

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board (Repealed)
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
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		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care Board	
		62 Sanitarian Examiners	
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		64 Speech & Language Pathologists & Audiologists	
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**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
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18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
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19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

## 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 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**  
An agency shall accept comments on the text of a proposed rule for at least ① days after the text is published or until the date of any public hearings held on the proposed 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.

*Note from the Codifier: 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.*

**NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH CAROLINA SECRETARY OF HUMAN RESOURCES**

Pursuant to N.C.G.S. 90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board:

Carbamazepine:	all oral dosage forms
Cyclosporine:	all oral dosage forms
Digoxin:	all oral dosage forms
Ethosuximide	
Levothyroxine sodium tablets	
Lithium (including all salts):	all oral dosage forms
Phenytoin (including all salts)	all oral dosage forms
Procainamide	
Theophylline (including all salts)	all oral dosage forms
Warfarin sodium tablets	

**U.S. Department of Justice**

Civil Rights Division

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JDR:TCH:VNR:par  
DJ 166-012-3  
2003-3400

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

November 10, 2003

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

Dear Mr. Bartlett:

This refers to Session Law 2003-274, which revises campaign reporting requirements for federal political committees; and Session Law 2003-278, which provides for student election assistants, and revises the following: campaign finance reporting procedures for judicial/referendum/recall elections, compensation rules for election officials, candidate vacancy procedures, voter address confidentiality provisions, petition procedures, procedures for election protests, nomination deadlines for presidential preference primary elections, canvass deadlines and other post-election deadlines, and absentee voting procedures, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 9, 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 See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich  
Chief, Voting Section

**U.S. Department of Justice**

Civil Rights Division

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JDR:MJP:VNR:par  
DJ 166-012-3  
2003-3547

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

November 19, 2003

Don Wright, Esq.  
General Counsel  
State Board of Elections  
P.O. Box 27255  
Raleigh, NC 27611-7255

Dear Mr. Wright:

This refers to Session Law No. 2003-171, which changes the procedures related to the use and confidentiality of the address of a voter who is a victim of certain crimes, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 25, 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich  
Chief, Voting Section

**U.S. Department of Justice**

Civil Rights Division

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JDR:JBG:MDS:par  
DJ 166-012-3  
2003-3498  
2003-4126

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

November 21, 2003

David A. Holec, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to eight annexations (Ordinance Nos. 03-42, 03-43, 03-52, 03-53, 03-79, 03-80, 03-81, and 03-88) and their designations to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on September 23, 2003 and November 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



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.  
 Statutory reference: G.S. 150B-21.2.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – Division of MH/DD/SAS intends to adopt the rules cited as 10A NCAC 26C .0501-.0504.*

**Proposed Effective Date:** July 1, 2004

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by January 19, 2004.

**Reason for Proposed Action:** The proposed adoptions are necessary as a result of Session Law 2002-164 (SB 163). Temporary rules became effective July 1, 2003. These Rules are proposed for permanent rulemaking. The legislation permits the Secretary of DHHS to adopt and enforce rule governing the following: providers who have been previously sanctioned by DHHS and want to provide services under G.S. 143B, Article 3, communication procedures between the area authority or county program, the local Department of Social Services, the bcal education authority and the criminal justice agency, if involved with the individual, regarding placement of the individual outside the home community, and monitoring of mental health, developmental disabilities and substance abuse services.

**Procedure by which a person can object to the agency on a proposed rule:** The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.

**Written comments may be submitted to:** Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net.

**Comment period ends:** March 2, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The

Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 26 – MENTAL HEALTH, GENERAL**

**SUBCHAPTER 26C – OTHER GENERAL RULES**

**SECTION .0500 – SUMMARY SUSPENSION AND REVOCATION**

**10A NCAC 26C .0501 SCOPE**

This Section sets forth rules governing summary suspension and revocation of authorization to receive public funding for providing mental health, developmental disabilities and substance abuse services. As used in the rules in this Section, publicly funded mental health, developmental disabilities and substance abuse services are hereafter referred to as services.

Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1.

**10A NCAC 26C .0502 DEFINITIONS**

As used in the rules in this Section, the following terms have the meanings specified:

- (1) "Authorization to receive public funding for providing services" means approval from the Department to receive funding through one or more of the following mechanisms:
  - (a) enrollment of a provider with Medicaid, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(D), and 42 C.F.R. 440.180 and SL 2002-164; or
  - (b) compliance with contract or funding requirements for state or federal funds, as defined in 10A NCAC 27A . Sections .0100 through .0200.
- (2) "Funding authority" means the state agency that is responsible for administering state or federal funds, or the area authority or county program that is responsible for administering local funds.

**PROPOSED RULES**

- (3) "Provider" means any person or entity authorized to receive public funding for providing publicly funded services.
- (4) "Statutes or rules" means the North Carolina General Statutes or North Carolina Administrative Code.
- (5) "Substantial failure to comply" means evidence of one or more of the following:

- (a) the provider has not addressed issues that endanger the health, safety or welfare of individuals receiving services;
- (b) the provider has been convicted of a crime specified in G.S. 122C-80;
- (c) the provider has not made available and accessible all sources of information necessary to complete the monitoring processes set out in G.S. 122C-112.1;
- (d) the provider has altered documents to avoid sanctions;
- (e) the provider has not submitted, revised or implemented a plan of correction in the specified timeframes; or
- (f) the provider has not removed the cause of a summary suspension in the specified timeframes.

Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1.

**10A NCAC 26C .0503 SUMMARY SUSPENSION**

(a) The DMH/DD/SAS shall issue a written order of agency-wide, site-limited or service-specific summary suspension of state or federal mental health, developmental disabilities and substance abuse services funds, when it determines that a client's health or safety is in immediate jeopardy, as defined in 10A NCAC 27G .0602(5). Where funding is authorized by other public sources, DMH/DD/SAS shall refer its findings to the funding authority, when it determines that a client's health or safety is in immediate jeopardy. Regardless of funding authority, DMH/DD/SAS shall refer findings concerning licensed providers to the licensing agency for investigation, when it determines that a client's health or safety is in immediate jeopardy. The DMH/DD/SAS shall include its findings in the order or referral.

(b) An order of summary suspension shall be effective on the date specified in the order or on the date of the first attempt to deliver notification at the last known address of the provider, whichever is later.

(c) The order shall specify a date by which the provider shall remove the cause for the emergency action in order for authorization for funding to resume.

(d) The provider may contest the order by filing an appeal or grievance with DMH/DD/SAS or by requesting a contested case hearing pursuant to G.S. 150B. The order for summary suspension shall be in full force and effect during any appeal or grievance process.

Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1.

**10A NCAC 26C .0504 REVOCATION**

(a) The DMH/DD/SAS shall revoke authorization to receive funding to provide services utilizing state or federal mental health, developmental disabilities and substance abuse services funds and make a recommendation to the Division of Medical Assistance (DMA) to revoke enrollment for Medicaid, when it finds that there has been substantial failure to comply with statutes or rules. Where funding is authorized by other public

sources, DMH/DD/SAS shall refer its findings to the funding authority, when it finds there has been substantial failure to comply with statutes or rules. Regardless of funding authority, DMH/DD/SAS shall refer findings concerning licensed providers for investigation by the licensing agency when it determines there has been substantial failure to comply with statutes or rules. The DMH/DD/SAS shall include its findings in the revocation order, recommendation or referral.

(b) Before revoking authorization, making a recommendation to DMA or making a referral to another funding authority or licensing agency, DMH/DD/SAS shall provide written notice to the provider stating that continued failure to comply with statutes or rules will result in the revocation, recommendation and referral.

(c) The DMH/DD/SAS shall give the provider written notice of the revocation order, the recommendation to DMA or referral of findings to the funding authority or licensing agency, as applicable. The written notice shall include the reasons for the action, the grievance/appeal process and contested case procedures pursuant to G.S. 150B.

(d) The revocation notice shall be effective on the date specified in the notice or on the date of the first attempt to deliver notification at the last known address of the provider, whichever is later.

(e) The DMH/DD/SAS shall provide to DMA and any other funding authority a written notice of the revocation order and a recommendation to revoke Medicaid enrollment. The DMH/DD/SAS shall also provide a copy of the notice and recommendation to the licensing agency, as applicable.

(f) The provider may contest the order by filing an appeal or grievance with DMH/DD/SAS or by requesting a contested case hearing pursuant to G.S. 150B. The revocation order shall be in full force and effect during any appeal or grievance process.

Authority G. S. 122C-112.1; 143B-139.1; 150B-21.1.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – Division of MH/DD/SAS intends to adopt the rules cited as 10A NCAC 27G .0506, .0601-.0608, amend the rules cited as 10A NCAC 27G .0402, .0404.*

**Proposed Effective Date:** July 1, 2004

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by January 19, 2004.*

**Reason for Proposed Action:** *The proposed adoptions and amendments are necessary as a result of Session Law 2002-164 (SB 163). Temporary rules became effective July 1, 2003. These Rules are proposed for permanent rulemaking. The legislation permits the Secretary of DHHS to adopt and enforce rule governing the following: providers who have been previously sanctioned by DHHS and want to provide services under G.S. 143B, Article 3, communication procedures between the area authority or county program, the local Department of*

**PROPOSED RULES**

*Social Services, the local education authority and the criminal justice agency, if involved with the individual, regarding placement of the individual outside the home community, and monitoring of mental health, developmental disabilities and substance abuse services.*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

**Written comments may be submitted to:** *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net.*

**Comment period ends:** *March 2, 2004*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 27 - MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES**

**SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .0400 - LICENSING PROCEDURES**

**10A NCAC 27G .0402 LICENSE ISSUANCE**

(a) Applications for licensure shall be requested and completed in the form specified by DFS at least 30 days prior to the planned operation date of a new facility. Copies of reports, findings or recommendations issued by any accreditation agency and corrective action plans shall be submitted with the application for licensure.

- (b) The content of license applications shall include:
- (1) Name of person (as defined in GS. 122C-3) submitting the application;

- (2) Business name of facility, if applicable;
- (3) Street location of the facility (including multiple addresses if more than one building at one site);
- (4) Name and title of the operator of the facility;
- (5) Type of facility; services offered; ages served; and, when applicable, capacity and a floor plan showing bed locations and room numbers, any unlocked time-out rooms, and any locked interior or exterior doors which would prohibit free egress of clients; ~~and~~
- (6) Indication of whether the facility is operated by an area program, under contract with an area program, or is a private ~~facility.~~ facility; ~~and~~
- (7) All applications for a new license shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

(c) DFS shall conduct an on-site inspection to determine compliance with all rules and statutes. If the facility is operated by or contracted with an area program, DFS may, in lieu of conducting an on-site inspection, accept written verification from the area program or DMH/DD/SAS that the area program or DMH/DD/SAS has conducted an on-site review and the facility is in compliance with rules and statutes. The written verification shall be in such form as DFS may require.

(d) DFS shall issue a license after it determines a facility is in compliance with:

- (1) Certificate of Need law (G.S. 131E-183) and Certificate of Need rules as codified in 10 NCAC 03R .2400, .2500, or .2600, whichever is applicable;
- (2) Building Code and physical plant requirements in these Rules;
- (3) Annual fire and safety and sanitation requirements, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and
- (4) Applicable rules and statutes.

(e) Licenses shall be issued to the specific premise for types of services indicated on the application.

(f) A separate license shall be required for each facility which is maintained on a separate site, even though the sites may be under the same ownership or management.

*Authority G.S. 122C-3; 122C-23; 122C-26; 122C-27(5); 143B-147.*

**10A NCAC 27G .0404 OPERATIONS DURING LICENSED PERIOD**

(a) A license shall be valid for a period not to exceed two years from the date on which the license is issued.

(b) For all facilities providing periodic and day/night services, the license shall be posted in a prominent location accessible to public view within the licensed premises.

(c) For 24-hour facilities, the license shall be readily available for review upon request.

**PROPOSED RULES**

(d) A facility shall accept no more clients than the number for which it is licensed.

(e) DFS may conduct inspections of facilities without advance notice as DFS deems appropriate. For facilities that are not operated by or contracted with area programs, and that are not subject to the Accreditation Review described in Section .0600 of these Rules, DFS shall conduct an on-site inspection at least once every two years. For purposes of this inspection, DFS may accept DMH/DD/SAS or area program verification in accordance with Rule .0402(c) of this Section, or deemed status in accordance with Rule .0403 of this Section.

(f) Written notification must be submitted to DFS prior to any of the following:

- (1) Construction of a new facility or any renovation of an existing facility;
- (2) Increase or decrease in capacity by program service type;
- (3) Change in program service;
- (4) Change in ownership including any change in a partnership;
- (5) Change of name of facility; or
- (6) Change in location of facility.

(g) When a licensee plans to close a facility or discontinue a service, written notice at least 30 days in advance shall be provided to DFS, to all affected clients, and when applicable, to the legally responsible persons of all affected clients. This notice shall address continuity of services to clients in the facility.

(h) Licenses shall expire unless renewed by DFS for an additional period. Thirty days prior to the expiration of a license, the licensee shall submit to DFS the following information:

- (1) Brief description of any changes in the facility since the last written notification was submitted;
- (2) Annual local fire and sanitation inspection reports, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; ~~and~~
- (3) Copies of deficiencies and corrective action issued by an area program, DMH/DD/SAS, or any accreditation ~~agency, agency; and~~
- (4) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

Authority G.S. 122C-26; 143B-147.

**SECTION .0500 - AREA PROGRAM REQUIREMENTS**

**10A NCAC 27G .0506 COMMUNICATION PROCEDURES FOR OUT OF HOME COMMUNITY PLACEMENT**

(a) The purpose of this Rule is to address communication procedures concerning out of the home community placements for children and adolescents. This includes children and adolescents served through the area authority or county program mental health, developmental disabilities and substance abuse

services system and those children and adolescents residing in ICF-MR facilities in their catchment areas.

(b) Area authority or county program representative(s) shall meet with the parent(s) or legal guardian and other representatives involved in the care and treatment of the child or adolescent, including local Department of Social Services (DSS), Local Education Agency (LEA) and criminal justice agency, to make service planning decisions prior to the placement of the child and adolescent out of the home community. The area authority or county program may use existing child and family teams for this purpose.

(c) The home community area authority or county program shall be responsible for notification of placement. The notification of placement shall be made via e-mail, fax or hard copy within three business days after out of home placement occurs. In case of an emergency, notification may be by telephone with written notification occurring the next day. The following entities shall be notified:

- (1) legal guardian;
- (2) other representatives involved in the care and treatment of the child or adolescent;
- (3) host community provider; and
- (4) host community representatives (may include the court counselor, county DSS, regional Children's Developmental Services Agency (CDSA) or the LEA.

(d) Notification shall be completed on a form provided by the Secretary, to include the following information:

- (1) child or adolescent information: name, date of birth, grade, identification number, social security number, date of placement out of home community;
- (2) parent/legal guardian information: name, address, telephone number;
- (3) home and host DSS information: county; contact person name, address, telephone number;
- (4) home and host area authority/county program information: name of program; contact person name, address, telephone number;
- (5) home and host school information: school name, address, telephone number, principal, special education program administrator; and
- (6) person completing notification form information: name, date form completed, agency, address and telephone number.

Authority G.S. 122C-113; 122C-141(b); 143B-139.1; 150B-21.1.

**SECTION .0600 – AREA AUTHORITY OR COUNTY PROGRAM MONITORING OF FACILITIES AND SERVICES**

**10A NCAC 27G .0601 SCOPE**

This Section governs area authority or county program monitoring of the provision of mental health, developmental disabilities or substance abuse services (services) in the area authority's or county program's catchment area. Area authorities or county programs shall monitor providers of services for the purpose of assuring and improving the quality of care and protecting the human rights of clients receiving mh/dd/sa

services. Each area authority or county program shall develop and implement policies and procedures, which describe how the area authority or county program will:

- (1) receive, review and respond to critical incident reports;
- (2) receive and respond to complaints concerning the provision of services, rights protections defined in G.S. 122-C, Article 3 and the requirements of this Chapter;
- (3) conduct routine monitoring of Category A and B providers of services; and
- (4) analyze trends in the information collected in Items (1) through (3) of this Rule and integrate results into the quality improvement system of the area authority or county program to improve the quality of care received by clients receiving mh/dd/sa services.

Authority G.S. 122C-112.1; 143B-139.1.

**10A NCAC 27G .0602 DEFINITIONS**

In addition to the terms defined in G.S. 122C-3 and Rules .0103 and .0104 of this Subchapter, the following terms shall apply:

- (1) "Complaint investigation" means the process of determining if an allegation made against a provider concerning the protection of rights or provision of services is substantiated.
- (2) "Critical incident" (incident) means an unexpected adverse occurrence of physical or psychological harm to a client, an occurrence that potentially involves a continuing threat to a client's health or safety or an occurrence that signals a serious problem within the system of client care. Critical incidents include:
  - (a) any accident or injury, including self-injurious behavior, that requires treatment. First aid provided by a licensed practical nurse or non-medical staff would not be included in this category;
  - (b) any medication error that causes the client discomfort or places his or her health or safety in jeopardy, including failure to administer a medication within the prescribed time range, administration of the wrong dosage or administration of the wrong medication;
  - (c) exposure to any hazardous substance which requires treatment. First aid provided by a licensed practical nurse or non-medical staff would not be included in this category;
  - (d) any unplanned or unexplained client absence lasting more than three hours;
  - (e) any client death;
  - (f) suspension or expulsion of a client from services;
  - (g) any alleged abuse, neglect or exploitation against a client;

- (h) any suicide attempt;
  - (i) the arrest of a client for violations of state, municipal, county or federal law;
  - (j) any alleged rights violation in G.S. 122-C, Article 3;
  - (k) any use of seclusion or restraint as defined in 10A NCAC 27C .0102(b)(23) which is used more than four times or for more than 40 hours in a calendar month; or
  - (l) any fire, equipment or building failure that places the health or safety of a client in jeopardy.
- (3) "ICF/MR" means a facility certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded.
  - (4) "Jeopardy" means a situation which has caused death, or is likely to cause death or permanent impairment to a client.
  - (5) "Monitor" or "Monitoring" means the interaction between the area authority or county program and a provider of mental health, developmental disability or substance abuse services to assure the health, safety and well being of clients receiving services, whether on site or through a review of submitted data.
  - (6) "Provider category" means the type of facility or person through which a client receives services or supports. The provider category determines the extent of monitoring that a provider receives and is determined as follows:
    - (a) Category A - facilities licensed pursuant to G.S. 122C, Article 2, excluding hospitals. Category A includes 24-hour residential facilities, day treatment and outpatient services;
    - (b) Category B - community-based providers not requiring State licensure;
    - (c) Category C - hospitals, state-operated facilities, nursing homes, adult care homes, family care homes, foster care homes or child care facilities; and
    - (d) Category D - individuals providing only outpatient or day services whom are licensed or certified to practice in the State of North Carolina.
  - (7) "Legal requirements" means the requirements established in NC General Statutes or Rule for services and rights protections provided to clients. These statutes and rules determine the scope and content of actions that may be addressed through a plan of correction. Monitoring of legal requirements shall be documented on a form provided by the Secretary. Legal requirements include the following:
    - (a) compliance with the quality improvement and quality assurance

- requirements specified in Rule .0201(a)(7) of this Subchapter;
- (b) compliance with the personnel and staff competency requirements specified in Rules .0202, .0203 and .0204 of this Subchapter;
- (c) compliance with the assessment and service plan requirements specified in Rule .0205 of this Subchapter;
- (d) compliance with the client services requirements specified in Rule .0208 of this Subchapter;
- (e) compliance with the medication requirements specified in Rule .0209(a) and (c) of this Subchapter;
- (f) compliance with client rights statutes specified in G.S. 122C, Article 3 and the rules promulgated under those statutes;
- (g) compliance with confidentiality rules specified in 10A NCAC 26B; and
- (h) the requirements for reporting and responding to complaints and critical incidents specified in Rules .0603-.0606 of this Subchapter.
- (8) "Routine monitoring" means monitoring that is performed to determine compliance with legal requirements.
- (9) "Service coordination" means the process through which an area authority or county program coordinates services for clients.
- (10) "Technical assistance" means the dissemination of skills, knowledge and experience to promote improvement in the quality of care received by clients. Technical assistance may include training, referrals, on-site visits, peer-to-peer interaction or the promotion of tools providers can utilize to improve the quality of services or perform self-assessment of the quality of services provided.

*Authority G.S. 122C-112.1; 143B-139.1.*

**10A NCAC 27G .0603 CRITICAL INCIDENT REPORTING**

- (a) All Category A and B providers shall respond to critical incidents by:
- (1) conducting a full investigation into the cause of the incident;
  - (2) developing measures to correct the problem and implementing them according to a timeline;
  - (3) developing improvement measures to prevent similar incidents in the future and implementing them according to a timeline;
  - (4) assigning a person or persons to be responsible for overseeing implementation of the corrections and improvements; and
  - (5) maintaining documentation regarding critical incidents.

(b) If a critical event requires hospitalization of the client or notification of law enforcement, the provider shall:

- (1) immediately seal the client's records;
- (2) immediately notify the area authority or county program responsible for the catchment area where services are being provided and the area authority or county program responsible for the client's care, if different, of the event; and
- (3) immediately notify the client's legal guardian and any necessary authorities.

(c) All Category A and Category B providers shall report to the area authority or county program responsible for the catchment area where services are being provided and to the area authority or county program responsible for the client's care, if different, a critical incident within 72 hours of the critical incident. The report shall be submitted on a form provided by the Secretary. The critical incident report may be submitted via mail, in person, facsimile or secure electronic means. The report shall include the following information:

- (1) reporting provider: name, address, county, license number (if applicable), name and title of person preparing report, first person to learn of the incident and first staff to receive report of incident, facility telephone number, and date and time report prepared;
- (2) client information: name, social security number, date of birth, unit/ward (if applicable), diagnoses, whether the client has been treated by a physician for the incident and the date of the treatment;
- (3) circumstances of incident: place where incident occurred, cause of incident (if known), and if the client was restrained or in seclusion at the time of the incident;
- (4) investigation of incident: results of initial investigation by the provider to determine the cause of the incident and any corrective measures the provider has put in place or plans to put in place as a result of the incident; and
- (5) other information: list of other persons and authorities that have been notified, have investigated or are in the process of investigating the incident or events related to the incident, including legal guardians, law enforcement, county DSS or DFS Health Care Personnel Registry Section.

(d) If the provider is unable to obtain any information sought, or if any such information is not yet available, the provider shall explain on the form.

(e) The provider shall:

- (1) notify the area authority or county program whenever it has reason to believe that information provided in the report may be erroneous, misleading or otherwise unreliable;
- (2) submit to the area authority or county program information required on the critical incident form that was previously unavailable; and
- (3) provide, upon request by the area authority or county program, other information the provider may obtain regarding the critical

incident, including hospital records, reports by other authorities and the results of the provider's full investigation.

(f) If a critical event requires hospitalization of the client or notification of law enforcement, the area authority or county program shall:

- (1) ensure that client records are sealed;
- (2) ensure that the client's legal guardian and the necessary authorities are notified;
- (3) notify the area authority's or county program's Human Rights Committee; and
- (4) monitor the provider according to the requirements of Rule .0607 of this Subchapter to ensure that an investigation into the cause of the event is conducted and corrective measures and improvements are put into place to correct the problem and prevent its re-occurrence.

(g) The area authority or county program shall review, not less than quarterly, critical incident reports to identify trends based on such reports. The area authority or county program shall provide a report containing summary information about critical incidents, identified trends, and quality improvement activities resulting from the trends to DMH/DD/SAS and the local Human Rights Committee not less than quarterly on a form provided by the Secretary via electronic means.

(h) If the circumstances surrounding a critical incident give reasonable cause to believe that a disabled adult receiving services from a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A, Article 6.

(i) If the circumstances surrounding a critical incident give cause to suspect that a juvenile receiving services from a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 7B, Article 3.

*Authority G.S. 122C-112.1; 143B-139.1.*

**10A NCAC 27G .0604 AREA AUTHORITY OR COUNTY PROGRAM RESPONSE TO COMPLAINTS**

The area authority or county program shall respond to complaints regarding the provision of services within its catchment area. The area authority or county program shall seek to resolve complaints involving the provision of services for any provider category.

*Authority G.S. 122C-112.1; 143B-139.1.*

**10A NCAC 27G .0605 COMPLAINTS PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS EXCLUDING ICF/MR FACILITIES**

(a) For complaints received pertaining to Category A and B providers, except ICF/MR facilities, the area authority or county program shall be the first receiver of and responder to formal complaints. The area authority or county program shall:

- (1) establish a notification process to inform clients upon admission about the complaint process and rights in G.S. 122-C. The process shall include written materials and support for

notifying advocacy groups, including the Governor's Advocacy Council for Persons with Disabilities (GACPD);

(2) seek to resolve issues of concern at the level closest to the root of the problem through informal agreement between the client and the provider whenever possible; and

(3) establish and implement policies and procedures for receiving, processing, referring or investigating and following up on complaints. Policies and procedures shall include:

- (A) safeguards for protecting the identity of the complainant;
- (B) safeguards for protecting the complainant and any staff person from harassment or retaliation;
- (C) procedures to receive, track and help a client file a complaint;
- (D) methods to be used in investigating a complaint; and
- (E) options to be considered in resolving a complaint, including assisted communication between the parties, corrective action, technical assistance and referral to other agencies, including DMH/DD/SAS or DFS.

(b) The area authority or county program shall notify DFS prior to investigating a complaint for a Category A provider. The DFS may participate with the area authority or county program during any phase of the investigation. The area authority or county program shall notify DMH/DD/SAS prior to investigating a complaint for a Category B provider. The DMH/DD/SAS may participate with the area authority or county program during any phase of the investigation. The area authority or county program, DFS and DMH/DD/SAS shall collaborate as necessary to ensure there is no duplication of processes and redundancy of process occurs only to the extent required to verify corrections and improvements have been made.

(c) When investigating a complaint, the area authority or county program shall make contact with the provider. The area authority or county program shall state the purpose of the contact and inform the provider that the area authority or county program is in receipt of a complaint concerning the provider. During the course of a complaint investigation, the area authority or county program may provide technical assistance to the provider in an attempt to offer solutions to address and resolve the complaint.

(d) The area authority or county program shall complete the complaint investigation within 30 days of the date of the receipt of the complaint.

(e) Upon completion of the complaint investigation, the area authority or county program shall submit a report of investigation findings to the complainant, the provider and the area authority's or county program's Human Rights Committee in accordance with confidentiality requirements of G.S. 122-C-54-56 within 10 working days of the date of completion of the investigation. The complaint investigation report shall include:

- (1) statements of the allegations or complaints lodged;

- (2) steps taken and information reviewed to reach conclusions about each allegation or complaint;
- (3) conclusions reached regarding each allegation or complaint;
- (4) citations of law, rule or policy pertinent to each allegation or complaint; and
- (5) recommended action regarding each allegation or complaint.

(f) If the complaint investigation report identifies any issues needing correction, the provider shall submit to the area authority or county program a plan of correction for each identified issue needing correction within 10 working days of the date the provider initially received the complaint investigation report from the area authority or county program. The plan of correction must specify the following:

- (1) the analysis or investigation conducted by the provider to determine the cause of the issue requiring correction;
- (2) the measures that the provider will put in place to resolve the issue requiring correction;
- (3) the improvements that the provider will put in place to prevent a re-occurrence of the issue requiring correction;
- (4) the individual or individuals who will monitor the corrective action;
- (5) the date by which the provider will resolve the issue requiring correction, which shall be no later than 30 days from the date the plan of correction is approved by the area authority or county program; and
- (6) the timeline for implementation of improvements to prevent re-occurrence of the issue requiring correction.

(g) The area authority or county program shall review and respond to the provider's proposed plan of correction with approval or a description of additional required information and timelines for approval within 10 working days of the area authority's or county program's receipt of the provider's proposed plan of correction.

(h) The area authority or county program shall conduct monitoring to follow-up on issues needing correction cited in the complaint investigation report no later than 90 days from the date the investigation was concluded. An area authority or county program may provide technical assistance to a provider with identified deficiencies.

(i) Monitoring shall be conducted in accordance with Rule .0607 of this Subchapter.

(j) The area authority or county program may refer the monitoring of a Category A provider to DFS, or a Category B provider to DMH/DD/SAS based on the following factors:

- (1) the provider's failure to submit an accepted plan of correction for issues needing correction within the timeframe designated in the complaint investigation report;
- (2) the provider's failure to resolve issues needing correction after technical assistance has been provided by the area authority or county program;
- (3) the possibility that continuation of cited issues needing correction is likely to be detrimental

- to the client or place the client's psychological or physical health or safety in jeopardy;
- (4) the existence of a potential conflict of interest for the area authority or county program to conduct the investigation; or
- (5) a contention by the complainant that the findings of the investigation are not consistent with the facts or with law, rules, policies or guidelines.

(k) The area authority or county program shall provide follow-up information to the complainant and the area authority or county program's Human Rights Committee within 90 days of the date the investigation was concluded.

(l) The area authority or county program shall maintain a file with copies of complaint investigation and resolution reports for Category A providers for review by DFS or DMH/SDD/SAS. The area authority or county program shall maintain a file with copies of complaint investigation and resolution reports for Category B providers for review by DMH/DD/SAS.

*Authority G.S. 122C-112.1; 143B-139.1.*

**10A NCAC 27G .0606 COMPLAINTS PERTAINING TO CATEGORY C, CATEGORY D PROVIDERS OR ICF/MR FACILITIES**

(a) For complaints received pertaining to Category C, Category D providers or ICF/MR facilities, the area authority or county program shall:

- (1) establish a notification process to inform clients upon admission about the complaint process and rights in G.S. 122-C. The process shall include written materials and support for notifying advocacy groups, including the Governor's Advocacy Council for Persons with Disabilities (GACPD);
- (2) seek to resolve issues of concern at the level closest to the root of the problem through informal agreement between the client and the provider whenever possible; and
- (3) develop and implement policies and procedures for receiving, processing, referring and following up on complaints. Policies and procedures shall include:
  - (A) safeguards for protecting the identity of the complainant;
  - (B) safeguards for protecting the complainant and any staff person from harassment or retaliation;
  - (C) procedures to receive, track and help a client file a complaint;
  - (D) options to be considered in resolving a complaint, including assisted communication between the parties and referral to the State or local government agency responsible for the regulation and oversight of the provider; and
  - (E) criteria and protocols for referring the complaint to the State or local government agency responsible for



the regulation and oversight of the provider.

(b) If the area authority or county program refers the complaint to the State or local government agency responsible for the regulation and oversight of the provider, the area authority or county program shall send a letter to the complainant informing them of the referral and the contact person at the agency to which the complaint was referred.

(c) The area authority shall contact the State or local government agency to which the complaint was referred to determine the actions that agency has taken to resolve the complaint and provide that information to the complainant and the area authority's or county program's Human Rights Committee within 120 days of the date the area authority or county program initially received the complaint.

(d) If the circumstances identified during a complaint give reasonable cause to indicate that a disabled adult may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A, Article 6.

(e) If the circumstances identified during any complaint give reason to suspect that a child or adolescent may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 7B, Article 3.

*Authority G.S. 122C-112.1; 143B-139.1.*

**10A NCAC 27G .0607 ROUTINE MONITORING**

(a) The area authority or county program shall develop and implement policies and procedures for routine monitoring of Category A and Category B providers.

(1) The area authority or county program policies and procedures shall establish:

(A) the frequency and extent of monitoring of Category A and Category B providers based on the following:

- (i) provider's past performance relative to other Category A and B providers;
- (ii) status with other agencies that have oversight responsibilities for that provider;
- (iii) number and severity of critical incidents reported by a provider and trends in the incidents;
- (iv) number and types of complaints received or investigated concerning a provider, the provider's promptness in responding and satisfactory resolution of complaints;
- (v) results of State reviews conducted by DFS or DMH/DD/SAS;
- (vi) concerns about compliance with legal requirements

during a provider's provision of service or while the area authority or county program is providing service coordination;

(vii) addition of a new service that the provider has not provided in the past; and

(viii) whether the provider is accredited by one of the accreditation agencies accepted by DMH/DD/SAS and the results of that accreditation agency's reviews of the provider; and

(B) protocols by which the area authority or county program shall refer the routine monitoring of a Category A provider to DFS or a Category B provider to DMH/DD/SAS based on the following factors:

(i) the provider's failure to submit an accepted plan of correction for deficiencies within the timeframe designated in the routine monitoring report;

(ii) the provider's failure to correct cited deficiencies after technical assistance has been provided by the area authority or county program; or

(iii) the possibility that continuation of uncorrected deficiencies is likely to be detrimental to the client or to place the client's psychological or physical health or safety in jeopardy.

(2) The area authority or county program shall notify DFS prior to conducting routine monitoring for a Category A provider. The DFS may participate with the area authority or county program during any phase of the monitoring. The area authority or county program shall notify DMH/DD/SAS prior to conducting routine monitoring for a Category B provider. The DMH/DD/SAS may participate with the area authority or county program during any phase of the monitoring. The area authority or county program, DFS and DMH/DD/SAS shall collaborate as necessary to ensure that there is no duplication of routine monitoring and that redundancy of monitoring occurs only to the extent required to verify that monitoring is adequate to ensure the quality of care to clients and that corrections and improvements have been made.

**PROPOSED RULES**

- (3) When an area authority or county program has notified another area authority or county program pursuant to Rule .0505 of this Subchapter, the notifying area authority or county program may request that the area authority or county program conduct routine monitoring of their client's provider to assure compliance with legal requirements.
- (4) When routine monitoring occurs, the area program shall:
  - (A) conduct an exit review at the conclusion of the on-site monitoring visit, including disclosure of any deficiencies found during the review; and
  - (B) submit a monitoring report to the provider within 10 working days of the completion of the on-site monitoring visit or review of submitted data. Elements to be included in the routine monitoring report include:
    - (i) legal requirements reviewed;
    - (ii) a rating of "not met," "partially met," or "met or exceed" for each requirement reviewed;
    - (iii) a description of information reviewed to determine the rating for each requirement reviewed; and
    - (iv) recommended action regarding each requirement with a rating of "not met" or "partially met."
- (5) If the routine monitoring report's recommended actions include correction of cited deficiencies in the legal requirements, the provider shall submit to the area authority or county program a plan of correction for each identified deficiency within 10 working days of the date the provider initially received the deficiency report from the area authority or county program. The plan of correction shall specify the following:
  - (A) analysis or investigation conducted by the provider to determine the cause of the deficiency;
  - (B) conclusions reached about the cause of the deficiency;
  - (C) the measures that will be put in place to correct the deficiency and the timelines for these corrections which shall be no later than 60 days from the receipt of the monitoring report by the provider;
  - (D) the improvements that will be put in place to prevent a re-occurrence of the deficiency and the timelines for their implementation; and
  - (E) the individual or individuals who will monitor the corrective actions.
- (6) When the area authority's or county program's recommended action includes correction of cited deficiencies, the area authority or county program shall:
  - (A) review and respond to the provider's plan of correction with approval or a description of additional information required for approval within 10 working days of the receipt of the provider's proposed plan of correction; and
  - (B) follow-up to ensure correction of cited deficiencies no later than 90 calendar days from the date the on-site monitoring visit was concluded. The area authority or county program may provide technical assistance to a provider with identified deficiencies.
- (7) The area authority or county program shall submit a report of routine monitoring activities to DFS and DMH/DD/SAS not less than monthly on a form provided by the Secretary via electronic means. The monthly monitoring report shall include:
  - (A) the names of providers monitored during the reporting period;
  - (B) whether deficiencies were cited;
  - (C) the date the area authority or county program conducted a follow-up on the deficiencies; and
  - (D) whether the deficiencies had been corrected at the time of the follow-up.
- (8) The area authority or county program shall analyze, not less than quarterly, the results of routine monitoring activities to identify patterns and trends in providers compliance with legal requirements, timeliness of corrections, the effectiveness of monitoring processes and opportunities for improvements.
- (9) If the circumstances identified during routine monitoring give reasonable cause to indicate that a disabled adult may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A, Article 6.
- (10) If the circumstances identified during routine monitoring give cause to suspect that a child or adolescent may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 7B, Article 3.

Authority G.S. 122C-111; 143B-139.1.

**10A NCAC 27G .0608 REPORTING REQUIREMENTS**

**PROPOSED RULES**

The area authority or county program shall report to DMH/DD/SAS and GACPD quarterly on a form provided by the Secretary via electronic means, the following information:

- (1) summary numbers of types of complaints, critical incidents and results from routine monitoring activities;
- (2) trends and patterns identified through analyses of complaints, critical incidents and routine monitoring; and
- (3) use of the analyses for improvement of the service system and planning of future monitoring activities.

Authority G.S. 122C-112.1; 143B-139.1.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 10A NCAC 39A .0102-.0107, .0109, .0111.

**Proposed Effective Date:** June 1, 2004

**Public Hearing:**

**Date:** January 22, 2004

**Time:** 1:30 p.m.

**Location:** Room G1B, 1330 St. Mary's St., Raleigh, NC

**Reason for Proposed Action:** The cost of the fee-for-service component of the Migrant Health Program is exceeding the appropriated budget, causing this component of the program to close prematurely. In order to stay within budget, there is a need to reduce covered services and target services in farmworker dense regions.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-making coordinator, during the public comment period of January 2, 2004 – March 2, 2004. Additionally, objections for this rule may be made in writing and verbally at the public hearing on January 22, 2004.

**Written comments may be submitted to:** Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168, and email chris.hoke@ncmail.net.

**Comment period ends:** March 2, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile

transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 39 – ADULT HEALTH**

**SUBCHAPTER 39A - CHRONIC DISEASE**

**SECTION .0100 - MIGRANT HEALTH**

**10A NCAC 39A .0102 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Agriculture" means farming of the land in all its branches including cultivation, tillage, growing, harvesting, preparation, and processing for market or storage.
- (2) "Migrant" means an individual present in North Carolina whose principal employment is agriculture on a seasonal basis, as opposed to year-round employment, and who establishes a temporary abode for seasonal employment. The term includes an individual who has been so employed within the past 24 months and the individual's dependents.
- (3) "Migrant Health Clinic" means ~~Migrant Health program supported health services to migrants on a regularly scheduled basis. These services could be provided in a health department, free standing clinic facility, physician's office, mobile unit or clinic within a non health related facility.~~ a health department, physician's office, or other entity that, under contract with the NC Farmworker Health Program, provides health or dental services to migrants on a regularly scheduled basis, pursuant to the Migrant Health Program.
- (4) "Migrant Health Program" means the program described in the rules of this Section.
- (4)(5) "Primary Care" means preventive, diagnostic, treatment, consultant, referral, and other services rendered by physicians, physician assistants and nurse practitioners, ~~practitioners;~~ practitioners; routine associated laboratory ~~services, —services;~~ services; diagnostic radiologic ~~services services;~~ services; and emergency health services.
- (6) "NC Farmworker Health Program" means the program within the Office of Research, Demonstrations, and Rural Health Development that administers the Migrant Health Program.
- (7) "Migrant Health Entry Point" means an entity designated by the NC Farmworker Health Program to certify migrants for participation in

the fee-for-service component of the Migrant Health Program.

Authority G.S. 130A-223; Sec. 329, 95 STAT 569.

**10A NCAC 39A .0103 MIGRANT HEALTH PROGRAM SERVICES**

(a) ~~The Migrant Health program—NC Farmworker Health Program~~ may contract with local health departments, public or private agencies or providers to provide the following health services to migrants:

- (1) primary care services;
- (2) dental services;
- (3) outreach services, services;
- (4) health status assessments, assessments;
- (5) appropriate referrals for medical and dental care and care; and
- (6) other services as specified in the contract.

~~(b) The Migrant Health program may contract with local health departments, public or private agencies or providers to provide primary care services through Migrant Health Clinics.~~

~~(c)~~(b) A local health department, public or private agency or provider interested in contracting for migrant health services may submit a brief proposal to the ~~Migrant—~~North Carolina Farmworker Health Program. The proposal shall include at least:

- (1) a description of service area;
- (2) a statement of needs to be addressed, expressed in quantitative terms to the extent possible;
- (3) a statement of specific goals and objectives for addressing needs;
- (4) an outline of methodology and activities for achieving goals and objectives;
- (5) a statement of monitoring methods to be used in measuring outcome of activities; and
- (6) a projected detailed budget.

~~(d)~~(c) Contracts may be renewed on an annual basis based upon determination of a continuing need for these services in the area served by the provider and the need for services in other areas of the State and the availability of funds.

Authority G.S. 130A-223; Sec. 329, Public Health Services Act, 95 Stat. 569(42 U.S.C. 254b).

**10A NCAC 39A .0104 CO-PAYMENTS**

(a) ~~A schedule of fees or co-payments for services provided in the operation of a sponsored migrant health clinic shall be determined by the local sponsoring agency. Migrant Health Clinics shall adopt a schedule of co-payments for all covered services provided to migrants. Patients shall be charged for covered services based on that schedule. Copies of this the schedule of fees or co-payments will shall be sent by the local agency to the Migrant—NC Farmworker Health Program and may be inspected at or obtained from the Migrant Health program that agency.~~ No one will be denied service at a sponsored Migrant Health Clinic based solely on an inability or failure to pay.

(b) ~~The Migrant Health Fee-for-Service Program~~ patient co-payment for the fee-for-service component of the Migrant Health Program shall be in accordance with 10A NCAC 45A.

Authority G.S. 130A-223; Sec. 329, Public Health Services Act, 95 Stat. 569(42 U.S.C. 259B); 42 C.F.R. 56.302(f).

**10A NCAC 39A .0105 FEE-FOR-SERVICE REIMBURSEMENT**

The ~~Migrant Health program—~~NC Farmworker Health Program purchases medical care for migrants on a fee-for-service basis in accordance with the rules of this Section and the rules contained in 10A NCAC 45A.

Authority G.S. 130A-223; Sec. 329, 95 STAT 569.

**10A NCAC 39A .0106 ELIGIBLE MIGRANTS**

All migrants are eligible for participation in the fee-for-service ~~reimbursement aspect of the program.~~ component of the Migrant Health Program. ~~Migrant—~~A farmworker's migrant status shall be determined by ~~the provider of medical care services—~~a Migrant Health Entry Point and ~~certified—~~documented by ~~on a~~ Migrant (Farmworker) Health Program Eligibility Application form (form DHHS 3753) signed by the patient, a person responsible for the patient, or the provider. There are no financial eligibility requirements.

Authority G.S. 130A-223.

**10A NCAC 39A .0107 ELIGIBLE PROVIDERS**

Migrant and Community Health Centers funded directly from Section 329 or 330 of the United States Public Health Service Act, Independent National Service Corps sites, local health departments and mental health centers are not eligible for ~~fee-for-service—~~reimbursement ~~from—~~under the fee-for-service component of the Migrant Health Program. All other providers licensed by the State of North Carolina to provide covered services ~~may—~~are eligible to participate in the reimbursement program.

Authority G.S. 130A-223; Sec. 329, 95 STAT 569.

**10A NCAC 39A .0109 COVERED SERVICES**

(a) ~~Coverage under—~~The following services are covered by the Migrant Health Program ~~includes the following services—~~when provided to eligible migrant farmworkers:

- (1) Ambulatory care services that are necessary and essential for immediate health needs in the form of:
  - (A) primary care services;
  - (B) hospital outpatient; ~~outpatient, and emergency room services;~~
  - (C) basic preventive, simple restorative, and simple surgical dental services;
  - (D) laboratory tests, diagnostic X-rays;
  - (E) ~~drugs and medications; drugs on a formulary established by the NC Farmworker Health Program based upon the following factors: the medical needs of migrant patients, the cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients~~

PROPOSED RULES

utilizing finite program dollars. A copy of this formulary may be obtained free of charge by writing to the NCFHP, Office of Research, Demonstrations, and Rural Health Development, 2009 Mail Service Center, Raleigh, North Carolina, 27699-2009; and

(F) mental health services (limited to two visits per patient per FY);

(G) ~~ground ambulance transportation; and~~  
(H) ~~medical supplies.~~

(2) The following services must receive approval from the Program Director before being considered for reimbursement, and will be reviewed on a case-by-case basis considering the extent to which the services are necessary and essential for the immediate health care needs of the patient, the total cost of the plan of treatment, and the probability of the patient completing the course of therapy:

- (A) home health services;
(B) physical therapy and occupational therapy; and
(C) rental or purchase of durable medical equipment.

(b) Services not covered by the Migrant Health Program include, but are not limited to, the following:

- (1) inpatient care, custodial care, hospice care;
(2) any elective procedure;
(3) routine physical exams, routine vision or hearing exams;
(4) eyeglasses or hearing aids;
(5) speech therapy; and
(6) chiropractic therapy;
(7) emergency room services;
(8) ambulance transportation; and
(9) medical supplies.

Authority G.S. 130A-223.

10A NCAC 39A .0111 PAYMENT LIMITATIONS

Other payment limitations which apply applicable to the fee-for-service component of the Migrant Health program fee for service reimbursement component-Program are found in 10A NCAC 45A.

Authority G.S. 130A-223; Sec. 329, 95 STAT 569.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 10A NCAC 42A .0107.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: January 22, 2004

Time: 1:00 p.m.

Location: Room G1B, 1330 St. Mary's Street, Raleigh, NC

Reason for Proposed Action: Rule is proposed due to a fee established pursuant to G.S. 130A-5(15) for analyzing clinical Pap smear specimens for non-Medicaid eligible women sent to the State Public Health Laboratory by local health departments and State-owned facilities and for reporting the results of the analysis.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-making Coordinator, during the public comment period. Additionally, objections for this rule may be made in writing and verbally at the public hearing for this rule.

Written comments may be submitted to: Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168, and email chris.hoke@ncmail.net.

Comment period ends: March 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- [X] State
[X] Local
[ ] Substantive (>=\$3,000,000)
[ ] None

CHAPTER 42 - LABORATORY SERVICES

SUBCHAPTER 42A - GENERAL POLICIES

10A NCAC 42A .0107 PAP SMEAR FEES

The fee established pursuant to G.S. 130A-5(15) for analyzing clinical Pap smear specimens for non-Medicaid eligible women sent to the State Laboratory of Public Health by local health departments and State-owned facilities and for reporting the results of the analysis shall be ten dollars and sixty-five cents (\$10.65). In June of 2004 and each succeeding June, the fee shall be recomputed by the Director of the State Laboratory of Public Health by analyzing the data from the previous two years of testing at the State Laboratory of Public Health, determining the average number of pap smear analyses performed annually for non-Medicaid eligible women and dividing that number into

**PROPOSED RULES**

the total cost of analyzing non-Medicaid pap smear specimens sent to the State Laboratory of Public Health. The fee amount determined in June 2004 and succeeding Junes shall be effective during the succeeding fiscal year. The Director of the State Laboratory of Public Health shall, prior to July 1 of each year, give notice of the new fee amount to all local health departments and state-owned facilities impacted by this Rule.

Authority G.S. 130A-5.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 10A NCAC 45A .0303, .0403.*

**Proposed Effective Date:** June 1, 2004

**Public Hearing:**

**Date:** January 22, 2004

**Time:** 1:30 p.m.

**Location:** Room G1B, 1330 St. Mary's St., Raleigh, NC

**Reason for Proposed Action:** *The Migrant Health Program was transferred from the Division of Public Health to the North Carolina Farmworker Health Program within the Office of Research, Demonstrations and Rural Health Development as of July 2003. Therefore, a change needs to be made to 10A NCAC 45A .0303 to grant authority to the Director of the Office of Research, Demonstrations and Rural Health Development to limit program benefits when the cost of services is expected to exceed the program's cash balance. In addition, the cost of the benefits of the Migrant Health Program has exceeded the budget in two of the last three years, causing the fee-for-service component of the program to close temporarily. In addition to proposing changes to the Migrant Health rules to limit the program expenses, we are proposing making a change to 10A NCAC 45A .0403 to increase the co-payment of prescribed drugs from \$3.00 to \$6.00.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-making coordinator, during the public comment period of January 2, 2004 – March 2, 2004. Additionally, objections for this rule may be made in writing and verbally at the public hearing on January 22, 2004.*

**Written comments may be submitted to:** *Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168, and email chris.hoke@ncmail.net.*

**Comment period ends:** March 2, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will

become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 45 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS**

**SUBCHAPTER 45A - PAYMENT PROGRAMS**

**SECTION .0300 - ELIGIBILITY PROCEDURES**

**10A NCAC 45A .0303 PAYMENT LIMITATIONS**

(a) Payment program payments will be made for authorized services only when funds are available.

(b) During the last six months of the fiscal year, the State Health Director may limit payment program benefits that can be authorized when the total amount of outstanding authorizations, plus the estimated authorizations for the remainder of the fiscal year, less estimated cancellations, exceeds 100 percent of the program's cash balance. The State Health Director shall rescind the limitations at the end of the fiscal year, or prior to the end of the fiscal year if sufficient funds become available to authorize full program benefits for the remainder of the fiscal year. The Director of the Office of Research, Demonstrations, and Rural Health Development may limit payment program benefits for the Migrant Health Program when the cost of the services is projected to surpass the program's cash balance within the fiscal year. The Director of the Office of Research, Demonstrations, and Rural Health Development shall rescind the limitations if sufficient funds become available to reimburse for program benefits for the Migrant Health Program.

(c) Payment program benefits shall be available only for services or appliances which are not covered by another third party payor or which cannot be paid for out of funds received in settlement of a civil claim. Patients are responsible for applying for Medicaid or Medicare benefits to which they may be entitled. However, payment program benefits shall be available for Children's Special Health Services sponsored clinic patients who cannot reasonably be examined or treated by a Medicaid provider or an authorized provider for another third party payor because of transportation problems, a need for emergency care, or similar exceptional situations. All exceptions must be approved by the Children's Special Health Services program's medical director. Also, Children's Special Health Services may make payments for services provided to Medicaid patients when acting as a Medicaid provider under an agreement making the program eligible for reimbursement from Medicaid. Providers shall take reasonable measures to collect other third party payments. For the purposes of this Subchapter, third party payor means any person or entity that is or may be indirectly liable for

the cost of services or appliances furnished to a patient. Third party payors include, without limitation, the following:

- (1) School services, including physical or occupational therapy, speech and language pathology and audiology services, and nursing services for special needs children;
- (2) Medicaid;
- (3) Medicare, Part A and Part B;
- (4) Insurance;
- (5) Social Services;
- (6) Worker's compensation;
- (7) CHAMPUS; and
- (8) Head Start programs.

(d) The Department shall not pay Medicaid co-payments or in any other way supplement Medicaid payments.

(e) If prior to the Department's payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim, the Department shall pay only the amount, if any, by which the Department's payment rate exceeds the amount received by the person. For the purpose of this Rule the Department's payment rate means the rate of reimbursement established in 10A NCAC 45A .0400.

(f) Notwithstanding Paragraph (e) of this Rule, when the provider, the patient or a person responsible for the patient receives other third party payments equal to or exceeding the Department's payment rate, the Department shall pay the difference between the other third party payments and the provider's charge for an adopted child that meets the requirements of 10A NCAC 43F .0801. The Department's payment shall not exceed the payment rate in Section .0400 of the Subchapter.

(g) If after the Department makes payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim which are available to pay for the services or appliances, the person receiving the payment shall reimburse the Department to the extent of the amount received by the person without exceeding the amount of the Department's prior payment to the provider. This reimbursement shall be made to the Department within 45 days after receipt of the third party payment.

(h) Notwithstanding Paragraph (g) of this Rule, if after the Department makes payment for particular services or appliances for an adopted child that meets the requirements of 10A NCAC 43F .0801, the provider receives partial or total payment from a third party payor, the provider shall only be required to reimburse the Department the amount by which the total of payments exceeds the provider's charge.

(i) If the Department requests a refund of a payment made to a provider, the refund shall be made to the Department within 45 days after the date of the refund request.

Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

SECTION .0400 - REIMBURSEMENT

10A NCAC 45A .0403 REIMBURSEMENT FOR

PROFESSIONAL, OUTPATIENT, OTHER SERVICES

(a) The Department shall reimburse providers of authorized outpatient services, professional services, and all other services not otherwise covered in the rules of this Section at the Medicaid rate in effect at the time the claim is received by the Department, except in the Migrant Health Program.

(b) The Migrant Health Program shall reimburse providers of program covered outpatient, professional, and other services at the Medicaid rate in effect at the time the claim is received minus the allowable patient copayment to a maximum program payment of one hundred fifty dollars (\$150.00) per claim, per date of service. The allowable patient copayment is ~~three-six~~ six dollars ~~(\$3.00)~~ (\$6.00) for each prescribed drug and five dollars (\$5.00) per claim, per date of service for all other services. The one hundred fifty dollar (\$150.00) limit shall not apply to ~~drugs,~~ ~~medical supplies,~~ ~~drugs~~ and durable medical equipment.

(c) In addition to the requirements of Paragraph (a) of this Rule, for professional and outpatient services under the Cancer Program, there shall be a per claim payment limit of 1 percent of the program's current annual budget.

Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205; 130A-223.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Manufactured Housing Board/ NC Department of Insurance intends to adopt the rule cited as 11 NCAC 08 .1433 and amend the rules cited as 11 NCAC 08 .1401, .1407-.1408, .1415.

Proposed Effective Date: May 1, 2004

Public Hearing:

Date: January 20, 2004

Time: 9:00 a.m.

Location: 322 Chapanoke Rd., Suite 200, Raleigh, NC 27603

Reason for Proposed Action: Provides option of distance education and criteria for continuing education requirements.

Procedure by which a person can object to the agency on a proposed rule: The Manufactured Housing Board/NC Department of Insurance will accept written objections to these rules until the expiration of the comment period (3/2/04). Objection need to be specific and sent to the attention of the APA Coordinator.

Written comments may be submitted to: Ellen K. Sprenkel, PO Box 26387, Raleigh, NC 27611, phone (919) 733-4529, fax (919) 733-6495, and email esprenke@ncdoi.net.

Comment period ends: March 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed

objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 08 - ENGINEERING AND BUILDING CODES**

**SECTION .1400 - MANUFACTURED HOUSING BOARD CONTINUING EDUCATION**

**11 NCAC 08 .1401 DEFINITIONS**

As used in this Section:

- (1) "Board" means the North Carolina Manufactured Housing Board, as defined in G.S. 143-143.9(1).
- (2) "CE Administrator" means a person designated by the Board to receive all applications for course approval, course reports, course application and renewal fees, etc., on behalf of the Board for the CE program.
- (3) "Continuing education" or "CE" means any educational activity approved by the Board to be a continuing education activity.
- (4) "Course" means a continuing education course directly related to manufactured housing principles and practices or a course designed and approved for licensees.
- (5) "Credit hour" means at least 50 minutes of continuing education instruction.
- (6) "Distance education course" or "distance learning course" means a continuing education course approved by the Board in which instruction is accomplished through the use of media whereby teacher and student are separated by distance and sometimes by time.
- ~~(6)~~(7) "Licensee" means a manufactured housing salesperson or set-up contractor who holds a license issued by the Board in accordance with G.S. 143-143.11, but does not include a licensed manufacturer or dealer.
- ~~(7)~~(8) "Qualifier" means the person or persons having passed the written Set-Up Contractor's Examination as administered by the Board and authorized in G.S. 143-143.11(h), and as defined in 11 NCAC 08 .0912(e), or a person who meets the requirements of 11 NCAC 08 .0912(e) and is designated by a licensee to obtain CE credits.

~~(8)~~(9) "Sponsor" means an organization or individual who has submitted information to the Board as specified in this Section and has been approved by the Board to provide instruction for the purpose of CE.

~~(9)~~(10) "Staff" means designated employees of the Manufactured Building Division of the Department of Insurance who are authorized to act on behalf of the Board with regard to continuing education matters.

Authority G.S. 143-143.10; 143-143.11B.

**11 NCAC 08 .1407 SCHEDULING**

Courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day, including breaks for each class session. The maximum permissible class session without a break is 90 minutes. Courses scheduled for more than four hours in any given day shall include a meal break of at least one hour. The provisions of this Rule do not apply to distance learning courses.

Authority G.S. 143-143.10; 143-143.11B.

**11 NCAC 08 .1408 NOTICE OF SCHEDULED COURSES**

(a) A sponsor shall provide the Board with written notice of each scheduled course offering not later than 10 days before a scheduled course date. The notice shall include the name and assigned number for the sponsor, the name and assigned number for the course, the scheduled date and time, specific location, and name of the instructor(s).

(b) A sponsor shall notify the Board of any schedule changes or course cancellations at least five calendar days before the original scheduled course date. If a change or cancellation is necessary because of some unforeseen circumstance, the sponsor shall notify the Board as soon as the sponsor effects the change or cancellation.

(c) A sponsor shall notify the Board as soon as it becomes apparent to the sponsor that enrollment in a planned class session will exceed 100 students.

(d) Distance learning courses shall be advertised in accordance with 11 NCAC 08 .1409 and shall be posted on the North Carolina Department of Insurance website.

Authority G.S. 143-143.10; 143-143.11B.

**11 NCAC 08 .1415 CE REQUIREMENTS**

(a) In order to renew an active manufactured housing salesperson or set-up contractor license for license periods beginning on or after July 1, 2003, and in accordance with G.S. 143-143.11B(a), a licensee shall have completed the number of credit hours specified in this Paragraph, by June 30 of the previous license year. Salespersons shall complete six credit hours and set-up contractors shall complete four credit hours. If a licensee exceeds the number of credit hours specified in this Paragraph, the excess credit hours may be carried forward into the next license year, but the number of carry over credit hours may not exceed the number specified in this Paragraph. In addition to the specific requirements stated in this Rule, a Law and Administration course consisting of at least six hours of



continuing education for salespersons and at least four hours of continuing education for set-up contractors shall be required to be taken for continuing education credit at least once in every five year period beginning July 1, 2004. In license periods in which a salesperson or set-up contractor takes an approved Law and Administration course, no additional courses shall be required during that license period. All Law and Administration courses taken for credit shall be submitted to and approved by the Board in accordance with 11 NCAC 08 .1405 and 11 NCAC 08 .1433.

(b) For set-up contractors originally licensed on or after July 15, 1999, the person obtaining the required credit hours must be a qualifier. If a set-up contractor licensed on or after July 15, 1999 has more than one qualifier, each qualifier must obtain the required number of CE credits for the license period. For set-up contractors originally licensed prior to July 15, 1999, the licensee shall designate an individual, known as the "qualifier", who is associated with the licensee and is actively engaged in the work of the licensee for a minimum of 20 hours per week or a majority of the hours operated by the licensee, whichever is less. The qualifier shall be the person who obtains CE credits on behalf of the licensee. Each licensee shall notify the Board in writing within 10 days after the qualifier no longer meets the preceding requirements. If a qualifier has obtained excess credit hours which may be carried over into the subsequent license year, and no longer meets the requirements of this Section, the carry over credits shall not apply to the licensee. If the qualifier becomes employed by another licensee and meets the requirements of this Section, the qualifier's carry over credit hours may be applied to the licensee with whom the qualifier is newly employed for the current license year. A licensee whose qualifier no longer meets the requirements of this Section must designate another qualifier who shall obtain the required credit hours for the subsequent license year.

(c) A licensee who is initially licensed on or after January 1 in any license year is exempt from this Section for the license period expiring on the next June 30.

(d) A licensee who is qualified as an instructor in accordance with 11 NCAC 08 .1418 and who serves as an instructor for an approved CE course shall receive the maximum credits for the course taught by the instructor that are awarded to a student for the course. However, teaching credit is valid for teaching an approved CE course or seminar for the first time only.

*Authority G.S. 143-143.10; 143-143.11B.*

**11 NCAC 08 .1433 DISTANCE EDUCATION COURSES**

A sponsor requesting approval of a distance education course shall comply with 11 NCAC 08 .1405. Additionally, the proposed distance education course shall satisfy the following criteria, as applicable:

- (1) The course shall be designed to assure that students have clearly defined learning objectives. If the nature of the subject matter is such that the learning objectives cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course shall be designed to provide for such interaction.

- (2) A course that does not provide the opportunity for continuous audio and visual communication between instructor and all students during the course presentation shall utilize testing processes appropriate to assure student mastery of the subject material.
- (3) A course that involves students completing the course on a self-paced study basis shall be designed so that the time required for a student of average ability to complete the course will be not less than six hours for salespersons and four hours for set-up contractors. The sponsor shall utilize a system that assures that students have actually performed all tasks required for completion and mastery of the subject material.
- (4) The sponsor shall provide appropriate technical support to enable students to satisfactorily complete the course.
- (5) The approved course instructor(s) shall be reasonably available to respond in a timely manner to student questions about the subject matter of the course. Instructors shall have appropriate training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other applicable equipment and systems.
- (6) The sponsor shall provide students an orientation or information package containing all pertinent information regarding requirements unique to completing a distance education course, including but not limited to any special requirements with regard to computer hardware and software or other equipment, and outlining in detail the instructor and technical support that will be available when taking the course.
- (7) The sponsor shall utilize procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed, on his or her own, all the work required to complete the course. For courses that involve independent study by students, certification that the student personally completed all required course work shall be provided by the student to the sponsor, either by a signed statement (on a form provided by the sponsor) or, in the case of Internet or computer based courses, by electronic means that are clearly indicated in the software or on the website. Signed course completion statements or records of electronic certification shall be retained by the sponsor together with any other course records required by this Section.
- (8) In addition to the information required in 11 NCAC 08 .1405, sponsors seeking approval of distance education courses must submit to the Board a complete copy of the course in the medium that is to be utilized, including all

PROPOSED RULES

computer software that will be used in presenting the course and administering tests. If the course is to be Internet based, the Board must be provided access to the course via the Internet and shall not be charged a fee for such access.

(9) All reporting of completed distance education courses shall be in full accordance with 11 NCAC 08 .1426. Students shall not be reported for continuing education credit for distance education courses until the signed form from the student or electronic certification, as described in Item (7) of this Rule, has been received.

Authority G.S. 143-143.10; 143-143.11B.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rule cited as 11 NCAC 12 .0612 and amend the rules cited as 11 NCAC 12 .0601-.0611.

Proposed Effective Date: May 1, 2004

Public Hearing:

Date: January 20, 2004

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, Raleigh, NC

Reason for Proposed Action: These Rules are being amended/adopted in order to be in compliance with NAIC Model Laws and with statutes.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to the amendment /adoption of these Rules until the expiration of the comment period on March 2, 2004. Objections need to be specific and sent to the attention of the APA Coordinator.

Written comments may be submitted to: Ellen K. Sprenkel, PO Box 26387, Raleigh, NC 27611, phone (919) 733-4529, fax (919) 733-6495 and email esprenke@ncdoi.net.

Comment period ends: March 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections

by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0600 - REPLACEMENT REGULATIONS

11 NCAC 12 .0601 PURPOSE AND SCOPE

The purpose of this Regulation is: the rules in this Section are:

- (1) To regulate the activities of insurers, agents and brokers insurers and producers with respect to the replacement of existing life insurance and annuities.
(2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by or financed purchase transactions that will:
(a) assuring assure that purchasers receive information with which a decision can be made in their own best interest;
(b) reducing reduce the opportunity for misrepresentation and incomplete disclosures; and
(c) establishing establish penalties for failure to comply with requirements of this Regulation the rules in this Section.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

11 NCAC 12 .0602 DEFINITION OF REPLACEMENT

"Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be: a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (1) lapsed, forfeited, surrendered, or otherwise terminated; partially surrendered, assigned to the replacing insurer or otherwise terminated;
(2) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
(3) amended so as to effect either a reduction in benefits or in the term for which coverage

would otherwise remain in force or for which benefits would be paid;

- (4) reissued with any reduction in cash value; or
- (5) pledged as collateral or subjected to borrowing or withdrawal, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding fifty percent of the loan value set forth in the policy where such loan or withdrawal is made in connection with new application or within twelve months of the date of signing the new application used in a financed purchase.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0603 OTHER DEFINITIONS**

(a) "Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(b) "Deposit Fund" means an arrangement under which amounts to accumulate as interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts.

(c) "Direct Response Sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

(d) "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement".

(e) "Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(f) "Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(g) "Registered Contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

(a) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity, or individually, solely through mails, telephone, the Internet or other mass communication media.

(b) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement" in 11 NCAC 12 .0602.

(c) "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(d) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual

transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it shall be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in 11 NCAC 12 .0606.

(e) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in 11 NCAC 04 .0501(b)(8).

(f) "Policy summary," for purposes of the rules in this Section:

(1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

- (A) current death benefit;
- (B) annual contract premium;
- (C) current cash surrender value;
- (D) current dividend;
- (E) application of current dividend; and
- (F) amount of outstanding loan.

(2) For universal life policies, means a written statement that shall contain at least the following information:

- (A) the beginning and end date of the current report period;
- (B) the policy value at the end of the previous report period and at the end of the current report period;
- (C) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
- (D) the current death benefit at the end of the current report period on each life covered by the policy;
- (E) the net cash surrender value of the policy as of the end of the current report period; and
- (F) and the amount of outstanding loans, if any, as of the end of the current report period.

(g) "Producer," for purposes of the rules in this Section, shall include agents, brokers and producers.

(h) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(i) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(j) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0604 EXEMPTIONS**

(a) Unless the statutes state otherwise, this Chapter Section shall not apply to transactions involving:

- (1) Credit life insurance; G.S. 58-57-1 through G.S. 58-57-90;
- (2) ~~Group life insurance or group annuities; G.S. 58-58-1 through G.S. 58-58-165;~~
- (3) ~~An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised, where replacing and existing insurer are same, or subsidiaries or affiliates under common ownership or control;~~
- (4) ~~Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;~~
- (5) ~~Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, agents or brokers proposing replacement shall comply with the requirements of 11 NCAC 12 .0605(a);~~
- (6) ~~Life insurance policies and annuities issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility under the provisions of Sec. 401 of the Internal Revenue Code; provided, however, that full and complete disclosure of all material facts shall be given to the administrator or policyowner, if other than the insured, of any plan to be replaced.~~
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 11 NCAC 12 .0608;
- (3) Group life insurance and annuities used to fund prearranged funeral contracts;
- (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner;
- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

- (6) Policies or contracts used to fund:
  - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (B) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
  - (C) A governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
  - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from 11 NCAC 12 .0601; or
- (10) Structured settlements.

(b) Notwithstanding 11 NCAC 12 .0604(6), the rules in this Section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.

(c) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0607 with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0605 DUTIES OF PRODUCERS**

(a) ~~Each agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or~~

annuity is presented, with or as part of each application the following:

- (1) ~~A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction;~~
- (2) ~~A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.~~

~~The requirements of Paragraphs (a)(1) and (2) may be satisfied by suitable questions on the application.~~

~~(b) Where a replacement is involved, the agent or broker shall:~~

- (1) ~~Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant. The agent or broker shall obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.~~
- (2) ~~Leave with the applicant the original or a copy of any written or printed marketing communications used for the presentation to that specific applicant, including but not limited to ledger statements, brochures, sales proposals or any other materials necessary for the buyer to make an informed purchase decision.~~
- (3) ~~Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Paragraph (b)(1).~~

~~(c) Each agent or broker who uses written or printed marketing communications in a conversation shall leave with the applicant the original or a copy of such materials used.~~

~~(a) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. Electronic capture of signature is acceptable in accordance with The Uniform Electronic Transactions Act, Article 40, G.S. 66. If the answer is "no," the producer's duties with respect to replacement are complete.~~

~~(b) If the applicant answered "yes" to the question regarding existing coverage referred to in Paragraph (a) of this Rule, the producer shall present and read to the applicant, not later than at the time of taking the application, and a notice regarding replacements in the format required by 11 NCAC 12.0611. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant. When the application is captured electronically, the notice shall be delivered to the applicant within two business days of receipt by the home office of the insurer.~~

(c) The notice shall list all life insurance policies or annuities proposed to be replaced, identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(d) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(e) Except as provided in 11 NCAC 12.0612(c), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this Section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

**11 NCAC 12.0606 DUTIES OF THE EXISTING INSURER**

Where a replacement is involved in the transaction, the existing Each insurer shall:

- ~~(1) Inform its field representatives or other personnel responsible for compliance with this Regulation of the requirements of this Regulation.~~
- ~~(2) Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.~~
- (1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- (2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration. If an in force illustration cannot be produced within five business days after receipt of a notice that an existing policy or contract is being replaced, the insurer shall provide a policy summary. The information shall be provided within five business days after receipt of the request from the policy or contract owner.
- (3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed

elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. When consecutive automatic premium loans are made, the insurer is only required to send the notice at the time of the first loan.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0607 DUTIES OF INSURERS THAT USE PRODUCERS**

Each insurer that uses an agent or broker in a life insurance or annuity sale shall:

- (1) Require with or as part of each completed applicant for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.
- (2) Where a replacement is involved:
  - (a) Require from the agent or broker with the application for life insurance or annuity:
    - (i) a list of all of the applicant's existing life insurance or annuity to be replaced; and
    - (ii) a copy of the Replacement Notice provided the applicant pursuant to 11 NCAC 12 .0605(b)(1).

Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

- (b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to 11 NCAC 12 .0607(2)(a) and a Policy Summary, Contract Summary or ledger statement containing Policy Data as required by G.S. 58-60-1 through G.S. 58-60-30 and for an annuity a contract summary as required in 11 NCAC 12 .0607(2)(c). Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement. The aforementioned Policy Summary, Contract Summary or ledger statement shall be based upon the EXACT face amount, plan, premium and supplemental riders or agreements, if any, contained in the applicant's application to the replacing insurer. In the event that multiple applications are made by or

for an applicant, Policy Summary, Contract Summary or ledger statement shall be provided for each. All required items shall be sent within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

- (c) Where annuities are involved, the Contract Summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. Amounts in items (2)(c)(i) and (iii) in this Rule, in the case of flexible premium annuity contracts, shall be determined either according to an anticipated pattern of consideration payments or on the assumption that considerations payable will be one hundred dollars (\$100.00) a month or one thousand dollars (\$1,000.00) a year. "Contract Summary" means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to where applicable, the following items:
  - (i) One of the options under the contract available for annuity payout.
  - (ii) A prominent statement that the contract does not provide cash surrender values if such is the case.
  - (iii) The following amounts, where applicable, for the first ten contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to, the twentieth contract year and at least one year from age 60 to 70 and at the scheduled commencement of annuity payments:
    - (A) The gross annual or single consideration for the annuity contract. Any

additional considerations for optional benefits, such as disability premium waiver, should be shown separately.

(B) Scheduled annual or single deposit for the deposit fund, if any.

(C) The total guaranteed death benefit and cash surrender value at the end of the year or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for deposit fund must be shown separately from those for a basic contract.

(D) The total illustrative death benefit and cash surrender value or paid-up annuity at the end of the year, not greater in amount than that based on:

(I) the current dividend scale and the interest rate credited by the insurer, and

(II) current annuity purchase rates.

A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

(iv) A Contract Summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, and a statement that such values are for illustration and are not guaranteed.

(v) A statement of the interest rates used in calculating the guaranteed and illustrative contract or fund values.

(vi) The date on which the Contract Summary is prepared.

(d) Each existing insurer or such insurer's agent or broker that undertakes a conversion shall furnish the policy owner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of G.S. 58-60-1 through G.S. 58-60-30, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, and the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in Subparagraph (2)(c) in this Rule. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be done within five working days of the receipt of the request.

(3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement", the Policy Summary, the Contract Summary and any ledger statements used, and a replacement register, listing the replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries, Contract Summaries or ledger statements used in any conversion. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

(4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy a statement that the applicant has a right to an unconditional refund of all premiums paid, which right may

be exercised within a period of twenty days commencing from the date of delivery of the policy.

- (5) ~~Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0607(2)(b),(c) and (d) requiring provision of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.~~

Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of the rules in this Section that shall include the following:

- (a) Information to its producers of the requirements of the rules in this Section and incorporation of the requirements of the rules in this Section into all relevant producer training manuals prepared by the insurer;
- (b) Provision to each producer of a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
- (c) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subitem (1)(b) of this Rule.
- (d) Procedures to confirm that the requirements of the rules in this Section have been met; and
- (e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this paragraph may include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Department. The capacity to monitor shall include the ability to produce records for each producer's:

- (a) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
- (b) Number of lapses of policies by the producer as a percentage of the

producer's total annual sales for life insurance;

- (c) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
  - (d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subitem (1)(e) of this Rule; and
  - (e) Replacements, indexed by replacing producer and existing insurer;
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
- (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements as required in 11 NCAC 12.0611;
- (5) When the applicant has existing policies or contracts, be able to produce copies of any sales material required by 11 NCAC 12 .0605(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) Ascertain that the sales material and illustrations required by 11 NCAC 12.0605(e) meet the requirements of the rules in this Section and are complete and accurate for the proposed policy or contract;
- (7) If an application does not meet the requirements of the rules in this Section, notify the producer and applicant and fulfill the outstanding requirements; and
- (8) Maintain records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

**11 NCAC 12 .0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES**

(a) ~~If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. In such instances the insurer may delete the last sentence and the references to signatures from Exhibit A without having to obtain approval of the form from the Commissioner.~~

(b) ~~If the insurer proposed the replacement it shall:~~



**PROPOSED RULES**

- ~~(1) Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner.~~
- ~~(2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.~~
- ~~(3) Comply with the requirements of Rule .0607(2)(b) and (c) of this Section, if the applicant furnishes the names of the existing insurers, and the requirements of Rule .0607(3) of this Section, except that it need not maintain a replacement register.~~

~~(a) When an insurer receives an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement as required in 11 NCAC 12 .0611.~~

~~(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:~~

- ~~(1) Provide to applicants or prospective applicants with the policy or contract a notice, as required in 11NCAC 12 .0611. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this Paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this Section; and~~
- ~~(2) Comply with the requirements of 11 NCAC 12 .0612(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of 12 .0612(a)(2), 12 .0612(a)(3), 12 .0612(a)(4), and 12 .0612(b).~~

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

**11 NCAC 12 .0609 VIOLATIONS AND PENALTIES**

~~(a) A violation of these rules shall occur if an agent, broker or insurer recommends the replacement or conversion of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of these rules shall be subject to such penalties as may be appropriate under the insurance laws.~~

~~(b) Patterns of action by policyowners who purchase replacing policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed~~

~~prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this Regulation.~~

~~(c) These rules do not prohibit the use of additional material other than that which is required that is not in violation of these rules or any other statute or rule.~~

~~(a) Any failure to comply with the rules in this Section shall be considered a violation of G.S. 58-63-15. Violations include:~~

- ~~(1) Any deceptive or misleading information set forth in sales material;~~
- ~~(2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;~~
- ~~(3) The intentional incorrect recording of an answer;~~
- ~~(4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or~~
- ~~(5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.~~

~~(b) Policy and contract owners may replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate the rules in this Section.~~

~~(c) Where it is determined that the requirements of the rules in this Section have not been met, the replacing insurer shall provide to the policy owner:~~

- ~~(1) Either:
 
  - ~~(A) An in force illustration if available; or~~
  - ~~(B) A policy summary for the replacement policy; or~~
  - ~~(C) An available disclosure document for the replacement contract; and~~~~
- ~~(2) The appropriate notice regarding replacements as required in 11 NCAC 12 .0611.~~

~~(d) Violations of the rules in this Section shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the Commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and payment of monetary penalties pursuant to G.S. 58-2-75.~~

*Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40.*

**11 NCAC 12 .0611 NOTICE REGARDING REPLACEMENT**

~~A notice-Notice regarding replacement shall be the most current format adopted by the NAIC Life Insurance and Annuities Replacement Model Regulation, prepared by the replacing agent whenever replacement of life insurance or annuities are involved. This form shall include at a minimum a statement that the insured understands all the relevant facts, the name of the replacing company, the contract number, the name of the insured, the signature of the replacing agent, the signature of the contract owner, and the date signed. A sample form can be obtained by calling the Senior Deputy Commissioner at (919) 733-4935 or writing him at Room 347, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.~~

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

**11 NCAC 12 .0612 DUTIES OF REPLACING INSURERS THAT USE PRODUCERS**

(a) Where a replacement is involved in a transaction, the replacing insurer shall:

- (1) Verify that the required forms are received and are in compliance with the rules in this Section.
- (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;
- (3) Be able to produce copies of the notification regarding replacement required in 11 NCAC 12 .0605(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
- (4) Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges; such notice may be included in the notice required by 11 NCAC 12 .0611.

(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to 11 NCAC 12 .0605(e), the insurer may:

- (1) Require with each application a statement signed by the producer that:
  - (A) Represents that the producer used only company-approved sales material; and
  - (B) States that copies of all sales material were left with the applicant in accordance with 11 NCAC 12 .0605(d); and
- (2) Within 10 days of the issuance of the policy or contract:
  - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with 11 NCAC 12 .0605(d);
  - (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
  - (C) Stress the importance of retaining copies of the sales material for future reference.

(d) An insurer shall retain and be able to produce a copy of the letter or other verification referenced in Paragraph (c)(2)(A) of this Rule in the policy or contract file for at least five years after the termination or expiration of the policy or contract.

*Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07K .0209.*

**Proposed Effective Date:** July 1, 2004

**Public Hearing:**

**Date:** January 28, 2004

**Time:** 5:00 p.m.

**Location:** Blockade Runner Hotel, 275 Waynick Blvd., Wrightsville Beach, NC

**Reason for Proposed Action:** *The purpose of this proposed amendment is to clarify the criteria used to define structures considered development versus those accessory structures which are excluded from the definition of development according to G.S. 113A-103(5)(b)(6).*

**Procedure by which a person can object to the agency on a proposed rule:** *If you have any objection(s) to the proposed rule, please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to the following*

**PROPOSED RULES**

address: Charles S. Jones, DCM, Coastal Management, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557.

**Written comments may be submitted to:** Charles S. Jones, DCM, Coastal Management, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone (252) 808-2808 and email charles.s.jones@ncmail.net.

**Comment period ends:** March 2, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT**

**SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT**

**15A NCAC 07K .0209 EXEMPTION/ACCESSORY USES/MAINTENANCE REPAIR/REPLACEMENT**

(a) Accessory buildings customarily incident to an existing structure are specifically excluded from the definition of development if the work does not involve filling, excavation, or the alteration of any sand dune or beach as set out in G.S. 113A-103(5)(b)(6). Accessory buildings shall be subordinate in area and purpose to the principal structure and shall not require, or consist of the expansion of the existing structure as defined by an increase in footprint or total floor area of the existing structure. A building with a footprint of 100 square feet or less shall be considered an accessory building as long as it is customarily incident to and subordinate in area and purpose to the principal structure. Buildings of a larger size may be considered accessory buildings if necessary for customary use.

(b) Accessory uses as defined in Paragraph (a) of this Rule and that are directly related to the existing dominant use, but not within the exclusion set out in G.S. 113A-103(5)(b)(6), and that require no plumbing, electrical or other service connections and do not exceed 200 square feet shall be exempt from the CAMA minor development permit requirement if they also meet the criteria set out in Paragraph (d) of this Rule.

(c) Any structure or part thereof may be maintained, repaired or replaced in a similar manner, size and location as the existing structure without requiring a permit, unless such repair or replacement would be in violation of the criteria set out in Paragraph (d) of this Rule. This exemption applies to those projects that are not within the exclusion for maintenance and repairs as set out in G.S. 113A-103(5)(b)(5) and Rule .0103 of this Subchapter.

(d) In order to be eligible for the exemptions described in Paragraphs (a), (b) and (c) of this Rule, the proposed development activity must meet the following criteria:

- (1) the development must not disturb a land area of greater than 200 square feet on a slope of greater than 10 percent;
- (2) the development must not involve removal, damage, or destruction of threatened or endangered animal or plant species;
- (3) the development must not alter naturally or artificially created surface drainage channels;
- (4) the development must not alter the land form or vegetation of a frontal dune;
- (5) the development must not be within 30 feet of normal water level or normal high water level; and
- (6) the development must be consistent with all applicable use standards and local land use plans in effect at the time the exemption is granted.

Authority G.S. 113A-103(5)(b); 113A-103(5)(c); 113A-111; 113A-118(a); 113A-120(8).

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 10 – BOARD OF CHIROPRACTICE EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Chiropractic Examiners intends to adopt the rule cited as 21 NCAC 10 .0209.*

**Proposed Effective Date:** May 1, 2004

**Public Hearing:**

**Date:** February 20, 2004

**Time:** 10:00 a.m.

**Location:** Board of Examiners Office, 174 Church St. North, Concord, NC

**Reason for Proposed Action:** G.S. 90-151.1 permits chiropractic physicians to dispense "nutritional supplements" but does not define the term. The purpose of the proposed rule is to supply a definition of nutritional supplements so that

**PROPOSED RULES**

*chiropractic physicians and their patients will know where the legal boundary is drawn by the Board of Chiropractic Examiners for purposes of enforcing G.S. 90-151.1.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be filed in writing and addressed to the Secretary, NC Board of Chiropractic Examiners, 174 Church St. North, Concord, NC 28025.*

**Written comments may be submitted to:** *Carol Hall, Executive Secretary, NC Board of Chiropractic Examiners, 174 Church St. North, Concord, NC 28025.*

**Comment period ends:** *March 2, 2004*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on

the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SECTION .0200 – PRACTICE OF CHIROPRACTIC**

**21 NCAC 10 .0209 NUTRITIONAL SUPPLEMENTS**  
For the purpose of enforcing G.S. 90-151.1, the term "nutritional supplements" includes vitamins, minerals, enzymes, dietary supplements, herbs, homeopathic and naturopathic preparations, glandular extracts, food concentrates and other natural agents. The term "nutritional supplements" does not include controlled substances or dangerous drugs.

*Authority G.S. 90-142; 90-151; 90-151.1; 90-154.*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.  
 This section of the Register may also include, 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.

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Rule-making Agency:** North Carolina Board of Agriculture

**Rule Citation:** 02 NCAC 43L .0104-.0108, .0113-.0116, .0201-.0206, .0401-.0409, .0701-.0702

**Effective Date:** January 1, 2004

**Date Approved by the Rules Review Commission:** December 11, 2003

**Reason for Action:** This temporary rule-making action would repeal rules that establish fees for various farmers markets operated by the Department. These rules have been superseded by a new fee schedule adopted by the Board pursuant to G.S. 106-6.1. The new fee schedule will become effective January 1, 2004, but these Rules would conflict with that unless repealed under temporary rule-making proceedings. Adherence to notice and hearing requirements would delay the implementation of the new fee schedule, thus reducing revenues needed for maintenance and repairs at the farmers markets before the busy season begins next June, which would be contrary to the public interest.

**CHAPTER 43 – MARKETS**

**SUBCHAPTER 43L – MARKETS**

**SECTION .0100 - FEES: STATE FARMERS' MARKET AT RALEIGH**

**02 NCAC 43L .0104 GATE FEE**

~~A charge designated as "gate fee" shall be collected from farmers at the gate upon entering the market at the rate as shown in gate fee charges in Rule .0113 of this Subchapter.~~

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985;

**02 NCAC 43L .0113 GATE FEES**

Gate fees shall be as follows:

- (1) ~~Farmers Area – Wholesale:~~
  - (a) ~~all vehicles less than one ton~~ \$ 4.00
  - (b) ~~trucks one ton thru six wheel straight truck~~ 7.00
  - (c) ~~trucks 10 wheel (one space)~~ 8.00
  - (d) ~~trucks tractor trailer~~ 10.00
  - (e) ~~trailers~~ 4.00
  - (f) ~~Sellers of out-of-state products shall pay double the above stated fees.~~
- (2) ~~Farmers Area – Retail:~~

Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0105 PERIOD FOR SHED LEASE**

~~Fees for shed spaces of farmers spaces are for a 24-hour period as stated on serially numbered receipts issued by a market representative.~~

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0106 TEMPORARY OR SEASONAL RENTAL BASIS**

~~The manager shall also rent spaces, if available, on a temporary or seasonal basis to persons selling specialty or seasonal items such as pumpkins and Christmas trees, fees to be based on amount of space occupied and agreed upon between manager and seller of the item(s).~~

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0107 LENGTH OF AGREEMENT**

~~Length of such agreements shall not exceed 60 days unless there is a renewal at a fee mutually agreed upon between manager and seller.~~

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0108 COMMERCIAL TRUCKERS**

~~The manager shall also rent, if available, on a week to week basis or month to month basis spaces to commercial truckers for a fee (depending on space occupied) for parking trucks in areas which will not interfere with normal market operations.~~

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

TEMPORARY RULES

Table with 2 columns: Description and Fee. Includes categories (a) through (5) for various buildings and delivery fees.

History Note: Authority G.S. 106-530; 106-6.1; Eff. January 1, 1985; Amended Eff. June 1, 1994; June 1, 1989; July 1, 1985; Temporary Repeal Eff. January 1, 2004.

02 NCAC 43L .0114 ADJUSTMENT OF RENTALS

The manager, with the approval of the Commissioner of Agriculture and Controller of the North Carolina Department of Agriculture, may change fees, rentals when leases expire upon 60 days notice when it is deemed advisable for the economic interests of the market.

History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985; Temporary Repeal Eff. January 1, 2004.

02 NCAC 43L .0115 ASSESSMENT OF TRUCKS: ETC.

Charges may be assessed for each truck, trailer, or other vehicle entering the market to deliver fruits, vegetables, or any other article or item to be sold or offered for sale on the market or delivered to operators on the market.

02 NCAC 43L .0202 GATE FEES

The following gate fees shall be paid upon entering the market:

- (1) Retail Shed A

History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985; Temporary Repeal Eff. January 1, 2004.

02 NCAC 43L .0116 EXEMPTIONS

Trucks, trailers or other vehicles owned and operated by persons or firms leasing facilities on an annual basis for operating on this market shall be exempt from such charges.

History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985; Temporary Repeal Eff. January 1, 2004.

SECTION .0200 - FEES: CHARLOTTE FARMERS MARKET

02 NCAC 43L .0201 BASE PRICES

Base prices are hereby established for use of the Charlotte Regional Farmers Market.

History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. January 1, 1985; Temporary Repeal Eff. January 1, 2004.

Day Week

**TEMPORARY RULES**

(a)	North Carolina residents:		
(i)	March through December	\$ 7.00	\$ 30.00
(ii)	January through February	5.00	
(b)	Out of state sellers	10.00	
(2)	Retail Building B		
(a)	North Carolina residents:		
(i)	March through September	7.00	35.00
(ii)	North Carolina farmers		30.00
(iii)	October through February	7.00	25.00
(iv)	Non farmer sellers - March through December - Saturdays		10.00
(b)	Out of state sellers	10.00	
(3)	Retail Building C	6.00	
(4)	Eighteen Wheelers	10.00	
(5)	Deliveries	4.00	
	(North Carolina farmers are exempt from this fee)		
(6)	Greenery Shed (Trucker's Shed)	7.00	30.00

*History Note:* Authority G.S. 106-6.1;  
 Eff. January 1, 1985;  
 Amended Eff. July 1, 1998; June 1, 1995; June 1, 1994; May 1, 1992; December 1, 1989;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0203 MISCELLANEOUS FEES**

Owners who leave vehicles on the market with flat tires more than one day shall be charged one dollar (\$1.00) per day. Vendors failing to clean up leased area may be assessed cleanup fees as deemed appropriate by the market manager. Parking fees for vehicles used for storage shall be one dollar (\$1.00) per day from May through September. Parking fees from October through April shall be established by the market manager. Charges for the use of electricity shall be determined by the market manager.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
 Eff. January 1, 1985;  
 Amended Eff. December 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0204 SPACE AVAILABILITY**

Spaces in the Charlotte Regional Farmers Market shall be rented on a first come, first serve basis. Twenty five percent of the spaces will be available for weekly rental on a first come, first serve basis.

Leased spaces may be reserved from October through March, subject to daily or weekly rental, for a fee of fifteen dollars (\$15.00) per month or a maximum of sixty dollars (\$60.00).

*History Note:* Authority G.S. 106-530; 106-6.1;  
 Eff. January 1, 1985;  
 Amended Eff. June 1, 1990; December 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0205 SPACE LIMITATIONS**

All persons are limited to two spaces per day unless a surplus space vacancy situation exists or special arrangements are made with the market manager.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
 Eff. January 1, 1985;

**02 NCAC 43L .0402 GATE FEES**

Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0206 TRUCK RENT BASIS**

The gate fee is good for the date shown on the receipt or until load is sold. If the load is not sold by the end of the day the space will be assigned on a space rental fee basis for an additional day. When the load of produce is sold, the space shall immediately revert back to the market for use by incoming vehicles.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
 Eff. January 1, 1985;  
 Amended Eff. December 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**SECTION .0400 - FEES: WESTERN NORTH CAROLINA FARMERS MARKET**

**02 NCAC 43L .0401 RETAIL BUILDINGS**

(a) Rental charges for space in the "Retail Buildings" at the Western North Carolina Farmers Market shall be at the rate of seven dollars (\$7.00) per day or forty two dollars (\$42.00) per week per assigned space of 10 feet by 20 feet from June through October and four dollars (\$4.00) per day or twenty four dollars (\$24.00) per week during the months of November through May.  
 (b) Beginning June 1, 1999, rental charges for space in the "Retail Buildings" at the Western North Carolina Farmers Market shall be at the rate of eight dollars (\$8.00) per day or forty eight dollars (\$48.00) per week per assigned space of 10 feet by 20 feet from June through October and six dollars (\$6.00) per day or thirty six dollars (\$36.00) per week during the months of November through May.

*History Note:* Authority G.S. 106-530; 106-6.1;  
 Eff. January 1, 1985;  
 Amended Eff. July 1, 1998; October 1, 1993; October 1, 1989;  
Temporary Repeal Eff. January 1, 2004.

**TEMPORARY RULES**

Gate fees for farmers or truckers who do not otherwise rent stall spaces at the Western North Carolina Farmers Market shall be as follows:

	<del>Sellers</del>	<del>Non-Resident</del>
	<del>Resident Sellers</del>	
Vehicles, 5 cartons or less	<del>\$ 1.00</del>	<del>\$ 3.00</del>
Pickups/4 wheelers	<del>5.00</del>	<del>8.00</del>
Ton trucks/6 wheelers:		
50 cartons or less	<del>5.00</del>	<del>8.00</del>
More than 50 cartons	<del>7.00</del>	<del>10.00</del>
10 wheelers and tractor trailers:		
100 cartons or less	<del>8.00</del>	<del>11.00</del>
101 cartons to half load	<del>9.00</del>	<del>12.00</del>
More than half load	<del>10.00</del>	<del>13.00</del>

Trucks which deliver such items as soft drinks, candy, snack bar supplies and freight are exempt from the gate fees stated in this Rule.

*History Note:* Authority G.S. 106-530; 106-6.1;  
Eff. January 1, 1985;  
Amended Eff. July 1, 1998; October 1, 1993; October 1, 1989;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0403 FARMERS AND TRUCKERS SHEDS**

Daily rental charges for space under the "Farmers and Truckers Sheds" at the Western North Carolina Farmers Market for each 12-foot wide stall shall be seven dollars (\$7.00) per day all year; forty-five dollars (\$45.00) per week, or one hundred fifty dollars (\$150.00) per month from June through October; thirty-five dollars (\$35.00) per week, or one hundred dollars (\$100.00) per month for April, May, November and December; and twenty dollars (\$20.00) per week, or sixty dollars (\$60.00) per month for January, February and March. A holding fee of twenty-five dollars (\$25.00) per stall per month shall be charged during January, February and March for each space to be rented on April 1. Electricity used shall be paid for in addition to these regular fees.

*History Note:* Authority G.S. 106-530; 106-6.1;  
Eff. January 1, 1985;  
Amended Eff. July 1, 1998; October 1, 1993; October 1, 1989;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0404 MISCELLANEOUS FEES**

Owners who leave vehicles on the market with flat tires more than one day shall be charged one dollar (\$1.00) per day. Vendors failing to clean up leased area may be assessed cleanup fees as deemed appropriate by the Market Manager. Parking fees for vehicles used for storage shall be one dollar (\$1.00) per day from May through September. Parking fees from October through April shall be established by the Market Manager.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0405 YEARLY DELIVERY PERMIT**

Truckers, farmers, or wholesalers making regular deliveries to the Western North Carolina Farmers Market may obtain a delivery permit as follows: all vehicles through 6 wheelers, three hundred dollars (\$300.00) per year; all vehicles over 6

wheelers, four hundred dollars (\$400.00) per year. These permits shall expire December 31 of the year purchased.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
Eff. January 1, 1985;  
Amended Eff. July 1, 1998; October 1, 1993;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0406 SPACE AVAILABILITY**

Stalls and spaces in the "Retail Buildings" and under the "Farmers and Truckers Sheds" shall be rented on a first-come-first-serve basis.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0407 SPACE LIMITATIONS**

All persons are limited to two stalls per day, unless a surplus stall vacancy situation exists or special arrangements are made with the Market Manager and Market Advisory Committee.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0408 TRUCK-RENT BASIS**

The gate fee is good for 24 hours or until load is sold. If load is not sold by end of 24-hour period, space will be assigned on a space rental fee basis for an additional 24-hour period until the load is sold. When the load of produce is sold, the space shall immediately revert back to the market for use by incoming vehicles.

*History Note:* Authority G.S. 106-22; 106-530; 106-6.1;  
Eff. January 1, 1985;  
Temporary Repeal Eff. January 1, 2004.

**02 NCAC 43L .0409 FEES FOR SPECIAL EVENTS**

The Market Manager shall have the right to establish reasonable fees for special events not otherwise covered in these rules.



**TEMPORARY RULES**

*History Note: Authority G.S. 106-530; 106-6.1; Eff. October 1, 1989; Temporary Repeal Eff. January 1, 2004.*

**SECTION .0700 - FEES - PIEDMONT TRIAD FARMERS MARKET**

**02 NCAC 43L .0702 GATE FEES**

The following gate fees shall be paid upon entering the market:

- (1) ~~Farmers Area Wholesale:~~
  - (a) ~~all vehicles less than one ton~~ \$ 6.00 per space per day
  - (b) ~~trucks one ton through six wheel straight truck~~ 7.00 per space per day
  - (c) ~~trucks 10 wheel (one space)~~ 8.00 per space per day
  - (d) ~~trucks tractor trailer~~ 10.00 per space per day
  - (e) ~~trailers~~ 6.00 per space per day
- (2) ~~Farmers Area Retail:~~
  - (a) ~~January through December~~ \$ 6.00 per space per day
  - (b) ~~Additional loads~~ 6.00 per load
  - (c) ~~Off season holding fee of seventy five dollars (\$75.00) applies to only Christmas tree sellers.~~
  - (d) ~~Sellers of out of state products shall pay double the above fees.~~
- (3) ~~Building F (Retail): January through December~~ \$ 7.00 per space per day
- (4) ~~Building D (Truckers) Excluding Farmers Area:~~
  - (a) ~~wholesale daily fees:~~
    - (i) ~~all vehicles through six wheel straight truck~~ \$ 8.00
    - (ii) ~~trucks 10 wheel, tractor trailer~~ 12.00
  - (b) ~~wholesale by month:~~
    - (i) ~~one to four months~~ 125.00
    - (ii) ~~five months and over~~ 100.00
- (5) ~~Delivery Fees: Wholesale Dealers, Building D, Garden Center:~~
  - (a) ~~all vehicles through six wheel:~~
    - ~~less than 50 packages~~ \$ 1.00
    - ~~51-300 packages~~ 3.00
    - ~~301 or more packages~~ 4.00
  - (b) ~~10 wheel tractor trailers:~~
    - ~~less than 100 packages~~ 3.00
    - ~~101-500 packages~~ 5.00
    - ~~501 or more packages~~
- (6) ~~Delivery fees for the Retail Building shall be the same as for the farmers area wholesale.~~

*History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. June 1, 1995; Temporary Repeal Eff. January 1, 2004.*

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

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

**Rule Citation:** 10A NCAC 14C .3801-.3805

**Effective Date:** January 1, 2004

**Date Approved by the Rules Review Commission:** December 11, 2003

**Reason for Action:** One of the subject matters included in the State Medical Facilities Plan is acute care beds. Certificate of Need (CON) rules are needed to implement the new need

**02 NCAC 43L .0701 PAYMENT OF FEES**

All persons using the Piedmont Triad Farmers Market shall pay the fees set forth in this Section.

*History Note: Authority G.S. 106-22; 106-530; 106-6.1; Eff. June 1, 1995; Temporary Repeal Eff. January 1, 2004.*

determination for acute care beds in the 2004 State Medical Facilities Plan. These Rules must be adopted under temporary action to coincide with the Plan effective date of January 1, 2004.

**CHAPTER 14 - DIRECTOR, DIVISION OF FACILITY SERVICES**

**SUBCHAPTER 14C - CERTIFICATE OF NEED REGULATIONS**

**SECTION .3800 – CRITERIA AND STANDARDS FOR ACUTE CARE BEDS**

**10A NCAC 14C .3801 DEFINITIONS**

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

- (1) "Acute care beds" means acute care beds licensed by the Division of Facility Services in accordance with standards in 10A NCAC 13B .6200, and located in hospitals licensed pursuant to G.S. 131E-79.
- (2) "Average daily census" means the number of inpatient acute care days of care provided in licensed acute care beds in a given year divided by 365 days.
- (3) "Campus" shall have the same meaning as defined in G.S. 131E-176(2c).
- (4) "Service Area" means the single or multi-county area as used in the development of the acute care bed need determination in the applicable State Medical Facilities Plan.

*History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004.*

**10A NCAC 14C .3802 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant that proposes to develop new acute care beds shall complete the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to develop new acute care beds shall submit the following information:

- (1) the number of acute care beds proposed to be licensed and operated following completion of the proposed project;
- (2) documentation that the proposed services shall be provided in conformance with all applicable facility, programmatic, and service specific licensure, certification, and JCAHO accreditation standards;
- (3) documentation that the proposed services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (4) if adding new acute care beds to an existing facility, documentation of the number of inpatient days of care provided in the last operating year in the existing licensed acute care beds by medical diagnostic category, as classified by the Centers for Medicare and Medicaid Services according to the list set forth in the applicable State Medical Facilities Plan;
- (5) the projected number of inpatient days of care to be provided in the total number of licensed acute care beds in the facility, by county of residence, for each of the first three years following completion of the proposed project, including all assumptions, data and methodologies;
- (6) documentation that the applicant shall be able to communicate with emergency transportation agencies 24 hours per day, seven days per week;
- (8) documentation that services in the emergency care department shall be provided 24 hours per day, seven days per week, including a

- description of the scope of services to be provided during each shift and the physician and professional staffing that will be responsible for provision of those services;
  - (8) copy of written administrative policies that prohibit the exclusion of services to any patient on the basis of age, race, sex, creed, religion, disability or the patient's ability to pay;
  - (9) a written commitment to participate in and comply with conditions of participation in the Medicare and Medicaid programs;
  - (10) documentation of the health care services provided by the applicant, and any facility in North Carolina owned or operated by the applicant's parent organization, in each of the last two operating years to Medicare patients, Medicaid patients, and patients who are not able to pay for their care;
  - (11) documentation of strategies to be used and activities undertaken by the applicant to attract physicians and medical staff who will provide care to patients without regard to their ability to pay;
  - (12) correspondence from physicians and other referral sources that documents their willingness to refer patients to the proposed services to be offered in the new acute care beds; and
  - (13) documentation that the proposed new acute care beds shall be operated in a hospital that provides inpatient medical services to both surgical and non-surgical patients.
- (c) An applicant proposing to develop new acute care beds in a new licensed hospital or on a new campus of an existing hospital shall also submit the following information:
- (1) the projected number of inpatient days of care to be provided in the licensed acute care beds in the new hospital or on the new campus, by major diagnostic category as recognized by the Centers for Medicare and Medicaid Services (CMS) according to the list set forth in the applicable State Medical Facilities Plan;
  - (2) documentation that medical and surgical services shall be provided in the proposed acute care beds on a daily basis within at least five of the major diagnostic categories as recognized by the Centers for Medicare and Medicaid Services (CMS) according to the list set forth in the applicable State Medical Facilities Plan;
  - (3) copies of written policies and procedures for the provision of care within the new acute care hospital or on the new campus, including but not limited to the following:
    - (A) the admission and discharge of patients, including discharge planning;
    - (B) transfer of patients to another hospital;
    - (C) infection control; and

- (D) safety procedures;
- (4) documentation that the applicant owns or otherwise has control of the site on which the proposed acute care beds will be located; and
- (5) documentation that the proposed site is suitable for development of the facility with regard to water, sewage disposal, site development and zoning requirements; and provide the required procedures for obtaining zoning changes and a special use permit if site is currently not properly zoned.

*History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004.*

**10A NCAC 14C .3803 PERFORMANCE STANDARDS**

- (a) An applicant proposing to develop new acute care beds shall demonstrate that the projected average daily census (ADC) of the total number of licensed acute care beds proposed to be licensed within the service area, under common ownership with the applicant, divided by the total number of those licensed acute care beds is reasonably projected to be at least 66.7 percent when the projected ADC is less than 100 patients, 71.4 percent when the projected ADC is 100 to 200 patients, and 75.2 percent when the projected ADC is greater than 200 patients, in the third operating year following completion of the proposed project or in the year for which the need determination is identified in the State Medical Facilities Plan, whichever is later.
- (b) An applicant proposing to develop new acute care beds shall provide all assumptions and data used to develop the projections required in this Rule and demonstrate that they support the projected inpatient utilization and average daily census.

*History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004.*

**10A NCAC 14C .3804 SUPPORT SERVICES**

- (a) An applicant proposing to develop new acute care beds shall document that each of the following items shall be available to the facility 24 hours per day, seven days per week:
  - (1) laboratory services including microspecimen chemistry techniques and blood gas determinations;
  - (2) radiology services;
  - (3) blood bank services;
  - (4) pharmacy services;
  - (5) oxygen and air and suction capability;
  - (6) electronic physiological monitoring capability;
  - (7) mechanical ventilatory assistance equipment including airways, manual breathing bag and ventilator/respirator;
  - (8) endotracheal intubation capability;
  - (9) cardiac arrest management plan;
  - (10) patient weighing device for a patient confined to their bed; and
  - (11) isolation capability.

(b) If any item in Paragraph (a) of this Rule will not be available in the facility 24 hours per day, seven days per week, the applicant shall document the basis for determining the item is not needed in the facility.

(c) If any item in Paragraph (a) of this Rule will be contracted, the applicant shall provide correspondence from the proposed provider of its intent to contract with the applicant.

*History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004.*

**10A NCAC 14C .3805 STAFFING AND STAFF TRAINING**

- (a) An applicant proposing to develop new acute care beds shall demonstrate that the proposed staff for the new acute care beds shall comply with licensure requirements set forth in Title 10A NCAC 13B, Licensing of Hospitals.
- (b) An applicant proposing to develop new acute care beds shall provide correspondence from the persons who expressed interest in serving as Chief Executive Officer and Chief Nursing Executive of the facility in which the new acute care beds will be located, documenting their willingness to serve in this capacity.
- (c) An applicant proposing to develop new acute care beds in a new hospital or on a new campus of an existing hospital shall provide a job description and the educational and training requirements for the Chief Executive Officer, Chief Nursing Executive and each department head which is required by licensure rules to be employed in the facility in which the acute care beds will be located.
- (d) An applicant proposing to develop new acute care beds shall document the availability of admitting physicians who shall admit and care for patients in each of the major diagnostic categories to be served by the applicant.
- (e) An applicant proposing to develop new acute care beds shall provide documentation of the availability of support and clinical staff to provide care for patients in each of the major diagnostic categories to be served by the applicant.

*History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004.*

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**Rule-making Agency:** *Department of Health and Human Services*

**Rule Citation:** *10A NCAC 42A .0107*

**Effective Date:** *January 1, 2004*

**Date Approved by the Rules Review Commission:** *December 11, 2003*

**Reason for Action:** *This Rule is proposed due to a fee established pursuant to G.S. 130A-5(15) for analyzing clinical pap smear specimens for non-Medicaid eligible women sent to the State Laboratory of Public Health by local health departments and state-owned facilities and for reporting the results of the analyses.*

**CHAPTER 42 – LABORATORY SERVICES**

**SUBCHAPTER 42A - GENERAL POLICIES**

**10A NCAC 42A .0107 PAP SMEAR FEES**

The fee established pursuant to G.S. 130A-5(15) for analyzing clinical Pap smear specimens for non-Medicaid eligible women sent to the State Laboratory of Public Health by local health departments and State-owned facilities and for reporting the results of the analysis shall be ten dollars and sixty-five cents (\$10.65). In June of 2004 and each succeeding June, the fee shall be recomputed by the Director of the State Laboratory of Public Health by analyzing the data from the previous two years of testing at the State Laboratory of Public Health, determining the average number of pap smear analyses performed annually for non-Medicaid eligible women and dividing that number into

the total cost of analyzing non-Medicaid pap smear specimens sent to the State Laboratory of Public Health. The fee amount determined in June 2004 and succeeding Junes shall be effective during the succeeding fiscal year. The Director of the State Laboratory of Public Health shall, prior to July 1 of each year, give notice of the new fee amount to all local health departments and state-owned facilities impacted by this Rule.

*History Note: Authority G.S. 130A-5;  
Temporary Adoption Eff. January 1, 2004.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday, December 18, 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, December 12, 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 R. Funderburke - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Thomas Hilliard, III  
Robert Saunders  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
Graham Bell  
Dana E. Simpson  
Dr. John Tart

**RULES REVIEW COMMISSION MEETING DATES**

December 18, 2003      January 18, 2004

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**RULES REVIEW COMMISSION  
DECEMBER 11, 2003  
MINUTES**

The Rules Review Commission met on Thursday morning, December 11, 2003, in the office of the Rules Review Commission, 1307 Glenwood Avenue, Suite 159, Raleigh, North Carolina, to review temporary rules. A designated panel of Commissioners present were: Jeffrey Gray, Jennie Hayman, Dana Simpson and Thomas Hilliard.

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

The following people attended:

David McLeod	Dept. of Agriculture
Torrey McLean	DHHS
Mike Haufman	DHHS
Lee Hoffman	DHHS/DFS
Jim Keene	DHHS/DFS

The meeting was called to order at 1:03 p.m. with Commissioner Hayman presiding.

**LOG OF FILINGS TEMPORARY RULES**

Chairman Hayman presided over the review of the log of temporary rules and all rules were approved unanimously.

The meeting adjourned at 1:15 p.m.

The next meeting of the Commission is Thursday, December 18, 2003 at 10:00 a.m.

Respectfully submitted,  
Lisa Johnson

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**Commission Review/Temporary Rules  
Log of Filings (Log #2)  
Review Date December 11, 2003**

**BOARD OF AGRICULTURE**

**RULES REVIEW COMMISSION**

The rules in Chapter 43 are the rules of the Markets Division. They deal with the marketing of N.C. farm products. They cover structure and policy (43A); market news section (43B); inspection of farm, horticultural crops, and animal products (43C); standards and fees (43D); unfair practices of fruit and vegetable handlers (43E); marketing and branding of apples and peaches (43F); agricultural fairs (43G); marketing of shell eggs (43H); operation of various markets (43L); and egg processing (43M).

Subchapter 43L rules regulate the fees and operational rules of the various farmers markets including Raleigh (.0100), Charlotte (.0200), the Western N.C. horse and livestock facility (.0300), the Western N.C. Farmers' market (.0400), managers' duties (.0500), general operational rules (.0600), and fees for the Piedmont Triad Farmers Market (.0700).

Gate Fee	02 NCAC 43L .0104	Repeal
Period for shed lease	02 NCAC 43L .0105	Repeal
Temporary or seasonal rental basis	02 NCAC 43L .0106	Repeal/
Length of agreement	02 NCAC 43L .0107	Repeal/
Commercial truckers	02 NCAC 43L .0108	Repeal/
Gate Fee	02 NCAC 43L .0113	Repeal/
Adjustment of rentals	02 NCAC 43L .0114	Repeal/
Assessment of trucks	02 NCAC 43L .0115	Repeal/
Exemptions	02 NCAC 43L .0116	Repeal/
Base prices	02 NCAC 43L .0201	Repeal/
Gate Fee	02 NCAC 43L .0202	Repeal/
Miscellaneous fees	02 NCAC 43L .0203	Repeal/
Space availability	02 NCAC 43L .0204	Repeal/
Space limitations	02 NCAC 43L .0205	Repeal/
Truck rent basis	02 NCAC 43L .0206	Repeal/
Rental buildings	02 NCAC 43L .0401	Repeal/
Gate Fee	02 NCAC 43L .0402	Repeal/
Farmers and truckers sheds	02 NCAC 43L .0403	Repeal/
Miscellaneous fees	02 NCAC 43L .0404	Repeal/
Yearly delivery permit	02 NCAC 43L .0405	Repeal/
Space availability	02 NCAC 43L .0406	Repeal/
Space limitations	02 NCAC 43L .0407	Repeal/
Truck rent basis	02 NCAC 43L .0408	Repeal/
Fees for special events	02 NCAC 43L .0409	Repeal/
Payment of fees	02 NCAC 43L .0701	Repeal/
Gate Fees	02 NCAC 43L .0702	Repeal/

**DHHS**

**The rules in Chapter 14 concern services provided by the Divisions of Facility Services.**

The rules in Subchapter 14C are Certificate of Need regulations including general provision (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800).

Criteria and Standards for Acute Care Beds	10A NCAC 14C .3801	Adopt/
Information Required of Applicant	10A NCAC 14C .3802	Adopt/
Performance Standards	10A NCAC 14C .3803	Adopt/
Support Services	10A NCAC 14C .3804	Adopt/
Staffing and Staff Training	10A NCAC 14C .3805	Adopt/

**The rules in Chapter 42 are general provisions regulating laboratory services.**

PAP Smear Fees	10A NCAC 42A .0107	Adopt/
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## 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>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
<b><u>AGRICULTURE</u></b>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development June Locklear	02 DHR 1672	Wade	06/10/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care	02 DHR 2206	Wade	11/04/03	

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Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03
Caatherine Williams v. DHHS	03 DHR 0320	Mann	07/17/03
Rachel Peek,Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03
Constance Basnigh v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03
Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03
Pamela Powell v. DMA Outpatient Therapy	03 DHR 0834	Lassiter	10/13/03
Angela Carter Precious Love Turtledove v. Tarin Goodwin, St. of NC, DCD	03 DHR 0850	Connor	09/23/03
Nequita Williams v. DHHS, Div. of Medical Assistance	03 DHR 0895	Wade	11/21/03
Ali Alsaras d/b/a University Market v. DHHS	03 DHR 0917	Conner	12/02/03
Kimberly Roberts v. DHHS, Div. of Facility Services	03 DHR 0927	Gray	08/15/03
Michael Hillis v. Department of Revenue	03 DHR 0935	Conner	07/28/03
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03
Nazih Hasan & Emao Hasan, Nes Convenient Mart v DHHS	03 DHR 0985	Lassiter	10/31/03
Victor J Gray v Dorothea Dix Hospital	03 DHR 1039	Morrison	09/29/03
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03
Heather M Wood v. DHHS	03 DHR 1083	Morrison	10/30/03
Lisa S Lincoln, Honeybees Creative Ctr v DHHS, Nutrition Branch	03 DHR 1091	Elkins	11/13/03
Jaris Davis v. DHHS, Div. of Facility Services	03 DHR 1136	Gray	10/07/03
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03
Angela Sadler v. DHHS, Div. of Facility Services	03 DHR 1210	Conner	11/04/03
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03
Calvin Harris, Jr. v. Health Care Personnel Registry	03 DHR 1434	Wade	10/06/03
Karen J Andrews v. DHHS	03 DHR 1461	Lassiter	11/25/03
Coastal Carolina Health Care PA d/b/a Coastal Carolina Imaging (P-6766-03) V DHHS Div of Facility Svcs, Certificate of Need Section	03 DHR 1496	Lassiter	11/06/03
Delaine Hairston v DHHS	03 DHR 1604	Mann	11/25/03
Ronald Bryan Gatlyn v. Health Care Personnel Registry	03 DHR 1655	Lassiter	10/28/03
Sheila Ferrell Meeks v Office of Administrative Hearings	03 DHR 1672	Lassiter	12/02/03
Willie S Neely v DHHS, Div. of Facility Services	03 DHR 1674	Gray	11/20/03
Doris Duff v DHHS, Div. of Facility Services	03 DHR 1720	Lassiter	12/02/03
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**JUSTICE**



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**Alarm Systems Licensing Board**

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Alan Bradford Foehner v. Alarm System Licensing Board	03 DOJ 0709	Morrison	08/05/03	

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John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03	
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03	18:06 NCR 444
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03	
Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03	
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Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR 229
Joshua Phillip Grant v Sheriffs' Education & Training Standards Comm.	02 DOJ 1787	Wade	10/27/03	
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03	
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03	
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03	
Alexander Draft: Registered Agent/Owner of A.D. Police Svcs., Inc. v. DOJ, Company Police Program	03 DOJ 0484	Mann	10/17/03	
Harvey Levale Cook v. Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0515	Lassiter	07/09/03	
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03	
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03	
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03	
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03	
Loy S. Lentz Jr v. Sheriffs' Educ. & Trng. Stds. Comm.	03 DOJ 1229	Gray	10/02/03	

**DEPARTMENT OF TRANSPORTATION**

Chris Azar v. Department of Transportation	03/DOT 1345	Morrison	09/08/03	
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**DEPARTMENT OF STATE TREASURER**

Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03	
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**DEPARTMENT OF PUBLIC INSTRUCTION**

Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03	
Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03	
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03	

**ENVIRONMENT AND NATURAL RESOURCES**

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Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03	
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 <sup>1</sup>	Chess	05/14/03	
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03	
Trafalgar Properties LLC v. County of Durham	03 EHR 0630	Wade	07/18/03	
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03	
Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR, Div. of Coastal Management	02 EHR 1078	Wade	06/09/03	
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Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03	
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Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR	02 EHR 1735	Conner	07/22/03	
Glenn Sasser v. DENR, Division of Coastal Management	02 EHR 1794	Morrison	08/28/03	18:07 NCR 485
Michael E Hendrix v. Caldwell Co. Dept of Environmental Health	03 EHR 0006	Gray	07/02/03	
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03	
Daniel W Bulla III v. Env. Health Section Stokes Co Health Dept.	03 EHR 0156	Conner	09/11/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242	Lassiter	10/30/03	
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242 <sup>2</sup>	Lassiter	10/30/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0254 <sup>6</sup>	Lassiter	10/30/03	
Pacemaker Leasing Co v. DENR	03 EHR 0711	Conner	09/10/03	
Curtis Carney v. Pitt Co Health Dept., Env. Health Div.	03 EHR 0766	Conner	07/25/03	
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Danny L Ottaway v. DENR, Div. of Air Quality	03 EHR 0948	Gray	08/15/03	
Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03	
Lorraine E. Caracci v. Nash Co. Health Dept. Env. Health	03 EHR 0986	Gray	11/26/03	
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Connell E Purvis v DENR, Div of Marine Fisheries	03 EHR 1228	Elkins	11/06/03	
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Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03	
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**TEACHERS' & STATE EMPLOYEES COMP. MAJOR MED PLAN**

Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR 338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR 405

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Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03		
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03		
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03		
Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03		
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Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admin Asst & the County of Stanly	01 OSP 0888 <sup>4</sup>	Lassiter	09/08/03		
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Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03		
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Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03		
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Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 <sup>4</sup>	Lassiter	09/08/03		
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03		
James Thomas Kinlaw v. ESC of NC	03 OSP 1343	Wade	10/23/03		
Norman Burton v. Chatham County	02 OSP 1483 <sup>2</sup>	Gray	05/12/03		
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03		
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 <sup>3</sup>	Gray	07/23/03		
Norman Burton v. Chatham County	02 OSP 1625 <sup>2</sup>	Gray	05/12/03		
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 <sup>3</sup>	Gray	07/23/03		
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03		
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03		
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03		
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Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03		
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03		
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03		
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Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03		
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03		
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03		
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Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03		
James E. Sharpe v Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03		
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03		
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03		
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Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03		
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 <sup>8</sup>	Chess	10/20/03		
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03		
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 <sup>8</sup>	Chess	10/20/03		
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03		
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03		
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Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03		
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Leslie AllenWhittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03		
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03		
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769	Conner	07/17/03		
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Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03		
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0862 <sup>5</sup>	Morrison	09/29/03		
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0863 <sup>5</sup>	Morrison	09/29/03		
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03		
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 <sup>7</sup>	Lassiter	11/10/03		
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Everette C Body v Department of Correction	03 OSP 0885	Conner	11/12/03		
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Mable Lynn Kelly v. NC SEAA	03 OSP 1129	Chess	10/20/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
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Marcella Thorne v Department of Correction	03 OSP 1225	Elkins	11/14/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 <sup>7</sup>	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 <sup>7</sup>	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 <sup>7</sup>	Lassiter	11/10/03
Luvae J Wall v. DHHS, Payroll Office	03 OSP 1259	Morrison	12/02/03
Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Victor Marc Sain v. Catawba Valley Community College	03 OSP 1380	Conner	11/19/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03
Richard Todd McLean v. John Umstead Hospital	03 OSP 1448	Wade	11/26/03
Charles G Home Jr v. DOC	03 OSP 1479	Lassiter	10/28/03
Charles G Home Jr v. DOC	03 OSP 1480	Lassiter	10/29/03
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03
Jesse C Whitaker v. Facilities Mgmt Operations of NCSU	03 OSP 1645	Lassiter	11/26/03
Peter A Fillare v. NCSU Dining	03 OSP 1646	Lassiter	12/02/03
A Louise Nilsen Mankes v. Dr. Gatewood, UNC Gen Admin Dept NCSEAA	03 OSP 1660	Lassiter	12/01/03
A Louise Nilsen Mankes v. Mr. Anthony Bordeaux, UNC Gen Admin Dept NCSEAA	03 OSP 1661	Lassiter	12/01/03

**UNIVERSITY OF NORTH CAROLINA HOSPITALS**

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Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03
Michael Gray Simmons v. UNC Hospitals	03 UNC 0977	Wade	11/25/03
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03
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Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03

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- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases
- 7 Combined Cases
- 8 Combined Cases