new service if a license violation or revocation has occurred within 60 months; and 5) ensure that special education funding follows children with special needs who are placed outside of their local school jurisdiction. In order to ensure that the Division of Social Services fully implements the provision of Session Law 2002-164 (SB163) certain APA rules in Chapters 41F, 10 NCAC 41N and 10 NCAC 41S will need to be amended or new rules adopted.

Reason for Proposed Action: Changes to these rules will enable the Division of Public Health to operate the Department of Health and Human Services' public health programs in accordance with evolving medical and legal situations.

Comment Procedures: Comments from the public shall be directed to Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168 and email chris.hoke@ncmail.net.

Notice of Rule-making Proceedings is hereby given by the Department of Health and Human Services- Division of MH/DD/SAS 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.

Authority for the Rule-making: G.S. 122C-191; 143B-139.1; 150B-21.1

Comment Procedures: Anyone wishing to comment should contact Vandella Bradley, APA Coordinator, Social Services

Statement of the Subject Matter: Rules applicable to providers of publicly funded mental health, developmental disabilities and substance abuse services.

Reason for Proposed Action: Senate Bill 163 (Session Law 2002-164) grants the Secretary of the Department of Health and Human Services rulemaking authority governing: (1) the placement of individuals in licensable facilities located outside the individual's community and ability of the providers to return the individual to the individual's community as soon as possible without detriment to the individual or the community; (2) the monitoring of mental health, developmental disability and substance abuse services; and (3) the communication procedures between the area authority or county program, the local department of social services, the local education authority, and the criminal justice agency, if involved with the individual outside of the individual's community and the transfer of the individual's records in accordance with law.

Comment Procedures: Comments from the public shall be directed to Cindy Kornegay, 3001 Mail Service Center, Raleigh, NC 27699-3001, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net.

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10A .1001 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-140

Statement of the Subject Matter: Warning tickets

Reason for Proposed Action: Steadily increasing traffic on our waterways has resulted in a higher number of accidents on the water. The proposed additions to the list of those safety violations for which a warning ticket may be issued are intended to help reduce accidents.

Comment Procedures: Comments from the public shall be directed to Kenneth Everhart, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 733-7191, and email kenneth.everhart@ncwildlife.org.

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

Notice of Rule-making Proceedings is hereby given by the North Carolina Department of Labor 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: 13 NCAC 15 .0704 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-110.5

Statement of the Subject Matter: Amusement Device Inspection Fee Schedule

Reason for Proposed Action: The North Carolina Department of Labor proposes to amend this Rule in order to reduce the amount of the amusement device inspection fee from \$250 per device to \$250 per inspection plus the amusement device inspection fee as provided in 13 NCAC 15 .0703.

Comment Procedures: Comment from the public shall be directed to Lynette D. Johnson, Assistant Rule-making Coordinator, 4 West Edenton St., Raleigh, NC 27601, phone (919) 733-0368, fax (919) 733-4235, and email ljohnson@mail.dol.state.nc.us.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10F - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-3; 75A-15

Statement of the Subject Matter: No Wake Zones under consideration for Chowan, Burke, Davidson, Pender, & Graham counties.

Reason for Proposed Action: Rulemaking for No-wake Zones is pursued in the interest of public safety at the request of the local governments with territorial jurisdiction over the proposed areas.

Comment Procedures: The record will be open for receipt of written comments. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

CHAPTER 18 - ENVIRONMENTAL HEALTH

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

Citation to Existing Rule Affected by this Rule-making: 15A-NCAC 18A .1700 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-225; 130A-5; 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257

Statement of the Subject Matter: Revision of .1700 rules and regulations related to business of this office.

Reason for Proposed Action: Environmental Health Services conducts appraisals of the rules and regulations related to the business of this office continuously. Should amendments to current rule be necessary, a committee will be formed and public notification will be published for comments and public hearings.

Comment Procedures: Comments from the public shall be directed to Bart Campbell, Field Supervisor, DENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-7148, fax (919) 715-4739, and email bart.campbell@ncmail.net.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Editor's Note: *This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.*

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10B .0202*

Effective Date for Temporary Rule: *September 1, 2003*

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

Authority for the rulemaking: *G.S. 113-134; 113-291.2; 113-291.7; 113-305*

Reason for Proposed Action for Temporary Rule: *A public hearing will be scheduled prior to the effective date. The need for approval from OAH stems from the fact that the publication deadline for the Digest, which is the hunters' chief resource for information on seasons and bag limits, precedes the time for permanent rules adoption.*

Public Hearing:

Date: *April 22, 2003*

Time: *10:00 a.m.*

Location: *Room 332, Archdale Building, 512 N. Salisbury St., Raleigh, NC*

Proposed Effective Date for Permanent Rule: *August 1, 2004*

Reason for Proposed Action: *This action is to adjust the bear hunting season.*

Comment Procedures: *Comments from the public shall be directed to Brad Gunn, 1701 Mail Service Center, Raleigh, NC 27699-1701. Comments shall be received through May 13, 2003.*

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 – HUNTING

15A NCAC 10B .0202 BEAR

(a) Open Seasons for bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 113 from the Virginia State line to the intersection with NC 18 and NC 18 to the South Carolina State line.
- (2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Hertford County and Martin counties; and in the following parts of counties:
Halifax: that part east of US 301.
Northampton: that part east of US 301.
- (3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender counties; and in the following parts of counties:
Cumberland: that part south of NC 24 and east of the Cape Fear River.
Sampson: that part south of NC 24.
- (4) Second Monday in December to January 1 in Brunswick and Columbus counties.
- (5) Second Monday in November to the following Saturday and the ~~third Monday after Thanksgiving to the fifth Saturday after Thanksgiving~~ second Monday prior to the first Saturday before Christmas through the first Saturday before Christmas in all of Beaufort, Bertie, Camden, Craven, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington counties, and in the following parts of counties:
Chowan: that part north of US 17.
Currituck: except Knotts Island and the Outer Banks.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

- Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary
- Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary
- Beaufort and Pamlico counties--Gum Swamp bear sanctuary
- Bladen County--Suggs Mill Pond bear sanctuary
- Brunswick County--Green Swamp bear sanctuary
- Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary
- Carteret, Craven and Jones counties--Croatan bear sanctuary
- Clay County--Fires Creek bear sanctuary

TEMPORARY RULES

Columbus County--Columbus County bear sanctuary	Wilkes County--Thurmond Chatham bear sanctuary
Currituck County--North River bear sanctuary	(c) Bag limits shall be:
Dare County--Bombing Range bear sanctuary	(1) daily, one;
Haywood County--Harmon Den bear sanctuary	(2) possession, one;
Haywood County--Sherwood bear sanctuary	(3) season, one.
Hyde County--Gull Rock bear sanctuary	(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.
Hyde County--Pungo River bear sanctuary	
Jackson County--Pantherdown-Bonas Defeat bear sanctuary	<i>History Note: Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305;</i>
Macon County--Standing Indian bear sanctuary	<i>Eff. February 1, 1976;</i>
Macon County--Wayah bear sanctuary	<i>Amended Eff. July 1, 1998; September 1, 1995; July 1, 1995; July 1, 1994; April 1, 1992;</i>
Madison County--Rich Mountain bear sanctuary	<i>Temporary Amendment Eff. July 1, 1999;</i>
McDowell and Yancey counties--Mt. Mitchell bear sanctuary	<i>Amended Eff. July 1, 2000;</i>
Mitchell and Yancey counties--Flat Top bear sanctuary	<i>Temporary Amendment Eff. July 1, 2002;</i>
	<i>Amended Eff. August 1, 2002;</i>
	<i><u>Temporary Amendment Eff. September 1, 2003.</u></i>

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting February 20, 2003, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2002 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION

**REGISTER CITATION TO THE
NOTICE OF TEXT**

02	NCAC	22A	.0101	not required G.S. 150B-21.5(b)(1)
02	NCAC	22A	.0103-.0104	not required G.S. 150B-21.5(b)(1)
02	NCAC	22B	.0101-.0102	not required G.S. 150B-21.5(b)(1)
10	NCAC	26H	.0215*	17:03 NCR
10	NCAC	26H	.0304*	17:03 NCR
10	NCAC	26H	.0506*	17:03 NCR
11	NCAC	11F	.0205*	17:10 NCR
11	NCAC	11F	.0207*	17:10 NCR
15A	NCAC	10F	.0318*	16:24 NCR
15A	NCAC	21D	.0202*	17:07 NCR
15A	NCAC	21D	.0410*	17:07 NCR
15A	NCAC	21D	.0501*	17:07 NCR
15A	NCAC	21D	.0702-.0704*	17:07 NCR
15A	NCAC	21D	.0706*	17:07 NCR
20	NCAC	10	.0102*	17:05 NCR
20	NCAC	10	.0201-.0210*	17:05 NCR
20	NCAC	10	.0301-.0302*	17:05 NCR
21	NCAC	04B	.0102	not required G.S. 150B-21.5(a)(4)
25	NCAC	01B	.0107	17:07 NCR
25	NCAC	01D	.1951	17:03 NCR
25	NCAC	01E	.0809*	17:03 NCR
25	NCAC	01E	.1305*	17:03 NCR
25	NCAC	01E	.1410*	17:07 NCR
25	NCAC	01E	.1607*	17:03 NCR

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

*History Note: Authority G.S. 137-32.1;
Eff. February 1, 1976;
Amended Eff. August 1, 1988;
Repealed Eff. March 1, 2003.*

02 NCAC 22A .0101 PURPOSE

*History Note: Authority G.S. 137-31;
Eff. February 1, 1976;
Repealed Eff. March 1, 2003.*

**02 NCAC 22A .0103 OFFICERS
02 NCAC 22A .0104 GUIDELINES FOR FUND
EXPENDITURES**

*History Note: Authority G.S. 137-32.1(2); 137-42; 137-43;
Eff. February 1, 1976;
Repealed Eff. March 1, 2003.*

**02 NCAC 22B .0101 ANNUAL MEETINGS
02 NCAC 22B .0102 SPECIAL MEETINGS**

**TITLE 10 - DEPARTMENT OF HEALTH
& HUMAN SERVICES**

10 NCAC 26H .0215 SPECIAL SITUATION

(a) In order to be eligible for inpatient hospital reimbursement under Section .0200 of this Subchapter, a patient must be admitted as an inpatient and stay past midnight in an inpatient bed. The only exceptions to this requirement are those admitted inpatients who die or are transferred to another acute care hospital on the day of admission. Hospital admissions prior to 72 hours after a previous inpatient hospital discharge are subject to review by the Division of Medical Assistance, in order to assure proper billing. Services for patients admitted and

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discharged on the same day and who are discharged to home or to a non-acute care facility must be billed as outpatient services. In addition patients who are admitted to observations status do not qualify as inpatients, even when they stay past midnight. Patients in observation status for more than 30 hours must either be discharged or converted to inpatient status.

(b) Outpatient services provided by a hospital to patients within the 24 hour period prior to an inpatient admission in the same hospital that are related to the inpatient admission shall be bundled with the inpatient billing.

(c) When a patient is transferred between hospitals, the discharging hospital shall receive a pro-rated payment equal to the normal DRG payment multiplied by the patient's actual length of stay divided by the geometric mean length of stay for the DRG. When the patient's actual length of stay equals or exceeds the geometric mean length of stay for the DRG, the transferring hospital receives full DRG payment. Transfers are eligible for cost outlier payments. The final discharging hospital shall receive the full DRG payment.

(d) For discharges occurring on or after October 1, 2001, a discharge of a hospital inpatient is considered to be a transfer under Paragraph (c) of this Rule when the patient's discharge is assigned to one of the following qualifying diagnosis-related groups, DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483 and the discharge is made under any of the following circumstances:

- (1) To a hospital or distinct part hospital unit excluded from the DRG reimbursement system;
- (2) To a skilled nursing facility; or
- (3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within three days after the date of discharge.

(e) Days for authorized skilled nursing for intermediate care level for service rendered in an acute care hospital shall be reimbursed at a rate equal to the average rate for all such Medicaid days based on the rates in effect for the long term care plan year beginning each October 1. Days for lower than acute level of care for ventilator dependent patients in swing-bed hospitals or that have been down-graded through the utilization review process shall be paid for up to 180 days at a lower level ventilator-dependent rate if the hospital is unable to place the patient in a lower level facility. An extension shall be granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance of the patient. A single all inclusive prospective per diem rate shall be paid, equal to the average rate paid to nursing facilities for ventilator-dependent services. The hospital must actively seek placement of the patient in an appropriate facility.

(f) The Division of Medical Assistance shall make a retrospective review of any transfers to a lower level of care prior to the expiration of the average length of stay for the applicable DRG. The Division of Medical Assistance shall adjust the DRG payment if the transfer is deemed to be inappropriate, based on the preponderance of evidence of a case by case review.

(g) In state-operated hospitals, the appropriate lower level of care rates equal to the average rate paid to state operated nursing facilities, shall be paid for skilled care and intermediate care patients awaiting placement in a nursing facility bed.

(h) For an inpatient hospital stay where the patient is Medicaid eligible for only part of the stay, the Medicaid program shall pay the DRG payment less the patient's liability or deductible, if any, as provided by 10 NCAC 50B .0406 and .0407.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447 Subpart C; Eff. February 1, 1995; Temporary Amendment Eff. December 10, 2001; Temporary Amendment Expired September 29, 2002; Amended Eff. August 1, 2004.

10 NCAC 26H .0304 RATE SETTING METHOD FOR NON-STATE FACILITIES

(a) A prospective rate shall be determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. The prospective rate may be changed due to a rate appeal under Rule .0308 of this Section or facility reclassification under Paragraph (b) of this Rule. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

- (1) Group 1 - Facilities with 32 beds or less.
- (2) Group 2 - Facilities with more than 32 beds.
- (3) Group 3 - Facilities with medically fragile clients. For rate reimbursement purposes under this Rule medically fragile clients are defined as individuals with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems that generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.
- (4) Facilities in group 1 or 2 in Subparagraph (a)(1) or (2) of this Rule shall be further classified in accordance to the level of disability of the facility's clients, as measured by the Developmental Disabilities Profile (DDP) copyrighted assessment instrument which along with the scoring instrument are hereby incorporated by reference, including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603 at a cost of twenty cents (\$.20) per page. A summary of the levels of disability is shown in the following chart:

FACILITY DDP SCORE

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Level	Low	High
1	200.00	300.00
2	125.00	199.99
3	100.00	124.99
4	75.00	99.99
5	50.00	74.99

(b) If the identified needs of the ICF-MR clients change then facilities shall be reclassified into appropriate groups as defined in Paragraph (a) of this Rule.

- (1) When a facility is reclassified, the rate shall be adjusted retroactively back to the date of the event that caused the reclassification. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical Assistance.
- (3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.
- (4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each facility is properly classified for rate setting purposes.
- (5) A provider shall file any request for facility reclassification in writing with the Division of Medical Assistance no later than 60 days subsequent to the proposed reclassification effective date.
- (6) For facilities certified prior to July 1, 1993, the facility DDP score calculated for fiscal year 1993 shall be used to establish proper classification at July 1, 1995.
- (7) For facilities certified after June 30, 1993, the most recent facility DDP score shall be used to establish proper classification.
- (8) A facility reclassification review shall use the most current facility DDP score.
- (9) A facility's DDP score shall be subject to independent validation by the Division of Medical Assistance.
- (10) A new facility that has not had a DDP survey conducted on its clients shall be categorized as a level 2 facility for rate setting purposes, pending completion of the DDP survey. Upon completion of the DDP survey, the facility shall be subject to reclassification and rates shall be adjusted retroactively back to the date of certification. Overpayments related to this

retroactive adjustment shall be paid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(c) Facility rates under this Rule shall be established at July 1, 1995, under the following:

- (1) For facilities certified prior to July 1, 1993, rates shall be derived from the 1993 cost reports.
- (2) For facilities certified during fiscal year 1993-1994, the fiscal year 1994 facility specific cost report shall be used to derive rates.
- (3) For facilities certified during fiscal year 1994-1995, the fiscal year 1995 facility specific cost report shall be used to derive rates. Rates for these facilities shall not be adjusted, except for the impact of inflation under Paragraph (k) of this Rule, until the fiscal year 1995 cost report has been reviewed. Rates for these facilities shall be adjusted retroactively back to July 1, 1995, once the fiscal year 1995 facility specific cost report has been reviewed. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (4) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 shall not have their rates established in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule. The rates for these facilities shall remain at the level approved in the rate appeal proceeding adjusted only for inflation, as reflected in Paragraph (k) of this Rule.

(d) For facilities certified after June 30, 1993, rates developed from filed cost reports for fiscal years subsequent to 1993 shall be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports shall be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment shall be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

(e) Each prospective rate developed in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule consists of the sum of two components as follows:

- (1) Indirect care rate.
- (2) Direct care rate.

(f) A uniform industry wide indirect care rate shall be established for each facility category shown under Subparagraph (a)(1), (a)(2), or (a)(3) of this Rule.

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- (1) The indirect rate for group 1 facilities shall be based on the fiftieth percentile of the following costs incurred by all group 1 facilities with six beds or less, except those related by common ownership or control to more than 40 said facilities: The sum of the cost of property ownership and use; administrative and general; and operation and maintenance of plant, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (2) The indirect rate for group 2 facilities shall be based on the fiftieth percentile of the costs noted in Subparagraph (f)(1) of this Rule incurred by the group 2 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (3) The indirect rate for group 3 facilities shall be based on the fiftieth percentile of the costs noted in Subparagraph (f)(1) of this Rule incurred by the group 3 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (4) The indirect rates established under Subparagraphs (f)(1), (f)(2), and (f)(3) of this Rule shall be reduced as determined based on industry cost analysis by an amount not to exceed four percent to account for expected operating efficiencies.
- (g) The direct care rate for facilities certified prior to July 1, 1993, shall be based on the Myers and Stauffer study performed on the 1993 base year cost reports.
- (1) The direct care rate for all facilities certified during fiscal years subsequent to fiscal year 1993 is based on the first facility specific cost report filed after certification. Based on said cost report, the direct care rate shall be equal to the sum of all allowable costs reflected in the ICF-MR cost report cost centers, as included in the ICF-MR cost report format effective July 1, 1993, except for the following indirect cost centers:
 - (A) Property Ownership and Use
 - (B) Operation and Maintenance of Plant and Housekeeping-Non-Labor
 - (C) Administrative and General
 - (2) The direct care rate shall be limited to the lesser of the actual amount incurred in the base year or the cost limit derived from the fiftieth percentile of direct care costs incurred by the related facility group in the fiscal year 1993 base year, based on the Myers and Stauffer study.
 - (3) The fiftieth percentile cost limit shall be reduced by one percent each year, for the four year period beginning July 1, 1996, in order to account for expected operating efficiencies, as determined based on industry cost analysis.
 - (4) The fiftieth percentile cost limit shall be increased each year by price level changes calculated in accordance with Paragraph (k) of this Rule.
- (h) The indirect rate shall not be subject to cost settlement.
- (1) Costs above the indirect rate shall not be paid to the provider.
 - (2) Costs savings below the indirect rate shall not be recouped from the provider.
- (i) The direct care rate shall be subject to cost settlement, based on the cost report, subject to audit, filed with the Division of Medical Assistance.
- (1) Costs above the direct rate shall not be paid to the provider.
 - (2) Cost savings below the direct rate shall be recouped from the provider.
- (j) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 may choose to cost settle under the provisions of Paragraphs (h) and (i) of this Rule, or under the following procedure:
- (1) If, during a cost reporting period, total allowable costs are less than total prospective payments, then a provider may retain one-half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. Costs in excess of a facility's total prospective payment rate are not reimbursable.
 - (2) The facilities subject to this Paragraph shall make the election on cost settlement methodology on or before the filing of the annual cost report with the Division of Medical Assistance.
 - (3) An election to follow the cost settlement procedures of Paragraphs (h) and (i) of this Rule shall be irrevocable.
 - (4) Rates established for these facilities during future rate appeal proceedings shall be subject to the cost settlement procedures of Paragraphs (h) and (i) of this Rule.
- (k) To compute each facility's current prospective rate, the direct and indirect rates established by Paragraphs (f) and (g) of this Rule shall be adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.
- (1) Price level adjustment factors shall be computed using aggregate costs in the following manners:
 - (A) Costs shall be separated into three groups:
 - (i) Labor;
 - (ii) Non-labor;
 - (iii) Fixed.
 - (B) The relative weight of each cost group shall be calculated to the

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second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total cost of the three categories.

(C) Price level adjustment factors for each cost group shall be established as follows:

(i) Labor. The percentage change for labor costs shall be based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance based upon market analysis.

(ii) Nonlabor. The percentage change for nonlabor costs shall be based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(iii) Fixed. No price level adjustment shall be made for this category.

(D) The weights computed in Part (k)(1)(B) of this Rule shall be multiplied by the rates computed in Part (k)(1)(C) of this Rule. These weighted rates shall be added to obtain the composite inflation rate to be applied to both the direct and indirect rates.

(2) If necessary, the Division of Medical Assistance shall adjust the annual inflation factor or rates in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.

(l) Effective July 1, 1995, any rate reductions resulting from this Rule shall be implemented based on the following deferral methodology:

(1) Rates shall be reduced for the excess of current rates over base year costs plus inflation.

(2) Rates shall be reduced a maximum of 50 percent of the fiscal 1996 inflation rate for the excess of actual costs over applicable cost limits. This reduction shall result in the facility receiving at a minimum 50 percent of the 1996 inflation rate. Any excess reduction shall be carried forward to future years.

(3) Total reduction in future years related to the excess reduction carried forward from Subparagraph (l)(2) of this Rule, shall not exceed the annual rate of inflation. This reduction shall result in the facility receiving at a minimum the rate established in Paragraph (l)(2) of this Rule. Any excess reduction shall be carried forward to future years, until the established rate equals that generated by Paragraphs (f), (g), and (k) of this Rule.

(4) Rates calculated based on Subparagraphs (l)(2) and (3) of this Rule shall be cost settled based on the provisions of Subparagraph (j)(1) of this Rule until the fiscal year that the facility receives full price level increase under Paragraph (k) of this Rule.

(A) A provider may make an irrevocable election to cost settle under the provisions of Paragraphs (h) and (i) of this Rule during the deferral period.

(B) Once the rates calculated based on Subparagraphs (l)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k) of this Rule, then said fiscal year's rates shall be cost settled based on Paragraphs (h) and (i) of this Rule.

(C) Chain providers may file combined cost reports, for cost settlement purposes, for facilities that use the same cost settlement methodology and have the same uniform rate.

(D) A provider may elect to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said election shall be made each year, 30 days prior to the cost report due date.

(m) The initial rate for facilities that have been awarded a Certificate of Need is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application, adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (k) of this Rule, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year an audit of the first year of normal operation is completed.

(1) In the event of a change in ownership, the new owner shall receive no more than the rate of payment assigned to the previous owner.

(2) Except in cases wherein the provider has failed to file supporting information as requested by

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- the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of budgets and supporting information.
- (3) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certified by the Medicaid Program.
- (4) The initial rate for a new facility shall not be entered into the Medicaid payment system until the facility is enrolled in the Medicaid program and a Medicaid identification number has been assigned to the facility by the Division of Medical Assistance.
- (n) A provider with more than one facility shall recover costs through a combined uniform rate for all facilities.
- (1) Combined uniform rates for chain providers shall be approved upon written request from the provider and after review by the Division of Medical Assistance.
- (2) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.
- (3) A chain provider with facility(s) that fall under Paragraphs (h) and (i) of this Rule and with facility(s) that fall under Subparagraph (l)(4) of this Rule may elect to include the facilities in a combined cost report and elect to cost settle under either Paragraphs (h) and (i) or Subparagraph (l)(4) of this Rule. The cost settlement election shall be made each year, 30 days prior to the cost report due date.
- (o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this Rule for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.
- (p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.
- (q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance shall approve an interim rate.
- (1) The interim rate shall not exceed the rate cap established under this Rule for the applicable facility group.
- (2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.
- (3) The provider shall repay to the Division of Medical Assistance any overpayment resulting from the interim rate exceeding the subsequent permanent rate.
- (r) In addition to the prospective per diem rate developed under this Rule, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required in accordance with 42 C.F.R. 447, Subpart C. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Rule 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Rule 1910.1030 in the prospective rate. This interim add on shall be removed, upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.
- (s) All rates, except those noted otherwise in this Rule, approved under this Rule are considered to be permanent.
- (t) In the event that the rate for a facility cannot be developed so that it shall be effective on the first day of the rate period, due to the provider not submitting the required reports by the due date, the average rate for facilities in the same facility group, or the facility's current rate, whichever is lower, shall be in effect until such time as the Division of Medical Assistance can develop a new rate.
- (u) When the Division of Medical Assistance develops a new rate for a facility for which a rate was paid in accordance with Paragraph (t) of this Rule, the rate developed shall be effective on the first day of the second month following the receipt by the Division of Medical Assistance of the required reports. The Division of Medical Assistance shall upon its own motion or upon application and cause related to patient care shown by the provider, within 60 days subsequent to submission of the delinquent report, make the rate retroactive to the beginning of the rate period in question. Any overpayment to the provider resulting from this temporary rate being greater than the final approved prospective rate for the facility shall be repaid to the Medicaid Program.
- (v) ICF-MR facilities meeting the requirements of the North Carolina Division of Facility Services as a facility affiliated with one or more of the four medical schools in the state and providing services on a statewide basis to children with various developmental disabilities who are in need of long-term high acuity nursing care, dependent upon high technology machines (i.e. ventilators and other supportive breathing apparatus) monitors, and feeding techniques shall have a prospective payment rate that approximates cost of care. The payment rate may be reviewed periodically, no more than quarterly, to assure proper payment. A cost settlement at the completion of the fiscal period year end is required. Payments in excess of cost shall be returned to the Division of Medical Assistance.
- (w) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash

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basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost of vacation leave earned for that year and all previous years less vacation leave used or expended over the same time period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on an estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(x) The annual prospective rate, effective beginning each July 1, for facilities that commenced operations under the Medicaid Program subsequent to the base year used to establish rates, and therefore did not file a cost report for the base year, shall be based on the facility's initial rate, established in accordance with Paragraph (m) of this Rule, and the applicable price level changes, in accordance with Paragraph (l) of this Rule.

(y) Effective for fiscal years beginning on or after fiscal year 1998, installation cost of Fire Sprinkler Systems in an ICF-MR Facility shall be reimbursed in the following manner.

- (1) Upon receipt of the documentation listed in Parts (A) through (E) of this Subparagraph, the Division of Medical Assistance shall reimburse directly to the provider 90 percent of the verified cost.
 - (A) All related invoices.
 - (B) Verification from the Division of Facility Services that the Sprinkler System is needed to maintain certification for participation in the Medicaid program.
 - (C) Statement from appropriate authorities that the Sprinkler System has been installed. Examples of appropriate authorities for this purpose would include local building inspectors, fire/safety inspectors, insurance company inspectors, or the construction section of the Division of Facilities Services.
 - (D) Three bids to install the system.
 - (E) Prior approval from the Division of Medical Assistance for any installation projected to cost more than twenty-five thousand dollars (\$25,000). Prior approval shall be granted based upon determination by the Division of Medical Assistance that the cost is reasonable considering the specifics of the installation. The burden to provide adequate documentation that the cost is reasonable is the responsibility of the provider.
- (2) The unreimbursed installation cost shall be reimbursed after audit through the annual Cost

Settlement Process. This portion shall be offset by profits, after taking into consideration any indirect profits and direct losses. Any overpayments determined after audit shall be returned to the program by the provider through the annual cost settlement process.

- (3) The installation of the Sprinkler System is subject to Prudent Buyer Standards contained in the HCFA-15.
- (4) The Sprinkler system's installation costs shall be recorded on the provider's ICF-MR Cost Report.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C; Eff. December 1, 1984; Amended Eff. March 1, 1988; January 1, 1987; Temporary Amendment Eff. July 8, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. August 1, 1995; November 1, 1993; Temporary Amendment Eff. September 8, 1999; August 7, 1998; Amended Eff. March 19, 2001; August 1, 2000; Temporary Amendment Eff. December 10, 2001; Temporary Amendment Expired September 29, 2002; Amended Eff. August 1, 2004.

10 NCAC 26H.0506 PERSONAL CARE SERVICES

(a) Payment for personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by an in-home aide who meets the requirements of 10 NCAC 03L .1110 and is under the supervision of a registered nurse, shall be based on a negotiated hourly fee not to exceed reasonable cost.

(b) The Division of Medical Assistance shall enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in adult care homes.

- (1) Effective August 1, 1995 reimbursement for private providers shall be determined by the Division of Medical Assistance based on a capitation per diem fee (fee) derived from review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial fee shall be based on one hour of services per patient day. Additional payments shall be made utilizing the one hour fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial one hour fee is computed by adding together the estimated salary, fringes, direct supervision and administration cost. Effective January 1, 2000 the cost of medication administration and additional personal care services direct

supervision shall be added to the fee. The fee(s) shall be recalculated each year based on the most current annual cost report available to the state. This annual adjustment shall not exceed the amount approved by the North Carolina General Assembly. Payments may not exceed the limits set in 42 CFR 447.361. Effective January 1, 2000, private provider payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payment to the provider shall be made due to cost settlement. The first cost settlement period shall be the nine months ended September 30, 2000. Subsequently, the annual cost settlement shall be the 12 months ended September 30.

- (2) Effective January 1, 1996 public providers shall be paid on an interim basis using the above method. Payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payments to the provider shall be made due to cost settlement.

(c) Changes to the Payment for Services Prospective Plan for Personal Care Services shall become effective when the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services, approves amendment submitted to CMS by the Director of the Division of Medical Assistance as #TN 01-14

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; S.L. 1995 c. 507, s. 23.10; 42 C.F.R. 440.170(f); Eff. January 1, 1986; Temporary Amendment Eff. April 22, 1996; January 9, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2000; Temporary Amendment Expired on October 28, 2000; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment Eff. January 13, 2003; Amended Eff. August 1, 2004.

appropriate future valuation net premiums at that time. This evaluation may be applied on a rating block basis if the total premiums for the block were developed to support the total risk assumed and expected expenses for the block each year, and a qualified actuary certifies the premium development. The actuary shall state in the certification that premiums for the rating block were developed such that each year's premium was intended to cover that year's costs without any prefunding. If the premium is also intended to recover costs for any prior years, the actuary shall also disclose the reasons for and magnitude of such recovery. The values specified in this Subparagraph shall be determined on the basis specified in 11 NCAC 11F .0205(b).

- (2) Contracts not requiring a contract reserve are:
 - (A) Contracts that cannot be continued after one year from issue; or
 - (B) Contracts already in force on the effective date of these standards for which no contract reserve was required under the immediately preceding standards.
- (3) The contract reserve is in addition to claim reserves and premium reserves.
- (4) The methods and procedures for contract reserves shall be consistent with those for claim reserves for any contract, or else appropriate adjustment must be made when necessary to assure provision for the aggregate liability. The definition of the date of incurral must be the same in both determinations.

(b) Minimum Standards for Contract Reserves:

- (1) Basis:
 - (A) Minimum standards with respect to morbidity are those set forth in 11 NCAC 11F .0207. Valuation net premiums used under each contract must have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration and period for which gross premiums have been calculated. Contracts for which tabular morbidity standards are not specified in 11 NCAC 11F .0207 shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commissioner.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 11F.0205 CONTRACT RESERVES

(a) General:

- (1) Contract reserves are required, unless otherwise specified in this Rule for:
 - (A) All individual and group contracts with which level premiums are used; or
 - (B) All individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any

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- (B) The maximum interest rate is specified in 11 NCAC 11F .0207.
- (C) Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in 11 NCAC 11F .0207 except as noted in Subparagraphs (b)(1)(C)(i) and (ii) of this Rule.
- (i) Under contracts for which premium rates are not guaranteed, and where the effects of insurer underwriting are specifically used by contract duration in the valuation morbidity standard, or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of:
- (I) 80 percent of the total termination rate used in the calculation of the gross premiums; or
- (II) Eight percent.
- (ii) For long-term care individual policies or group certificates issued after August 1, 2004, the contract reserve may be established on a basis of separate mortality and other terminations, where the other terminations are not to exceed:
- (I) For policy years one through four, the lesser of 80 percent of the voluntary lapse rate used in the calculation of gross premiums and eight percent;
- (II) For policy years five and later, the lesser of 100 percent of the voluntary lapse rate used in the calculation of gross premiums and four percent.
- Where a morbidity standard specified in 11 NCAC 11F .0207 is on an aggregate basis, such morbidity standard may be adjusted to reflect the effect of insurer underwriting by contract duration. The adjustments must be appropriate to the underwriting.
- (2) Reserve Method:
- (A) For insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the two-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.
- (B) For long-term care insurance, the minimum reserve is the reserve calculated on the one-year full preliminary term method.
- (C) For return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated as follows:
- (i) On the one-year preliminary term method if such benefits are provided at any time before the 20th anniversary;
- (ii) On the two-year preliminary term method if such benefits are only provided on or after the 20th anniversary.
- (D) The preliminary term method may be applied only in relation to the date of issue of a contract. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions (e.g., projected inflation rates) or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.
- (3) Negative reserves on any benefit may be offset against positive reserves for other benefits in the same contract, but the total contract reserve with respect to all benefits combined may not be less than zero.
- (4) For long-term care insurance with nonforfeiture benefits, the contract reserve on a policy basis shall not be less than the net single premium for the nonforfeiture benefits at the appropriate policy duration, where the net single premium is computed according to the standards specified in this Rule.
- (c) Provided the contract reserve on all contracts to which an alternative method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified in this Rule, an insurer may use any

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reasonable assumptions as to interest rates, termination or mortality rates, and rates of morbidity or other contingency. Also, subject to the preceding condition, the insurer may employ methods other than the methods stated in this rule in determining a sound value of its liabilities under such contracts, including, but not limited to the following:

- (1) the net level premium method;
- (2) the one-year full preliminary term method;
- (3) prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;
- (4) the use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity, grouping of similar contract forms;
- (5) the computation of the reserve for one contract benefit as a percentage of, or by other relation to, the aggregated contract reserves exclusive of the benefit or benefits so valued; and
- (6) the use of a composite annual claim cost for all or any combination of the benefits included in the contracts valued.

(d) Annually, a review shall be made of the insurer's prospective contract liabilities on contracts valued by tabular reserves, to determine the continuing adequacy and reasonableness of the tabular reserves giving consideration to future gross premiums. The insurer shall make appropriate increments to such tabular reserves if such tests indicated that the basis of such reserves is no longer adequate; subject, however, to the minimum standards of 11 NCAC 11F .0205(b). If an insurer has a contract or a group of related similar contracts, for which future gross premiums will be restricted by contract, insurance department rules, or for other reasons, such that the future gross premiums reduced by expenses for administration, commissions and taxes will be insufficient to cover future claims, the insurer shall establish contract reserves for such shortfall in the aggregate.

History Note: Authority G.S. 58-2-40; 58-58-50(k); Temporary Adoption Eff. January 21, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. April 1, 1994; Amended Eff. August 1, 2004.

11 NCAC 11F .0207 SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY

(a) Minimum standard morbidity tables for valuation of specified individual contract accident and health insurance benefits are as follows:

- (1) Disability Income Benefits Due to Accident or Sickness.
 - (A) Contract Reserves:
 - (i) Contracts issued on or after January 1, 1965 and before January 1, 1986: The 1964 Commissioners Disability Table (64 CDT).

(ii) Contracts issued on or after January 1, 1994: The 1985 Commissioners Individual Disability Tables A (85CIDA); or The 1985 Commissioners Individual Disability Tables B (85CIDB).

(iii) Contracts issued during the years 1986 through 1993: Optional use of either the 1964 or the 1985 Tables.

(iv) Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may, however, elect to use the other tables with respect to any subsequent statement year.

(B) Claim Reserves:

(i) For claims incurred on or after August 1, 2004: The 1985 Commissioners Individual Disability Tables A (85CIDA) with claim termination rates multiplied by the following adjustment factors:

Duration	Adjustment Factor	Adjusted Termination Rates*
Week 1	0.366	0.04831
Week 2	0.366	0.04172
Week 3	0.366	0.04063
Week 4	0.366	0.04355
Week 5	0.365	0.04088
Week 6	0.365	0.04271
Week 7	0.365	0.04380
Week 8	0.365	0.04344
Week 9	0.370	0.04292
Week 10	0.370	0.04107
Week 11	0.370	0.03848
Week 12	0.370	0.03478
Week 13	0.370	0.03034
Month 4	0.391	0.08758
Month 5	0.371	0.07346
Month 6	0.435	0.07531
Month 7	0.500	0.07245
Month 8	0.564	0.06655
Month 9	0.613	0.05520
Month 10	0.663	0.04705
Month 11	0.712	0.04486
Month 12	0.756	0.04309
Month 13	0.800	0.04080
Month 14	0.844	0.03882
Month 15	0.888	0.03730

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Month 16	0.932	0.03448			(a)(1)(B)(i) of this
Month 17	0.976	0.03026			Rule, all future
Month 18	1.020	0.02856			valuations must be
Month 19	1.049	0.02518			on that basis.
Month 20	1.078	0.02264	(2)	Hospital Benefits, Surgical Benefits and	
Month 21	1.107	0.02104		Maternity Benefits (Scheduled benefits or	
Month 22	1.136	0.01932		fixed time period benefits only).	
Month 23	1.165	0.01865		(A) Contract Reserves:	
Month 24	1.195	0.01792		(i) Contracts issued on or after	
				January 1, 1955, and before	
Year 3	1.369	0.16839		January 1, 1982: The 1956	
Year 4	1.204	0.10114		Intercompany	
Year 5	1.199	0.07434		Hospital-Surgical Tables.	
Year 6 & later	1.000	**		(ii) Contracts issued on or after	
	* The adjusted termination rates derived from the application of the adjustment factors to the DTS Valuation Table termination rates shown in Exhibits 3a, 3b, 3c, 4, and 5 of <i>Transactions of the Society of Actuaries (TSA) XXXVII</i> , pp. 457-463 are displayed. The adjustment factors for age, elimination period, class, sex, and cause displayed in Exhibits 3a, 3b, 3c, and 4 shall be applied to the adjusted termination rates shown in this table.				January 1, 1982: The 1974
	**Applicable DTS Valuation Table duration rate from exhibits 3c and 4 (TSA XXXVII, pp. 462-463).				Medical Expense Tables,
	The 85 CIDA table so adjusted for the computation of claim reserves shall be known as 85 CIDC (The 1985 Commissioners individual disability Table C).				Table A.
	(ii)	For claims incurred prior to August 1, 2004:		(B)	Claim Reserves: See 11 NCAC 11F .0207(a)(5).
		Each insurer may elect which of the following to use as the minimum standard for claims incurred prior to August 1, 2004:		(3)	Cancer Expense Benefits (Scheduled benefits or fixed time period benefits only).
	(I)	The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred, or		(A)	Contract Reserves: Contracts issued on or after January 1, 1986: The 1985 NAIC Cancer Claim Cost Tables.
	(II)	The standard as defined in Subparagraph (a)(1)(B)(i) of this Rule, applied to all open claims.		(B)	Claim Reserves: See 11 NCAC 11F .0207(a)(5).
	(III)	Once an insurer elects to calculate reserves for all open claims on the standard defined in Subparagraph		(4)	Accidental Death Benefits.
				(A)	Contract Reserves: Contracts issued on or after January 1, 1965: The 1959 Accident Death Benefits Table.
				(B)	Claim Reserves: Actual amount incurred.
				(5)	Single Premium Credit Disability
				(A)	Contract Reserves:
				(i)	For contracts issued on or after August 1, 2004:
				(I)	For plans having less than a 30 day elimination period, the 1985 Commissioners Individual Disability Table A (85 CIDA) with claim incidence rates increased by 12 percent.
				(II)	For plans having a 30 day and greater elimination period, the 85 CIDA for a 14 day elimination period with the adjustment in Subparagraph (a)(5)(A)(i)(I) of this Rule.

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(ii) For contracts issued prior to August 1, 2004, each insurer may elect either Subparagraph (a)(5)(A)(ii)(I) or Subparagraph (a)(5)(A)(ii)(II) of this Rule to use as the minimum standard. Once an insurer elects to calculate reserves for all contracts on the standard defined in Subparagraph (a)(5)(A)(i) of this Rule, all future valuations must be on that basis.

(I) The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the contract was issued, or

(II) The standard as defined in Subparagraph (a)(5)(A)(i) of this Rule, applied to all contracts.

(B) Claim Reserves: Claim reserves are to be determined as provided in 11 NCAC 11F .0203.

(6) Other Individual Contract Benefits.

(A) Contract Reserves: For all other individual contract benefits, morbidity assumptions are to be determined which will produce contract reserves that place a sound value on the liabilities of each such benefit.

(B) Claim Reserves: For all benefits other than disability, claim reserves are to be determined as provided in the standards as set out in this rule.

(b) Minimum standard morbidity tables for valuation of specified group contract accident and health insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(A) Contract Reserves:

(i) Contracts issued before January 1, 1994: The same basis, if any, as that employed by the insurer as of December 31, 1993.

(ii) Contracts issued on or after January 1, 1994: The 1987 Commissioners Group

Disability Income Table (87CGDT).

(B) Claim Reserves:

(i) For claims incurred on or after January 1, 1994: The 1987 Commissioners Group Disability Income Table (87CGDT);

(ii) For claims incurred before January 1, 1994: See 11 NCAC 11F .0207(b)(2).

(2) Single Premium Credit Disability

(A) Contract Reserves:

(i) For contracts issued on or after August 1, 2004:

(I) For plans having less than a 30 day elimination period, the 1985 Commissioners Individual Disability Table A (85 CIDA) with claim incidence rates increased by 12 percent.

(II) For plans having a thirty-day and greater elimination period, the 85 CIDA for a 14 day elimination period with the adjustment in Subparagraph (b)(2)(A)(i)(I) of this Rule.

(ii) For contracts issued prior to August 1, 2004, each insurer may elect either Subparagraph (b)(2)(A)(ii)(I) or

Subparagraph (b)(2)(A)(ii)(II) of this Rule to use as the minimum standard. Once an insurer elects to calculate reserves for all contracts on the standard defined in Subparagraph (b)(2)(A)(i) of this Rule, all future valuations must be on that basis.

(I) The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the

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- date the contract was issued, or
- (II) The standard as defined in Subparagraph (b)(2)(A)(i) of this Rule, applied to all contracts.
- (B) Claim Reserves: Claim reserves are to be determined as provided in 11 NCAC 11F .0203.
- (3) Other Group Contract Benefits.
- (A) Contract Reserves: For all other group contract benefits, morbidity assumptions are to be determined which will produce contract reserves that place a sound actuarial value on the liabilities of each such benefit.
- (B) Claim Reserves: For all benefits other than disability, claim reserves are to be determined as provided in the standards as set out in this Rule.
- (c) Maximum interest rate standards for valuation of accident and health insurance benefits are as follows:
- (1) For contract reserves the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the accident and health insurance contract.
- (2) For claim reserves on contracts that require contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the claim incurral date.
- (3) For claim reserves on contracts not requiring contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of single premium immediate annuities issued on the same date as the claim incurral date, reduced by one hundred basis points.
- (d) Minimum standard mortality tables for valuation of accident and health insurance benefits are as follows:
- (1) Except as provided for in 11 NCAC 11F .0207(d)(2) or (3), the mortality basis used for all policies except long-term care individual policies and group certificates issued after August 1, 2004, shall be according to a table (but without use of selection factors) permitted by law for the valuation of whole life insurance issued on the same date as the accident and health insurance contract. For long-term care insurance individual policies or group certificates issued on or after August 1, 2004, the mortality basis used shall be the 1983 Group Annuity Mortality Table without projection.
- (2) Other mortality tables adopted by the NAIC and promulgated by the Commissioner in accordance with G.S. 150B may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if requested by a qualified actuary. The request must include the proposed mortality table and the reason that the standard specified in 11 NCAC 11F .0207(d)(1) is inappropriate.
- (3) For single premium credit insurance using the 85 CIDA table, no separate mortality shall be assumed.
- (e) The tables referenced in 11 NCAC 11F .0207 may be found as follows:
- (1) The 1964 Commissioners Disability Table, 1965 Proceedings of the National Association of Insurance Commissioners, Vol. I, pgs. 78-80;
- (2) The 1985 Commissioners Individual Disability Tables A, 1986 Proceedings of the National Association of Insurance Commissioners, Vol. I, pgs. 574-589;
- (3) The 1985 Commissioners Individual Disability Tables B, 1985 Proceedings of the National Association of Insurance Commissioners, Vol. I, pgs. 486-540;
- (4) The 1956 Intercompany Hospital-Surgical Tables, 1957 Proceedings of the National Association of Insurance Commissioners, Vol. I, pgs. 83-85;
- (5) The 1974 Medical Expense Tables, Table A, Transactions of the Society of Actuaries, Vol. XXX, pg. 63. Refer to the paper (in the same volume, page 9), to which this table is appended, including its discussions for methods of adjustment for benefits not directly valued in Table A: "Development of the 1974 Medical Expense Benefits", Houghton and Wolf;
- (6) The 1985 NAIC Cancer Claim Cost Tables, 1986 Proceedings of the National Association of Insurance Commissioners, Vol. I, pgs. 609-623;
- (7) The 1959 Accident Death Benefit Tables, Transactions of the Society of Actuaries, Vol. XI, pg. 754; and
- (8) The 1987 Commissioners Group Disability Income Table, 1987 Proceedings of the National Association of Insurance Commissioners, Vol. II, pgs. 557-619.
- (9) The 1983 Group Annuity Mortality Table, Transactions of the Society of Actuaries, Vol. XXXV, pgs. 880-881.

Copies of the above-referenced tables can be obtained at a cost prescribed in G.S. 58-6-5(3) from the Actuarial Service Division of the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611. The above-referenced tables are hereby

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incorporated by reference and do not incorporate any amendments or editions.

History Note: Authority G.S. 58-2-40; 58-58-50(k); Temporary Adoption Eff. January 21, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. April 1, 1994; Amended Eff. August 1, 2004.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 10F .0318 WARREN COUNTY

- (a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Warren County.
- (b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of Gaston Lake in Warren County.
- (c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a lawfully marked mooring on the waters of Gaston Lake in Warren County.
- (d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any lawfully marked public swimming on the waters of Gaston Lake in Warren County.
- (e) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zone located on the regulated area described in Paragraph (a) of this Rule: the entrance of the Camp Willow Run Canoe/Sail Cove; and the shoreline of the Mariner's Cove Subdivision 50 yards across State Road 1498 off Hubquarter Creek on Lake Gaston.
- (f) Placement and Maintenance of Markers. The Board of Commissioners of Warren County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15; Eff. February 1, 1976; Amended Eff. October 1, 1992; March 25, 1978. Temporary Amendment Eff. June 17, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0202 DEFINITIONS

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to making a formal appeal in accordance with G.S. 150B.
- (6) A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (9) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.

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- (11) "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.
- (12) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- (13) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- (14) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- (15) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 15A NCAC 21D .0501.
- (16) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (17) "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
- (18) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- (19) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (20) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (21) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- (22) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1330 St. Mary's Street, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786;

7 C.F.R. 246;
Eff. July 1, 1981;
Amended Eff. December 6, 1991; November 1, 1990;
July 1, 1989;
Temporary Amendment Eff. May 17, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2004.

15A NCAC 21D .0410 PARTICIPANT VIOLATIONS AND SANCTIONS

(a) The State agency shall assess a claim for the full value of Program benefits that have been obtained or disposed of improperly as the result of a participant violation. "Participant violation" means those violations listed in 7 C.F.R. 246.2 which are incorporated by reference in Rule .0202 of this Subchapter. A claim shall not be paid by offsetting the claim against future Program benefits.

(b) The following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a one-year disqualification of the participant from the WIC Program, except as provided in Paragraphs (c) and (d) of this Rule:

- (1) Exchanging food instruments or supplemental food for cash;
- (2) Exchanging food instruments or supplemental food for alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802;
- (3) A claim for dual participation resulting from intentional misrepresentation;
- (4) Intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain Program benefits;
- (5) Any participant violation for which a claim of one hundred dollars (\$100.00) or more is assessed;
- (6) A second or subsequent claim assessed for any participant violation, regardless of the dollar amount. The second or subsequent claim does not have to be for the same participant violation as the initial claim to result in a one-year disqualification; and
- (7) Physical harm to clinic or vendor staff.

(c) The one-year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if a claim is assessed and full payment is made or a repayment schedule is agreed upon within 30 days of receipt of a written demand for repayment of the claim for the improperly obtained or disposed of Program benefits.

(d) The one year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant. Designation of a proxy shall be approved if the proxy:

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- (1) is at least 18 years of age;
- (2) presents proof of identification in the form of a government-issued photo identification card, work or school identification card, health benefits or social services program card, social security card, birth certificate, or a pay stub or utility bill no more than 60 days old;
- (3) has written authorization from the participant or the parent or caretaker of an infant or child participant;
- (4) will not be serving as proxy for more than two families at the same time; and
- (5) will be the person who transacts the food instruments.

(e) Except as provided in Subparagraphs (b)(5) and (b)(6) of this Rule, the following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first violation and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits:

- (1) Exchanging food instruments or supplemental food for credit;
- (2) Exchanging food instruments or supplemental food for non-food items, other than alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802; and
- (3) Exchanging food instruments or supplemental food for unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.

For the violations listed in this Paragraph, failure to pay a claim in full or agree to a repayment schedule within 30 days of receipt of a written demand for repayment of a claim, shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(f) The occurrence of a second or subsequent participant violation listed in Paragraph (e) of this Rule shall result in a one-year disqualification of the participant and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits. The second or subsequent violation does not have to be the same as the initial violation to result in a one-year disqualification. The one-year disqualification shall not be imposed against the participant if full payment is made or a repayment schedule agreed upon within 30 days of receipt of a written demand for repayment of a claim. Additionally, the one year disqualification shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(g) Threatening physical harm to or verbal abuse of clinic or vendor staff by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first occurrence of this violation. A second occurrence within a 12-month period shall result in a 90-day disqualification

of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(h) For any disqualification imposed under this Rule, a participant may reapply for Program participation if during the period of the disqualification full payment is made or a repayment schedule is agreed upon, or in the case of a participant who is an infant, child, or under age 18, the state or local agency approves the designation of a proxy in accordance with Paragraph (d) of this Rule.

(i) The participant has a right to a fair hearing in accordance with Section .0900 of this Subchapter for sanctions imposed under this Rule.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1983; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0501 SUPPLEMENTAL FOODS

(a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human Services, Division of Public Health, 1330 Saint Mary's Street, Raleigh, North Carolina and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition service:

- (1) shredded cheese;
- (2) eggs other than grade A large or extra-large fresh and "cholesterol reducing";
- (3) infant cereal-fruit and cereal-formula combinations;
- (4) cheese in excess of four pounds per month, unless a physician documents that the recipient is lactose intolerant, or is a postpartum woman who is breast feeding exclusively;
- (5) all formulas other than standard milk-based iron fortified infant formulas, unless a physician prescribes a formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (6) if the WIC program executes a sole source contract for an infant formula, that formula shall be specified in the vendor agreement and on the food instrument, and all other formulas shall be excluded from the food package, unless a physician prescribes a different formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;

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- (7) infant juice;
- (8) peanut butter other than plain, smooth, crunchy or whipped;
- (9) dried beans and peas other than mature and unflavored;
- (10) tuna other than chunk light in water; and
- (11) carrots other than raw, canned or frozen.

(c) The state agency may waive application of this Rule and exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC program as a result of their composition, packaging or promotion in a manner which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. October 1, 1993; October 1, 1990; July 1, 1989; October 1, 1988; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0702 ISSUANCE OF FOOD INSTRUMENTS

- (a) Local WIC agencies shall issue WIC program food instruments to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.
- (b) Local WIC agencies shall issue food instruments in a manner which prevents theft and shall retain documentation of the disposition of the food instruments. The documentation of issuance shall include the dated signature of the authorized individual receiving the food instruments unless the food instruments are mailed.
- (c) The authorized individual receiving the food instrument shall sign it on the "signature" line. The person who so signs the food instrument is the only individual who can transact it.
- (d) Participants shall be given appointments to receive food instruments in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members.
- (e) Food instruments shall be issued only to the participant, the participant's parent, the participant's caretaker, an authorized proxy, or a compliance investigator.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0703 USE OF FOOD INSTRUMENTS

- (a) Participants may transact food instruments on any day on or between the "date of issue" and "participant must use by" dates

printed on the food instrument. The "participant must use by" date shall be 30 days from the "date of issue."

(b) North Carolina WIC program food instruments shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement (DHHS Form 2768). Neither an agency of the United States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, parent or caretaker of an infant or child participant, or proxy is under any obligation to pay for food instruments accepted by a store that was not an authorized WIC vendor on the date of transaction of the food instrument.

(c) Only the individual who has received the food instrument at the local or state agency or through the mail and has signed the signature line may countersign the food instrument. Vendors shall assume full responsibility for food instruments not properly countersigned.

(d) North Carolina WIC food instruments shall be deposited at the vendor's bank. These food instruments shall not be assigned, transferred, sold or otherwise negotiated.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0704 VALIDITY OF WIC FOOD INSTRUMENTS

- (a) North Carolina WIC food instruments shall not be valid if:
 - (1) the instrument has not been legibly imprinted with an authorized WIC vendor stamp;
 - (2) the instrument has been counterfeited or the signature forged;
 - (3) the instrument has been mutilated, defaced or otherwise tampered with or altered;
 - (4) the instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument;
 - (5) the "pay exactly" amount (i.e. purchase price) is not recorded on the food instrument;
 - (6) the signature and countersignature do not match or the countersignature is missing;
 - (7) the "date transacted" entered on the instrument is not on or between the "date of issue" and "participant must use by" dates assigned to the instrument;
 - (8) the instrument is not completed in indelible ink.

Invalid food instruments shall be stamped with the reason for invalidity and returned to the vendor without payment.

(b) A vendor may attempt to justify or correct an invalid food instrument and shall receive payment if:

- (1) for a food instrument invalid under Subparagraph (a)(1) of this Rule, the vendor legibly imprints the authorized WIC vendor stamp on the food instrument and redeposits it

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- within 95 days from the "date of issue" on the food instrument;
- (2) for a food instrument invalid under Subparagraphs (a)(2) or (a)(3) of this Rule, the vendor can demonstrate the food instrument was invalid due solely to the actions of a third party other than the vendor's owners, officers, managers, agents, or employees and the "pay exactly" amount is legible or can be verified by the vendor with a receipt.
 - (3) for a food instrument invalid under Subparagraph (a)(3) of this Rule, the food instrument was unintentionally mutilated or defaced by the vendor's owners, officers, managers, agents, or employees and the "pay exactly" amount is legible or can be verified by the vendor with a receipt.
 - (4) for a food instrument invalid under Subparagraph (a)(3) of this Rule, the "pay exactly" amount has been altered and the vendor provides a receipt that confirms the altered amount is the correct "pay exactly" amount;
 - (5) for a food instrument invalid under Subparagraph (a)(4) of this Rule, the state WIC office gives approval to the local WIC agency to revalidate. The state WIC office shall give approval to the local WIC agency to revalidate unless:
 - (A) the total value of food instruments submitted at one time to the local WIC agency exceeds five hundred dollars (\$500.00);
 - (B) the vendor has submitted food instruments for revalidation to the local agency on two separate occasions within the preceding 12 months; or
 - (C) the date the vendor submits the food instrument(s) to the local WIC agency for revalidation is more than six months past the "date of issue" on the food instrument(s).

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until annual WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:
 - Peer Group I - - zero to two cash registers;
 - Peer Group II - - three to five cash registers; and
 - Peer Group III - - six or more cash registers;
- (2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(7) of this Rule.
 - Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;
 - Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;
 - Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and
 - Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;
- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:
 - Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement) and military commissaries; and
 - Peer Group V - - free-standing pharmacies, including free-standing

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1989; July 1, 1985; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 21D .0706 AUTHORIZED WIC VENDORS

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- pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;
- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (5) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.
- (6) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.
- (7) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination or disqualification. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.
- (b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:
- (1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;
- (2) At the time of application and throughout the term of authorization, submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;
- (3) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(3)(B) of this Rule;
- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by January 1 and July 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in March and September of each year;
- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it shall charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(3) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90

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- days from the date of receipt of the written denial to reapply for authorization;
- (4) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
 - (5) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
 - (6) Mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case at all times;
 - (7) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
 - (8) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.;
 - (9) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local agency;
 - (10) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business;
 - (11) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, but not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (12) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;
 - (13) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.
- The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of

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- financial interest in a Food Stamp vendor under Part (b)(13)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply until the time the Food Stamp vendor disqualification otherwise would have expired;
- (14) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and
- (15) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.
- (c) By signing the WIC Vendor Agreement, the vendor agrees to:
- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
 - (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 15A NCAC 21D .0501;
 - (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
 - (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
 - (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
 - (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(3)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument.
- (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(3)(A) of this Rule for each supplemental food within the vendor's peer group;
 - (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(3)(A) of this Rule for the vendor's peer group;
 - (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
 - (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
 - (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
 - (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
 - (13) Ensure that the food instrument is countersigned in the presence of the cashier;
 - (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
 - (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
 - (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
 - (17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;

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- (18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- (19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- (20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- (21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- (22) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
- (23) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

Single strength: 46oz	10 containers
container	
Orange juice must be available in frozen and single strength.	
A second flavor must be available in frozen or single strength.	
Dried Peas/Beans	2 varieties: 3 packages one pound package
or	
Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 3 containers 18 oz. container
Infant Cereal	Plain-no fruit added: 6 boxes 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate 62 can combination
Tuna	Chunk light in water: 4 cans 6-6.5 oz. can
Carrots	Raw, canned or frozen 2 packages/cans 14.5-16 oz. size

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	Total of 6 gallons fluid milk
	-and-	
	Skim/lowfat fluid: gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 oz. can	5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices	Frozen: 11.5-12 oz. container	10 containers

- (24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (25) Permit the purchase of supplemental food without requiring other purchases;
- (26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- (27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes, but shall not be limited to, allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC

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- supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (30) Submit a current accurately completed WIC Price List when signing this agreement, and by January 1 and July 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (32) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
- (33) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (34) Notify the local agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store.
- (35) Return the authorized WIC vendor stamp to the local agency upon termination of this agreement or disqualification from the WIC Program;
- (36) Offer WIC customers the same courtesies as offered to other customers;
- (37) A vendor must reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- (38) Comply with all the requirements for vendor applicants of Subparagraphs (b)(3) and (b)(6) through (b)(14) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(11) or (b)(13) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(6),(b)(9),(b)(12) or (b)(14) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training classes on WIC procedures and regulations;
- (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a state fiscal year (July 1 through June 30) and all vendors shall be monitored at least once within three consecutive state fiscal years. Any vendor shall be monitored within one week of written request by the state agency;

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- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
 - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
 - (5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.
- (e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.
- (1) In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
 - (2) A pattern, as referenced in 7 C.F.R. 246.12(l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:
 - (A) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
 - (B) two occurrences of vendor overcharging within a 12-month period;
 - (C) two occurrences of receiving, transacting or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
 - (D) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
 - (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.
- (h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule.
- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
 - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
 - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
 - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.
 - (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
 - (A) 2.5 points for stocking WIC supplemental foods outside of the manufacturer's expiration date.
 - (B) 5 points for:

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- (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory; or
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case.
- (C) 7.5 points for:
- (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.
- (D) 15 points for:
- (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the state agency; or
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit.
- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.
- (i) For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food instruments for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly transact a WIC food instrument;
 - (J) requiring a cash purchase to transact a WIC food instrument;
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; or
 - (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

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- (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instrument(s) for review when requested;
 - (E) failure to provide store inventory records when requested by WIC staff;
 - (F) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case; or
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (E) nonpayment of a claim made by the state agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.
- (j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.
- (l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
 - (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
 - (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
 - (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
- (m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
- (n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

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- (o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.
- (p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.
- (q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.
- (r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 15A NCAC 21D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. May 17, 2000; Temporary Amendment Eff. June 23, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. August 1, 2004.

TITLE 20 - DEPARTMENT OF THE TREASURER

20 NCAC 10 .0102 DEFINITIONS

In addition to the definition of terms found in G.S. 147, the following definitions are in effect throughout this Chapter:

- (1) Advisory Committee. One or more committees appointed by the Commission consisting of experts to advise the Commission on drafting Requests for Proposals or reviewing grant applications.
- (2) Capacity building. Any resources that strengthen or enhance a community's ability to meet the health and wellness needs of its residents. More specifically, capacity building is a term referring to the collective traits that enable an organization to perform at an

- optimum level. Capacity building leads to organizational effectiveness and may include assistance to hire staffing to acquire technology, to train staff or Boards, and to learn new skills.
- (3) Corporation. An entity created under the laws of North Carolina or another State which is vested with the authority to transact business.
- (4) Master Settlement Agreement. The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.
- (5) Person. An individual human being.
- (6) Requests for proposals. Specific written requests for grant proposals solicited by the Commission to fund specific priorities or programs.
- (7) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption.

History Note: Authority G.S. 147-86.30; 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0201 PURPOSE

The purpose of the Commission's Grant Program is to provide funding for projects as set out in G.S. 147-86.30.

History Note: Authority G.S. 147-86.30; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0202 TYPES OF GRANTS

The Commission shall have two types of grant programs:

- (1) General Grants. General grants are grants awarded to applicants seeking funding for programs to address a health need or wellness issue existing in North Carolina that the application highlights as needing attention. General grants may also address or be directed to an area of health and wellness which the Commission has identified as a funding priority. Undirected general grants shall follow an annual funding cycle beginning January 1st of any year through December 31st of that same year. Applications for any funding year are due on or before August 1st of the funding year. Directed general grants may be made at any time if they are part of a health and wellness initiative undertaken by the Commission.

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- (2) Requests for Proposals (RFP) Grants. Requests for proposals grants are grants awarded in response to requests for proposals published by the Commission to address its funding priorities or to provide specific health and wellness programs identified by the Commission.

- (3) A verified statement from the chair of the Board of Directors or the head of the applying entity stating that the grant application has the approval of the governing body;

- (4) A description of the proposed project, including the project's goals and measurable objectives, the manner in which the applicant intends to accomplish these goals and objectives, a statement of how these goals and objectives meet the statutory purposes of the Health and Wellness Trust Fund, and a brief description of the need for the project;

- (5) A statement of the projected annual budget of the proposed project, including any administrative costs as well as the budget of the applying organization or in case there is more than one organization, of the lead organization which reflects expected funding from any other sources which have been applied for or have been received. The projected annual budget must also include an allocation for conducting an outcomes analysis or evaluation of the project;

- (6) A list of sub-recipients under the grant and a specification of how the applicant's methodology for accounting for funds disbursed to sub-recipients will work. The applicant shall have a continuing duty to identify sub-recipients under the grant;

- (7) A description of how the project will be completed including time lines;

- (8) A description of the geographic area and population the project will serve and an explanation of how these people will benefit from the project;

- (9) A description of the bank accounts and internal accounting ledgers or books that will be set up and used and an assurance that all accounts, books and ledgers can be audited by the Commission or the State auditor;

- (10) A list of expected outcomes from the project including what the applicant expects the project to accomplish and an explanation of how the project's results will be evaluated along with a definition of the long-term impact of the project;

- (11) At least three references whom the Commission may contact;

- (12) Any other information required by G.S. 147, Article 6C or required by these rules in order to make a decision on the grant proposal;

- (13) An explanation of how the project will be sustained beyond the life of the grant;

- (14) An explanation of how the program will build or enhance health care capacity in the community served; and

- (15) A list and history of applicant's past projects funded by grants or awards as well as the

History Note: Authority G.S. 147-86.30; 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0203 ELIGIBILITY TO RECEIVE GRANTS

The Commission may award grants of any kind to the organizations set out in G.S. 147-86.31.

History Note: Authority G.S. 147-86.31; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0204 APPLICATIONS FOR UNDIRECTED GENERAL GRANTS

(a) General grant proposals shall be typed or printed in ink in 12 point type on 8 1/2' by 11' white or light colored paper and submitted with five one-sided copies to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. Applicants may also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. Completed general grant proposals postmarked later than August 1 of any funding year shall be considered in the subsequent funding year.

(b) To be eligible for consideration for funding, applicants shall complete the Health and Wellness Trust Fund General Grant Application Form which shall contain the following information:

- (1) Name, mailing address, telephone number, facsimile number, email and federal identification number for the applying organization and name of the key contact person at the applying organization;

- (2) If a non-profit organization, a description of the applying organization including history, current programs, activities, accomplishments, a mission statement, financial information, audit statements (if available), organizational goals, a list of members of the Board of Directors, a list of contributors to the organization with the amounts given for the current year, and evidence of tax-exempt status. If the application involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the general grant; but there must be a lead organization identified which shall have fiscal responsibility for the grant and for the activities proposed;

names of all granting entities involved in those grants or awards.

(c) As a condition of applying for or of receiving a grant, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience and must also allow the State auditor or an outside auditor hired by the Commission to have access to all books and records of the grant project.

History Note: Authority G.S. 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0205 APPLICATION FOR GRANTS ISSUED IN RESPONSE TO REQUESTS FOR PROPOSALS

The Commission may specify programs based on its funding priorities which address specific health needs of the residents of North Carolina or programs intended to improve the health and wellness of the residents of North Carolina and grant money to eligible entities that can best perform the specified work. Specifications shall include the information required for general grants listed in 20 NCAC 10 .0204 and may be published in documents available on the Commission website. To be complete, responses to requests for proposals must address each and every specification contained in the request for proposals. Incomplete responses to requests for proposals shall be returned to the applicant with an explanation of what is missing. Requests for proposals shall be kept open for at least 30 days.

History Note: Authority G.S. 147-86.30, G.S. 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0206 OUT OF CYCLE AWARD OF UNDIRECTED GENERAL GRANTS

(a) The Commission may consider and award general grants out of cycle if any of the following conditions are met:

- (1) The requested program will respond to a serious and unforeseen threat to the public health, safety or welfare; or
- (2) The requested program is required in response to a recent change in federal or State budgetary or health care related policy; or
- (3) The requested program is in response to a disaster as that term is defined in G.S. 166A, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

(b) The maximum amount which can be awarded to an out of cycle grant is twenty-five thousand dollars (\$25,000).

History Note: Authority G.S. 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0207 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission and his or her staff or designee shall screen all grant applications, whether general grant applications or applications in response to requests for proposals, to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.

(b) Applications that have been deemed complete shall be forwarded to one or more Grant Review Committees of the Commission. Grant Review Committee members shall include Commissioners. Grant Review Committees may hire consultants or appoint advisory committees to advise them in their review and evaluation of the grant proposals.

(c) During the review and evaluation of proposals, the Grant Review Committees may request that the Commission staff or designee make site visits and report to the Grant Review Committee.

(d) At the conclusion of their review and evaluation, Grant Review Committees shall make recommendations to the Commission.

(e) The Commission shall receive the suggestions of the Grant Review Committees and shall evaluate proposals based on the beneficial impact of the request on the health and wellness of the people of North Carolina. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant, capacity building and sustainability of the grant application and whether the grant will benefit the health and wellness of the residents of the State in a measurable manner. Scoring and ranking of proposals may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings.

(f) No grant shall be awarded for a project that is unlawful.

History Note: Authority G.S. 147-86.33; Temporary Adoption Eff. June 15, 2002; Eff. August 1, 2004.

20 NCAC 10 .0208 AWARD OF GRANTS

(a) All applicants shall be notified in writing whether they have received a grant or not. All awards shall be made subject to the availability of funds to the Commission.

(b) All grant awards shall be incorporated in a written grant agreement between the Commission and the grantee. The grant proposal, whether for a general grant or a request for proposals grant, shall be incorporated into the grant agreement and the goals, time lines and other grant objectives shall be performance standards for the grant agreement.

(c) Funds shall be transmitted to grantees based on a schedule agreed upon in a grant agreement with the Commission.

(d) The grant agreement may allow up to 50 percent of the total funding for the first program year to be paid upon signing of the contract if such payment is requested in the grant application for start up costs and initial administration.

(e) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals in the grant agreement.

(f) The Commission or the Commission staff may agree to amend time lines or payment schedules specified in the grant

APPROVED RULES

agreement when such changes do not undermine the purposes and goals of the grant.

(g) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award money to an applicant whose past performance of Commission grants and program has been unsatisfactory according to these Rules.

(h) The granting agreement shall also outline the standard accounting practices which the applicant must follow in order to facilitate review by the Commission staff or the State Auditor, or an outside auditor hired by the Commission.

(i) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were awarded.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002;
Eff. August 1, 2004.*

20 NCAC 10 .0209 REPORTING

(a) Successful applicants for both general grants and requests for proposals grants shall submit written progress reports at six-month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the grant project, progress toward achieving grant objectives, occurrences which the grantee deems notable, any problems encountered which the grantee deems significant, and steps taken to overcome the problems. These reports are due no later than 30 days after completion of the six-month intervals or at other predetermined intervals specified in the grant agreement. Within 60 days of completion of the grant, the successful applicant must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee shall be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold future grant payments.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15 2002;
Eff. August 1, 2004.*

20 NCAC 10 .0210 POLICIES GOVERNING GRANTS

(a) Successful applicants shall keep financial and other records of the grant for five years and shall comply with audit requests. If the Commission determines that the amount of the money awarded or the performance or alleged non-performance of the

grantee compels it, the Commission shall require a compliance audit of the grant project.

(b) All applications, attachments to applications and written reports received by the Commission are public records unless determined otherwise by court order or other applicable law.

*History Note: Authority G.S. 147-86.33; G.S. 147-86.36;
Temporary Adoption Eff. June 15, 2002;
Eff. August 1, 2004.*

20 NCAC 10 .0301 GIFTS MADE TO THE COMMISSION

All proposed gifts shall be submitted to the Commission for a decision on whether to accept the gift. The Commission shall direct how all gifts will be used or spent. If the Commission determines that honoring a donor's request is consistent with the Commission's statutory duties and the public interest, the Commission may accept gifts and honor the request of the donor regarding the use of the gift for a specific funding priority; however, the Commission shall not accept a gift that requires the Commission to award a grant to a specific entity or person. Upon acceptance, the gift shall be deposited in the Commission's general fund at the Treasurer's Office.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002;
Eff. August 1, 2004.*

20 NCAC 10 .0302 GRANTS ACCEPTED BY THE COMMISSION

The Commission may apply for grants if it determines that accepting a grant and performing work under the grant is consistent with its statutory duties. All money awarded to the Commission pursuant to a grant shall be deposited in the Commission's general fund at the Treasurer's Office.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002;
Eff. August 1, 2004.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 4 - BOARD OF AUCTIONEERS

21 NCAC 04B .0102 BOARD OFFICE

The administrative offices of the Board are located at:

602 Stellata Drive
Fuquay-Varina, North Carolina 27526
Telephone: (919) 567-2844

Office hours are 8:30 a.m. until 5:00 p.m., Monday through Friday, except holidays.

*History Note: Authority G.S. 85B-3.1;
Eff. November 1, 1984;
Amended Eff. March 1, 2003; June 1, 1999; July 1, 1995;
April 1, 1989.*

TITLE 25 - STATE PERSONNEL

25 NCAC 01E .0809 RETENTION AND CONTINUATION OF BENEFITS

During the period of reserve active duty, whether receiving full State pay, differential pay, or no pay, no employee shall incur any loss of state service or suffer any adverse service rating. The employee shall continue to accumulate sick and vacation leave, aggregate service credit, and receive any promotion or salary increase for which otherwise eligible. Prior to the 30 days of full pay and the differential, the employee may choose to retain vacation, exhaust vacation, or be paid in a lump sum up to a maximum of 240 hours. If the employee is FLSA non-exempt, any accumulated compensatory time may also be exhausted prior to exhausting leave or may be paid in a lump sum for accumulated vacation.

History Note: Authority G.S. 126-4; 127A-116; Eff. February 1, 1976; Amended Eff. February 1, 1983; December 1, 1980; March 1, 1978; Temporary Amendment Eff. March 18, 2002; Amended Eff. August 1, 2004.

25 NCAC 01E .1305 DONOR GUIDELINES

(a) A donor may contribute vacation leave to another employee in any agency. A member may contribute vacation or sick leave to an immediate family member in any agency or public school. Immediate family is defined as spouse, parents, children, brother, sister, grandparents, grandchildren, great grandparents and great grandchildren. Also, included are the step, half, and in-law relationships. For detailed definitions of immediate family see 25 NCAC 01E .0317 DEFINITIONS.

(b) The minimum amount to be donated is four hours. An employee family member donating sick leave to a qualified family member under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

(c) The maximum amount of vacation leave allowed to be donated by one individual is the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

(d) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating may not receive remuneration for the leave donated.

History Note: Authority G.S. 126-4;

Eff. May 1, 1990; Amended Eff. August 1, 2004; July 1, 1995; September 1, 1992; July 1, 1991.

25 NCAC 01E .1410 INTERFERENCE WITH RIGHTS

(a) Actions Prohibited-It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.

(b) Protected Activity-It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

- (1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;
- (2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or
- (3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.
- (4) A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is a grievable issue and employees, except for ones in exempt policy-making positions, may appeal pursuant to the State Personnel Act (G.S. 126).

History Note: Authority G.S. 126-4(5); P.L. 103-3 Eff. October 1, 1995; Amended Eff. August 1, 2004.

25 NCAC 01E .1607 SPECIAL LEAVE PROVISIONS

(a) Agency heads may establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head shall determine that a bonafide need for such services exists within a given area. A bonafide need is defined as real or eminent danger to life or property.

(b) Each policy shall require proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

(c) Blood, Bone Marrow and Organ Donorship – Employees may be given reasonable time off with pay for whole blood donation, pheresis procedure and bone marrow transplant. Employees may be given up to 30 days with pay for organ donation.

History Note: Authority G.S. 126-4; Temporary Adoption Eff. March 18, 2002; Eff. August 1, 2004.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, April 17, 2003, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, April 11, 2003 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Laura Devan
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

April 17, 2003	May 15, 2003
June 19, 2003	July 17, 2003
August 21, 2003	September 18, 2003
October 16, 2003	

RULES REVIEW COMMISSION MARCH 20, 2003 MINUTES

The Rules Review Commission met on Thursday morning, March 20, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Jennie Hayman, Graham Bell, Jim Funderburk, Walter Futch, Thomas Hilliard, John Tart, and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Lebeed Kady	NC Hazardous Waste
Helen Cotton	NC Hazardous Waste
Bart Campbell	DENR
Mike Eddinger	DFS/EMS
Mark Benton	DFS/EMS
Dedra Alston	DENR
Allan Russ	Secretary of State
Haley Montgomery	Secretary of State
Nick Fountain	Plumbing, Heating & Fire Sprinkler Contractor Board

APPROVAL OF MINUTES

The meeting was called to order at 10:04 a.m. with Commissioner Hayman presiding. The Commission went into Executive Session in the Office of the Rules Review Commission to discuss with its attorney the Pharmacy Board lawsuit against the Rules Review Commission.

At 10:20 a.m. the Commission came out of Executive Session and relocated back to the Assembly Room. At 10:32 a.m. the meeting was called to order. Mrs. Hayman asked for any discussion, comments, or corrections concerning the minutes of the February 20, 2003, meeting. The minutes were approved as written. The Commission welcomed new member Graham Bell to the Rules Review Commission. Newly appointed Commissioner Meredith Norris has submitted a letter of resignation to the Democratic Speaker of the House.

FOLLOW-UP MATTERS

- 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 – The Commission took no action on these rules at the request of the agency.
- 2 NCAC 52C .0701: Department of Agriculture – The agency intends to submit a rewritten rule at the April meeting.
- 8 NCAC 1 .0101: Board of Elections – The Commission took no action on this rule at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 2 .0101-.0113: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 4 .0101-.0109; .0201-.0208; .0301-.0307: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 6B .0101-.0105: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 7B .0101; .0102: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 9 .0101-.0109: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 10B .0101-.0108: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 12 .0101-.0111: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101: DHHS/Medical Care Commission – The Commission approved the rewritten rules submitted by the agency.
- 10 NCAC 26H .0211; .0213: Department of Health and Human Services – The Commission approved the rewritten rules submitted by the agency contingent upon technical change being made by the end of the business day. The change was made.
- 21 NCAC 46 .1812: Board of Pharmacy – This rule will be considered at next month’s meeting.
- 21 NCAC 46 .2502: Board of Pharmacy – This rule will be considered at next month’s meeting.
- 21 NCAC 50 .0103: Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – Nick Fountain asked Commission to rescind the objection. The Commission took no action on this rule.
- 23 NCAC 2E .0201: State Board of Community Colleges – The Commission approved the rewritten rule submitted by the agency.
- 25 NCAC 1D .1945: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.
- 25 NCAC 1E .0805: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

- 1 NCAC 30D .0302: State Building Commission – The Commission objected to the rule due to ambiguity. In (2), it is not clear what “special circumstances” would dictate the need to institute interview procedures. This objection applies to exiting language in this rule
- 15A NCAC 13A .0109: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (1)(2), it is unclear if the two lines have to be different types or if two clayey liners or two artificial liners would work. Items (r)(2)(B) and (r)(2)(C) seem inconsistent as to distance from property lines. Subparagraph (r)(1) lists a number of risks and factors the Department is to consider in determining whether to issue a permit. It is not clear what standard these risks and factors must meet for a permit to be issued or denied. In (r)(2)(A), it is not clear what standards will be used to determine if a risk is unreasonable. There is the same problem in (r)(2)(D)(I) and (r)(3). In (r)(2)(D)(i), it is not clear what would amount to “an adequate secondary containment system.” In (r)(1) and (r)(3), it is not clear what would constitute an “adequate” buffer zone. In (r)(4)(B), it is not clear what would constitute “highly weathered” and “relatively “impermeable” clayey formations. In (r)(4)(B)(viii), it is not clear what is meant by “competent” geologic formation and “adequate” protection. This objection applies to existing language.
- 15A NCAC 13A .0113: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (1), it is unclear what “other facilities are being referred to. This objection applies to existing language.
- 15A NCAC 18A .2606: Commission for Health Services – The Commission objected to the rule due to ambiguity. It is not clear how the percentage scores established by this rule are determined. In (b), it is not clear what standards the Department will use in approving food service sanitation programs. The objection applies to exiting language in this rule.
- 18 NCAC 2 .0103: Secretary of State – The Commission objected to the rule due to lack of necessity. This rule only deals with the internal management of the agency and is not necessary to be included in the rules. The objection applies to exiting language in this rule.
- 18 NCAC 6 .1501: Secretary of State – The Commission continued this rule to the next meeting at the request of the agency.

COMMISSION PROCEDURES AND OTHER BUSINESS

RULES REVIEW COMMISSION

The Commission held elections for Chair, Vice Chair and Second Vice Chair. Commissioner Jennie Hayman was elected Chairman, Jim Funderburk was elected First Vice Chairman and David Twiddy was elected Second Vice Chairman.

Chairman Hayman suggested that Mr. DeLuca write Speakers of the House and the President Pro-Tempore about appointments to fill the two vacancies in the Commission.

The meeting adjourned at 11:30 a.m.

The next meeting of the Commission is Thursday, April 17, 2003 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #196)

February 21, 2003 through March 20, 2003

DHHS/MEDICAL CARE COMMISSION

Other Services Performed by Physicians and Other

10 NCAC 26H .0404 Amend

DENR/ENVIRONMENTAL MANGEMENT COMMISSION

Permits Requiring Public Participation

15A NCAC 02Q .0306 Amend

DENR/WELL CONTRACTORS CERTIFICATION COMMISSION

Application Requirements for Certification

15A NCAC 27 .0301 Amend

DEPARTMENT OF TRANSPORTATION

Safety of Operation and Equipment

19A NCAC 03D .0801 Amend

NC BOARD OF LICENSING OF GEOLOGIST

Forms

21 NCAC 21 .0106 Repeal

NC BOARD OF REFRIGERATION EXAMINERS

Office of the Board

21 NCAC 60 .0102 Amend

Dates of Board Meetings

21 NCAC 60 .0201 Repeal

Scoring Examinations

21 NCAC 60 .0204 Repeal

Examination Application Duly Filed

21 NCAC 60 .0206 Amend

Requirements for Examination Applicants

21 NCAC 60 .0207 Amend

Examination Review

21 NCAC 60 .0208 Amend

Special Examination

21 NCAC 60 .0210 Repeal

Qualifying Examinations

21 NCAC 60 .0212 Adopt

Examinations

21 NCAC 60 .0213 Adopt

Permits

21 NCAC 60 .0311 Adopt

Preferring Charges

21 NCAC 60 .1102 Adopt

NC STATE VETERINARY MEDICAL BOARD

Minimum Standards for Continuing Education (4)

21 NCAC 66 .0206 Amend

AGENDA

Rules Review Commission

April 17, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. State Building Commission – 1 NCAC 30D .0302 Objection 03/20/03 (Bryan)
 - B. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 Carried over to April from 12/19/02 (DeLuca)
 - C. Department of Agriculture – 2 NCAC 52C .0701 Objection 12/19/02 (DeLuca)
 - D. Commission for Health Services – 15A NCAC 13A .0109; .0113 Objection 03/20/03 (Bryan)
 - E. Commission for Health Services – 15A NCAC 18A .2606 Objection 03/20/03 (Bryan)
 - F. Secretary of State – 18 NCAC 2 .0103 Objection 03/20/03 (Bryan)
 - G. Secretary of State – 18 NCAC 6 .1501 Carried over to April meeting 03/20/03 (Bryan)
 - H. Board of Pharmacy – 21 NCAC 46 .1812 Objection 11/21/02 (DeLuca)

RULES REVIEW COMMISSION

- I. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (DeLuca)
 - J. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)
 - K. Cultural Resources Commission – 7 NCAC 4S .0104 Objection 12/21/00 (DeLuca)
 - L. Board of Elections – 8 NCAC Chapter 1-12 Extend Period of Review 01/16/03 (DeLuca) To be considered at October Meeting.
-
- IV. Review of rules (Log Report #196)
 - V. Commission Business
 - VI. Next meeting: May 15, 2003

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. Issa Fuad Shaikh T/A Variety Pic Up #14	01 ABC 0874	Conner	12/03/02	
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	
NC ABC Commission v. Jerry Lynn Johnson T/A E & J Millenium	02 ABC 0115	Conner	10/23/02	
Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission	02 ABC 0157	Mann	12/03/02	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission	02 ABC 0629	Chess	11/19/02	17:13 NCR 1116
NC ABC Commission v. Cevastiano Hernandez T/A Cristy Mexican Store	02 ABC 0667	Gray	10/17/02	
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NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
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Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
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Linda Hawley v. Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
Elbert Reid, Jr. v. Crime Victims Compensation Commission	02 CPS 0431	Conner	11/13/02	
Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission	02 CPS 0760	Chess	11/19/02	
Willie Ray Lucas v. Crime Victims Compensation Commission	02 CPS 0770	Wade	01/06/03	
Claudia White v. Crime Victims Compensation Commission	02 CPS 0894	Conner	01/08/03	
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Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services	02 CPS 1332	Lassiter	09/20/02	
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A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Chiffon R Robeson, Ronald V Robeson v DHHS, Div. of Child Dev.	00 DHR 1030	Gray	02/28/03	
Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec.	01 DCS 2351	Elkins	10/28/02	17:11 NCR 1024
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Pamela S Vuncannon v. DHHS, Div of Child Development	01 DHR 2332	Chess	11/18/02	
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Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
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Albemarle Home Care & Ginger Parrish, PhD v. DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
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Gemela Kidada Davis v. DHHS, Div. of Facility Services	02 DHR 0283	Lassiter	02/24/03	
Unieca Richardson v. DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
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Notisha Utley v. DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
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Vernon Farley v. DHHS, Div. of Medical Assistance	02 DHR 0450	Gray	01/29/03	
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Bill & Suzy Crawford for (NEELY) Crawford v. DHHS	02 DHR 0539	Wade	12/18/02	
Mooreville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Wayne Douglas Temples v. DHHS, NC Off. of Emer. Med. Svcs.	02 DHR 0543	Morrison	10/09/02	
Mark Thomas v. DHHS, Div. of Facility Services	02 DHR 0555	Chess	10/17/02	
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Vernessa B Pittman v. DHHS	02 DHR 0734	Chess	11/21/02	
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02	
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Miranda Lynn Stewart v. DHHS, Div. of Facility Services	02 DHR 0791	Mann	11/08/02	17:12 NCR 1086
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
Jeffrey Wayne Radcliff v. DHHS	02 DHR 0838	Conner	12/16/02	
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Martha L Cox v. DHHS, Div. of Facility Services	02 DHR 0935	Morrison	10/25/02	
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Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02	
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Jack Irizarry v. DHHS, Div. of Facility Services, Adult Care License Sec.	02 DHR 1331	Elkins	02/19/03	
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Evy's Group Care v. DHHS, Div. of Mental Health, Program Accountability	02 DHR 1462	Gray	01/27/03
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Marquelle's Enrichment Center for Edith James & Wilhelmenia Bridges v. Div. of Child Dev. Regulatory Services Section	02 DHR 1537	Gray	01/27/03
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Shirley Suggs v. DHHS, Division of Facility Services	02 DHR 2038	Gray	02/13/03
Ziad El-Hilou, A&T Food v. Food & Nutrition Service – USDA, and DHHS	02 DHR 2165	Elkins	01/08/03
Donna W. Roach v. DHHS	02 DHR 2187	Chess	03/07/03

Heather Lail v DHHS, Health Care Personnel Registry	03 DHR 0014	Gray	02/26/03
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San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities	02 DOA 0545	Chess	08/26/02

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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
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Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 0104	Chess	09/09/02
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Wanda L Grant v. Sheriffs' Education & Training Standards Comm.	02 DOJ 0602	Mann	10/18/02
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Mark A Faucette Sr. v. Criminal Justice & Training Stds. Comm	02 DOJ 1585	Chess	01/02/03	
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Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 0363 ³	Conner	11/21/02	
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 1475 ⁵	Conner	11/21/02	
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Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 0474 ⁷	Gray	12/20/02	
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	
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Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR 93
Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 1258 ⁷	Gray	12/20/02	
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Reginald Ross v. Department of Correction	01 OSP 1122/23	Wade	06/28/02	
Bob R Napier v. Department of Correction	01 OSP 1379	Lassiter	09/26/02	17:09 NCR 914
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR 93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02	
Joseph E. Teague, Jr. PE, CM v. Dept. of Transportation	01 OSP 1511	Lassiter	10/17/02	
Marshall E Carter v Department of Transportation	01 OSP 1516	Wade	12/19/02	
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02	
Anthony W. Price v. Eliz City State University	01 OSP 1591	Lassiter	11/05/02	
Wade Elms v. 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
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02	
Gladys Faye Walden v. Department of Correction	01 OSP 1741	Mann	07/12/02	
Bruce A Parsons v. Gaston County Board of Health	01 OSP 2150	Gray	11/04/02	
Barbara A. Harrington v. Harnett Correctional Institution	01 OSP 2178	Conner	09/03/02	
Joy Reep Shuford v. Department of Correction	01 OSP 2179	Overby	06/25/02	
Debra R. Dellacroce v. NC DHHS	01 OSP 2185	Conner	09/11/02	
Thomas E Bobbitt v. NC State University	01 OSP 2196 ⁶	Reilly	11/21/02	
Thomas E Bobbitt v. NC State University	01 OSP 2197 ⁶	Reilly	11/21/02	
Jana Washington v Department of Corrections (Central Prison)	01 OSP 2224	Wade	12/19/02	
Joseph Kevin McKenzie v. DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02	
Bryan Aaaron 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. Forest Service	01 OSP 2374	Conner	06/20/02	
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02	
James Donoghue v. Department of Correction	02 OSP 0011	Mann	08/26/02	
Robert N. Roberson v. DOC, Div. of Community Corrections	02 OSP 0059	Conner	10/14/02	
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR 329
Stacey Joel Hester v. Dept. of Correction	02 OSP 0071	Gray	10/18/02	
Gwendolyn Gordon v. Department of Correction	02 OSP 0103	Gray	10/24/02	17:14 NCR 1218
Gwendolyn Gordon v. NC Department of Correction	02 OSP 0103	Gray	11/25/02	17:14 NCR 1223
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	02 OSP 0110 ²	Elkins	08/07/02	
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	
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02	
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	
Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center	02 OSP 0316	Elkins	12/18/02	
Gerald W Jones v. NC Dept. of Transportation	02 OSP 0318	Wade	10/25/02	
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02	
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02	
Ronald P Covington v. NC DOC, Dept. of Prisons	02 OSP 0404	Morrison	11/07/02	
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Michael Forreest 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	
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Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02	
Robert L. Swinney v. NC Dept. of Transportation	02 OSP 0570	Lassiter	10/23/02	
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02	

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Lisa A Forbes v Dorothea Dix Hospital	02 OSP 0757	Wade	02/11/03
Jackie Brannon v. Durham Co. Social Services, Daniel Hudgins	02 OSP 0769	Wade	12/19/02
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02
Alber L Scott v. UNC General Administration	02 OSP 0828	Gray	01/15/03
Linda Kay Osbon v. Isothermal Community College	02 OSP 0911	Elkins	09/25/02
Deona Renna Hooper v. NCC Police Dept, NCCU	02 OSP 0984	Lassiter	10/31/02
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02
Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02
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John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3	02 OSP 1067	Conner	10/21/02
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Carolyn Davis v Durham Co. MHDDSAS Area Authority	02 OSP 1116	Lassiter	01/16/03
Donald B. Smith v. NC DOC, Div. of Community Corrections	02 OSP 1117	Chess	10/03/02
Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst	02 OSP 1127	Lassiter	11/05/02
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02
Melvin Kimble v. NC Dept. of Crime Control & Public Safety	02 OSP 1318	Lassiter	11/06/02
Gwendolyn H Abbott v. Wayne Talbert, Asst Super. NC DOC, Div. of Prisons, Dan River Work Farm (3080)	02 OSP 1334	Conner	12/03/02
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1367 ⁷	Gray	12/20/02
Mark Tony Davis v DHHS	02 OSP 1372	Overby	02/12/03
Marie D Barrentine v. Robert William Fisher, NC Probation/Parole	02 OSP 1410	Elkins	02/11/03
Onyedika Nwaebube v Employment Security Commission of NC	02 OSP 1443	Gray	01/24/03
Alber LScott v UNC General Administration	02 OSP 1444	Gray	01/22/03
Esther L Jordan v. Pasquotank Correctional Ins. (Ernest Sutton)	02 OSP 1453	Conner	02/06/03
Martha Ann Brooks v. State of NC Brown Creek Correctional Inst.	02 OSP 1468	Chess	10/25/02
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1482 ⁷	Gray	12/20/02
James Orville Cox II v. NC DOC, Adult Probation/Parole	02 OSP 1526	Chess	10/17/02
Renee Shirley Richardson v Albert Blake, Interim Dir. of Eng Svcs, DDH	02 OSP 1551	Gray	12/20/02
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1599 ⁸	Wade	01/13/03
Kevin W Lawrence v DOC, Division of Prisons	02 OSP 1675	Conner	02/18/03
Rashad A Rahman v. South East Region Mental Health	02 OSP 1669	Lassiter	01/09/03
Alwilda G. George v. Sanford Correctional Center	02 OSP 2317	Elkins	02/06/03
Jennifer Howard v Sampson Correctional Center	03 OSP 0042	Elkins	02/24/03
Bobby C Lee v Dorothea Dix Hospital	03 OSP 0096	Lassiter	03/07/03

SUBSTANCE ABUSE PROFESSIONAL BOARD

NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02
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UNIVERSITY OF NORTH CAROLINA

Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571
Sharon Reed v. UNC Hospitals	02 UNC 1284	Conner	11/11/02	
Dee C Driver/Jenny Driver one and the same and Philip L Driver v. UNC Hospitals	02 UNC 1635	Gray	01/15/03	

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- 2 Combined Cases
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