

# NORTH CAROLINA

## REGISTER



**Volume 19, Issue 10**  
**Pages 812 - 915**

**November 15, 2004**

This issue contains documents officially filed through October 22, 2004.

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

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Dana Sholes, Publication Coordinator  
Linda Dupree, Editorial Assistant  
Julie Brincefield, Editorial Assistant

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**For the CUMULATIVE INDEX to the NC Register go to:**  
<http://oahnt.oah.state.nc.us/register/CI.pdf>

**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.*

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
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
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	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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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
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
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
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
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
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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 60 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.*

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT  
Executive Director

Mailing Address  
PO Box 27255  
Raleigh, NC 27611-7255

October 1, 2004

Mr. J. David James  
Smith, James, Rowlett & Cohen, L.L.P.  
Post Office Box 990  
Greensboro, North Carolina 27402-0990

Re: Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163-278.23 on Questions Related to the Scope of Articles 22E and 22F of Chapter 163 of the N.C. General Statutes

Dear Mr. James:

You have requested on behalf of Teamsters Local 391 and the political committee "Carolina Drive" a written opinion pursuant to N.C. Gen. Stat. § 163-278.23 on the scope of certain statutory requirements of Articles 22E and/or 22F of Chapter 163 of the North Carolina General Statutes.

You ask several questions with respect to the permissible source of funds for electioneering communications and the reporting of any funds spent on electioneering communications. First, you ask whether "only new funds raised and maintained in separate and segregate accounts, comprising only funds directly contributed by individuals" may be used for "the purchase or provision of electioneering communications pursuant to Articles 22E and 22F." With limited exceptions, only an "individual, committee, association, or any other organization or group of individuals" may make disbursements for electioneering communications. The source of the funds used for the disbursements must be individuals and the entity making the disbursement must be able to clearly document that all funds originated from individuals.

If an entity has maintained an account that has only funds originating from individuals, those funds do not have to be "new" in the sense that they have been raised since the passage of Article 22E and 22F. General Statutes 163-278.81 and -278.91 recognize in subdivision (b)(5) that disbursements for electioneering communications may originate from a "segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications." In addition, a corporation exempt from taxation under section 501(c)(4) of the Internal Revenue Code of 1986 or a political organization defined by section 527(e)(1) of the Code may make expenditures for communications paid for exclusively from funds provided by individuals and maintained in a segregated bank account without their being deemed "electioneering communications." G.S. 163-278.82(a) & -278.92(a). But not all disbursements for electioneering communications have to originate from segregated funds. Subdivisions (b)(6) of G.S. 163-278.82(a) and -278.92(a) contemplate that there may be disbursements from funds other than segregated bank accounts, presumably by entities meeting all the criteria set forth in G.S. 163-278.19(f). Thus, when Articles 22 E and F are read as a whole, they dictate that no funds for electioneering communications may be from an account in which funds from corporations, labor unions or other prohibited sources were commingled with funds from individuals unless the entity making the disbursement for the electioneering communication fits within the narrow statutory exception for entities meeting all the criteria of G.S. 163-278.19(f).

You next ask whether the accounts in which the funds used for electioneering communications are deposited must be maintained in North Carolina. Neither Article 22E nor Article 22F imposes a requirement that the accounts be maintained in this State. In providing disclosure of disbursements for electioneering communications, the entity making the disclosure is asked to provide the name of the individual who controls the accounts for the entity making the disbursement and that individual's mailing address, telephone number, their principal place of business or employer's name, and their occupation. This information is requested so that the State Board has the information necessary to contact the appropriate representative of the entity making the disclosure if it has questions about the reports the entity has filed. The State Board has promulgated a reporting form for electioneering communications and it is available in editable pdf format on the State Board's web page ([www.sboe.state.nc.us/index\\_cfrs.html](http://www.sboe.state.nc.us/index_cfrs.html)). A copy of the form and instructions is attached.

Next you ask whether “the State Board intends to apply ‘consultation and coordination standards’ drawn from the Federal Election Campaign Act as is more fully addressed in the administrative scheme promulgated by the Federal Election Commission.” As you are undoubtedly aware, on September 18, 2004, the United States District Court for the District of Columbia rejected the coordination regulations adopted by the Federal Elections Commission (“FEC”) implementing the Bipartisan Campaign Reform Act of 2002 (“BCRA”) in the case of *Shays v. FEC* (No. 02-1984(CKK)). The FEC announced on September 28 that it had voted to appeal the decision but it had “not yet determined whether it will ask the court of appeals to review all, or only some, of the rules remanded to the Commission by the district court.” ([www.fec.gov](http://www.fec.gov)) The State Board may review the evolving case law on the validity of the FEC regulations, as well as developments with respect to the statutes or regulations of other jurisdictions dealing with consultation and coordination, in order to better understand and apply North Carolina’s statutes; however, the State Board does not consider regulations adopted by another jurisdiction to be in any way binding on it.

Rather, in interpreting North Carolina’s statutes, the State Board will rely on ordinary principles of statutory construction. A fundamental principle on which it will rely is that words used in a statute will be given their common or ordinary meaning unless the General Assembly has specifically defined them. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980). In addition, “in the absence of a contextual definition, [the State Board] may look to dictionaries to determine the ordinary meaning of words within a statute.” *Perkins v. Ark.Trucking Servs, Inc.*, 351 N.C. 634, 638, 528, S.E.2d 902, 904 (2000).

The term “independent expenditure” is defined in N.C. Gen. Stat. § 163-278.6(9a) in pertinent part to mean “an expenditure to support or oppose the nomination or election of one or more clearly identified candidates *that is made without consultation or coordination with a candidate or agent of a candidate* whose nomination or election the expenditure supports or whose nomination or election the expenditure opposes.” (Emphasis supplied.) The State Board will apply the common understanding of the words used in this definition to determine whether an expenditure is independent. If there is any doubt about the meaning of a word used in the definition, then the State Board may rely on a dictionary to determine the meaning of a word. In addition, if a word has been construed by a North Carolina court in an analogous context, then the meaning given the word by the court will be significant.

The purpose of an advisory opinion under N.C. Gen. Stat. § 163-278.23 is to provide an opinion to candidates, committees and others regarding compliance with the campaign reporting statutes. It is a vehicle for providing guidance on the application of the statutes to a set of facts. Whether an expenditure is “made without consultation or coordination” will of necessity be made on a case-by-case basis considering the pertinent facts under the principles set forth herein. Since your letter presents no facts to which the statutes may be applied, I am unable to provide any more definitive guidance at this time. You are encouraged in the future to request an opinion with respect to a given set of facts if you are uncertain of the application of the campaign reporting statutes to those facts.

Changes in statutes or case law may affect this opinion and you should evaluate their applicability in relying on it. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett  
Executive Director

cc: Julian Mann III, Codifier of Rules

U.S. Department of Justice

Civil Rights Division

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JDR:JR:JEM:jdh  
DJ 166-012-3  
2004-3763  
2004-3897

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

October 15, 2004

George A. Weaver, Esq.  
113 East Nash Street, Suite 204  
Wilson, NC 27893

Ms. Ann D. Cone  
Elections Administrator  
P.O. Box 2121  
Wilson, NC 27894-2121

Dear Mr. Weaver and Ms. Cone:

This refers to the changes in absentee voting methods for the November 2004 general election, including the use of the M100 system to tabulate paper ballots and the WINVote and iVotronic voting systems, and the extended absentee voting hours for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 25 and September 1, 2004; supplemental information was received on September 27, 2004.

The Attorney General does not interpose any objection to the use of the M100 system and the extended hours. 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. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

With regard to the remaining changes, your August 14 and October 4, 2004, letters withdraw use of these systems from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. 28 C.F.R. 51.25 (a).

Sincerely,

Joseph D. Rich  
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

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JDR:RPL:JEM:par  
DJ 166-012-3  
2003-3739

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

October 20, 2004

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

Dear Mr. Holec:

This refers to the procedures for conducting the November 2, 2004, special bond and tax election, including conduct of the election by the county, for 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 submission on August 25, 2004.

The Attorney General does not interpose any objection to the specified change. 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. Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich  
Chief, Voting Section



**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**NODA Properties, LLC**

Pursuant to N.C.G.S. §130A-310.34, NODA Properties, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in the City of Charlotte, Mecklenburg County, North Carolina. The Property is comprised of approximately 3.5 acres located at 2320 North Davidson Street in Charlotte. Environmental contamination exists on the Property in groundwater. NODA Properties, LLC has committed itself to redevelop the Property exclusively for industrial, commercial, retail and residential uses in a mixed-use format. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and NODA Properties, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The new Notice of Intent to Redevelop a Brownfields Property is a third one regarding this Property; it has been filed because, contrary to original plans, land use restrictions will not be placed on adjoining parcels. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Charlotte, Neighborhood Development Key Business, Employment & Business Service, located at 600 East Trade Street, by contacting Carolyn Minnich at that address, at [cminnich@ci.charlotte.nc.us](mailto:cminnich@ci.charlotte.nc.us), or at (704) 336-3499; or at 401 Oberlin Road, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919)733-2801, ext. 336. Written public comments and written requests for a public meeting may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Program Manager  
Brownfields Program  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**Deadline to request public meeting: December 1, 2004**

**Deadline to submit comments: December 15, 2004**

**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 NC Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .1002-.1010, .1103-.1106, .1212-.1213; 13G .0301, .1213-.1214, amend the rules cited as 10A NCAC 13F .0507, .0601, .0603-.0604, .0801-.0802, .0901-.0902, .1001, .1101-.1102, .1202; 13G .0204, .0206, .0301-.0308, .0310-.0317, .0601, .0801-.0802, .0901-.0902, .1001-.1002, .1004, .1008, .1010, .1101-.1106, .1203 and repeal the rules cited as 10A NCAC 13F .0101, .1203; 13G .0101, .0205, .0210 and .1204.*

**Proposed Effective Date:** July 1, 2005

**Public Hearing:**

**Date:** December 10, 2004

**Time:** 2:00 p.m.

**Location:** Division of Facility Services, Room 201, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC

**Reason for Proposed Action:** *The NC Medical Care Commission is proposing to adopt, amend, and repeal rules found in 10A NCAC 13F and 10A NCAC 13G. These Subchapters pertain to the Licensing of Homes for the Aged and Infirm and Licensing of Family Care Homes. The specifics of this rule-making action are: In an effort to improve the care of residents in adult care homes, the Division of Facility Services, has sought and considered input from a variety of stakeholders with interest in adult care homes. The adoption, amendment, and repeal of the above outlined rules when required are a result of this effort and all recommended changes are being proposed with the expressed intent of improving care to the residents in adult and family care homes.*

**Procedure by which a person can object to the agency on a proposed rule:** *An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.*

**Written comments may be submitted to:** *Mercidee Benton, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701, Phone (919)855-3750, Fax (919)733-2757, email mercidee.benton@ncmail.net.*

**Comment period ends:** January 14, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of

the rule, 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 day following the day the Commission approves the rule. 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

**SUBCHAPTER 13F – LICENSING OF HOMES FOR THE AGED AND INFIRM**

**SECTION .0100 - DEFINITIONS**

**10A NCAC 13F .0101 DEFINITIONS**

~~(a) The following definition shall apply throughout this Subchapter. Home for the Aged and Disabled. A home for the aged and disabled is a facility licensed by the Division of Facility Services to provide residential care to seven or more adults who because of age or disability require some personal care and supervision along with room and board to assure their safety and comfort.~~

~~(b) For purposes of the rules of this Subchapter, the definitions of the following terms, as set forth in 10A NCAC 13G .0101 shall apply: activities coordinator, administrator, adult homes specialist, co administrator, licensing agency, minimum standards, monitoring agency, relief person in charge, relief supervisor in charge, residents, responsible person, staff and supervisor in charge.~~

*Authority G.S. 131D-2; 143B-153.*

**SECTION .0500 - STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION**

**10A NCAC 13F .0507 TRAINING ON CARDIO-PULMONARY RESUSCITATION**

Each adult care home shall have at least one staff person on the premises at all times who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by the

American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute and Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations. The staff person trained according to this Rule shall have access at all times in the facility to a one-way valve pocket mask for use in performing cardio-pulmonary resuscitation.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160.

**SECTION .0600 - STAFFING**

**10A NCAC 13F .0601 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF SEVEN TO THIRTY RESIDENTS**

(a) The adult care home administrator is responsible for the total operation of an adult care home and is also responsible to the licensing agency and the monitoring agency for meeting and maintaining the rules of this Subchapter. The co-administrator, when there is one, shares equal responsibility with the administrator for the operation of the home and for meeting and maintaining the rules of this Subchapter. The term administrator also refers to co-administrator where it is used in this Subchapter.

(b) At all times there shall be one administrator or administrator-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. Except for the provisions in Paragraph (c) of this Rule, One one of the following arrangements shall be used to manage a facility with a capacity or census of 7 to 30 residents:

- (1) The administrator is in the home or within 500 feet of the home with a means of two-way telecommunication with the home at all times; and immediately available. ~~To be immediately available, the administrator shall be on stand-by and have direct access to either a two way intercom system or a two way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed shall be in working condition and must be located in the bedroom of the administrator; or~~
- (2) An administrator-in-charge is in the home or within 500 feet of the home with a means of two-way telecommunication with the home at all times; or and is immediately available. ~~The conditions of being "immediately available" cited in Subparagraph (b)(1) of this Rule shall apply to this arrangement; or~~
- (3) When there is a cluster of licensed homes, each with a capacity of 7 to 12 residents, located adjacently on the same site, there shall be at least one staff member, either live-in or on a shift basis in each of these homes. In addition, there shall be at least one administrator or administrator-in-charge who

is within 500 feet of each home with a means of two-way telecommunication with each home at all times immediately available, and directly responsible for assuring that all required duties are carried out in each home. ~~To be immediately available, the administrator or administrator-in-charge shall be on stand-by and have direct access to either a two way intercom system or a two way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or administrator in charge. The equipment installed shall be in working condition and shall be located in the bedroom of the administrator or administrator in charge.~~

(c) When the administrator or administrator-in-charge is absent from the home or not ~~immediately available,~~ within 500 feet of the home, the following shall apply:

- (1) ~~If the administrator or administrator-in-charge is absent temporarily~~ For absences of a non-routine nature that do not exceed 24 hours per week, (not to exceed 24 hours per week), a relief-person-in-charge shall be designated by the administrator ~~to shall be in the home and in charge of # the home during the absence.~~ absence and in the home or within 500 feet of the home according to the requirements in Paragraph (b) of this Rule. The administrator shall assure that the relief-person-in-charge is prepared to respond in case of an emergency in the home. The relief-person-in-charge shall be 21 years or older. ~~;~~ and
- (2) ~~When the administrator or administrator-in-charge will be away from the home~~ For recurring or for an extended planned absence absences, (more than 24 hours per week), a relief-administrator-in-charge shall be designated by the administrator ~~to shall be in charge of the home during the absence.~~ absence and in the home or within 500 feet of the home according to the requirements in Paragraph (b) of this Rule. The relief-administrator-in-charge shall meet all of the qualifications required for the administrator-in-charge as specified in Rule .0402 of this Subchapter with the exception of Sub-Paragraph (4) pertaining to the continuing education requirement.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

**10A NCAC 13F .0603 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF 81 OR MORE RESIDENTS**

(a) ~~A facility~~ An adult care home with a capacity or census of 81 or more residents shall be under the direct control of an administrator, who shall be responsible for the operation,

administration, management and supervision of the facility on a full-time basis to assure that all care and services to residents are provided in accordance with all applicable local, state and federal regulations and codes. The administrator shall be on duty in the facility at least eight hours per day, five days per week and shall not serve simultaneously as a personal care aide supervisor or other staff to meet staffing requirements while on duty as an ~~administrator~~ administrator or be an administrator for another adult care home except as follows. (~~For staffing chart, see Rule .0606 of this Subchapter.~~) If there is more than one facility on a contiguous parcel of land or campus setting, and the combined licensed capacity of the facilities is 200 beds or less, there may be one administrator on duty for all the facilities on the campus. The administrator shall not serve simultaneously as a personal care aide supervisor in this campus setting. (For staffing chart, see Rule .0606 of this Subchapter.)

(b) When the administrator is not on duty in the facility, there shall be a person designated as administrator-in-charge on duty in the facility who has responsibility for the overall operation of the facility. The supervisor may serve simultaneously as the administrator-in-charge. Each facility on a contiguous parcel of land or campus setting, as described in Paragraph (a) of this Rule, shall have a person designated as the administrator-in-charge in the facility when the administrator is not on duty.

~~(e) The administrator in charge shall meet the following qualifications:~~

- ~~(1) be 21 years or older;~~
- ~~(2) be at least a high school graduate or certified under the G.E.D. program or have passed an alternative examination established by the Department;~~
- ~~(3) meet the general health requirements according to Rule .0606 of this Subchapter;~~
- ~~(4) have at least six months management or supervisory experience in a long term care setting or be a licensed health professional or a licensed nursing home administrator; and~~
- ~~(5) earn at least 12 hours a year of continuing education credits related to the management of adult care homes and care of aged and disabled persons in accordance with procedures established by the Department.~~

~~(d)(c)~~ The administrator shall be on call, which means able to be contacted by telephone, pager or two-way intercom at all times when not in the building.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13F .0604 PERSONAL CARE AND OTHER STAFFING**

~~(a) In addition to the requirements set forth in Paragraphs (b) through (e) of this Rule, the requirements in 10A NCAC 13F .0407 shall control for this Subchapter. References to homes in Paragraphs (b) through (e) of this Rule refer to adult care homes.~~

~~(b)(a)~~ Homes Adult care homes shall staff to the licensed capacity of the home or to the resident census. When a home is staffing to resident census, a daily census log shall be maintained which lists current residents by name, room assignment and date

of admission and must be available for review by the monitoring and licensing agencies.

~~(e)(b)~~ Homes with capacity or census of 12 or fewer residents: residents shall comply with the following:

- (1) At all times there shall be an administrator or ~~supervisor in charge~~ administrator-in-charge in the home or within 500 feet of the home with a means of two-way telecommunication at all times; and immediately available;
- ~~(2) A free standing home with capacity or census of 12 or fewer residents shall comply with the following staffing:~~
- ~~(2)(A)~~ When the administrator or ~~supervisor in charge~~ administrator-in-charge is not on duty within the home, there shall be at least one staff member on duty on the first and second shifts and at least one staff member on call within the building on third shift. There shall be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom; ~~bedroom; and~~
- ~~(3)(B)~~ When the administrator or ~~supervisor in charge~~ administrator-in-charge is on duty within the home on the first and second shifts and on call within the home on the third shift, another staff member (i.e., co-administrator, ~~supervisor in charge~~ administrator-in-charge or aide) shall be in the building or within 500 feet of the home with a means of two-way telecommunication at all times; and immediately available.
- ~~(4)(A)~~ The administrator shall prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties and the amount of time estimated to be spent for each duty. There shall be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies;
- ~~(5)(B)~~ At least 12 hours shall be spent daily providing for the personal services, health services, drug management, meaningful activities, and other direct services needed by the residents. These activities are the primary responsibility of the staff member(s) on duty on the first and second shifts; however, other help, such as ~~the~~ supervisor in charge administrator-in-charge and activities coordinator may be used to assist in providing these services;
- ~~(6)(C)~~ During the remaining hours, the staff member on duty may perform housekeeping and food service duties as long as the staff member can respond immediately to resident calls or the residents are otherwise supervised. Also, the person on call within the home may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. if the duties do not hinder care

of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns; and do not take the person on call out of view of where the residents are;

~~(7)(D)~~ Additional help shall be available daily to assure adequate housekeeping and food service.

~~(3)(c)~~ A cluster of homes with capacity or census of 12 or fewer residents shall comply with the following staffing:

~~(A)(1)~~ When there is a cluster of up to six licensed homes located adjacently, there shall be at least one administrator or ~~supervisor in charge~~ administrator-in-charge who lives within 500 feet of each of the ~~homes with a means of two-way telecommunication at all times~~ homes, is immediately available, and ~~who, as supervisor for all the homes, who~~ is directly responsible for assuring that all required duties are carried out in each home; and

~~(B)(2)~~ In each of the homes, at least one staff member shall be on duty on the first and second shifts and at least one staff member shall be on call within the building during the third shift. There shall be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom.

~~(4)~~ The following shall apply to all homes with capacity or census of 12 or fewer residents:

~~(A)~~ The administrator shall prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties and the amount of time estimated to be spent for each duty. There shall be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies;

~~(B)~~ At least 12 hours shall be spent daily providing for the personal services, health services, drug management, meaningful activities, and other direct services needed by the residents. These activities are the primary responsibility of the staff member(s) on duty on the first and second shifts; however, other help, such as the supervisor in charge and activities coordinator may be used to assist in providing these services;

~~(C)~~ During the remaining hours, the staff member on duty may perform housekeeping and food service duties as long as the staff member can respond immediately to resident calls or the residents are otherwise

supervised. Also, the person on call within the home may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. if the duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns; and do not take the person on call out of view of where the residents are;

~~(D)~~ Additional help shall be available daily to assure adequate housekeeping and food service.

(d) Homes with capacity or census of 13-20 shall comply with the following staffing. When the home is staffing to census and the census falls below 13 residents, the staffing requirements for a home with 12 or fewer residents shall apply.

(1) At all times there shall be an administrator or ~~supervisor in charge~~ administrator-in-charge in the home or within 500 feet of the home with a means of two-way telecommunication at all times and immediately available;

(2) When the administrator or ~~supervisor in charge~~ administrator-in-charge is not on duty within the home, there shall be at least one staff member on duty on the first, second and third ~~shifts~~; shifts.

(3) When the administrator or ~~supervisor in charge~~ administrator-in-charge is on duty within the home, another staff member (i.e. co-administrator, ~~supervisor in charge~~ administrator-in-charge or aide) shall be in the building or within 500 feet of the home with a means of two-way telecommunication at all times and immediately available;

(4) The job responsibility of the staff member on duty within the home is to provide the direct personal assistance and supervision needed by the residents. Any housekeeping duties performed by the staff member between the hours of 7 a.m. and 9 p.m. shall be limited to occasional, non-routine tasks. The staff member may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns and do not take the staff member out of view of where the residents are. The staff member on duty to attend to the residents shall not be assigned food service duties, duties; and

(5) In addition to the staff member(s) on duty to attend to the residents, there shall be sufficient help available daily to perform necessary housekeeping and food service duties.

(e) Homes with capacity or census of 21 or more shall comply with the following staffing. When the home is staffing to census

and the census falls below 21 residents, the staffing requirements for a home with a census of 13-20 shall apply.

(1) While the Division of Facility Services may require a home to have additional aide duty in excess of the minimum (based on the condition of the residents and the layout of the building), the daily total of aide duty hours on each 8-hour shift shall at all times (other than during short, unforeseeable circumstances) be at least:

(A) First shift (morning) - 16 hours of aide duty for facilities with a census or capacity of 21 to 40 residents; and 16 hours of aide duty plus four additional hours of aide duty for every additional 10 or fewer residents for facilities with a census or capacity of 40 or more residents. (For staffing chart, see Rule .0606 of this Subchapter.)

(B) Second shift (afternoon) - 16 hours of aide duty for facilities with a census or capacity of 21 to 40 residents; and 16 hours of aide duty plus four additional hours of aide duty for every additional 10 or fewer residents for facilities with a census or capacity of 40 or more residents. (For staffing chart, see Rule .0606 of this Subchapter.)

(C) Third shift (evening) - 8.0 hours of aide duty per 30 or fewer residents (licensed capacity or resident census). (For staffing chart, see Rule .0606 of this Subchapter.)

(D) The facility shall have additional aide duty to meet the needs of the facility's heavy care residents equal to the amount of time reimbursed by Medicaid. As used in this Rule, the term, "heavy care resident", means an individual residing in an adult care home who is defined as "heavy care" by Medicaid and for which the facility is receiving enhanced Medicaid payments.

(2) The following describes the nature of the aide's duties, including allowances and limitations:

(A) The job responsibility of the aide is to provide the direct personal assistance and supervision needed by the residents. ~~residents;~~

(B) Any housekeeping performed by an aide between the hours of 7 a.m. and 9 p.m. shall be limited to occasional, non-routine tasks, such as wiping up a water spill to prevent an accident, attending to an individual resident's

soiling of his bed, or helping a resident make his bed. Routine bed-making is a permissible aide ~~duty. duty;~~

(C) If the home employs more than the minimum number of aides required, any additional hours of aide duty above the required hours of direct service between 7 a.m. and 9 p.m. may involve the performance of housekeeping ~~tasks. tasks;~~

(D) An aide may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder the aide's care of residents or immediate response to resident calls, do not disrupt the residents' normal lifestyles and sleeping patterns, and do not take the aide out of view of where the residents are. The aide shall be prepared to care for the residents since that remains his primary ~~duty. duty; and~~

(E) Aides shall not be assigned food service duties; however, providing assistance to individual residents who need help with eating and carrying plates, trays or beverages to residents is an appropriate aide duty.

(3) In addition to the staffing required for management and aide duties, there shall be sufficient personnel employed to perform necessary housekeeping and food service duties.

(f) Information on required staffing shall be posted in the facility according to G.S. 131D-4.3(a)(5).

*Authority G.S. 131D-2; 131D-4.3; 143B-153; S.L. 99-0334.*

**SECTION .0800 - RESIDENT ASSESSMENT AND CARE PLAN**

**10A NCAC 13F .0801 RESIDENT ASSESSMENT**

(a) An adult care home shall assure that an initial assessment of each resident is completed within 72 hours of admission using the Resident Register.

(b) The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. The assessment to be completed within 30 days following admission and annually thereafter shall be a functional assessment to determine a resident's level of functioning to include psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The assessment shall indicate if the resident requires referral to the

resident's physician or other licensed health care professional, a provider of mental health, developmental disabilities or substance abuse services or a community resource.

(c) The facility shall assure an assessment of a resident is completed within 10 days following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. For the purposes of this Subchapter, significant change in the resident's condition is determined as follows:

- (1) Significant change is one or more of the following:
  - (A) deterioration in two or more activities of daily living;
  - (B) change in ability to walk or transfer;
  - (C) change in the ability to use one's hands to grasp small objects;
  - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
  - (E) no response by the resident to the treatment for an identified problem;
  - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
  - (G) threat to life such as stroke, heart condition, or metastatic cancer;
  - (H) emergence of a pressure ulcer at Stage II, which is a superficial ulcer presenting an abrasion, blister or shallow crater, or higher;
  - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being such as initial diagnosis of Alzheimer's disease or diabetes;
  - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;
  - (K) new onset of impaired decision-making;
  - (L) continence to incontinence or indwelling catheter; or
  - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
  - (A) changes that suggest slight upward or downward movement in the resident's status;
  - (B) changes that resolve with or without intervention;
  - (C) changes that arise from easily reversible causes;
  - (D) an acute illness or episodic event;

- (E) an established, predictive, cyclical pattern; or
- (F) steady improvement under the current course of care.

(d) If a resident experiences a significant change as defined in Paragraph (c) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record. Referral shall be made immediately when significant changes are identified that pose an immediate risk to the health and safety of the resident, other residents or staff of the facility.

(e) The assessments required in Paragraphs (b) and (c) of this Rule shall be completed and signed by the person designated by the administrator to perform resident assessments.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13F .0802 RESIDENT CARE PLAN**

(a) An adult care home shall assure a care plan is developed for each resident in conjunction with the resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section. The care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Section.

(c) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
- (2) frequency of the service provision.

(d) The assessor shall sign the care plan upon its completion.

(e) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:

- (1) the resident is under the physician's care; and
- (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

(f) The facility shall assure that the care plan for each resident who is under the care of a provider of mental health, developmental disabilities or substance abuse services includes resident specific instructions regarding how to contact that provider. Whenever significant behavioral changes described in Rule .0801(c)(1)(D) of this Subchapter are identified, the care plan shall specify how consultation or further assessment shall be obtained by the facility regarding that resident's needs and treatment. The facility shall seek consultation or further assessment immediately for all behavioral changes that pose a risk to the safety and health of the resident, other residents or the staff in the facility.

*Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-165; S.L. 99-*

0334; 2002-0160.

**SECTION .0900 – RESIDENT CARE AND SERVICES**

**10A NCAC 13F .0901 PERSONAL CARE AND SUPERVISION**

~~The requirements in 10A NCAC 13G .0901 shall control for this Subchapter. In addition, handbells or other signaling devices are to be supplied, when indicated, to semi-ambulatory and non-ambulatory residents for their reasonable use.~~

(a) Adult care home staff shall provide personal care to residents according to the residents' care plans and to attend to any other personal care needs residents may be unable to attend for themselves.

(b) Staff shall provide supervision of residents in accordance with each resident's assessed needs, care plan and current symptoms.

(c) Staff shall respond immediately in the case of an accident or incident involving a resident to provide care and intervention according to the facility's policies and procedures.

*Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2003-0284.*

**10A NCAC 13F .0902 HEALTH CARE**

(a) An adult care home shall provide care and services in accordance with the resident's care plan.

(b) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition, considering age, disability and diagnoses.

~~(b)~~(c) The facility shall assure documentation of the following in the resident's record:

- (1) facility contacts with the resident's physician, physician service, other licensed health professional, including mental health professional, when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;
- (2) all visits of the resident to or from the resident's physician, physician service or other licensed health professional, including mental health professional, of which the facility is aware.
- (3) written procedures, treatments or orders from a physician or other licensed health professional; and
- (4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.

~~(c)~~(d) The following shall apply to the resident's physician or physician service:

- (1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident.
- (2) When the resident cannot remain under the care of the chosen physician or physician service, the facility shall assure that arrangements are made with the resident or responsible person for choosing and securing

another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.

*Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160; 2003-0284.*

**SECTION .1000 - MEDICATIONS**

**10A NCAC 13F .1001 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES**

~~The rules stated in 10A NCAC 13G .1000 shall control for this Subchapter, except that:~~

- ~~(1) The facility shall obtain the services of a licensed pharmacist or a prescribing practitioner for the provision of pharmaceutical care at least quarterly for residents or more frequently as determined by the Department based on the documentation of significant medication problems identified during monitoring visits or other investigations in which the safety of the residents may be at risk.~~
- ~~(2) A facility licensed for 13 or more beds shall have a written agreement with the pharmacy provider for dispensing services and a licensed pharmacist or prescribing practitioner for pharmaceutical care services according to Rule 10A NCAC 13G .1009. The written agreement shall include a statement of the responsibility of each party.~~

In addition to the requirements in Rule .1211(a)(1) of this Subchapter, the adult care home shall ensure the following:

- (1) orientation to medication policies and procedures for staff responsible for medication administration prior to their administering or supervising the administration of medications; and
- (2) compliance of medication policies and procedures with requirements of this Section and all applicable state and federal regulations, including definitions in the North Carolina Pharmacy Practice Act, G.S. 90-85.3.

Note: For the purposes of this Subchapter, medications include herbal and non-herbal supplements.

*Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334.*

**10A NCAC 13F .1002 MEDICATION ORDERS**

(a) The adult care home shall ensure contact of the resident's physician or prescribing practitioner for verification or clarification of orders for medications and treatments:

- (1) orders for admission or readmission of the resident are is not dated and signed within 24 hours of admission or readmission to the facility;
- (2) if orders are not clear or complete; or



- (3) if multiple admission forms are received upon admission or readmission and orders on the forms are not the same.

The facility shall ensure that this verification or clarification is documented in the resident's record.

(b) All orders for medications, prescription and non-prescription, and treatments shall be maintained in the resident's record in the facility.

(c) The medication orders shall be complete and include the following:

- (1) medication name;
- (2) strength of medication;
- (3) dosage of medication to be administered;
- (4) route of administration;
- (5) specific directions of use, including frequency of administration; and
- (6) if ordered on an as needed basis, a clearly stated indication for use.

(d) Verbal orders for medications and treatments shall be:

- (1) countersigned by the prescribing practitioner within 15 days from the date the order is given;
- (2) signed or initialed and dated by the person receiving the order; and
- (3) accepted only by a licensed professional authorized by state occupational licensure laws to accept orders or qualified staff responsible for medication administration.

(e) Any standing orders shall be for individual residents and signed and dated by the resident's physician or prescribing practitioner.

(f) The facility shall assure that all current orders for medications or treatments, including standing orders and orders for self-administration, are reviewed and signed by the resident's physician or prescribing practitioner at least every six months.

(g) In addition to the requirements as stated in Paragraph (c) of this Rule, psychotropic medications ordered "as needed" by a prescribing practitioner, shall not be administered unless the following have been provided by the practitioner or included in an individualized care plan developed with input by a registered nurse or registered pharmacist:

- (1) detailed behavior-specific written instructions, including symptoms that might require use of the medication;
- (2) exact dosage;
- (3) exact time frames between dosages; and
- (4) the maximum dosage to be administered in a 24 hour period.

(h) The facility shall assure that personal care aides and their direct supervisors receive training annually about the desired and undesired effects of psychotropic medications, including alternative behavior interventions. Documentation of training attended by staff shall be maintained in the facility.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1003 MEDICATION LABELS**

(a) Prescription legend medications shall have a legible label with the following information:

- (1) the name of the resident for whom the medication is prescribed;
- (2) the most recent date of issuance;
- (3) the name of the prescriber;
- (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
- (5) directions for use clearly stated and not abbreviated;
- (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
- (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
- (8) auxiliary statements as required of the medication;
- (9) the name, address, telephone number of the dispensing pharmacy; and
- (10) the name or initials of the dispensing pharmacist.

(b) For medication systems such as med paks and multi-paks when two or more solid oral dosage forms are packaged and dispensed together, labeling shall be in accordance with Paragraph (a) of this Rule and the label or package shall also have a physical description or identification of each medication contained in the package.

(c) The facility shall assure the container is relabeled by a pharmacist or a dispensing practitioner at the refilling of the medication when there is a change in the directions by the prescriber. The facility shall have a procedure for identifying direction changes until the container is correctly labeled. No person other than a pharmacist or dispensing practitioner shall alter a prescription label.

(d) Non-prescription medications shall have the manufacturer's label with the expiration date clearly visible, unless the container has been labeled by a pharmacist or a dispensing practitioner. Non-prescription medications in the original manufacturer's container shall be labeled with at least the resident's name and the name shall not obstruct any of the information on the container. Facility staff may label or write the resident's name on the container.

(e) Medications, prescription and non-prescription, shall not be transferred from one container to another except when prepared for administration to a resident.

(f) Prescription medications leaving the facility shall be in a form packaged and labeled by a pharmacist or a dispensing practitioner. Non-prescription medications that are not packaged or labeled by a pharmacist or dispensing practitioner must be released in the original container and directions for administration must be provided to the resident or responsible party. The facility shall assure documentation of medications, including quantity released and returned to the facility.

Note: Dispensing of medications is restricted to pharmacists or other health care practitioners that are approved by the North Carolina Board of Pharmacy. Repackaging or providing more than one dose of a prescription medication, including unit dose prescription medications, for subsequent administration is an act of dispensing.

Authority G.S. 131D-2; 131D-4.5; 143B-165.

**10A NCAC 13F .1004 MEDICATION ADMINISTRATION**

(a) The adult care home shall assure that the preparation and administration of medications, prescription and non prescription, and treatments by staff are in accordance with:

- (1) orders by a licensed prescribing practitioner which are maintained in the resident's record; and
- (2) rules in this Section and the facility's policies and procedures.

(b) The facility shall assure that only staff meeting the requirements in Rule .0403 of this Subchapter shall administer medications, including the preparation of medications for administration.

(c) Only oral solid medications that are ordered for routine administration may be prepared in advance and must be prepared within 24 hours of the prescribed time for administration. Medications prescribed for prn (as needed) administration shall not be prepared in advance.

(d) Liquid medications, including powders or granules that require to be mixed with liquids for administration, and medications for injection shall be prepared immediately before administration to a resident.

(e) Medications shall not be crushed for administration until immediately before the medications are administered to the resident.

(f) If medications are prepared for administration in advance, the following procedures shall be implemented to keep the drugs identified up to the point of administration and protect them from contamination and spillage:

- (1) Medications are dispensed in a sealed package such as unit dose and multi-paks that is labeled with at least the name of each medication and strength in the sealed package. The labeled package of medications is to remain unopened and kept enclosed in a capped or sealed container that is labeled with the resident's name, until the medications are administered to the resident. If the multi-pak is also labeled with the resident's name, it does not have to be enclosed in a capped or sealed container;
- (2) Medications not dispensed in a sealed and labeled package as specified in Subparagraph (1) of this Paragraph are kept enclosed in a sealed container that identifies at least the name and strength of each medication prepared and the resident's name;
- (3) A separate container is used for each resident and each planned administration of the medications and labeled according to Paragraph (1) or (2) of this Rule;
- (4) All containers are placed together on a separate tray or other device that is labeled clearly with the planned time for administration and stored in a locked area

which is only accessible to staff as specified in Rule .1006(d) of this Section.

(g) The facility shall ensure that medications are administered to residents within one hour before or one hour after the prescribed or scheduled time unless precluded by emergency situations.

(h) If medications are not prepared and administered by the same staff person, there shall be documentation for each dose of medication prepared for administration by the staff person who prepared the medications when or at the time the resident's medication is prepared. Procedures shall be established and implemented to clearly identify the staff person who prepared the medication and the staff person who administered the medication.

(i) The recording of the administration on the medication administration record shall be by the staff person who administers the medication immediately following administration of the medication to the resident and observation of the resident actually taking the medication and prior to the administration of another resident's medication. Pre-charting is prohibited.

(j) The resident's medication administration record (MAR) shall be accurate and include the following:

- (1) resident's name;
- (2) name of the medication or treatment order;
- (3) strength and dosage or quantity of medication administered;
- (4) instructions for administering the medication or treatment;
- (5) reason or justification for the administration of medications or treatments as needed (PRN) and documenting the resulting effect on the resident;
- (6) date and time of administration;
- (7) documentation of any omission of medications or treatments and the reason for the omission, including refusals; and
- (8) name or initials of the person administering the medication or treatment. If initials are used, a signature equivalent to those initials is to be documented and maintained with the medication administration record (MAR).

(k) The facility shall have a system in place to ensure the resident is identified prior to the administration of any medication or treatment.

(l) The facility shall assure the development and implementation of policies and procedures governing medication errors and adverse medication reactions that include documentation of at least the following:

- (1) notification of a physician or appropriate health professional and supervisor;
- (2) action taken by the facility according to orders by the physician or appropriate health professional; and
- (3) charting or documentation errors, unavailability of a medication, resident refusal of medication, any adverse medication reactions and notification of the resident's physician when necessary.

(m) Medication administration supplies, such as graduated measuring devices, shall be available and used by facility staff in order for medications to be accurately and safely administered.

(n) The facility shall assure that medications are administered in accordance with infection control measures that help to prevent the development and transmission of disease or infection, prevent cross-contamination and provide a safe and sanitary environment for staff and residents.

(o) A resident's medication shall not be administered to another resident except in an emergency. In the event of an emergency, steps shall be taken to ensure that the borrowed medications are replaced promptly and that the borrowing and replacement of the medication is documented.

(p) Only oral, topical (including ophthalmic and otic medications), inhalants, rectal and vaginal medications, subcutaneous injections and medications administered by gastrostomy tube and nebulizers may be administered by persons who are not authorized by state occupational licensure laws to administer medication.

(q) Unlicensed staff may not administer insulin or other subcutaneous injections prior to meeting the requirements for training and competency validation as stated in Rules .0504 and .0505 of this Subchapter.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1005 SELF-ADMINISTRATION OF MEDICATIONS**

(a) The adult care home shall permit residents who are competent and physically able to self-administer their medications if the following requirements are met:

- (1) the self-administration is ordered by a physician or other person legally authorized to prescribe medications in North Carolina and documented in the resident's record; and
- (2) specific instructions for administration of prescription medications are printed on the medication label.

(b) When there is a change in the resident's mental or physical ability to self-administer or resident non-compliance with the physician's orders or the facility's medication policies and procedures, the facility shall notify the physician. A resident's right to refuse medications does not imply the inability of the resident to self-administer medications.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1006 MEDICATION STORAGE**

(a) Medications that are self-administered and stored in the resident's room shall be stored in a safe and secure manner as specified in the adult care home's medication storage policy and procedures.

(b) All prescription and non-prescription medications stored by the facility, including those requiring refrigeration, shall be maintained in a safe manner under locked security except when under the immediate or direct physical supervision of staff in charge of medication administration.

(c) The medication storage area shall be clean, well-lighted, well-ventilated, large enough to store medications in an orderly

manner, and located in areas other than the bathroom, kitchen or utility room. Medication carts shall be clean and medications shall be stored in an orderly manner.

(d) Accessibility to locked storage areas for medications shall only be by staff responsible for medication administration and administrator or person in charge.

(e) Medications intended for topical or external use, except for ophthalmic, otic and transdermal medications, shall be stored in a designated area separate from the medications intended for oral and injectable use. Ophthalmic, otic and transdermal medications may be stored with medications intended for oral and injectable use. Medications shall be stored apart from cleaning agents and hazardous chemicals.

(f) Medications requiring refrigeration shall be stored at 36 degrees F to 46 degrees F (2 degrees C to 8 degrees C).

(g) Medications shall not be stored in a refrigerator containing non-medications and non-medication related items, except when stored in a separate container. The container shall be locked when storing medications unless the refrigerator is locked or is located in a locked medication area.

(h) The facility shall only possess a stock of non-prescription medications or the following prescription legend medications for general or common use:

- (1) irrigation solutions in single unit quantities exceeding 49 ml. and related diagnostic agents;
- (2) diagnostic agents;
- (3) vaccines; and
- (4) water for injection and normal saline for injection.

Note: A prescribing practitioner's order is required for the administration of any medication as stated in Rule .1004 (a) of this Section.

(i) First aid supplies shall be immediately available, stored out of sight of residents and visitors and stored separately in a secure and orderly manner.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1007 MEDICATION DISPOSITION**

(a) Medications shall be released to or with a resident upon discharge if the resident has a physician's order to continue the medication. Prescribed medications are the property of the resident and shall not be given to, or taken by, other staff or residents according to Rule .1004(o) of this Subchapter.

(b) Medications, excluding controlled medications, that are expired, discontinued, prescribed for a deceased resident or deteriorated shall be stored separately from actively used medications until disposed of.

(c) Medications, excluding controlled medications, shall be destroyed at the facility or returned to a pharmacy within 90 days of the expiration or discontinuation of medication or following the death of the resident.

(d) All medications destroyed at the facility shall be destroyed by the administrator or the administrator's designee and witnessed by a pharmacist, a dispensing practitioner, or their designee. The destruction shall be conducted so that no person can use, administer, sell or give away the medication.

(e) Records of medications destroyed or returned to the pharmacy shall include the resident's name, the name and strength of the medication, the amount destroyed or returned, the method of destruction if destroyed in the facility and the signature of the administrator or the administrator's designee and the signature of the pharmacist, dispensing practitioner or their designee. These records shall be maintained by the facility for a minimum of one year.

(f) A dose of any medication prepared for administration and accidentally contaminated or not administered shall be destroyed at the facility according to the facility's policies and procedures.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1008 CONTROLLED SUBSTANCES**

(a) The adult care home shall assure a readily retrievable record of controlled substances by documenting the receipt, administration and disposition of controlled substances. These records shall be maintained with the resident's record and in order that there can be accurate reconciliation.

(b) Controlled substances may be stored together in a common location or container. If Schedule II medications are stored together in a common location, the Schedule II medications shall be under double lock.

(c) Controlled substances that are expired, discontinued or no longer required for a resident shall be returned to the pharmacy within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident. The facility shall document the resident's name; the name, strength and dosage form of the controlled substance and the amount returned. There shall also be documentation by the pharmacy of the receipt or return of the controlled substances.

(d) If the pharmacy will not accept the return of a controlled substance, the facility shall assure that destruction of the controlled substance is within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident and the destruction is by the administrator or the administrator's designee and witnessed by a registered pharmacist, a dispensing practitioner, or their designee. The destruction shall be conducted so that no person can use, administer, sell or give away the controlled substance. Records of controlled substances destroyed shall include the resident's name; the name, strength and dosage form of the controlled substance; the amount destroyed; the method of destruction; and the signature of the administrator or the administrator's designee and the signature of the registered pharmacist, dispensing practitioner or their designee.

(e) Records of controlled substances returned to the pharmacy or destroyed by the facility shall be maintained by the facility for a minimum of three years.

(f) Controlled substances that are expired, discontinued, prescribed for a deceased resident or deteriorated shall be stored securely in a locked area separately from actively used medications until disposed of.

(g) A dose of a controlled substance accidentally contaminated or not administered shall be destroyed at the facility. The destruction shall be documented on the medication administration record (MAR) or the controlled substance record

showing the time, date, quantity, manner of destruction and the initials or signature of the person destroying the substance.

(h) The facility shall ensure that all known drug diversions are reported to the pharmacy, local law enforcement agency and Health Care Personnel Registry as required by state regulations, and that all suspected drug diversions are reported to the pharmacy. There shall be documentation of the contact and action taken.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1009 PHARMACEUTICAL CARE**

(a) The adult care home shall obtain the services of a licensed pharmacist or a prescribing practitioner for the provision of pharmaceutical care at least quarterly for residents or more frequently as determined by the Department, based on the documentation of significant medication problems identified during monitoring visits or other investigations in which the safety of the residents may be at risk. Pharmaceutical care involves the identification, prevention and resolution of medication related problems which includes at least the following:

- (1) an on-site medication review for each resident which includes at least the following:
  - (A) the review of information in the resident's record such as diagnoses, history and physical, discharge summary, vital signs, physician's orders, progress notes, laboratory values and medication administration records, including current medication administration records, to determine that medications are administered as prescribed and ensure that any undesired side effects, potential and actual medication reactions or interactions, and medication errors are identified and reported to the appropriate prescribing practitioner; and,
  - (B) making recommendations for change, if necessary, based on desired medication outcomes and ensuring that the appropriate prescribing practitioner is so informed; and,
  - (C) documenting the results of the medication review in the resident's record;
- (2) review of all aspects of medication administration including the observation or review of procedures for the administration of medications and inspection of medication storage areas;
- (3) review of the medication system utilized by the facility, including packaging, labeling and availability of medications;
- (4) review the facility's procedures and records for the disposition of medications and provide assistance, if necessary;

- (5) provision of a written report of findings and any recommendations for change for Subparagraphs (a)(1) through (a)(4) of this Rule to the facility and the physician or appropriate health professional, when necessary;
- (6) conducting in-service programs as needed for facility staff on medication usage that includes, but not limited to the following:
  - (A) potential or current medication related problems identified;
  - (B) new medications;
  - (C) side effects and medication interactions; and
  - (D) policies and procedures.

(b) The facility shall assure action is taken as needed in response to the medication review and documented, including that the physician or appropriate health professional has been informed of the findings when necessary.

(c) The facility shall maintain the findings and reports resulting from the activities in Subparagraphs (a)(1) through (a)(6) of Paragraph (a) of this Rule in the facility, including action taken by the facility.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**10A NCAC 13F .1010 PHARMACEUTICAL SERVICES**

(a) The adult care home shall allow the resident the right to choose a pharmacy provider as long as the pharmacy will provide services that are in compliance with the facility's medication management policies and procedures.

(b) There shall be a current, written agreement with a licensed pharmacist or a prescribing practitioner for pharmaceutical care services according to Rule .1009 of this Section. The written agreement shall include a statement of the responsibility of each party.

(c) The facility shall assure the provision of pharmaceutical services to meet the needs of the resident, including procedures that assure the accurate ordering, receiving and administering of all medications prescribed on a routine, emergency, or as needed basis.

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility.

(e) The facility shall assure that accurate records of the receipt, use and disposition of medications are maintained in the facility and readily available for review.

(f) A facility with 12 or more beds shall have a written agreement with a pharmacy provider for dispensing services. The written agreement shall include a statement of the responsibility of each party.

*Authority G.S. 131D-2; 131D-4.5; 143B-165.*

**SECTION .1100 – RESIDENT'S FUNDS AND REFUNDS**

**10A NCAC 13F .1101 MANAGEMENT OF RESIDENTS FUNDS**

~~The rules stated in 10A NCAC 13G .1100 shall control for this Subchapter.~~

(a) Residents are to manage their own funds if at all possible.

(b) In situations where a resident is unable to manage his funds, a legal representative or payee shall be designated in accordance with Rule .1103 of this Section.

(c) Residents shall endorse checks made out to them unless a legal representative or payee has been authorized to endorse checks.

*Authority G.S. 33-6; 108A-37; 131D-2; 143B-165.*

**10A NCAC 13F .1102 REFUND POLICY**

~~The rules stated in 10A NCAC 13G .1104, .1105 and .1106 shall control for this Subchapter.~~

The adult care home's refund policies shall be in writing and signed by the administrator. A copy shall be given to the resident or the resident's responsible person at time of admission. A copy shall also be filed in the resident's record.

*Authority G.S. 28-68; 131D-2; 143B-165.*

**10A NCAC 13F .1103 LEGAL REPRESENTATIVE OR PAYEE**

(a) In situations where the resident is unable to manage his funds, the administrator shall contact a family member or the county department of social services regarding the need for a legal representative or payee. The administrator and other staff of the home shall not serve as a resident's legal representative, payee, or executor of a will, except as indicated in Paragraph (b) of this Rule.

(b) In the case of funds administered by the Social Security Administration, the Veteran's Administration or other federal government agencies, the administrator of the home may serve as a payee when so authorized as a legally constituted authority by the respective federal agencies.

(c) The administrator shall give the resident's legal representative or payee receipts for any monies received on behalf of the resident.

*Authority G.S. 33-6; 108A-37; 131D-2; 143B-165.*

**10A NCAC 13F .1104 ACCOUNTING FOR RESIDENT'S PERSONAL FUNDS**

(a) To document a resident's receipt of his personal needs allowance after payment of the cost of care, a statement shall be signed by the resident or marked by the resident with two witnesses' signatures. The statement shall be maintained in the home.

(b) Upon the written authorization of the resident or his legal representative or payee, an administrator or the administrator's designee may handle the personal money for a resident, provided an accurate accounting of monies received and disbursed and the balance on hand is available upon request of the resident or his legal representative or payee.

(c) A record of each transaction involving the use of the resident's personal funds according to Paragraph (b) of this Rule shall be signed by the resident, legal representative or payee or marked by the resident, if not adjudicated incompetent, with two

witnesses' signatures at least monthly verifying the accuracy of the disbursement of personal funds. The record shall be maintained in the home.

(d) A resident's personal funds shall not be commingled with facility funds or with the personal funds of other residents in an interest-bearing account set up by the administrator. All or any portion of a resident's personal funds shall be available to the resident or his legal representative or payee upon request during regular office hours, except as provided in Rule .1105 of this Subchapter.

(f) The resident's personal needs allowance shall be credited to the resident's account within 24 hours of the check being deposited following endorsement.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13F .1105 REFUND OF PERSONAL FUNDS**

(a) When the administrator or the administrator's designee handles a resident's personal money at the resident's or his payee's request, the balance shall be given to the resident or the resident's responsible person within 14 days of the resident's leaving the home.

(b) If a resident dies, the administrator of his estate or the Clerk of Superior Court, when no administrator for his estate has been appointed, shall be given all of his personal funds within 30 days after death. When given to the Clerk of Superior Court, the money will be disbursed in accordance with G.S. 28A-25-6.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13F .1106 SETTLEMENT OF COST OF CARE**

(a) If a resident of an adult care home, after being notified by the facility of its intent to discharge the resident in accordance with Rule .0702 of this Subchapter, moves out of the facility before the period of time specified in the notice has elapsed, the facility shall refund the resident an amount equal to the cost of care for the remainder of the month minus any nights spent in the facility during the notice period. The refund shall be made within 14 days after the resident leaves the facility.

(b) If a resident moves out of the facility without giving notice, as may be required by the facility according to Rule .0702(h) of this Subchapter, or before the facility's required notice period has elapsed, the resident owes the facility an amount equal to the cost of care for the required notice period. If a resident receiving State-County Special Assistance moves before the facility's required notice period has elapsed, the former facility is entitled to the required payment for the notice period before the new facility receives any payment. The facility shall refund the resident the remainder of any advance payment following settlement of the cost of care. The refund shall be made within 14 days from the date of notice or, if no notice is given, within 14 days after the resident leaves the facility.

(c) When there is an exception to the notice, as provided in Rule .0702(h) of this Subchapter, to protect the health or safety of the resident or others in the facility, the resident is only required to pay for any nights spent in the facility. A refund shall be made to the resident by the facility within 14 days from the date of notice.

(d) When a resident gives notice of leaving the facility, as may be required by the facility according to Rule .0702(h) of this Subchapter, and leaves at the end of the notice period, the facility shall refund the resident the remainder of any advance payment within 14 days from the date of notice. If notice is not required by the facility, the refund shall be made within 14 days after the resident leaves the facility.

(e) When a resident leaves the facility with the intent of returning to it, the following apply:

(1) The facility may reserve the resident's bed for a set number of days with the written agreement of the facility and the resident or his responsible person and thereby expect payment for the days the bed is held.

(2) If, after leaving the facility, the resident decides not to return to it, the resident or someone acting on his behalf may be required by the facility to provide up to a 14-day written notice that he is not returning.

(3) Requirement of a notice, if it is to be applied by the facility, shall be a part of the written agreement and explained by the facility to the resident and his family or responsible person before signing.

(4) On notice by the resident or someone acting on his behalf that he will not be returning to the facility, the facility shall refund the remainder of any advance payment to the resident or his responsible person, minus an amount equal to the cost of care for the period covered by the agreement. The refund shall be made within 14 days after notification that the resident will not be returning to the facility.

(5) In no situation involving a recipient of State-County Special Assistance may a facility expect payment for more than 30 days since State-County Special Assistance is not authorized unless the resident is actually residing in the facility or it is anticipated that he will return to the facility within 30 days.

(6) Exceptions to the two weeks' notice, if required by the facility, are cases where returning to the facility would jeopardize the health or safety of the resident or others in the facility as certified by the resident's physician or approved by the county department of social services, and in the case of the resident's death. In these cases, the facility shall refund the rest of any advance payment calculated beginning with the day the facility is notified.

(f) If a resident dies, the administrator of his estate or the Clerk of Superior Court, when no administrator for his estate has been appointed, shall be given a refund equal to the cost of care for the month minus any nights spent in the facility during the month. This is to be done within 30 days after the resident's death.

Authority G.S. 131D-2; 131D-4.5; 143B-165.

**SECTION .1200 – POLICIES, RECORDS AND REPORTS**

**10A NCAC 13F .1202 DISPOSAL OF RESIDENT RECORDS**

~~(a) All records may be purged of material more than three years old unless the home has been asked by the monitoring or licensing agency to keep it for a longer period.~~

~~(b) After a resident has left the home or died, the resident's records shall be put in order and filed in a safe place in the home for a period of three years one year and then may be destroyed.~~

After a resident has left the adult care home or died, the resident's records shall be filed in the facility for at least one year and then stored for at least two more years. Note: Medicaid policy requires retention of records for at least five years.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160.*

**10A NCAC 13F .1203 REPORT OF ADMISSIONS AND DISCHARGES**

~~When there is an admission or discharge of a resident of an adult care home, the administrator or supervisor in charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting a form for reporting admissions and discharges. A form does not need to be submitted if there have not been any admissions or discharges.~~

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160.*

**10A NCAC 13F .1212 REPORTING OF ACCIDENTS AND INCIDENTS**

(a) The adult care home shall notify the county department of social services of any accident or incident resulting in resident death or any accident or incident resulting in injury to a resident requiring medical treatment, other than minor first aid, or referral for emergency medical evaluation or hospitalization.

(b) Notification as required in Paragraph (a) of this Rule shall be by a copy of the death report completed according to Rule .1208 of this Subchapter or a written report that shall provide the following information:

- (1) resident's name;
- (2) name of staff who discovered the accident or incident;
- (3) name of the person preparing the report;
- (4) how, when and where the accident or incident occurred;
- (5) nature of the injury;
- (6) what was done for the resident, including any follow-up care;
- (7) time of notification or attempts at notification of the resident's responsible person or contact person as required in Paragraph (c) of this Rule; and
- (8) signature of the administrator or administrator-in-charge.

(c) The report as required in Paragraph (b) of this Rule shall be submitted to the county department of social services by mail, telefacsimile, electronic mail, or in person within 48 hours of the

initial discovery or knowledge by staff of the accident or incident.

(d) The facility shall immediately notify the county department of social services and the local law enforcement authority, as appropriate, of any mental or physical abuse, neglect or exploitation of a resident in accordance with G.S. 108A-99 and send a written report of the facility's investigation to the Division of Facility Services in compliance with Rule .1205 of this Subchapter.

(e) The facility shall assure the notification of a resident's responsible person or contact person, as indicated on the Resident Register, of the following, unless the resident or his responsible person or contact person objects to such notification:

- (1) any injury to or illness of the resident requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but no later than 24 hours from the time of the initial discovery or knowledge of the injury or illness by staff and documented in the resident's file; and
- (2) any incident of the resident falling or elopement which does not result in injury requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but not later than 48 hours from the time of initial discovery or knowledge of the incident by staff and documented in the resident's file, except for elopement requiring immediate notification according to Rule .0906(f)(4) of this Subchapter.

(f) When a resident is at substantial risk that death or serious physical harm will occur as a result of physical violence by another person, the facility shall immediately report the situation to the local law enforcement authority. Whenever there is a risk that death or physical harm will occur due to the actions or behavior of a resident, the facility shall provide supervision and control over the threatening resident to protect others from harm. The facility shall seek immediate emergency medical treatment of the threatening resident as needed, request that the local management entity for mental health services arrange an assessment of the threatening resident and accommodate assessment personnel assigned to the case by the local management entity to assure the earliest possible assessment.

(g) In the case of physical assault by a resident, the facility shall immediately increase the supervision and control over the threatening resident to protect others from harm, and seek any needed emergency medical treatment. The facility shall report the assault by a resident to the local management entity for mental health services and request that the local management entity arrange an assessment of the resident. The facility shall accommodate assessment personnel assigned to the case by the local management entity to assure the earliest possible assessment. The facility shall report any assault resulting in harm to a resident to the local law enforcement authority.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13F .1213 AVAILABILITY OF**

**CORRECTIVE ACTION AND SURVEY REPORTS**

The adult care home shall make available to residents and their families or responsible persons and to prospective residents and their families or responsible persons, upon request and within the facility, corrective action reports by the county departments of social services and facility survey reports by state licensure consultants that have been approved by the Adult Care Licensure Section of the Division of Facility Services within the past 12 months.

*Authority 131D-2; 143B-165.*

**SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES**

**SECTION .0100 - DEFINITIONS**

**10A NCAC 13G .0101 DEFINITIONS**

~~The following definitions shall apply throughout this Subchapter:~~

- ~~(1) Activities Coordinator. A person designated by the administrator to be responsible for planning, coordinating, and making available a program of individual and group activities for the residents, who has completed a 48-hour approved activities course or has equivalent education and training;~~
- ~~(2) Administrator. A person approved by the Division of Facility Services who has the responsibility for the total operation of a licensed home;~~
- ~~(3) Adult Homes Specialist. The social worker in the county department of social services designated to work with applicants, administrators, supervisors in charge and residents, who has responsibility for the routine monitoring of a licensed home's compliance with the rules of this Subchapter;~~
- ~~(4) Ambulation of Residents. The following definitions shall apply to Rule .0302 of this Subchapter:
 
  - ~~(a) Ambulatory Resident. A person who should be able to evacuate the licensed home in which he resides without the assistance or supervision of another person in a safe period of time in an emergency, as certified by his physician;~~
  - ~~(b) Semi ambulatory and Non ambulatory Resident. A person who would likely require the assistance or supervision of another person to evacuate the licensed home in which he resides in a safe period of time in an emergency, as certified by his physician;~~~~
- ~~(5) Co-administrator. A person who shares equal responsibility with the administrator for the total operation of a licensed home;~~

- ~~(6) Family care Home. A home licensed by the Division of Facility Services to provide residential care to two to six adults who, because of age or disability, require some personal care and supervision along with room and board to assure their safety and comfort;~~
- ~~(7) Licensure Agency. The Division of Facility Services of the North Carolina Department of Health and Human Services, which has two units involved in licensure:
 
  - ~~(a) Construction Section. The unit of the Division of Facility Services which approves plans for construction, verifies that a building is safe for occupancy, and enforces compliance with the rules of this Subchapter as related to the building;~~
  - ~~(b) Adult Care Licensure Section. The unit of the Division of Facility Services which issues the license and enforces overall compliance with the rules of this Subchapter;~~~~
- ~~(8) Minimum Standards. The accommodations and services required by the Social Services Commission for granting a license to operate a family care home;~~
- ~~(9) Monitoring Agency. The county department of social services, as an agent of the North Carolina Department of Health and Human Services for the purpose of assuring that a licensed home complies with the rules of this Subchapter;~~
- ~~(10) Relief Person In-Charge. A person designated by the administrator as capable of being in charge of a licensed home during the temporary absence of the administrator or supervisor in charge (not to exceed 24 hours per week);~~
- ~~(11) Relief Supervisor In Charge. A person designated by the administrator to be in charge of a licensed home during an extended absence (more than 24 hours per week) of the administrator or supervisor in charge;~~
- ~~(12) Residents. Aged or disabled persons living in a licensed home who pay for their care;~~
- ~~(13) Responsible Person. Any representative authorized in writing by a resident to manage the resident's financial affairs, any resident's legal guardian as appointed by a court, or any resident's attorney in fact as specified in the power of attorney agreement;~~
- ~~(14) Staff. The administrator, supervisor in charge and other persons (e.g., aides, housekeepers, food service personnel, activities coordinator) charged with carrying out the work of a licensed home; and~~
- ~~(15) Supervisor In-Charge. A person employed by the administrator to be responsible for carrying~~



out the program in the licensed home in the absence of the administrator.

*Authority G.S. 131D-2; 143B-165.*

**SECTION .0200 - LICENSING**

**10A NCAC 13G .0204 APPLYING FOR A LICENSE TO OPERATE A HOME NOT CURRENTLY LICENSED**

(a) An application for a license to operate a family care home for adults in an existing building where no alterations are necessary or a home which is to be constructed, added to or renovated shall be made at the county department of social services.

(b) If during the study of the administrator and the home, it does not appear that the qualifications of the administrator or requirements for the home can be met, the county department of social services shall so inform the applicant, indicating in writing the reason and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Facility Services for consideration.

~~(b)~~(c) The following forms and reports shall be submitted through the county department of social services to the Division of Facility Services:

- (1) the Initial Licensure Application;
- ~~(2)~~ (2) an approval letter from the local zoning jurisdiction for the proposed location;
- ~~(2)(3)~~ (3) a photograph of each side of the existing structure and at least one of each of the interior spaces if an existing structure; one set of schematic floor plans or blueprints of the building showing the floor plan; type of construction; location, size and height of windows; location and type of heating system; the use of basement and attic; location of doors and closets;
- ~~(3)~~ (4) the Fire and Building Safety Inspection Report to be submitted with completion of construction or renovation; and the Sanitation Report or a permit to begin operation from the sanitary division of the county health department.
- ~~(4)~~ (5) a set of blueprints or a floor plan of each level indicating the layout of all rooms, room dimensions (including closets), door widths (exterior, bedroom, bathroom and kitchen doors), window sizes and window sill heights, type of construction, the use of the basement and attic, the proposed resident bedroom locations including the number of occupants and the bedroom and number (including the ages) of any non-resident who will be residing within the home; and
- ~~(5)~~ (6) a cover letter or transmittal form prepared by the adult home specialist of the county department of social services identifying the prospective home site address, the name of the

contact person (including address, telephone numbers, fax numbers), the name and address of the applicant (if different from the contact person) and the total number and the expected evacuation capability of the residents.

~~(c) If during the study of the administrator and the home it does not appear that qualifications of the administrator or requirements for the home can be met, the county department of social services shall so inform the applicant, indicating in writing the reason, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application shall be completed and submitted to the Division of Facility Services for consideration.~~

~~(d) The Division of Facility Services shall notify the applicant and the county department of social services of any required changes.~~

~~(e) Following review of application, references and all forms, a pre-licensing visit shall be made by a consultant of the Division of Facility Services.~~

~~(f) The consultant shall report his findings and recommendations to the Division of Facility Services which shall promptly notify, in writing, the applicant and the county department of social services of the decision to license or not to license the family care home.~~

(d) The Construction Section of the Division of Facility Services shall review the information and notify the applicant and the county department of social services of any required changes that must be made to the building to meet the rules in Section .0300 of this Subchapter along with the North Carolina State Building Code. At the end of the letter there will be a list of final documentation required from the local jurisdiction that must be submitted upon completion of any required changes to the building or completion of construction.

(e) Any changes to be made during construction that were not proposed during the initial review shall require the approval of the Construction Section to assure that licensing requirements are maintained.

(f) Upon receipt of the required final documentation from the local jurisdiction, the Construction Section shall review the information and may either make an on-site visit or approve the home for construction by documentation. If all items are met, the Construction Section shall notify the Adult Care Licensure Section of the Division of Facility Services of its recommendation for licensure.

(g) Following review of the application, references, all forms and the Construction Section's recommendation for licensure, a pre-licensing visit shall be made by a consultant of the Adult Care Licensure Section. The consultant shall report findings and recommendations to the Division of Facility Services which shall notify, in writing, the applicant and the county department of social services of the decision to license or not to license the family care home.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-160.*

**10A NCAC 13G .0205 APPLICATION TO LICENSE A NEWLY CONSTRUCTED OR RENOVATED BUILDING**

(a) An application for a license to operate a family care home which is to be constructed, added to or renovated shall be made

at the county department of social services where the home is to be located.

~~(b) For information on the forms and reports to be submitted by the county department of social services to the Division of Facility Services, see Rule .0204(b) of this Subchapter. All of these forms and reports apply to a home which is to be constructed, added to or renovated, including one set of schematic floor plans or blueprints, and photographs of each side of the building for renovations or additions.~~

~~(c) If it does not appear that the licensure requirements for the home can be met, the county department of social services shall so inform the applicant, indicating in writing the reason, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application shall be completed and submitted to the Division of Facility Services for consideration.~~

~~(d) Upon receipt of copies of approval letters from the Department of Insurance and the Division of Environmental Health in the North Carolina Department of Environment and Natural Resources, indicating the applicant's plans are in full compliance with the applicable requirements of the North Carolina State Building Code and the sanitation requirements of the Division of Environmental Health, the Division of Facility Services shall make the final determination as to whether the rules of this Subchapter have been met and, if so, shall give written approval and authorization to begin construction.~~

~~(e) Any changes made during construction shall require the approval of the Division of Facility Services to assure that licensing requirements are maintained.~~

~~(f) A pre-licensing visit and subsequent recommendation shall be made by a program consultant, and in some cases a construction consultant, of the Division of Facility Services, in conjunction with the adult homes specialist of the county department of social services.~~

*Authority G.S. 131D-2; 143B-165; S.L. 2002-160.*

**10A NCAC 13G .0206 CAPACITY**

(a) Family care homes have a capacity of ~~from~~ two to six residents only.

(b) The total number of residents ~~must~~ shall not exceed the number shown on the license.

~~(c) A request for an increase in capacity without building modification must be made to the county department of social services. The Division of Facility Services has authority for approval of the request.~~

~~(d)~~(c) A request for an increase in capacity by adding ~~rooms~~ rooms, or remodeling or without any building modifications shall ~~must~~ be made to the county department of social services and submitted to the ~~state~~ Division of Facility Services, accompanied by ~~one copy~~ two copies of blueprints and ~~specifications, or floor plans.~~ One plan showing the existing building ~~with the current use of rooms and the second plan indicating the addition.~~ addition, remodeling or change in use of spaces clearly showing the use of each room. If new construction, ~~Plans~~ plans ~~must~~ shall show how the addition will be tied ~~onto~~ into the ~~old~~ existing building and all proposed changes in ~~old~~ the structure.

~~(e)~~(d) When licensed homes increase their designed capacity by the addition to or remodeling of the existing physical plant, the entire home ~~must~~ shall meet all current fire safety regulations.

~~(e) The Division of Facility Services shall be notified if the overall evacuation capability of the residents changes from the evacuation capability listed on the homes license or of the addition of any non-resident that will be residing within the home. This information shall be submitted through the county department of social services and forwarded to the Construction Section of the Division of Facility Services for review of any possible changes that may be required to the building.~~

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .0210 TERMINATION OF LICENSE**

~~(a) The Division of Facility Services shall take action to terminate the license when one of the following situations exist:~~

- ~~(1) change of ownership of the adult care home business; or~~
- ~~(2) change of location of home.~~

~~(b) The license is not transferable or assignable.~~

~~(c) The unexpired license shall be returned to the state Division of Facility Services by the county department of social services with the following information:~~

- ~~(1) reason for closing;~~
- ~~(2) date of closing;~~
- ~~(3) plans made for residents.~~

~~(d) When the owner of the adult care home business voluntarily closes his home, a signed statement to this effect shall be submitted to the county department of social services who shall immediately forward the statement to the Division of Facility Services. The owner or his designee shall give at least 30 days prior notice of the closing to the county department of social services and the residents or their responsible persons.~~

*Authority G.S. 131D-2; 143B-165.*

**SECTION .0300 - THE BUILDING**

**10A NCAC 13G .0301 APPLICATION OF PHYSICAL PLANT REQUIREMENTS**

The physical plant requirements for each home shall be applied as follows:

- (1) New construction and existing buildings proposed for use as a Family Care Home shall comply with the requirements of this Section;
- (2) Except where otherwise specified, existing licensed homes or portions of existing licensed homes shall meet licensure and code requirements in effect at the time of construction, change in service or bed count, addition, renovation or alteration, however, in no case shall the requirements for any licensed home, where no addition or renovation has been made, be less than those requirements found in the 1971 "Minimum and Desired Standards and Regulations" for "Family Care Homes", copies of which are available at the Division of Facility Services, 701 Barbour

- Drive, Raleigh, North Carolina 27603 at no cost;
- (3) New additions, alterations, modifications and repairs shall meet the technical requirements of this Section, however, where strict conformance with current requirements would be impractical, the Division may approve an equivalency;
  - (4) Rules contained in this Section are minimum requirements and are not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
  - (5) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant requirements, may be approved by the Division when the home can effectively demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the home; and
  - (6) Where rules, codes or standards have any conflict, the most stringent requirement shall apply.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .0302 DESIGN AND CONSTRUCTION**

- (a) A family care home Any building licensed for the first time as a family care home shall meet the applicable requirements of the North Carolina State Building Code Code, in force at the time of initial licensure. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for One and Two Family Dwellings and Residential Care Facilities if applicable. All applicable volumes of The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments, may be purchased from the Department of Insurance Engineering Division located at 322 Chapanoke Road, Suite 200, Raleigh, North Carolina 27603 at a cost of three hundred eighty dollars (\$380.00).
- (b) Each home shall be planned, constructed, equipped and maintained to provide the services offered in the home.
- (c) Any existing building converted from another use to a family care home shall meet all the requirements of a new facility.
- (d) Any existing licensed home when the license is terminated for more than 60 days shall meet all requirements of a new home prior to being relicensed.
- (e) Any existing licensed home that plans to have new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his appointed representative to the Department for review and approval prior to commencement of the work.
- (b)(f) The home shall be one story in height, or If the building is two stories in height height, and it shall meet the following requirements:
  - (1) Each floor shall be less than 4800 2500 square feet in area; area if existing construction or, if

- new construction, shall not exceed the allowable area for R-4 occupancy in the North Carolina State Building Code;
- (2) Aged or disabled persons are not to be housed on the second floor; any floor above or below grade level;
- (3) Required resident facilities are not to be located on the second floor; any floor above or below grade level; and
- (4) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local fire department where possible; and if the local fire department has the capability to receive it.
- (5) Interconnected U.L. approved products of combustion detectors directly wired to the house current shall be installed on each floor.

- (e)(g) The basement and the attic shall not to be used for residents' storage or sleeping.
- (d) The attic shall not to be used for storage or sleeping.
- (e)(h) The ceiling shall be at least seven and one-half feet from the floor.
- (f)(i) In facilities homes licensed on or after April 1, 1984, all required resident areas shall be on the same floor level. Steps between levels are not be permitted.
- (g)(j) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living rooms, bedrooms and bathrooms.
- (k) All windows shall be maintained operable.
- (l) The local code enforcement official shall be consulted before starting any construction or renovations for information on required permits and construction requirements.
- (h)(m) The building shall meet sanitary sanitation requirements as determined by the North Carolina Department of Environment and Natural Resources; Division of Environmental Health.
- (i) All windows shall be maintained operable.
- (j)(n) The home shall have current sanitation and fire and building safety inspection reports which shall be maintained in the home and available for review.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-160.*

**10A NCAC 13G .0304 .0303 LOCATION**

- (a) The family care home must shall be in a location approved by local zoning boards. and be a safe distance from streets, highways, railroads, open lakes and other hazards. It must be located on a street, road or highway accessible by car. The home shall be located so that hazards to the occupants are minimized.
- (b) Plans for the building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.
- (b) The site of the home shall:
  - (1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;

- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
- (4) meet all local ordinances; and
- (5) be free from exposure to hazards and pollutants.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0303 .0304 LIVING ARRANGEMENT**

The family care home must shall provide ample living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0304 .0305 LIVING ROOM**

- (a) Family care Homes homes licensed on or after April 1, 1984 must shall have a living room area of at least 200 square feet.
- (b) All living rooms must shall have operable windows to meet Volume I or I-B as applicable the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0305 .0306 DINING ROOM**

- (a) Family care Homes homes licensed on or after April 1, 1984 must shall have a dining room or area of at least 120 square feet. The dining room can be used for other appropriate activities during the day.
- (b) When the dining area is used in combination with a kitchen, an area five feet wide must shall be allowed as work space in front of the kitchen work areas. The work space is not to be used as the dining area.
- (c) The dining room must shall have operable windows and be lighted to provide 30 foot candles of light at floor level.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0306 .0307 KITCHEN**

- (a) The kitchen must shall be large enough to provide for the preparation and preservation of food and the washing of dishes.
- (b) The cooking unit must shall be mechanically ventilated to the outside. outside or be an approved unvented, recirculating fan provided with any special filter per manufacturers' instructions for ventless use.
- (c) The kitchen floor must shall have a non-slippery water-resistant covering.

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0307 .0308 BEDROOMS**

- (a) There must shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the

residents, the administrator or supervisor-in-charge, other live-in staff and any other persons living in the family care home. Residents are not to share bedrooms with staff or other live-in non-residents.

(b) Only rooms authorized as bedrooms are to be used for ~~residents'~~ bedrooms.

(c) A room where access is through a bathroom, kitchen or another bedroom will not be approved for a resident's bedroom.

(d) There ~~must shall~~ be a minimum area of 100 square feet, excluding vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two or three persons.

(e) The total number of residents assigned to a bedroom ~~must shall~~ not exceed the number authorized for that particular bedroom.

(f) A bedroom shall not be occupied by more than ~~three~~ two residents.

(g) Each resident bedroom must have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area must shall be equivalent to at least eight percent of the floor space. The windows ~~must be low enough to see outdoors from the bed and chair, with shall have~~ a maximum of ~~36~~ 44 inch sill height.

(h) Bedroom closets or wardrobes must shall be large enough to provide each resident with a minimum of 48 cubic feet of ~~hanging~~ clothing storage space (approximately two feet deep by three feet wide ~~of hanging space~~ by eight feet ~~high~~). high of which at least one-half shall be for hanging clothes with an adjustable height hanging bar).

Authority G.S. 131D-2; 143B-165.

**10A NCAC 13G .0308 .0309 BATHROOM**

(a) ~~Facilities~~ Adult care homes licensed on or after April 1, 1984, must shall have one full bathroom for each five or fewer persons including live-in staff and family.

(b) If there is a question whether a home licensed before April 1, 1984, has a sufficient number of bathrooms, the Division of Facility Services is responsible for determining the size and number of bathrooms required based on the number of persons living in the home.

(c) The bathrooms must shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains.

(d) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom.

(e) The required residents' bathrooms must shall be located so that there is as conveniently as possible no more than 40 feet from a bathroom door to the any residents' bedrooms resident's bedroom door.

(f) Hand grips must shall be installed at all commodes, tubs and showers ~~on the floor level~~ used by the residents.

(g) Nonskid surfacing or strips must be installed in showers and bath areas.

(h) The bathrooms must shall be lighted to provide 30 foot candles of light at floor level and ~~ventilated~~ have mechanical ventilation at the rate of two cubic feet per minute for each

square foot of floor area. These vents shall be vented directly to the outdoors.

(i) The bathroom floor must have a non-slippery water-resistant covering.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G ~~.0310~~ .0311 CORRIDOR**

- (a) Corridors ~~must shall~~ be a minimum clear width of three feet.
- (b) Corridors ~~must shall~~ be lighted sufficiently with night lights providing 1 foot-candle power at the floor.
- (c) Corridors ~~must shall~~ be free of all equipment and other obstructions.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G ~~.0314~~ .0312 OUTSIDE ENTRANCE AND EXITS**

- (a) All floor levels ~~must shall~~ have at least two exits. If there are only two, ~~the exits must be as remote from each other as reasonably possible.~~ the exit or exit access doors shall be so located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.
- (b) At least one entrance/exit door ~~must shall~~ be a minimum clear width of three feet and another ~~must shall~~ be a minimum clear width of two feet and eight inches.
- (c) At least ~~two~~ one principal outside ~~entrances/exits~~ entrance/exit for the residents' ~~floor level~~ use ~~must shall~~ be at ~~ground grade~~ level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. If the home has any resident that must have physical assistance with evacuation, the home will be required to have two outside entrances/exits at grade level or accessible by a ramp. If there are only two entrances/exits, the entrances/exits must be as remote from each other as reasonably possible.
- (d) All exit door locks ~~must shall~~ be easily operable, by a single hand motion, from the inside at all times without keys. This would require the disabling or removal of any existing deadbolt or turn button from the inside.
- (e) All entrances/exits ~~must shall~~ be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.
- (f) All steps, porches, stoops and ramps ~~must shall~~ be provided with handrails and guardrails.
- (g) In homes with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each ~~required~~ exit door for resident use shall be equipped with a sounding device that is activated when the door is opened. The sound ~~must shall~~ be of sufficient volume that it can be heard by staff. ~~A central control panel that will deactivate the sounding device may be used, provided the control panel is located in the bedroom of the person on call within the home. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the bedroom of the person on call, the office area or in a secured location approved by the Division.~~

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G ~~.0312~~ .0313 LAUNDRY ROOM**

The laundry equipment ~~must shall~~ be located out of the living, dining, and bedroom areas.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G ~~.0313~~ .0314 FLOORS**

- (a) All floors ~~must shall~~ be of smooth, non-skid material and so constructed as to be easily cleanable.
- (b) Scatter or throw rugs are not to be used.
- (c) All floors ~~must shall~~ be kept in good repair.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G ~~.0314~~ .0315 HOUSEKEEPING AND FURNISHINGS**

- (a) Each family care home ~~must shall~~:
  - (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
  - (2) have no chronic unpleasant odors;
  - (3) have furniture clean and in good repair;
  - (4) have an approved sanitary classification at all times;
  - (5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
  - (6) have an adequate supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings on hand at all times;
  - (7) make available the following items as needed through any means other than charge to the personal funds of recipients of State-County Special Assistance:
    - (A) protective sheets and clean, absorbent, soft and smooth pads;
    - (B) bedpans, urinals, hot water bottles, and ice caps; and
    - (C) bedside commodes, walkers, and wheelchairs;
  - (8) have television and radio, each in good working order; ~~and~~
  - (9) have curtains, draperies or blinds, where ~~appropriate~~ appropriate;
  - (10) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and
  - (11) have a clock that has numbers at least 1½ inches tall in an area commonly used by the residents.
- (b) ~~Residents will be allowed to bring their own furniture and personal belongings if permitted by the home.~~
- (e)(b) Each bedroom ~~must shall~~ have the following furnishings in good repair and clean for each resident:
  - (1) ~~Single~~ A bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Hospital bed appropriately equipped ~~must shall~~ be arranged for as needed. ~~A double bed is allowed if used~~

only for single occupancy, unless occupied by husband and wife. A water bed is allowed if requested by a resident and permitted by the home. Each bed is to have the following:

- (A) at least one pillow with clean pillow case;
  - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
  - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside type table;
  - (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
  - (4) a wall or dresser mirror that can be used by each resident;
  - (5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from floor for easy rising;
  - (6) additional chairs available, as needed, for use by visitors;
  - (7) individual clean towel, ~~and~~ wash cloth, and towel ~~bar~~; bar within bedroom or adjoining bathroom; and
  - (8) a light overhead of bed with a switch within reach of person lying on bed; or a lamp. The light ~~must be~~ shall provide a minimum of 30 foot-candle power of illumination for reading.

~~(d)(c)~~ The living room must shall have the following functional living room furnishings: furnishings for the comfort of aged and disabled persons, with coverings that are easily cleanable.

- ~~(1) functional living room furnishings for the comfort of aged and disabled persons, with coverings easily cleanable;~~
- ~~(2) recreational equipment, supplies for games, books, and reasonably current magazines;~~
- ~~(3) an easily readable clock; and~~
- ~~(4) a newspaper.~~

~~(e)(d)~~ The dining room must shall have the following furnishings:

- (1) tables and chairs to seat all residents eating in the dining room; ~~tables and chairs equal to the resident capacity of the home must be on the premises; and~~
- (2) movable, chairs that are sturdy, non-folding chairs, without rollers unless retractable, and designed to minimize tilting.

(e) This Rule shall apply to new and existing homes.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .0315 .0316 FIRE SAFETY AND DISASTER PLAN**

(a) Fire extinguishers must shall be provided which meet these minimum requirements:

- (1) one five pound or larger (net charge) "A-B-C" type centrally located; ~~and~~
- (2) one five pound or larger "A-B-C" or CO/2 type located in the ~~kitchen~~; kitchen; and
- (3) any other location as determined by the code enforcement official.

~~(b) The home must provide automatic, single station, U.L. listed smoke (ionization) detectors in locations as determined by the Division of Facility Services and U.L. listed heat detectors in the attic and basement. These detectors must be directly wired to the house current. The building shall be provided with smoke detectors per the North Carolina State Building Code and U.L. listed heat detectors connected to a dedicated sounding device located in the attic and basement. These detectors shall be interconnected and be provided with battery backup.~~

(c) Any other fire safety requirements required by city ordinances or county building inspectors ~~must~~ shall be met.

(d) A written fire ~~and disaster~~ evacuation plan (including a diagrammed drawing) which has the approval of the local ~~fire department~~ code enforcement official ~~must shall~~ be prepared in large print and posted in a central location on each floor. The plan ~~must shall~~ be reviewed with each resident on admission and ~~must shall~~ be a part of the orientation for all new staff.

(e) There ~~must shall~~ be at least four rehearsals of the fire ~~and disaster~~ evacuation plan each year. Records of rehearsals ~~are to~~ shall be maintained and copies furnished to the county department of social services annually. The records ~~must shall~~ include the date and time of the rehearsals, staff members present, and a short description of what the rehearsal involved.

~~(f) Fireplaces, fireplace inserts and wood stoves must be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves must be U.L. listed.~~

(f) A written disaster plan which has the written approval of, or has been documented as submitted to, the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the home.

(g) This Rule shall apply to new and existing homes.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .0316 .0317 BUILDING SERVICE EQUIPMENT**

(a) The building and all fire safety, electrical, mechanical, and plumbing equipment shall be maintained in a safe and operating condition.

(b) There shall be an approved central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected so as to avoid hazards to residents and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.

(c) Air conditioning or at least one fan per resident bedroom and living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).

(d) The hot water tank shall be of such size to provide an adequate supply of hot water to the kitchen, bathrooms, and

laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and ~~must~~ shall not exceed 116 degrees F (46.7 degrees C).

(e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:

- (1) 30 foot-candle power for reading;
- (2) 10 foot-candle power for general lighting; and
- (3) 1 foot-candle power at the floor for corridors at night.

(f) Where the bedroom of the live-in staff is located in a separate area from residents' bedrooms, an electrically operated ~~sounding device~~ call system shall be provided connecting each resident bedroom to the live-in staff bedroom. The resident call ~~switches,~~ system activator shall be such that ~~they~~ it can be activated with a single action and remain on until ~~switched off~~ deactivated by staff. The call ~~switch~~ system activator shall be within reach of resident lying on his bed.

(g) Fireplaces, fireplace inserts and wood stoves shall be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves must be U.L. listed.

(h) Gas logs may be installed if they are of the vented type, installed per the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.

~~(g)~~(i) Alternate methods, procedures, design criteria and functional variations from the requirements of this Rule or other rules in this Section because of extraordinary circumstances, new programs or unusual conditions, may be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility.

*Authority G.S. 131D-2; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .0317 .0318 OUTSIDE PREMISES**

(a) The outside grounds ~~must~~ shall be maintained in a clean and safe condition, in accordance with the rules governing the sanitation of residential care facilities of the North Carolina Department of Environment and Natural Resources; Division of Environmental Health.

(b) If the home has a fence around the premises, the fence ~~must~~ shall not prevent residents from exiting or entering freely or be hazardous.

(c) Outdoor ~~walkways and drives~~ stairways and ramps ~~must~~ shall be illuminated by no less than five foot candles of light at ground grade level.

*Authority G.S. 131D-2; 143B-165.*

**SECTION .0600 – STAFFING OF THE HOME**

**10A NCAC 13G .0601 MANAGEMENT AND OTHER STAFF**

(a) The family care home administrator is responsible for the total operation of a family care home and is also responsible to the licensing agency and the monitoring agency for meeting and

maintaining the rules of this Subchapter. The co-administrator, when there is one, shares equal responsibility with the administrator for the operation of the home and for meeting and maintaining the rules of this Subchapter. The term administrator also refers to co-administrator where it is used in this Subchapter.

(b) At all times there ~~must~~ shall be one administrator or supervisor-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. Except for the provisions cited in Paragraph (c) of this Rule regarding the occasional absence of the administrator or supervisor-in-charge, one of the following arrangements ~~must~~ shall be used:

- (1) ~~The administrator lives shall be in the home, home or resides reside within 500 feet of the home with a means of two-way telecommunication with the home at all times, and is immediately available. To be immediately available, the administrator must be on stand by and have direct access to either a two way intercom system or a two way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed must be in working condition and must be located in the bedroom of the administrator. When the administrator does not live in the licensed home, there must shall be at least one staff member who lives in the home or one on each shift and the administrator is shall be directly responsible for assuring that all required duties are carried out in the home; or~~  
 The administrator shall employ a supervisor-in-charge to live in the home or reside within 500 feet of the home ~~and be immediately available with a means of two-way telecommunication with the home at all times. The conditions of being immediately available specified in Subparagraph (b)(1) of this Rule apply.~~ When the supervisor-in-charge does not live in the licensed home, there ~~must~~ shall be at least one staff member who lives in the home or one on each shift and the supervisor-in-charge ~~is~~ shall be directly responsible for assuring that all required duties are carried out in the home; or
- (2) When there is a cluster of licensed homes located adjacently on the same site, there ~~must~~ shall be at least one staff member in each home, either live-in or on a shift basis, and at least one administrator or supervisor-in-charge who lives within 500 feet of each ~~home, is immediately available,~~ home with a means of two-way telecommunication with each home at all times and who is directly responsible for assuring that all required duties are carried out in each home. ~~To be immediately available,~~
- (3)

~~the administrator or supervisor in charge must be on stand by and have direct access to either a two way intercom system or a two way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or supervisor in charge. The equipment installed must be in working condition and must be located in the bedroom of the administrator or supervisor in charge.~~

(c) When the administrator or supervisor-in-charge is absent from the home or not immediately available, within 500 feet of the home, the following shall apply:

- (1) ~~If the administrator or supervisor in charge is absent temporarily (not to exceed 24 hours per week), For absences of a non-routine nature that do not exceed 24 hours per week, a relief-person-in-charge must be designated by the administrator to shall be in the home and in charge of it the home during the absence.~~ absence and in the home or within 500 feet of the home according to the requirements in Paragraph (b) of this Rule. The administrator must shall assure that the relief-person-in-charge is prepared to respond appropriately in case of an emergency in the home. The relief-person-in-charge must shall be 18 years or older; and older.
- (2) ~~When the administrator or supervisor in charge will be away from the home for an extended absence (more than 24 hours per week), For recurring or planned absences, a relief-supervisor-in-charge must be designated by the administrator to shall be in charge of the home during the absence.~~ absence and in the home or within 500 feet of the home according to the requirements in Paragraph (b) of this Rule. The relief-supervisor-in-charge must shall meet all of the qualifications required for the supervisor-in-charge (as as specified in Rule .0402 of this Subchapter) Subchapter with the exception of Paragraph Sub-Paragraph (4); (4) pertaining to the continuing education requirement.

(d) Additional staff shall be employed as needed for housekeeping and the supervision and care of the residents.

(e) The Division of Facility Services shall make the final determination of the need for additional staff based on the home's licensed capacity, any live-in non-residents requiring care, the needs of the residents and the layout of the building.

(f) Information on required staffing shall be posted in the facility according to G.S. 131D-4.3(a)(5).

Authority G.S. 131D-2; 143B-153.

**SECTION .0800 - RESIDENT ASSESSMENT AND CARE PLAN**

**10A NCAC 13G .0801 RESIDENT ASSESSMENT**

(a) A family care home shall assure that an initial assessment of each resident is completed within 72 hours of admission using the Resident Register.

(b) The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. The assessment to be completed within 30 days following admission and annually thereafter shall be a functional assessment to determine a resident's level of functioning to include psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The assessment shall indicate if the resident requires referral to the resident's physician or other licensed health care professional, a provider of mental health, developmental disabilities or substance abuse services or a community resource.

(c) The facility shall assure an assessment of a resident is completed within 10 days following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. For the purposes of this Subchapter, significant change in the resident's condition is determined as follows:

- (1) Significant change is one or more of the following:
  - (A) deterioration in two or more activities of daily living;
  - (B) change in ability to walk or transfer;
  - (C) change in the ability to use one's hands to grasp small objects;
  - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
  - (E) no response by the resident to the treatment for an identified problem;
  - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
  - (G) threat to life such as stroke, heart condition, or metastatic cancer;
  - (H) emergence of a pressure ulcer at Stage II, which is a superficial ulcer presenting an abrasion, blister or shallow crater, or higher;
  - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being such as initial diagnosis of Alzheimer's disease or diabetes;
  - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;



- (K) new onset of impaired decision-making;
  - (L) continence to incontinence or indwelling catheter; or
  - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
- (A) changes that suggest slight upward or downward movement in the resident's status;
  - (B) changes that resolve with or without intervention;
  - (C) changes that arise from easily reversible causes;
  - (D) an acute illness or episodic event;
  - (E) an established, predictive, cyclical pattern; or
  - (F) steady improvement under the current course of care.

(d) If a resident experiences a significant change as defined in Paragraph (c) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record. Referral shall be made immediately when significant changes are identified that pose an immediate risk to the health and safety of the resident, other residents or staff of the facility.

(e) The assessments required in Paragraphs (b) and (c) of this Rule shall be completed and signed by the person designated by the administrator to perform resident assessments.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .0802 RESIDENT CARE PLAN**

(a) An adult care home shall assure a care plan is developed for each resident in conjunction with the resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section. The care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Section.

(c) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
- (2) frequency of the service provision.

(d) The assessor shall sign the care plan upon its completion.

(e) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:

- (1) the resident is under the physician's care; and

- (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

(f) The facility shall assure that the care plan for each resident who is under the care of a provider of mental health, developmental disabilities or substance abuse services includes resident specific instructions regarding how to contact that provider. Whenever significant behavioral changes described in Rule .0801(c)(1)(D) of this Subchapter are identified, the care plan shall specify how consultation or further assessment shall be obtained by the facility regarding that resident's needs and treatment. The facility shall seek consultation or further assessment immediately for all behavioral changes that pose a risk to the safety and health of the resident, other residents or the staff in the facility.

*Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.*

**SECTION .0900 – RESIDENT CARE AND SERVICES**

**10A NCAC 13G .0901 PERSONAL CARE AND SUPERVISION**

Responsible staff shall be on duty at all times to:

- ~~(1) Encourage and assist residents to care for their grooming, clothing, and toilet articles. This includes care of body, hair, gums, teeth, dentures, fingernails, clothing and personal items (comb, brush, etc.);~~
- ~~(2) Allow all residents freedom of movement;~~
- ~~(3) Assist residents, when necessary, on an individual basis with their bathing, dressing, eating, walking, going up and down steps, correspondence, shopping, and scheduling of medical and business appointments, as well as attend to any personal needs residents may be incapable of or unable to attend for themselves;~~
- ~~(4) Supervise, on an individual basis, residents who smoke and need supervision. The degree of supervision shall be at the discretion of the administrator or supervisor in charge. The home shall have a written policy on smoking;~~
- ~~(5) Evacuate all residents in an emergency;~~
- ~~(6) Assure that residents are dressed in appropriate clothing when using the living room, dining room and recreational areas, or when the resident leaves the home for activities in the community;~~
- ~~(7) Respond immediately in case of an accident or incident involving a resident, and make a report of it, as follows:~~
  - ~~(a) The administrator or supervisor in charge shall notify the county department of social services within 24 hours of any incident or accident which results in injury to a resident. A report shall be made if~~

there is any reason to believe that a resident has been injured. Form DFS 4189 shall be completed by the administrator or supervisor in charge and mailed to the county department by the next working day. This written report shall indicate how, when and where the incident or accident occurred, the nature of the injury, what was done for the resident and time of notification or attempts at notification of the responsible person or contact person as required in Part (7)(e)(i) of this Rule;

(b) The administrator or supervisor in charge shall immediately notify the county department of social services and the local law enforcement authority, as appropriate, of any mental or physical abuse, neglect or exploitation of a resident in accordance with General Statute 108A 99. The administrator and supervisor in charge shall cooperate with the county department of social services in its investigation of the matter; and

(c) The administrator or supervisor in charge shall assure the notification of a resident's responsible person or contact person, as indicated on the Resident Register, of the following, unless the resident or his responsible person or contact person objects to such notification:

(i) any injury to or illness of the resident requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but no later than 24 hours from the time of the initial discovery or knowledge of the injury or illness by staff and documented in the resident's file; and

(ii) Any incident of the resident falling or wandering from the home's premises which does not result in injury requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but no later than 48 hours from the time of initial discovery or knowledge of the incident by staff and

documented in the resident's file, except for wandering incidents requiring immediate notification according to Rule 0906(f)(4) of this Subchapter; and

(8) Encourage and assist the residents in the fullest possible exercise of the civil and religious liberties guaranteed under the Adult Care Home Residents' Bill of Rights, General Statute 131D 21.

(a) Family care home staff shall provide personal care to residents according to the residents' care plans and to attend to any other personal care needs residents may be unable to attend for themselves.

(b) Staff shall provide supervision of residents in accordance with each resident's assessed needs, care plan and current symptoms.

(c) Staff shall respond immediately in the case of an accident or incident involving a resident to provide care and intervention according to the facility's policies and procedures.

Authority G.S. 131D-2; 143B-153.

**10A NCAC 13G .0902 HEALTH CARE**

(a) A family care home shall provide care and services in accordance with the resident's care plan.

(b) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition, considering age, disability and diagnoses.

(c) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition as evidenced by documentation of the following in the resident's record:

(1) facility contacts with the resident's physician, physician service, other licensed health professional, including mental health professional, when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;

(2) all visits of the resident to or from the resident's physician, physician service or other licensed health professional, including mental health professional, of which the facility is aware.

(3) written procedures, treatments or orders from a physician or other licensed health professional; and

(4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.

(d) The following shall apply to the resident's physician or physician service:

(1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident.

(2) When the resident cannot remain under the care of the chosen physician or physician

service, the facility shall assure that arrangements are made with the resident or responsible person for choosing and securing another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.

*Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160.*

**SECTION .1000 – MEDICATIONS**

**10A NCAC 13G .1001 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES**

~~(a) The facility shall ensure the development and implementation of written policies and procedures for the ordering, receiving, storage, discontinuation, disposition and administration of medications, including self administration of medications. Orientation of policies and procedures shall be provided to new staff responsible for medication administration prior to staff administering medications.~~

~~(b) The facility shall consult with a licensed health professional who is authorized to dispense or administer medications in developing medication policies and procedures.~~

~~(c) Medication policies and procedures shall comply with requirements of this Section and all applicable state and federal regulations, including definitions in the North Carolina Pharmacy Practice Act, G.S. 90-85.3. For the purposes of this Subchapter, medications shall include herbal and non-herbal supplements.~~

In addition to the requirements in Rule .1211(a)(1) of this Subchapter, the family care home shall ensure the following:

- (1) orientation to medication policies and procedures for staff responsible for medication administration prior to their administering or supervising the administration of medications; and
- (2) compliance of medication policies and procedures with requirements of this Section and all applicable state and federal regulations, including definitions in the North Carolina Pharmacy Practice Act, G.S. 90-85.3.

Note: For the purposes of this Subchapter, medications include herbal and non-herbal supplements.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .1002 MEDICATION ORDERS**

(a) The ~~facility~~ family care home shall ensure contact of the resident's physician or prescribing practitioner for verification or clarification of orders for medications and treatments:

- ~~(1) if the FL-2 orders for admission or readmission of the resident are is not dated and signed within 24 hours of admission or readmission to the facility; or~~
- ~~(2) if orders for readmission of a resident from the hospital are not dated and signed within 24 hours of readmission; or~~
- ~~(3)(2) if orders are not clear or complete; or complete, e.g., when multiple admission forms~~

~~are received upon admission or readmission and orders on the forms are not the same.~~

- (3) if multiple admission forms are received upon admission or readmission and orders on the forms are not the same.

The facility shall ensure that this verification or clarification is documented in the resident's record.

(b) All orders for medications, prescription and non-prescription, and treatments shall be maintained in the resident's record in the facility.

(c) The medication orders shall be complete and include the following:

- (1) medication name;
- (2) strength of medication;
- (3) dosage of medication to be administered;
- (4) route of administration;
- (5) specific directions of use, including frequency of administration; and
- (6) if ordered on an as needed basis, a clearly stated indication for use.

(d) Verbal orders for medications and treatments shall be:

- (1) countersigned by the prescribing practitioner within 15 days from the date the order is given;
- (2) signed or initialed and dated by the person receiving the order; and
- (3) accepted only by a licensed nurse, pharmacist, professional authorized by state occupational licensure laws to accept orders or qualified staff responsible for medication administration.

(e) Any standing orders shall be for individual residents and signed and dated by the resident's physician or prescribing practitioner.

(f) The facility shall assure that all current orders for medications or treatments, including standing orders and orders for self-administration, are reviewed and signed by the resident's physician or prescribing practitioner at least every six months.

(g) In addition to the requirements as stated in Paragraph (c) of this Rule, psychotropic medications ordered "as needed" by a prescribing practitioner, shall not be administered unless the following have been provided by the practitioner or included in an individualized care plan developed with input by a registered nurse or registered pharmacist:

- (1) detailed behavior-specific written instructions, including symptoms that might require use of the medication;
- (2) exact dosage;
- (3) exact time frames between dosages; and
- (4) the maximum dosage to be administered in a twenty-four hour period.

(h) The facility shall assure that staff receives personal care aides and their direct supervisors receive training and inservice programs annually about the desired and undesired effects of psychotropic medications, including alternative behavior interventions. Documentation of training ~~and inservice programs~~ attended by staff shall be maintained in the facility.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .1004 MEDICATION ADMINISTRATION**

(a) The facility ~~family care home~~ shall assure that the preparation and administration of medications, prescription and non prescription, and treatments by staff are in accordance with:

- (1) orders by a licensed prescribing practitioner which are maintained in the resident's record; and
- (2) rules in this Section and the facility's policies and procedures.

(b) The facility shall assure that only staff meeting the requirements in Rule .0403 of this Subchapter shall administer medications, including the preparation of medications for administration. ~~The facility shall be responsible for assuring that staff has the ability to apply the rules in this Section and the facility's policies and procedures.~~

(c) Only oral solid medications that are ordered for routine administration may be prepared in advance and must be prepared within 24 hours of the prescribed time for administration. Medications prescribed for prn (as needed) administration shall not be prepared in advance.

(d) Liquid medications, including powders or granules that require to be mixed with liquids for administration, and medications for injection shall be prepared immediately before administration to a resident.

(e) Medications shall not be crushed for administration until immediately before the medications are administered to the resident.

(f) If medications are prepared for administration in advance, the following procedures shall be implemented to keep the drugs identified up to the point of administration and protect them from contamination and spillage:

- (1) Medications are dispensed in a sealed package such as unit dose and multi-paks that is labeled with at least the name of each medication and strength in the sealed package. The labeled package of medications is to remain unopened and kept enclosed in a capped or sealed container that is labeled with the resident's name, until the medications are administered to the resident. If the multi-pak is also labeled with the resident's name, it does not have to be enclosed in a capped or sealed container;
- (2) Medications not dispensed in a sealed and labeled package as specified in Subpart (1) of this Rule are kept enclosed in a sealed container that identifies at least the name and strength of each medication prepared and the resident's name;
- (3) A separate container is used for each resident and each planned administration of the medications and labeled according to Paragraph (1) or (2) of this Rule;
- (4) All containers are placed together on a separate tray or other device that is labeled clearly with the planned time for administration and stored in a locked area

which is only accessible to staff as specified in Rule .1006(d) of this Section.

(g) The facility shall ensure that Medications medications shall be administered within one hour before or one hour after the prescribed or scheduled time unless precluded by emergency situations.

(h) If medications are not prepared and administered by the same staff person, there shall be documentation for each dose of medication prepared for administration by the staff person who prepared the medications when or at the time the resident's medication is prepared. Procedures shall be established and implemented to clearly identify the staff person who prepared the medication and the staff person who administered the medication.

(i) The recording of the administration on the medication administration record shall be by the staff person who administers the medication immediately following administration of the medication to the resident and observation of the resident actually taking the medication and prior to the administration of another resident's medication. Pre-charting is prohibited.

(j) The resident's medication administration record (MAR) shall be accurate and include the following:

- (1) resident's name;
- (2) name of the medication or treatment order;
- (3) strength and dosage or quantity of medication administered;
- (4) instructions for administering the medication or treatment;
- (5) reason or justification for the administration of medications or treatments as needed (PRN) and documenting the resulting effect on the resident;
- (6) date and time of administration;
- (7) documentation of any omission of medications or treatments and the reason for the omission, including refusals; and,
- (8) name or initials of the person administering the medication or treatment. If initials are used, a signature equivalent to those initials is to be documented and maintained with the medication administration record (MAR).

(k) The facility shall have a system in place to ensure the resident is identified prior to the administration of any medication or treatment.

(l) The facility shall assure the development and implementation of policies and procedures governing medication errors and adverse medication reactions that include documentation of at least the following:

- (1) notification of a physician or appropriate health professional and supervisor;
- (2) action taken by the facility according to orders by the physician or appropriate health professional; and
- (3) charting or documentation errors, unavailability of a medication, resident refusal of medication, any adverse medication reactions and notification of the resident's physician when necessary.

- (m) Medication administration supplies, such as graduated measuring devices, shall be available and used by facility staff in order for medications to be accurately and safely administered.
- (n) The facility shall assure that medications are administered in accordance with infection control measures that help to prevent the development and transmission of disease or infection, prevent cross-contamination and provide a safe and sanitary environment for staff and residents.
- (o) A resident's medication shall not be administered to another resident except in an emergency. In the event of an emergency, steps shall be taken to ensure that the borrowed medications are replaced promptly and that the borrowing and replacement of the medication is documented.
- (p) Only oral, topical (including ophthalmic and otic medications), inhalants, rectal and vaginal medications, subcutaneous injections and medications administered by gastrostomy tube and nebulizers ~~shall~~ may be administered by persons who are not authorized by state occupational licensure laws to administer medication.
- (q) ~~Unlicensed staff may not administer injections other than insulin and other subcutaneous injections, excluding anticoagulants such as heparin. The unlicensed person~~ Unlicensed staff may not administer insulin or other subcutaneous injections prior to meeting the requirements for training and competency validation as stated in ~~Rule .0903~~ Rules .0504 and .0505 of this Subchapter.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .1008 CONTROLLED SUBSTANCES**

- (a) The ~~facility~~ family care home shall assure a readily retrievable record of controlled substances by documenting the receipt, administration and disposition of controlled substances. These records shall be maintained with the resident's record and in order that there can be accurate reconciliation.
- (b) Controlled substances may be stored together in a common location or container. If Schedule II medications are stored together in a common location, the Schedule II medications shall be under double lock.
- (c) Controlled substances that are expired, discontinued or no longer required for a resident shall be returned to the pharmacy within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident. The facility shall document the resident's name; the name, strength and dosage form of the controlled substance and the amount returned. There shall also be documentation by the pharmacy of the receipt or return of the controlled substances.
- (d) If the pharmacy will not accept the return of a controlled substance, the facility shall assure that destruction of the controlled substance is within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident and the destruction is by the administrator or the administrator's designee and witnessed by a registered pharmacist, a dispensing practitioner, or their designee. The destruction shall be conducted so that no person can use, administer, sell or give away the controlled substance. Records of controlled substances destroyed shall include the resident's name; the name, strength and dosage form of the controlled substance; the amount destroyed; the method of destruction; and,

- the signature of the administrator or the administrator's designee and the signature of the registered pharmacist, dispensing practitioner or their designee.
- (e) Records of controlled substances returned to the pharmacy or destroyed by the facility shall be maintained by the facility for a minimum of three years.
- (f) Controlled substances that are expired, discontinued, prescribed for a deceased resident or deteriorated shall be stored securely in a locked area separately from actively used medications until disposed of.
- (g) A dose of a controlled substance accidentally contaminated or not administered shall be destroyed at the facility. The destruction shall be documented on the medication administration record (MAR) or the controlled substance record showing the time, date, quantity, manner of destruction and the initials or signature of the person destroying the substance.
- (h) The facility shall ensure that all known drug diversions are reported to the pharmacy, the local law enforcement agency and Health Care Personnel Registry as required by state regulations, and that all suspected drug diversions are reported to the pharmacy. There shall be documentation of the contact and action taken.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**10A NCAC 13G .1010 PHARMACEUTICAL SERVICES**

- (a) The ~~facility~~ family care home shall allow the resident the right to choose a pharmacy provider as long as the pharmacy will provide services that are in compliance with the facility's medication management policies and procedures.
- (b) There shall be a current, written agreement with a licensed pharmacist, prescribing practitioner or registered nurse for pharmaceutical care services according to Rule .1009 of this Section. The written agreement shall include a statement of the responsibility of each party.
- (c) The facility shall assure the provision of ~~emergency pharmaceutical services~~ services to meet the needs of the resident, including procedures that assure the accurate ordering, receiving and administering of all medications prescribed on a routine, emergency, or as needed basis.
- (d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility.
- (e) The facility shall assure that accurate records of the receipt, use and disposition of medications are maintained in the facility and readily available for review.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.*

**SECTION .1100 – MANAGEMENT OF RESIDENT'S FUNDS AND REFUNDS**

**10A NCAC 13G .1101 MANAGEMENT OF RESIDENT'S FUNDS**

- (a) Residents are to manage their own funds if at all possible. ~~Residents must endorse checks made out to them unless a legal guardian or payee or some other legally constituted authority, as described in Paragraph (b) of this Rule has been authorized to endorse checks.~~

(b) In situations where a resident is unable to manage his funds, a legal guardian representative or payee must shall be designated in accordance with Rule .1102 of this Section.

(c) Residents shall endorse checks made out to them unless a legal representative or payee has been authorized to endorse checks.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .1102 LEGAL REPRESENTATIVE OR PAYEE**

(a) In situations where the resident is unable to manage his funds, the administrator ~~is to~~ shall contact a family member or the county department of social services regarding the need for a legal guardian representative or payee. The administrator and other staff of the home ~~may shall~~ not serve as a resident's legal guardian, representative, payee, or executor of a will, except as indicated in ~~Subparagraph (a)(3)~~ Paragraph (b) of this Rule.

~~(1) When a payee is needed for a resident and there is not an appropriate family member to serve, it is recommended that the county director of social services be appointed as payee, except in the case of State County Special Assistance for Adults.~~

~~(2) In the case of State County Special Assistance for Adults, a payee may only be appointed by court action. The county department of social services may only serve as payee when it has been legally appointed as the resident's legal guardian.~~

~~(b)(3)~~ In the case of funds administered by the Social Security Administration, the Veteran's Administration or other federal government agencies, the administrator of the home may serve as a payee when so authorized as a legally constituted authority by the respective federal agencies.

~~(c)(b)~~ The administrator ~~must shall~~ give the resident's legal guardian representative or payee receipts for any monies received on behalf of the resident.

*Authority G.S. 33-6; 108A-37; 131D-2; 143B-165.*

**10A NCAC 13G .1103 ACCOUNTING FOR RESIDENT'S PERSONAL FUNDS**

(a) To document a resident's receipt of his personal needs allowance after payment of the cost of care, a statement ~~must shall~~ be signed by the resident or marked by the resident with two witnesses' signatures. The statement ~~is to~~ shall be maintained in the home.

(b) Upon the written authorization of the resident or his legal guardian representative or payee, ~~recorded on Form DSS 1865 or the equivalent~~, an administrator or the administrator's designee may handle the personal money for a resident, provided an accurate accounting of monies received and disbursed and the balance on hand is available upon request of the resident or his legal guardian representative or payee. ~~The administrator is to use Form DSS 1866 or an approved method of bookkeeping in maintaining the account.~~

(c) ~~There must be a~~ A record of each ~~transaction. transaction~~ involving the use of the resident's personal funds according to

Paragraph (b) of this Rule ~~The record of transactions must shall~~ be signed by the ~~resident resident~~, legal representative or payee or marked by the ~~resident resident~~, if not adjudicated incompetent, with two witnesses' signatures at least monthly verifying the accuracy of the disbursement of personal funds. The record ~~is to~~ shall be maintained in the home.

(d) A resident's personal funds ~~cannot shall not~~ be commingled with facility funds or with the personal funds of other residents in an interest-bearing account set up by the administrator. ~~All of any portion of a resident's personal funds are to be available to the resident or his legal guardian or payee upon request during regular office hours, except as provided in Rule .1105 of this Subchapter.~~

(e) All or any portion of a resident's personal funds shall be available to the resident or his legal representative or payee upon request during regular office hours, except as provided in Rule .1105 of this Subchapter.

(f) The resident's personal needs allowance shall be credited to the resident's account within 24 hours of the check being deposited following endorsement.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .1104 REFUND POLICY**

The family care home's refund policies policy shall be in writing and signed by the administrator. A copy ~~must shall~~ be given to the ~~resident, family or social worker~~ resident or the resident's responsible person at time of admission. A copy ~~must shall~~ also be filed in the resident's record.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .1105 REFUND OF PERSONAL FUNDS**

(a) ~~When an~~ the administrator or the administrator's designee handles a resident's personal money at the resident's or his payee's request, the balance ~~must shall~~ be given to the resident or the resident's responsible person responsible for planning for his care within ~~30~~ 14 days of the resident's leaving the home.

(b) If a resident dies, the administrator of his estate or the Clerk of Superior Court, when no administrator for his estate has been appointed, ~~must shall~~ be given all of his personal funds within 30 days after death. When given to the Clerk of Superior Court, the money will be disbursed in accordance with North Carolina General Statute 28A-25-6.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .1106 SETTLEMENT OF COST OF CARE**

(a) If ~~the~~ a resident of a family care home, after being notified by the home of its intent to discharge ~~him~~ the resident in accordance with Rule ~~.2505(a)~~ .0705 of this Subchapter, moves out of the home before the ~~two weeks (14 days)~~ period of time specified in the notice has elapsed, ~~he shall receive a~~ the home shall refund the resident an amount equal to the cost of care for the remainder of the month minus any nights spent in the home during the ~~two week~~ notice period. The refund ~~is to shall~~ be made within 14 days after the resident leaves the home. ~~from the date of notice for a resident who is returning to an~~

independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.

(b) If the ~~a resident~~ resident, after giving written notice to the home of his intent to leave in accordance with Rule .0705(h) of this Subchapter, moves out of the home ~~without giving notice, as may be required by the home according to Rule .0705(h) of this Subchapter, or before the two weeks (14 days) home's required notice period~~ has elapsed, the resident owes the ~~administrator home~~ an amount equal to the cost of care for the ~~14 days~~ required notice period. If the ~~two weeks' period~~ for a resident receiving State-County Special Assistance ~~extends into another month and the resident moves early, without giving notice or before the notice period has elapsed,~~ the former home is entitled to the required payment for the notice period before the new home receives any payment. The ~~resident~~ home shall be ~~refunded~~ refund the resident the remainder of any advance payment following settlement of the cost of care. The refund is ~~to~~ shall be made within 14 days from the date of ~~notice. notice~~ or, if no notice is given, within 14 days of the resident leaving the home. ~~notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.~~

(c) When there is an exception to the notice as provided in Rule .0705(h) of this Subchapter to protect the health or safety of the resident or others in the home, the resident is only required to pay for any nights spent in the home. A refund ~~is to~~ shall be made to the resident by the home within 14 days from the date of ~~notice. notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.~~

(d) When a resident gives notice of leaving the home, as may be required by the home according to Rule .0705(h) of this Subchapter, and leaves at the end of the notice period, the home shall refund the resident the remainder of any advance payment within 14 days from the date of notice. If notice is not required by the home, the refund shall be made within 14 days after the resident leaves the home.

~~(4)(e)~~ When a resident leaves the home with the intent of returning to it, the following apply:

- (1) The home may reserve the resident's bed for a set number of days with the written agreement of the ~~administrator home~~ and the resident or his responsible person and thereby expect payment for the days the bed is ~~held; held.~~
- (2) If, after leaving the home, the resident decides not to return to it, the resident or someone acting on his behalf may be required by the home to provide up to a ~~two weeks' (14 day) 14-day~~ written notice that he is not ~~returning; returning.~~
- (3) Requirement of ~~the two weeks' a~~ notice, if it is to be applied by the home, ~~must~~ shall be a part of the written agreement and explained by the ~~administrator home~~ to the resident and his family or responsible person before ~~signing; signing.~~

(4) On notice by the resident or someone acting on his behalf that he will not be returning to the facility, ~~home,~~ the ~~administrator home~~ shall refund the remainder of any advance payment to the resident or his responsible person, minus an amount equal to the cost of care for the ~~two weeks (14 days) period~~ covered by the agreement. The refund ~~is to~~ shall be made within 14 days ~~after notification that the resident will not be returning to the home, from the date of notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home;~~

(5) In no situation involving a recipient of State-County Special Assistance may a home expect payment for more than 30 days since State-County Special Assistance is not authorized unless the resident is actually residing in the ~~facility home~~ or it is anticipated that he will return to the ~~facility home~~ within 30 days; ~~and days.~~

(6) Exceptions to the two weeks' notice, if required by the home, are cases where returning to the home would jeopardize the health or safety of the resident or others in the home as certified by the resident's physician or approved by the county department of social services, and in the case of the resident's death. In these cases, the ~~administrator home~~ shall refund the rest of any advance payment calculated beginning with the day the home is notified.

~~(e)(f)~~ If a resident dies, the administrator of his estate or the Clerk of Superior Court, when no administrator for his estate has been appointed, ~~must~~ shall be given a refund equal to the cost of care for the month minus any nights spent in the home during the month. This is to be done within 30 days after the resident's death.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

**SECTION .1200 – POLICIES, RECORDS AND REPORTS**

**10A NCAC 13G .1203 DISPOSAL OF RESIDENT'S RECORDS**

~~(a) All records may be purged of material more than three years old unless the home has been asked by the monitoring or licensing agency to keep it for a longer period.~~

~~(b) After a resident has left the home or died, the resident's records shall be put in order and filed in a safe place in the home for a period of three years one year and then may be destroyed. After a resident has left the family care home or died, the resident's records shall be filed in the home for at least one year and then stored for at least two more years. Note: Medicaid policy requires retention of records for at least five years.~~

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160.

**10A NCAC 13G .1204 REPORT OF ADMISSIONS AND DISCHARGES**

~~When there is an admission or discharge of a resident, the administrator or supervisor in charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting the form for reporting admissions and discharges. The form does not need to be submitted if there have not been any admissions or discharges.~~

*Authority G.S. 131D-2; 143B-153.*

**10A NCAC 13G .1213 REPORTING OF ACCIDENTS AND INCIDENTS**

(a) The family care home shall notify the county department of social services of any accident or incident resulting in resident death or any accident or incident resulting in injury to a resident requiring medical treatment, other than minor first aid, or referral for emergency medical evaluation or hospitalization.

(b) Notification as required in Paragraph (a) of this Rule shall be by a copy of the death report completed according to Rule .1209 of this Subchapter or a written report that shall provide the following information:

- (1) resident's name;
- (2) name of staff who discovered the accident or incident;
- (3) name of the person preparing the report;
- (4) how, when and where the accident or incident occurred;
- (5) nature of the injury;
- (6) what was done for the resident, including any follow-up care;
- (7) time of notification or attempts at notification of the resident's responsible person or contact person as required in Paragraph (c) of this Rule; and
- (8) signature of the administrator or administrator-in-charge.

(c) The report as required in Paragraph (b) of this Rule shall be submitted to the county department of social services by mail, telefacsimile, electronic mail, or in person within 48 hours of the initial discovery or knowledge by staff of the accident or incident.

(d) The facility shall immediately notify the county department of social services and the local law enforcement authority, as appropriate, of any mental or physical abuse, neglect or exploitation of a resident in accordance with G.S. 108A-99 and send a written report of the facility's investigation to the Division of Facility Services in compliance with Rule .1206 of this Subchapter.

(e) The facility shall assure the notification of a resident's responsible person or contact person, as indicated on the Resident Register, of the following, unless the resident or his responsible person or contact person objects to such notification:

- (1) any injury to or illness of the resident requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but no later than 24 hours

from the time of the initial discovery or knowledge of the injury or illness by staff and documented in the resident's file; and

- (2) any incident of the resident falling or elopement which does not result in injury requiring medical treatment or referral for emergency medical evaluation, with notification to be as soon as possible but not later than 48 hours from the time of initial discovery or knowledge of the incident by staff and documented in the resident's file, except for elopement requiring immediate notification according to Rule .0906(f)(4) of this Subchapter.

(f) When a resident is at substantial risk that death or serious physical harm will occur as a result of physical violence by another person, the facility shall immediately report the situation to the local law enforcement authority. Whenever there is a risk that death or physical harm will occur due to the actions or behavior of a resident, the facility shall provide supervision and control over the threatening resident to protect others from harm. The facility shall seek immediate emergency medical treatment of the threatening resident as needed, request that the local management entity for mental health services arrange an assessment of the threatening resident and accommodate assessment personnel assigned to the case by the local management entity to assure the earliest possible assessment.

(g) In the case of physical assault by a resident, the facility shall immediately increase the supervision and control over the threatening resident to protect others from harm, and seek any needed emergency medical treatment. The facility shall report the assault by a resident to the local management entity for mental health services and request that the local management entity arrange an assessment of the resident. The facility shall accommodate assessment personnel assigned to the case by the local management entity to assure the earliest possible assessment. The facility shall report any assault resulting in harm to a resident to the local law enforcement authority.

*Authority G.S. 131D-2; 143B-165.*

**10A NCAC 13G .1214 AVAILABILITY OF CORRECTIVE ACTION AND SURVEY REPORTS**

The family care home shall make available within the facility, upon request, corrective action reports by the county departments of social services and facility survey reports by state licensure consultants that have been approved by the Adult Care Licensure Section of the Division of Facility Services within the past 12 months to residents and their families or responsible persons and to prospective residents and their families or responsible persons.

*Authority 131D-2; 143B-165.*

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend the rule cited as 10A NCAC 14C .3303.

Proposed Effective Date: March 1, 2005

Public Hearing:

Date: January 12, 2005

Time: 2:00 p.m.

Location: Division of Facility Services, Room 201, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: This Rule is requested to be amended to change the Certificate of Need Criteria and Standards for Air Ambulance services to allow for the development of new air ambulance services in conjunction with a Level I or a Level II Trauma Center. The proposed rule change also deletes the requirement that another air ambulance service shall not be based within 60 miles of the base of the proposed new service.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Written comments may be submitted to: Mercidee Benton, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701

Comment period ends: January 14, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 14 – DIRECTOR, DIVISION OF FACILITY SERVICES

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .3300 - CRITERIA AND STANDARDS FOR AIR AMBULANCE

10A NCAC 14C .3303 PERFORMANCE STANDARDS

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

- (1) For the acquisition of a rotary air ambulance [unless 10A NCAC 14C .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service], each rotary air ambulance proposed to be acquired by the applicant shall be utilized at an average rate of at least 60 patient requests per month, measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).
(2) For the acquisition of a rotary air ambulance [unless 10A NCAC 14C .3303(6) is applicable], an applicant proposing to add a rotary air ambulance to an existing rotary air ambulance service shall demonstrate that all of its existing rotary air ambulances have had at least 60 patient requests per month in the last year.
(3) For the acquisition of a fixed wing air ambulance [unless 10A NCAC 14C .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service], each fixed wing air ambulance proposed to be acquired by the applicant shall be utilized at an average of no less than 60% of capacity transporting patients (determined based on the type aircraft), measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).
(4) For the acquisition of a fixed wing air ambulance [unless 10A NCAC 14C .3303(6) is applicable], an applicant proposing to add a fixed wing air ambulance to an existing fixed wing air ambulance service shall demonstrate that all of its existing fixed wing air ambulances have been utilized at no less than 60% of capacity transporting patients for the last year.
(5) For all proposed projects involving the development of a new air ambulance service (rotary or fixed wing), the new service shall be

developed in conjunction with ~~at least a level 2 designated a Level I or a Level II~~ trauma center as designated by the North Carolina Office of Emergency Medical Services pursuant to 10A NCAC 13P .0901 or .0902 and another air ambulance service shall not be based within 60 air miles of the base of the proposed new service.

- (6) For acquisition of an air ambulance that shall be utilized less than 25% of the time flown for purposes defined in G.S. 131E-176(1a), the applicant shall provide the following information:
  - (a) documentation that the aircraft shall be utilized less than 25% of the time flown in any given quarter for purposes defined in G.S. 131E-176(1a) (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and
  - (b) a detailed description of all circumstances and conditions under which the aircraft will be utilized including the number of hours the aircraft will be flown for each of these circumstances.

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

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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 rules cited as 10A NCAC 41D .0101-.0104.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: December 2, 2004

Time: 2:00 p.m.

Location: Room G1-A 1330 St. Mary's Street, Raleigh, NC

Reason for Proposed Action: Illegal methamphetamine labs have been found in many North Carolina counties. These labs pose multiple dangers to both public health and the environment. Methamphetamine labs can be set up almost anywhere, but most have been found in private residences and hotel/motel rooms. It is necessary to adopt these rules to establish decontamination standards that will ensure property that has been a methamphetamine laboratory is safe for habitation as stated in legislation enacted in the last General Assembly.

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 may be made verbally and in writing at the public hearing for these rules.

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

Comment period ends: January 14, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 41 – HEALTH: EPIDEMIOLOGY

10A NCAC 41D .0101 GENERAL

(a) The rules of this Subchapter implement the provisions of G.S.130A-284 by establishing decontamination standards for property that has been used for the manufacture of methamphetamine. The contaminated property shall not be occupied prior to decontamination of the property in accordance with these Rules.

(b) A responsible party shall:

- (1) perform a pre-decontamination assessment to determine the level of contamination and scope of remediation;
- (2) decontaminate the property; and
- (3) document the activities of this Paragraph. The Division shall develop a template that can be used for this purpose.

(c) As used in this Subchapter the term "responsible party" means an owner, lessee, operator, or other person in control of a residence or place of business or any structure appurtenant to a residence or place of business who has knowledge that the property has been used for the manufacture of methamphetamine.

(d) When law enforcement officials have posted a property signifying that the property had been used as a clandestine methamphetamine laboratory, the law enforcement officials shall immediately notify the local health department of the presence of the laboratory. The local health department shall immediately

inform the property owner of record or their agent that the property has been used as a methamphetamine laboratory, inform them that the property must be vacated, and inform them of the requirement placed upon a responsible party to remediate the property in accordance with these Rules prior to the property being reoccupied.

*Authority G.S. 130A-284.*

**10A NCAC 41D .0102 PRE-DECONTAMINATION ASSESSMENT**

The responsible party shall conduct a pre-decontamination assessment in accordance with the following:

- (1) Interview hazardous materials (HAZMAT) team member(s) or law enforcement personnel and acquire a manifest of chemicals removed during HAZMAT cleanup to collect specific methamphetamine lab information including:
  - (A) the drugs manufactured;
  - (B) the chemicals found;
  - (C) the manufacture ("cook") recipes/methods used at the lab site;
  - (D) duration of lab operation;
  - (E) chemical equipment found; and
  - (F) the location of contaminated cooking and/or storage areas.
- (2) Determine whether the heating, ventilation, air conditioning (HVAC) system serves more than one unit or structure such as motels, apartments, row houses or multiple-family dwellings to determine whether contamination entered other residences or rooms.
- (3) Assess the plumbing system for visible contamination such as chemical etching or staining and for the presence of chemical odors coming from the drain.
- (4) Conduct a visual assessment of the severity of contamination inside and outside of the structure where the lab was located:
  - (A) document any visible chemical spills
  - (B) assess adjacent rooms, units, apartments or structures for contamination, e.g. chemical odors, staining, chemical spills; and
  - (C) determine whether disposal methods used by the "cooks" at/near the lab site (e.g., dumping, burning, burial, venting, and/or drain disposal) caused contamination of soil, groundwater, on-site sewage disposal systems, or other environmental contamination.
- (5) Develop a plan for waste disposal in accordance with the rules and statutes administered by the North Carolina Department of Environment and Natural Resources, Division of Waste Management for materials removed from the structure and wastes produced during cleaning, including

solid waste, hazardous waste, and household hazardous wastes.

- (6) Determine whether the severity and type of contamination creates a risk of explosion or fire and thereby requires disconnection of power sources to the structure until after decontamination is complete.
- (7) Determine the necessary personal protective equipment needed for cleanup workers.
- (8) Notify the local health director of potential contamination of septic systems, soil, or groundwater.
- (9) Notify the lead law enforcement agency for the site if lab remnants or other evidence of methamphetamine manufacturing is discovered that may have been overlooked during bulk decontamination.
- (10) Document and retain for three years findings of the pre-decontamination assessment and provide a copy to the local health department.

*Authority G.S. 130A-284.*

**10A NCAC 41D .0103 DECONTAMINATION**

Decontamination shall be performed in accordance with the pre-decontamination assessment report prepared pursuant to Rule .0102 of this Subchapter. The responsible party shall document all activities related to the cleanup and retain this documentation for three years. The cleanup shall include all of the following listed below:

- (1) Site ventilation shall include:
  - (A) not operating the HVAC system until clean up is completed;
  - (B) venting the structure by opening doors and windows or using equipment such as fans, blowers and/or negative air machines for a minimum of two days prior to cleaning and throughout the cleanup process; and
  - (C) preventing vented contaminants from entering air intakes of adjacent structures.
- (2) Any syringes or other drug paraphernalia that may be contaminated with blood or other bodily fluids shall be properly disposed of as bio-hazardous waste in accordance with state and federal law.
- (3) Chemical remnants and spills shall be remediated as follows:
  - (A) neutralize acids with weak basic solutions;
  - (B) neutralize bases with weak acidic solutions;
  - (C) litmus (pH) paper shall be used to check for a neutral surface after neutralization;

- (D) absorb liquids with a non-reactive material and package for waste disposal; and
- (E) package solids for waste disposal.
- (4) Machine washable porous materials such as draperies, bed coverings, and clothing in rooms assessed as contaminated and rooms serviced by the same HVAC as the room where methamphetamine was manufactured shall be washed two times with detergent and water or disposed of in accordance with the waste disposal plan. Non-machine washable porous materials, such as upholstered furniture and mattresses, in rooms assessed as contaminated and rooms serviced by the same HVAC as the room where methamphetamine was manufactured shall be disposed of in accordance with the waste disposal plan. All carpeting in rooms serviced by the same HVAC as the room where methamphetamine was manufactured and all carpet that is part of the same dwelling unit shall be disposed of in accordance with the waste disposal plan.
- (5) Plumbing and HVAC systems shall be remediated as follows:
  - (A) Plumbing fixtures that are visibly contaminated (chemical etching or staining or chemical odors present) beyond normal household wear and tear shall be removed and properly disposed, and the attached plumbing shall be aggressively flushed; plumbing fixtures that are not removed shall be thoroughly cleaned; and
  - (B) HVAC Systems shall have: all filters in the system replaced; supply diffusers and intake vents removed and cleaned; and the surfaces near system inlets and outlets cleaned. Any system that is constructed of non-porous material such as sheet metal or the equivalent shall be high efficiency particulate air (HEPA) vacuumed and washed two feet into the ductwork from the opening. Internally insulated ductwork shall be replaced two feet from the opening.
- (6) All appliances (such as refrigerators, stoves, hot plates, microwaves, toaster ovens, and coffee makers, etc.) used in the manufacture of methamphetamine or storage of associated chemicals shall be disposed in accordance with the waste disposal plan. Appliances that are not removed shall be thoroughly cleaned.
- (7) Ceilings, walls, floors and other non-porous materials in rooms assessed as contaminated and rooms serviced by the same HVAC as the room where methamphetamine was

manufactured shall be scrubbed using a household detergent solution and rinsed with clear water. Scrub and move non-porous materials to an area that is free of contamination. Then scrub the ceiling first, then the walls and then the floors. This procedure shall be repeated two additional times using a fresh detergent solution, with frequent changes of the rinse water. If a surface has visible contamination or staining, or if an odor emanates from a surface, that surface shall be rewashed, painted with a non-water based paint, or removed until the odor and visible contamination is removed. Room(s) used for the manufacture of methamphetamine shall have ceilings, walls, and floors painted with a non-water based paint after cleaning.

- (8) After cleaning is complete, the property shall be aired out for at least three days to allow for remaining volatiles to disperse. Open all windows and use exhaust fans to circulate air out of the house. During this time, the property shall remain off limits unless it is necessary to make short visits to check on the site.
- (9) Outdoor cleanup shall be completed in accordance with applicable rules administered by the North Carolina Department of Environment and Natural Resources.

*Authority G.S. 130A-284.*

**10A NCAC 41D .0104 POSTDECONTAMINATION**

The responsible party shall notify the local health department upon completion of the decontamination process. The responsible party shall provide a copy of the pre-decontamination assessment and the clean-up activity documentation to the local health department. The local health department shall retain this documentation for three years.

*Authority G.S. 130A-284.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 10B .1701-.1705 and amend the rules cited as 12 NCAC 10B .0204-.0206, .2002.*

**Proposed Effective Date:** *March 1, 2005*

**Public Hearing:**

**Date:** *November 30, 2004*

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

**Location:** *Old Education Bldg, 114 W Edenton St. Raleigh, Ground Floor, Room G01*

**Reason for Proposed Action:** *The General Assembly in its last legislature session made amendments to the Commission's enabling statute (G.S. 17E) to require the Commission to mandate in-service training in the area of Domestic Violence to be effective March 1, 2005.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objection should be sent to: Julia Lohman, Sheriffs Standards Division, NC Department of Justice, P.O. Box 629, Raleigh, NC 27602.*

**Written comments may be submitted to:** *Julia Lohman, Sheriffs Standards Division, NC Department of Justice, P.O. Box 629, Raleigh, NC 27602, phone (919)716-6460, fax (919)716-6753, email jlohman@ncdoj.com.*

**Comment period ends:** *January 14, 2005*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SECTION .0200 - ENFORCEMENT RULES**

**12 NCAC 10B .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony; or

- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a one year time period as specified by these Rules; or
- (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .1700, .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the

Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

(4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or

(5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

*Authority G.S. 17E-7.*

**12 NCAC 10B .0205 PERIOD OF SUSPENSION:  
REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
  - (a) commission or conviction of a felony; or
  - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
  - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
  - (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1) and (4); or
  - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
  - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
  - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
  - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or
  - (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
  - (g) a positive result on a drug screen, or a refusal to submit to drug testing both

- pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 9A .0103(6).
- (h) the Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
- (a) failure to meet or satisfy relevant basic training requirements; or
  - (b) failure to meet or maintain the minimum standards of employment or certification; or
  - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .1700, or .2100; or
  - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (5), and (6); or
  - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

*Authority G.S. 17E-4; 17E-7.*

**12 NCAC 10B .0206 SUMMARY SUSPENSIONS: OR DENIALS**

(a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Director, shall utilize summary suspension or denial following a full investigation of the matter when:

- (1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or

- (2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500, .0600, and 1300; or
- (3) the certified deputy sheriff or detention officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .1700, or .2100; or
- (4) the applicant for certification has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(c)(3) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
- (5) the applicant for certification or the certified officer has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(b) Without limiting the application of G.S. 17E, a person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

*Authority G.S. 17E-8; 17E-9; 150B-3(c).*

**SECTION .1700 - DOMESTIC VIOLENCE IN-SERVICE TRAINING PROGRAM FOR DEPUTY SHERIFFS**

**12 NCAC 10B .1701 SHERIFF RESPONSIBILITIES**

The sheriff shall ensure that the Domestic Violence In-Service Training Program is conducted using the commission-approved lesson plan. In addition, the Sheriff shall:

- (1) report to the Division those deputy sheriffs who are considered "special deputy sheriffs" in accordance with G.S. 17E-(3)(a);
- (2) maintain a roster of each deputy sheriff who successfully completes the In-Service Training Program; and
- (3) shall report to the Division by January 15<sup>th</sup> of each calendar year, those deputy sheriffs who fail to complete the Domestic Violence In-Service Training Program in accordance with the Rule .1704.

*Authority G.S. 17E-4; 17E-7.*

**12 NCAC 10B .1702 INSTRUCTORS**

The following requirements and responsibilities are hereby established for instructors who conduct the In-Service Domestic Violence Training Program:

- (1) The instructor shall hold General Instructor Certification as issued by the North Carolina

Criminal Justice Education and Training Standards Commission.

- (2) The instructor shall deliver the training consistent with the commission-approved lesson plan and shall be present at all times during which said training is being conducted.
- (3) The instructor shall document the successful or unsuccessful completion of training for each deputy sheriff attending a training program and forward a record of their completion to each deputy's Sheriff.

- (1) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of these Rules;
- (2) Domestic Violence Training for deputy sheriffs as set out in Section .1700 of these Rules.

Authority G.S. 17E-4; 17E-7.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT & 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 07H .1105.

**Proposed Effective Date:** April 1, 2005

**Public Hearing:**

**Date:** January 27, 2005

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

**Location:** TBD/CRC Meeting/Southern Area, Blockade Runner, 275 Waynick Blvd., Wrightsville Beach, NC

**Reason for Proposed Action:** The Coastal Resources Commission is proceeding with rulemaking with regard to specific conditions for the above referenced rule, in order to increase the allowable distance for the placement of riprap revetments from five feet to ten feet waterward when there is an existing bulkhead at the site. The current five-foot limit has proven inadequate when there is an existing bulkhead.

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

**Written comments may be submitted to:** Charles S. Jones, DENR, Coastal Management, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone (252)808-2808, fax (252)808-3330, email charles.s.jones@ncmail.net.

**Comment period ends:** January 27, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions

Authority G.S. 17E-4; 17E-7.

**12 NCAC 10B .1703 MINIMUM TRAINING REQUIREMENTS**

The North Carolina Justice Academy shall develop a four-hour Commission-approved In-Service Domestic Violence Training Program.

Authority G.S. 17E-4; 17E-7.

**12 NCAC 10B .1704 DOMESTIC VIOLENCE IN-SERVICE TRAINING PROGRAM SPECIFICATIONS**

Full-time and reserve deputy sheriffs must complete this In-Service Training Program by the end of each calendar year.

Authority G.S. 17E-4; 17E-7.

**12 NCAC 10B .1705 FAILURE TO COMPLETE IN-SERVICE DOMESTIC VIOLENCE TRAINING PROGRAM**

(a) Failure to complete the Domestic Violence In-Service Training Program in accordance with this Section shall result in the summary suspension of the deputy sheriff's certification by the Commission.

(b) Certification can be reinstated at the request of the deputy's Sheriff provided the deputy completes the In-Service Training Program within six months of the end of the calendar in which the deputy failed to comply, provided the appointing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305. An In-Service Training Program completed under this provision will be credited to the prior year of non-compliance; and will not be credited toward the current year of completion.

Authority G.S. 17E-4; 17E-7.

**SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS**

**12 NCAC 10B .2002 TOPICAL AREAS**

~~The Firearms Training and Requalification for deputy sheriffs and detention officers shall be included in the Justice Officers' In-Service Training Program.~~

The following topical areas shall be included in the Justice Officers' In-Service Training Program:



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 .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND THE PLACEMENT OF RIPRAP FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

**15A NCAC 07H .1105 SPECIFIC CONDITIONS**

(a) This general permit is applicable only along shorelines void of wetland vegetation including marsh grass and wooded swamp, or where all construction is to be accomplished landward of such vegetation.

(b) ~~Along natural shorelines e.g. rivers, creeks, bays, sounds, etc., bulkheads~~ Bulkheads and riprap material must shall be positioned as follows:

- (1) Bulkheads must shall be positioned so as not to exceed more than an average distance of 2 feet waterward of the ~~mean~~ normal high water mark, or the normal water level contour, whichever is applicable. In no case shall the bulkhead be positioned more than 5 feet waterward of the ~~mean~~ normal high water or normal water level contour at any point along its alignment.
- (2) Riprap ~~must~~ shall be positioned so as not to exceed a maximum of 5 feet waterward of the mean high water mark or normal water level contour at any point along its alignment. ~~This location standard also applies to riprap proposed waterward of the existing bulkheads. Where there is an existing bulkhead structure, riprap shall be allowed to extend a maximum of 10 feet offshore. This location standard shall take into consideration the height of the area to be protected (i.e. bulkhead height, water depth) and the alignment shall allow for a slope no flatter than 2 feet horizontal per 1 foot vertical and no steeper than 11/2 feet horizontal per 1 foot vertical.~~

(c) Along shorelines within upland basins, canals, and ditches, bulkheads or riprap material must be positioned so as not to exceed more than an average distance of 5 feet waterward of the ~~mean~~ normal high water mark or the normal water level contour, whichever is applicable. In no case shall the bulkhead or riprap be positioned more than 10 feet waterward of the ~~mean~~ normal high water or normal water level contour at any point along its alignment. For the purpose of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline and development must occur as described in 7H .1105(b).

(d) Construction authorized by this general permit ~~will~~ shall be limited to a maximum shoreline length of 500 feet.

(e) All backfill material shall be obtained from an upland source.

(f) The bulkhead ~~must~~ shall be constructed, or the riprap ~~must~~ shall be in place prior to any backfilling activities.

(g) The bulkhead or riprap ~~must~~ shall be structurally tight so as to prevent seepage of backfill materials through the structure.

(h) Riprap material shall be free from loose dirt or any other pollutant. It ~~must~~ shall be of a size sufficient to prevent its movement from the site by wave or current action.

(i) Riprap material ~~must~~ shall consist of clean rock or masonry materials such as but not limited to granite or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material or similar material, are not considered riprap.

(j) The bulkhead ~~must~~ shall be solid and constructed of treated wood, concrete slabs, metal sheet piles or other suitable materials approved by department personnel. No excavation is permitted except for that which may be required for the construction of the bulkhead wall, riprap, deadmen cables, etc. This permit does not authorize any excavation waterward of the approved alignment.

(k) Bulkheads or riprap shall not extend beyond established alignments nor restrict the original width of the canal or basin.

(l) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan ~~must~~ shall be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan ~~must~~ shall be approved prior to commencing the land-disturbing activity.

*Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 06 - BOARD OF BARBER EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Barber Examiners intends to adopt the rules cited as 21 NCAC 06O .0101-.0112 and amend the rule cited as 21 NCAC 06N .0101.*

**Proposed Effective Date:** *March 1, 2005*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A public hearing may be demanded if the agency receives a written request for a public hearing within 15 days after notice of text is published in North Carolina Register. The written request may be sent to: Paul Ridgeway, P.O. Box 911, Raleigh, NC 27602.*

**Reason for Proposed Action:** *To conform administrative rules with newly enacted legislation; to increase fees and to set civil penalties.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to the agency on a proposed rule by submitting comments on the text of the proposed rules that are published in the North Carolina Register*

at any time prior to the expiration of 60 days after the text is published or until the date of any public hearing held on the proposed rule (if demanded), whichever is longer.

**Written comments may be submitted to:** Paul Ridgeway, P.O. Box 911, Raleigh, NC 27602, phone (919)755-0025, fax (919)755-0025, email paul@eghs.com.

**Comment period ends:** January 14, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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

**SUBCHAPTER 06N - FORMS**

**21 NCAC 06N .0101 FORMS AND FEES**

(a) The forms used by the Board will be known by the following titles and numerical designations:

- (1) Application for a Permit to Open or Manage a New Barber Shop – Form BAR-1;
- (2) Application for a Barber Shop Permit for a Change of Manager – Form BAR-2;
- (3) Application for Student Permit to Enroll in Barber School – Form BAR-3;
- (4) Application for Examination to Receive a Certificate of Registration as a Registered apprentice in Barbering – Form BAR-4;
- (5) Application for Examination to Receive a Certificate of Registration as a Registered Barber – Form BAR-5;
- (6) Application for an Instructor's Examination – Form BAR-6;
- (7) Application for Registered Certificate – Form BAR-7;
- (8) Application for a Permit to Open or Manage a New Barber School – Form BAR-9;
- (9) Student Monthly Report – Form BAR-10;

~~(b) The Board charges the maximum amount for the fees authorized by G.S. 86A-25.~~

(b) The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- (1) Certificate of registration or renewal as a barber \$35.00
- (2) Certificate of registration or renewal as an apprentice barber \$35.00
- (3) Barbershop permit or renewal \$40.00
- (4) Examination to become a registered barber \$85.00.
- (5) Examination to become a registered apprentice barber \$85.00.
- (6) Late fee for restoration of an expired barber certificate within first year after expiration \$35.00.
- (7) Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration \$70.00.
- (8) Late fee for restoration of an expired apprentice certificate within the first year after expiration \$35.00
- (9) Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate \$45.00.
- (10) Late fee for restoration of an expired barber shop certificate \$45.00.
- (11) Examination to become a barber school instructor \$150.00.
- (12) Student permit \$20.00.
- (13) Issuance of any duplicate copy of a license, certificate or permit \$10.00.
- (14) Barber school permit or renewal 85.00.
- (15) Late fee for restoration of an expired barber school certificate \$85.00.
- (16) Barber school instructor certificate or renewal \$60.00.
- (17) Late fee for restoration of an expired barber school instructor certificate within first year after expiration \$45.00.
- (18) Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration \$85.00.
- (19) Inspection of newly established barbershop \$120.00.
- (20) Inspection of newly established barber school \$220.00.
- (21) Issuance of a registered barber or apprentice certificate by certification \$80.00.
- (22) Charge for certified copies of public documents \$10.00 for first page, \$0.25 for each page thereafter.
- (23) Charge for duplication services and material \$5.00 for first page, \$0.25 for each page thereafter.
- (24) Certificate of registration or renewal as a barber for barbers over 70 years of age \$0.00

*Authority G.S. 86A-25.*

**SUBCHAPTER 60 - CIVIL PENALTY**

**21 NCAC 060 .0101 SCHEDULE OF PENALTIES**

The rules in this Subchapter establish the schedule of civil penalties required by G.S. 86A-27(c). The amounts stated are the presumptive amounts which may be modified in accordance with G.S. 86A-27(b).

*Authority G.S. 86A-5(a)(6); 86A-27.*

**21 NCAC 060 .0102 LICENSING OF BARBER SHOPS**

(a) The presumptive civil penalty for operating a barber shop without first filing an application for a barber shop license, obtaining an inspection, or obtaining a shop permit:

(1)	1 <sup>st</sup> offense	\$150.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

(b) The presumptive civil penalty for operating a barber shop with an expired permit:

(1)	1 <sup>st</sup> offense	\$100.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-15; 86A-27.*

**21 NCAC 060 .0103 LICENSING OF BARBER SCHOOLS**

(a) The presumptive civil penalty for operating a barber school without first filing an application for a barber school license, obtaining an inspection, or obtaining a school permit:

(1)	1 <sup>st</sup> offense	\$150.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

(b) The presumptive civil penalty for operating a barber school with an expired permit:

(1)	1 <sup>st</sup> offense	\$100.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-15; 86A-27.*

**21 NCAC 060 .0104 UNSUPERVISED APPRENTICE**

(a) The presumptive civil penalty for a barber shop allowing an apprentice or holder of permission to work to engage in barbering without adequate supervision:

(1)	1 <sup>st</sup> offense	\$250.00
(2)	2 <sup>nd</sup> offense	\$250.00

(b) The presumptive civil penalty for an apprentice or holder of permission to work engaging in barber without adequate supervision:

(1)	1 <sup>st</sup> offense	\$150.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

*Authority G.S. 86A-5(a)(6); 86A-24; 86A-27.*

**21 NCAC 060 .0105 UNLICENSED BARBER**

(a) The presumptive civil penalty for a shop allowing a barber to practice without a license:

(1)	1 <sup>st</sup> offense	\$250.00
(2)	2 <sup>nd</sup> offense	\$500.00

(b) The presumptive civil penalty for an individual engaging in barbering without a license:

(1)	1 <sup>st</sup> offense	\$200.00
(2)	2 <sup>nd</sup> offense	\$400.00
(3)	3 <sup>rd</sup> offense	\$500.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-27.*

**21 NCAC 060 .0106 DISPLAY OF CURRENT LICENSE**

(a) The presumptive civil penalty for the failure of a shop or school to display a current shop or school license:

(1)	1 <sup>st</sup> offense	\$50.00
(2)	2 <sup>nd</sup> offense	\$100.00
(3)	3 <sup>rd</sup> offense	\$200.00

(b) The presumptive civil penalty for a shop or school to allow an individual to perform barbering without displaying a current license or permit:

(1)	1 <sup>st</sup> offense	\$50.00
(2)	2 <sup>nd</sup> offense	\$100.00
(3)	3 <sup>rd</sup> offense	\$200.00

(c) The presumptive civil penalty for an individual to practice barbering without displaying a current license or permit:

(1)	1 <sup>st</sup> offense	\$50.00
(2)	2 <sup>nd</sup> offense	\$100.00
(3)	3 <sup>rd</sup> offense	\$200.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-16; 86A-20(5); 86A-27.*

**21 NCAC 060 .0107 FRAUDULENT MISREPRESENTATIONS OR SUBMISSION OF FRAUDULENT DOCUMENT**

The presumptive civil penalty for barbering or attempting to barber by fraudulent misrepresentations or the submission of fraudulent or false documents in connection with licensing or an application for license: 1<sup>st</sup> offense \$500.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-20(2); 86A-20(3); 86A-27.*

**21 NCAC 060 .0108 INSPECTIONS OF SHOPS AND SCHOOLS**

The presumptive civil penalty for refusing to permit or interfering with the inspection of a shop or school:

(1)	1 <sup>st</sup> offense	\$100.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

*Authority G.S. 86A-1; 86A-5(a)(6); 86A-15(b); 86A-27.*

**21 NCAC 060 .0109 EXPIRED LICENSE**

(a) The presumptive civil penalty for engaging in the practice of barbering with a license or permit that has expired or lapsed for more than a six month duration:

(1)	1 <sup>st</sup> offense	\$50.00
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(2)	2 <sup>nd</sup> offense	\$100.00
(3)	3 <sup>rd</sup> offense	\$150.00

(b) The presumptive civil penalty for a shop allowing an individual to engage in the practice of barbering with a license or permit that has expired or lapsed for more than a six month duration:

(1)	1 <sup>st</sup> offense	\$50.00
(2)	2 <sup>nd</sup> offense	\$100.00
(3)	3 <sup>rd</sup> offense	\$150.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-17(b); 86A-27.

**21NCAC 060 .0110 ADEQUATE PREMISES**

(a) The presumptive civil penalty for a school to maintain adequate facilities, after two written warnings:

(1)	1 <sup>st</sup> offense	\$200.00
(2)	2 <sup>nd</sup> offense	\$350.00
(3)	3 <sup>rd</sup> offense	\$500.00

(b) The presumptive civil penalty for a shop to maintain adequately sanitary facilities, after two written warnings:

(1)	1 <sup>st</sup> offense	\$200.00
(2)	2 <sup>nd</sup> offense	\$400.00
(3)	3 <sup>rd</sup> offense	\$500.00

Authority G.S. 86A-5(a)(6); 86A-15; 86A-18(6); 86A-18(7); 86A-22(6); 86A-27.

**21 NCAC 060 .0111 SCHOOL INSTRUCTORS**

The presumptive civil penalty for a school failing to provide sufficient instructors to meet required student-teacher ratios:

(1)	1 <sup>st</sup> offense	\$100.00
(2)	2 <sup>nd</sup> offense	\$250.00
(3)	3 <sup>rd</sup> offense	\$500.00

Authority G.S. 86A-5(a)(6); 86A-22(2); 86A-27.

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**CHAPTER 36 - BOARD OF NURSING**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0702.*

**Proposed Effective Date:** July 1, 2005

**Public Hearing:**

**Date:** January 28, 2005

**Time:** 1:00 p.m.

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

**Reason for Proposed Action:** *To establish uniform requirement for multistate licensure privilege among compact states as adopted by Compact Administrators.*

**Procedure by which a person can object to the agency on a proposed rule:** *Persons may submit objections to this Rule by*

*contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, voicemail (919)782-3211, ext. 252, fax (919)781-9461 and email: jeans@ncbob.com*

**Written comments may be submitted to:** *Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, voicemail (919)782-3211, ext. 252, fax (919)781-9461 and email: jeans@ncbob.com*

**Comment period ends:** January 28, 2005

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

If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 .0700 – NURSE LICENSURE COMPACT**

**21 NCAC 36 .0702 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE**

For the purpose of the Compact:

- (1) A nurse applying for a license in a home state shall produce evidence of the nurses' primary state of residence. Such evidence shall include a declaration signed by the licensee attesting to the licensee's primary state of residence. Further evidence that may be requested includes, but is not limited to:
  - (a) Driver's license with a home address;
  - (b) Voter registration card displaying a home address; or
  - (c) Federal income tax return declaring the primary state of residence.
- (2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.

- (3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance. The 30-day period in Item (2) of this Rule shall be stayed until resolution of the pending investigation.
- (4) The former home state license shall no longer be valid upon the issuance of a new home state license.
- (5) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within 10 business days and the former home state may take action in accordance with that state's laws and rules.
- (6) As of July 1, 2005, no individual shall be issued a multistate licensure privilege unless the applicant provides evidence of successful completion of the licensing examination developed by the National Council of State Boards of Nursing, Inc.

Authority G.S. 90-171.82(6); 90-171.83(a)(b); 90-171.85(b); 90-171.87(4).

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**CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend the rules cited as 21 NCAC 50 .0301, .0306, .0505, .0508, .0513-.0515, .1101-.1102.*

**Proposed Effective Date:** March 1, 2005

**Public Hearing:**

**Date:** December 14, 2004

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

**Location:** Office of the Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC

**Reason for Proposed Action:** *Implementation of the program related to limited licenses for fire sprinkler inspection contractors, inspection technicians and maintenance technicians indicated a need for delayed effective dates and reduced fees in certain categories. Specificity of tasks to be carried out by maintenance technicians is needed for clear understanding by licensees and industry. One rule related to Heating Group 3 systems must be changed to conform to statute.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person desiring to comment upon or object to a proposed rule may do so either by appearing at the public hearing or in writing as set out below prior to the end of the comment period.*

**Written comments may be submitted to:** *Sandra R. O'Brien, Executive Director, State Board Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC 27609, phone (919)875-3612, fax (919)875-3616.*

**Comment period ends:** January 14, 2005

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

If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 .0300 – EXAMINATIONS**

**21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION**

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping

(b) Each applicant shall be required to read, interpret and provide answers to both the business and the technical parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

(d) After July 1, 2004, applicants for initial licensure in the Limited Fire Sprinkler Inspection Technician classification must submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of

examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306. Where certification based on NICET Level II certification was not required at the time of initial licensure, such certification must be obtained by December 31, 2005. After December 31, 2005, current NICET Level II certification is required as a condition of license renewal.

(e) After July 1, 2005, applicants for the Limited Fire Sprinkler Inspection Contractor classification must submit evidence of Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET in lieu of examination. License without examination shall be issued ~~beginning based on applications filed between~~ July 1, 2003, and ~~ending~~ July 1, 2005, to applicants who meet the experience requirement in Rule .0306. Persons who obtain license by NICET certification must maintain such certification thereafter as a condition of license renewal.

(f) Applicants for license in the Limited Fire Sprinkler Maintenance classification are qualified based on maintenance ~~of the experience, education~~ and job classification set forth in Rule. 0306.

Authority G.S. 87-18; 87-21(a); 87-21(b).

**21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE**

(a) All applicants for licensure or examinations shall file an application in the Board office on a form provided by the Board.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity, work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate experience which involves the kind of work set out above less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual:

(d) Fire Sprinkler contractors in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization; or
- (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing, government or university facility which provides training consistent with NFPA-25 in fire sprinkler inspections by a recognized fire sprinkler organization or institution of higher education with fire suppression curriculum.

(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification must submit evidence adequate to establish that the applicant was engaged in business in North Carolina as owner or officer in an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections in North Carolina.

(g) Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to April 1, 2005, July 1, 2004, must submit evidence of 4000 hours experience at the place for which license is sought as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. Applicants for initial licensure in the Limited Fire Sprinkler Maintenance classification after April 1, 2005, July 1, 2004, must submit evidence of ~~2000~~ 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of replacing activated or damaged sprinkler heads, lubricating control valves, and resetting dry pipe valves, or other tasks itemized as maintenance in ~~NFPA-25, NFPA-25~~ or 2000 hours of such experience, together with ~~six~~ six ~~18~~ hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants who have held Maintenance license previously are not required to demonstrate experience in addition to the experience at the time of initial licensure but will present evidence of ~~six~~ two hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service relevant to the systems in the new place of employment.

Authority G.S. 87-18; 87-21(b).

**SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES**

**21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE**

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress.

(b) The provisions of the North Carolina Building Code, including the provisions of codes and standards incorporated by reference, to the extent adopted by the Building Code Council of North Carolina from time to time is the minimum standard of competence applicable to contractors licensed by the Board. Licensees shall design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code, Manufacturer's specifications and installation instructions and standards prevailing in the industry.

(c) Limited Fire Sprinkler Maintenance Technicians licensees and Limited Fire Sprinkler Inspection Technicians shall be present in person at all times work is being carried out on the system pursuant to the license held by that person.

Authority G.S. 87-18; 87-23; 87-26.

**21 NCAC 50 .0508 HEATING: GROUP 3 LICENSE REQUIRED**

(a) A license in heating, group No. 3 is required for the installation or replacement of a furnace, ductwork or condenser in a heating, group No. 3 system.

(b) A license in heating, group No. 3 is required to install or replace a self-contained fireplace unit if the unit utilizes ducts or a blower to distribute air to areas not immediately adjacent to the fireplace itself.

(c) A license in heating, group No. 3 is required when air conditioning of less than 15 tons is added to an already installed heating, group No. 3 system, ~~system provided the existing heating system is altered or modified, or there are changes in the duct or control system.~~

(d) A Heating Group No. 2 license is required for the installation or replacement of equipment or ductwork in a Heating Group No. 2 system, unless exempted by G.S. 87-21(a)(3).

Authority G.S. 87-18; 87-21(a)(3); 87-21(a)(5); 87-21(c).

**21 NCAC 50 .0513 LIMITED FIRE SPRINKLER INSPECTION TECHNICIAN LICENSE**

License in the Limited Fire Sprinkler Inspection Technician classification is required of the technician who carries out periodic inspection of fire sprinkler systems consistent with NFPA-25. All NFPA-25 reports and system tags must display the name and signature of the licensee who performed the actual

inspection as well as the licensee number of the inspection contractor, except that where the Inspection Technician license is issued in the name of a manufacturing, government, university or hospital facility as set out in this rule, the NFPA-25 report and system tags must display the name, signature and license number of the Inspection Technician. ~~All NFPA-25 reports and system tags must display the name, signature and license number of the Inspection Contractor or Inspection Technician who performed the inspection.~~ Periodic observation and testing of systems other than NFPA-25 system certification may be carried out by Maintenance Technicians licensed under Rule .0515 of this Section. Licenses are issued based on demonstrated experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually. The duties of inspection technicians may be carried out as employees of inspection contractors or as full-time employees at a manufacturing, government, university or hospital facility which provides academic and practical training in fire sprinkler inspections consistent with NFPA-25 ~~NFPA-25, by a recognized fire sprinkler organization or institution of higher education with fire suppression curriculum.~~ Inspection Technician licenses are issued and listed either as sublicensees of inspection contractors or as a technician license in the name of the manufacturing, government, university or hospital facility where the technician is employed. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

Authority G.S. 87-21.

**21 NCAC 50 .0514 LIMITED FIRE SPRINKLER INSPECTION CONTRACTOR LICENSE**

License in the Limited Fire Sprinkler Inspection Contractor classification is required of persons who engage in the business of contracting to perform or performing independent testing and inspections of fire sprinkler systems consistent with NFPA-25. Where the NFPA-25 inspection is carried out by the Inspection Contractor, the All ~~NFPA-25 reports and system tags must display the name, signature and license number of the Inspection Contractor.~~ Inspection Contractor or Inspection Technician who performed the inspection. Licenses are issued based on experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

Authority G.S. 87-21.

**21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE TECHNICIAN LICENSE**

(a) License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance observation or testing of water-based fire protection systems ~~systems, consisting of minor repairs, replacing activated or damaged sprinkler heads, lubricating~~

control valves, resetting dry pipe valves and other tasks itemized as maintenance in NFPA 25. Licenses are issued based on experience and training, as described in Rules .0301 and .0306 of this Chapter and expire annually. This license is limited to work on the systems at the locations of the employer of the licensee for which experience was demonstrated. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license be obtained for the systems at the new place of employment by compliance with the requirements of Rule .0306 of this Chapter.

(b) Persons holding Limited Fire Sprinkler Maintenance license may only:

- (1) Operate and lubricate hydrants and control valves.
- (2) Adjust valve and pump packing glands.
- (3) Bleed moisture and condensation from air compressors, air lines and dry pipe system auxiliary drains.
- (4) Clean strainers.
- (5) Check for painted, damaged or corroded sprinklers, corroded or leaking piping and verify control valves are open.
- (6) Replace painted, corroded or damaged sprinkler head, using identical serial numbers.
- (7) Replace missing or loose hangers.
- (8) Replace gauges.
- (9) Clean water motor gong.
- (10) Perform air compressor maintenance.
- (11) Reset dry pipe valves.
- (12) Exercise fire pumps (no flow).
- (13) Periodic maintenance observation or testing.

*Authority G.S. 87-21.*

**21 NCAC 50 .1101 EXAMINATION FEES**

(a) An application to reissue or transfer a license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00).

(b) An application to issue or transfer a license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00).

(c) An application for a license by examination requires a fee of ~~one hundred twenty five dollars (\$100.00)~~, one hundred dollars (\$100.00), consisting of an application fee of twenty-five dollars (\$25.00) and an examination fee of ~~one hundred dollars (\$100.00)~~, seventy-five dollars (\$75.00), which is nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.

*Authority G.S. 87-18; 87-22.1; 87-22; 87-26.*

**21 NCAC 50 .1102 LICENSE FEES**

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is one hundred twenty-five dollars (\$125.00).

(b) The annual license fee for a licensed individual who holds qualifications from the Code Officials Qualification Board, is employed full-time as a local government plumbing, heating or mechanical inspector and who is not actively employed in business requiring license from this Board is fifteen dollars (\$15.00).

(c) The initial application fee for license without examination conducted by the Board is twenty-five dollars (\$25.00).

(d) The annual license fee for a contractor or inspection technician whose qualifications are listed as the second or subsequent individual on the license of a corporation, partnership, or business with a trade name under Paragraphs (a) or (c) of this Rule is twenty-five dollars (\$25.00).

*Authority G.S. 87-18; 87-21; 87-22.*



**APPROVED RULES**

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting September 16, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules have been entered into the North Carolina Administrative Code.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
01	NCAC	17	.0701	18:22 NCR
01	NCAC	17	.0703	18:22 NCR
01	NCAC	17	.0704*	18:22 NCR
01	NCAC	17	.0705-.0709	18:22 NCR
01	NCAC	17	.0710*	18:22 NCR
01	NCAC	17	.0711	18:22 NCR
01	NCAC	17	.0712*	18:22 NCR
01	NCAC	17	.0713-.0714	18:22 NCR
01	NCAC	17	.0715*	18:22 NCR
01	NCAC	17	.0716-.0718	18:22 NCR
02	NCAC	52B	.0406*	18:20 NCR
02	NCAC	52J	.0101-.0104	18:20 NCR
02	NCAC	52J	.0201*	18:20 NCR
02	NCAC	52J	.0202-.0203	18:20 NCR
02	NCAC	52J	.0204*	18:20 NCR
02	NCAC	52J	.0205-.0206	18:20 NCR
02	NCAC	52J	.0207*	18:20 NCR
02	NCAC	52J	.0209-.0210*	18:20 NCR
02	NCAC	52J	.0302*	18:20 NCR
10A	NCAC	27G	.0104*	18:24 NCR
10A	NCAC	27G	.4202*	18:24 NCR
10A	NCAC	28A	.0101	18:24 NCR
10A	NCAC	28D	.0208*	18:24 NCR
11	NCAC	10	.1106*	18:24 NCR
12	NCAC	07D	.0903*	18:15 NCR
12	NCAC	07D	.0909-.0910*	18:15 NCR
14A	NCAC	12	.0101	n/a G.S. 150B-21.5(a). Eff. October 1, 2004
14A	NCAC	12	.0103-.0105	n/a G.S. 150B-21.5(a). Eff. October 1, 2004
14A	NCAC	12	.0109	n/a G.S. 150B-21.5(a). Eff. October 1, 2004
14A	NCAC	12	.0114	n/a G.S. 150B-21.5(a). Eff. October 1, 2004
14A	NCAC	12	.0116-.0117	n/a G.S. 150B-21.5(a). Eff. October 1, 2004
15A	NCAC	03J	.0402*	18:21 NCR
15A	NCAC	03M	.0201	18:21 NCR
15A	NCAC	03O	.0503*	18:21 NCR
15A	NCAC	03Q	.0108	18:21 NCR
15A	NCAC	03Q	.0109*	18:21 NCR
15A	NCAC	03R	.0108*	18:21 NCR
15A	NCAC	03R	.0201	18:21 NCR
15A	NCAC	03S	.0101	18:21 NCR
15A	NCAC	07H	.0304*	18:19 NCR
15A	NCAC	07H	.2601-.2605*	18:19 NCR
15A	NCAC	10B	.0121	18:18 NCR
15A	NCAC	10B	.0202	18:17 NCR
15A	NCAC	10F	.0369	18:11 NCR
15A	NCAC	10D	.0103	18:16 NCR
15A	NCAC	18A	.2601*	18:21 NCR

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**APPROVED RULES**

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15A	NCAC	18A	.2603-.2604	18:21	NCR
15A	NCAC	18A	.2606*	18:21	NCR
15A	NCAC	18A	.2608-.2610*	18:21	NCR
15A	NCAC	18A	.2615*	18:21	NCR
15A	NCAC	18A	.2617-.2618*	18:21	NCR
15A	NCAC	18A	.2622*	18:21	NCR
15A	NCAC	18A	.2624*	18:21	NCR
15A	NCAC	18A	.2626	18:21	NCR
15A	NCAC	18A	.2627*	18:21	NCR
15A	NCAC	18A	.2629	18:21	NCR
15A	NCAC	18A	.2633*	18:21	NCR
15A	NCAC	18A	.2701-.2725	18:21	NCR
25	NCAC	01C	.0202*	18:16	NCR
25	NCAC	01C	.0203-.0204	18:16	NCR
25	NCAC	01C	.0209	18:16	NCR
25	NCAC	01C	.0212-.0213	18:16	NCR
25	NCAC	01C	.0301*	18:16	NCR
25	NCAC	01C	.0302	18:16	NCR
25	NCAC	01C	.0303-.0304*	18:16	NCR
25	NCAC	01C	.0305	18:16	NCR
25	NCAC	01C	.0310	18:16	NCR
25	NCAC	01C	.0402-.0403*	18:16	NCR
25	NCAC	01C	.0506	18:16	NCR
25	NCAC	01C	.0701-.0703*	18:16	NCR
25	NCAC	01C	.0801	18:16	NCR
25	NCAC	01C	.0804*	18:16	NCR
25	NCAC	01C	.1002*	18:16	NCR
25	NCAC	01C	.1007*	18:16	NCR
25	NCAC	01C	.1008	18:16	NCR
25	NCAC	01C	.1009*	18:16	NCR
25	NCAC	01E	.0102*	18:16	NCR
25	NCAC	01E	.0201-.0202	18:16	NCR
25	NCAC	01E	.0206	18:16	NCR
25	NCAC	01E	.0207-.0208*	18:16	NCR
25	NCAC	01E	.0209	18:16	NCR
25	NCAC	01E	.0211-.0212*	18:16	NCR
25	NCAC	01E	.0313-.0314	18:16	NCR
25	NCAC	01E	.0315*	18:16	NCR
25	NCAC	01E	.0705-.0706	18:16	NCR
25	NCAC	01E	.0707*	18:16	NCR
25	NCAC	01E	.0708	18:16	NCR
25	NCAC	01E	.0709*	18:16	NCR
25	NCAC	01E	.0804	18:16	NCR
25	NCAC	01E	.0902*	18:16	NCR
25	NCAC	01E	.0909*	18:16	NCR
25	NCAC	01E	.1001	18:16	NCR
25	NCAC	01E	.1101-.1102*	18:16	NCR
25	NCAC	01E	.1104	18:16	NCR
25	NCAC	01E	.1105*	18:16	NCR
25	NCAC	01E	.1107-.1108	18:16	NCR
25	NCAC	01E	.1111-.1112*	18:16	NCR
25	NCAC	01E	.1301-.1302*	18:16	NCR
25	NCAC	01E	.1304*	18:16	NCR
25	NCAC	01E	.1306*	18:16	NCR
25	NCAC	01E	.1401-.1402*	18:16	NCR
25	NCAC	01E	.1403-.1405	18:16	NCR
25	NCAC	01E	.1406-.1407*	18:16	NCR
25	NCAC	01E	.1408-.1411	18:16	NCR
25	NCAC	01E	.1601*	18:16	NCR

25 NCAC 01L .0401\* 18:16 NCR

*These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1)).*

21	NCAC	25	.0102	18:24 NCR
21	NCAC	25	.0103	n/a Notice not required G.S. 150B-21.5(a)(4)
21	NCAC	25	.0201	18:24 NCR
21	NCAC	25	.0202-.0203*	18:24 NCR
21	NCAC	25	.0204-.0205	18:24 NCR
21	NCAC	25	.0209	18:24 NCR
21	NCAC	25	.0301-.0302*	18:24 NCR
21	NCAC	25	.0401-.0402*	18:24 NCR
21	NCAC	25	.0403	18:24 NCR
21	NCAC	25	.0404-.0405*	18:24 NCR
21	NCAC	25	.0501*	18:24 NCR
21	NCAC	25	.0601-.0603	18:24 NCR

**TITLE 01 - DEPARTMENT OF ADMINISTRATION**

**01 NCAC 17.0704 INTAKE AND ASSESSMENT**

(a) All abuser treatment programs shall establish and comply with written policies and procedures regarding abuser intake and assessment.

(b) Intake: A comprehensive intake and assessment shall be administered to all participants. The intake shall include:

- (1) family and social history;
- (2) medical health history;
- (3) relationship history;
- (4) history of violent, abusive, and controlling behavior;
- (5) history of past criminal behavior;
- (6) substance abuse history and screening;
- (7) assessment of participant's cognitive or social skills;
- (8) any other factors that might interfere with the participation in a group program; and
- (9) lethality assessment.

(c) Lethality Assessment: Because of the severity of injuries and the number of deaths caused by domestic violence, lethality assessment shall be ongoing and not limited to intake. A lethality assessment shall include the following indicators of increased lethality risk:

- (1) violence that increases in severity, frequency, and specificity;
- (2) a high degree of ownership that the abuser expresses regarding the victim;
- (3) violation of court orders and conditions of probation;
- (4) change in access to and relationship with victim;
- (5) accessibility to weapons, especially firearms;
- (6) life stressors (e.g., divorce, chronic illness, death of loved one, and unemployment);
- (7) frequent or severe intoxication from alcohol or other drugs;
- (8) threatened or attempted homicide or suicide;
- (9) stalking behavior;

- (10) history of holding victim captive;
- (11) pet abuse;
- (12) victim making plans to leave or has already left;
- (13) extreme isolation of the victim;
- (14) increased level of risk-taking by the abuser;
- (15) history of sexual assault;
- (16) acute mental health problems, including depression and anti-social behavior;
- (17) past use of weapons or objects;
- (18) strangulation behaviors; and
- (19) violence in the family of origin.

(d) Abuser treatment programs shall also provide initial and ongoing referral services for participants who have concurrent substance abuse, medical, or mental health problems.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16; Eff. October 1, 2004.*

**01 NCAC 17.0710 PROGRAM ASSESSMENT**

Programs shall submit quarterly statistical reports to the Commission to include a tracking of participants received by, accepted into and completing the program; the sources of referral; an analysis of completion rates and reasons for termination; an analysis of contacts with participants' victimized partners; and an assessment of program impact, including but not limited to re-offense rates.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16; Eff. October 1, 2004.*

**01 NCAC 17.0712 CONTINUING EDUCATION**

The program shall require that group facilitators receive a minimum of 6 hours per year of continuing education or training on domestic violence. The program shall require that Direct Service Staff, including staff conducting assessments, receive a minimum of 20 hours per year of continuing education or training on domestic violence. This training may be obtained

through a combination of internal (i.e., presented within the agency as an in-service) and external sources (i.e., regional or state conferences).

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16; Eff. October 1, 2004.*

**01 NCAC 17 .0715 ABUSER TREATMENT PROGRAM INVESTIGATIONS AND REMOVAL FROM APPROVED LIST**

(a) A person who believes that an approved abuser treatment program has violated any provision of the Rules in this Section may file a written complaint with the Commission. The Commission may also initiate proceedings under this Rule without a third party complaint having been filed.

(b) The Commission shall dismiss any complaint it finds is unfounded, frivolous, or trivial.

(c) Unless the complaint is dismissed, pursuant to Paragraph (b) of this Rule, the Commission shall notify the program of the complaint in writing. Such notice shall be sent by certified mail with return receipt requested. The notice shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint, and shall contain a request that the program submit an answer in writing within 20 days from the date the notice of the complaint is received by the abuser treatment program.

(d) If the abuser treatment program acknowledges the violations in the complaint, the Commission shall accept the admission and shall issue a First Notice of Violation. Upon First Notice of Violation, the abuser treatment program shall enter into a probationary period. An abuser treatment program that is not in compliance with this Section shall have 60 days to bring its program into compliance.

(e) If the abuser treatment program does not respond to or denies the violations, the Commission shall investigate the allegations contained in the complaint. The program shall be given another opportunity to respond to the Commission's concerns. If the Commission finds that the program is in violation, the Commission shall issue a First Notice of Violation as in Paragraph (d) of this Rule.

(f) The Commission shall maintain the complaint, evidence, investigative findings, and disposition of each matter. If a First Notice of Violation has been issued, the Commission shall determine if the abuser treatment program has come into compliance within 60 days. If the abuser treatment program is still not in compliance as determined by the Commission, the Commission shall issue a Second Notice of Violation to the program, setting forth an additional 60 days for correcting the violations.

(g) If the Commission determines that the abuser treatment program is still not in compliance at the end of the time set forth in the Second Notice of Violation, the Commission shall remove the program from the list of approved programs effective as of the first day of the next calendar quarter and issue a Letter of Termination to the program. District court judges and clerks of court for the prosecutorial districts served by the program shall be notified immediately by Commission staff of the termination.

(h) All participants in a terminated abuser treatment program shall be remanded back to the referring court for referral to

another program or other action deemed appropriate by the court. Any program so terminated may reapply to the Commission for inclusion on the approval list no sooner than the next application period.

(i) When a program is terminated from the approved list, the Commission shall notify relevant domestic violence and sexual assault agencies and North Carolina Providers of Abuser Treatment.

(j) All abuser treatment programs shall comply with any reporting requirements and requests for information regarding statistics and other data as set out in the rule in this Section. Failure to comply with reporting deadlines and requests for information as set out in the rule in this Section shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16; Eff. October 1, 2004.*

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

**02 NCAC 52B .0406 EIA TEST REQUIRED**

(a) All equine more than six months of age entering North Carolina for any purpose other than for immediate slaughter shall be accompanied by a copy of the certificate of test from a laboratory approved by the USDA showing the animal to be negative to an official test for equine infectious anemia (EIA) within the past 12 months, except as provided in 02 NCAC 52B .0410. (See 02 NCAC 52B .0206 for other importation requirements.)

(b) No equine more than six months of age shall be sold, offered for sale, traded, given away, or moved for the purpose of change of ownership unless accompanied by the original official negative test for EIA administered within 12 months prior to sale or movement, except that equine which are offered for sale at auction markets or sales may have a blood sample drawn at the market by the market's veterinarian at the seller's expense. In such cases, the equine may be sold and transferred contingent upon receipt of an official negative EIA test. Until receipt of an official negative EIA test, the equine must be isolated in accordance with standards for isolation of positive reactors, pursuant to 02 NCAC 52B .0408(c)(2).

(c) All equine brought to or kept at any public place for exhibition, recreation or assembly shall be accompanied by either the original or a copy of an official negative test for EIA administered within the previous 12 months. The person in charge of any public place where equine are brought or kept for exhibition, recreation or assembly shall not permit an equine to remain on the premises without the test required by this Rule.

(d) A person in possession or control of an equine in a public place shall, upon the request of an authorized person, present the original or a copy of the test required by this Rule and shall assist in identifying the equine. A person in possession or control of an equine who does not have an original or a copy of the test required by this Rule shall remove the equine from the

premises within two hours of receiving written notification to leave from an authorized person. As used in this Rule, "authorized person" means the person in charge of the premises, or the State Veterinarian or his representative.

*History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. April 1, 2001; Amended Eff. October 1, 2004; April 1, 2001.*

**02 NCAC 52J .0201 GENERAL**

- (a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.
- (b) All light fixtures and electrical outlets in animal areas shall be in compliance with the State Building Code.
- (c) Facilities shall have reliable and safe electric power as necessary to comply with the Animal Welfare Act.
- (d) Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin and insects. All open bags of food shall be stored in airtight containers with lids. Refrigeration shall be provided for supplies of perishable food.
- (e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.
- (f) Hot and cold running, potable water must be available. Facilities such as washroom, basin or sink shall be provided to maintain cleanliness among animal caretakers, animals, and animal food and water receptacles.
- (g) Each facility shall have the ability to confirm ambient temperature.
- (h) A separate five-foot perimeter fence is required if any animals have access to an outdoor enclosure, including unsupervised exercise areas.
- (i) An adequate drainage system must be provided for the housing facility.
- (j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday).
- (k) All animals in a facility are subject to the requirements of the Animal Welfare Act, regardless of ownership.
- (l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.
- (m) No dog or cat shall be in a window display except during business hours and then only in compliance with standards set forth in this Section.

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.*

**02 NCAC 52J .0204 PRIMARY ENCLOSURES**

- (a) Primary enclosures shall be constructed so as to prevent

contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. For primary enclosures placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures in use in a licensed or registered facility prior to January 1, 2005, any damaged wood must be replaced in a manner that does not permit contact with wood by the animal.

- (b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.
- (c) Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time. All resting surfaces must be of a non-porous or easily sanitized material, such as a towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.
- (d) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in square inches ÷ 144 = required floor space in square feet. The calculation shall be expressed in square feet. Not more than four adult dogs shall be housed in the same primary enclosure without supervision.
- (e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.
- (f) In addition to Paragraph (b) of this Rule, each feline older than six months housed in any primary enclosure shall be provided a minimum of four square feet of floor space which may include elevated resting surfaces. Each feline younger than six months shall be provided 1.5 square feet. Not more than 12 cats shall be housed in the same primary enclosure.
- (g) In all cat enclosures, a receptacle containing clean litter shall be provided for waste. A minimum of one receptacle per three cats is required.

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.*

**02 NCAC 52J .0207 SANITATION**

- (a) Waste shall be removed from primary enclosures and exercise areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats must be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris. When a hosing or flushing method is used for

cleaning an enclosure, dogs or cats contained therein shall be removed during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

(b) Sanitation shall be as follows:

- (1) Prior to the introduction of dogs or cats into empty primary enclosures previously occupied, enclosures and accessories shall be sanitized in the manner provided in Subparagraph (b)(3) of this Rule.
- (2) In addition to primary enclosures being properly cleaned a minimum of two times per day, enclosures and accessories shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (b)(3) of this Rule if the same animal is housed in the same enclosure more than seven days.
- (3) Cages, rooms and hard-surfaced pens or runs shall be sanitized by:
  - (A) washing them with hot water (180 degrees F.) and soap or detergent as in a mechanical cage washer; or
  - (B) washing all soiled surfaces with a detergent solution to remove all organic matter followed by application of a safe and effective disinfectant; or
  - (C) cleaning all soiled surfaces with live steam.
- (4) Food and water receptacles shall be sanitized daily with hot water, detergent, and disinfectant.
- (5) Soiled linens and cloth products shall be mechanically washed with detergent and sanitized.
- (6) Any area accessible to multiple animals shall be kept clean and sanitary.

(c) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

(d) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.*

**02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION**

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

- (1) Females in season (estrus) shall not be housed

in the same primary enclosure with males, except for planned breeding purposes. Breeding shall not be allowed in animal shelters.

- (2) In boarding kennels, animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. Any dog or cat exhibiting an aggressive disposition shall be housed individually in a primary enclosure.
- (3) Puppies or kittens less than four months of age shall not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies, or if requested in writing, by the animals' owner, as in a boarding kennel. Puppies or kittens between 4 and 16 weeks of age shall have daily access to human social interaction, excluding animals which pose a danger to humans or other animals.
- (4) Dogs shall not be housed in the same primary enclosure with cats, nor shall dogs or cats be housed in the same primary enclosure with any other species of animals. Exceptions are allowed at boarding kennels, if requested in writing by the animals' owner.
- (5) All facilities shall designate an isolation area for animals being treated or observed for communicable diseases. Dogs or cats in isolation that are being treated for a communicable disease shall be separated from other dogs or cats and other susceptible species of animals in such a manner as to minimize dissemination of such disease. A sign shall be posted at the cage or isolation area when in use, giving notice of a communicable disease.
- (6) Animals in long term care which are intended for adoption or sale must be provided the following:
  - (a) Daily access to both human and same species social interaction.
  - (b) Daily access to space other than the primary enclosure.
  - (c) A species and size-appropriate toy, unless it poses a health threat.
- (7) All animals shall be confined in primary enclosures or exercise areas.

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.*

**02 NCAC 52J .0210 VETERINARY CARE**

(a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain a veterinarian's written recommendations for correcting the problem.

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a facility, a list of personnel approved to perform euthanasia shall be maintained on a Letter of Euthanasia Certification form and kept on file at the facility. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6.

*History Note: Authority G.S. 19A-24;  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005.*

**02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS**

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used to transport cats and dogs shall be constructed, ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall be maintained between 50 degrees F and 85 degrees F.

(b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than four months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.

(c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to turn about freely, and to easily stand, sit, or lie down in a natural position.

(d) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed so as to prevent animal excreta from entering lower enclosures.

(e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

*History Note: Authority G.S. 19A-24;  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005.*

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

**10A NCAC 27G .0104 STAFF DEFINITIONS**

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
  - (a) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
  - (b) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
  - (c) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised

- experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
- (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- (2) "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (3) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Certified substance abuse prevention consultant (CSAPC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Board.
- (7) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- (8) "Clinical staff member" means a qualified professional or associate professional who provides active direct treatment/habilitation to a client.
- (9) "Clinical/professional supervision" means regularly scheduled assistance by a qualified professional or associate professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- (10) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- (11) "Director" means the individual who is responsible for the operation of the facility.
- (12) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (13) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (14) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- (15) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed a training program in psychiatry accredited by the Accreditation Council for Graduate Medical Education.
- (16) "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina as either a licensed psychologist or a licensed psychological associate.
- (17) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- (18) "Qualified professional" means, within the mh/dd/sas system of care:
- (a) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or



- (b) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (c) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (d) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (19) "Qualified substance abuse prevention professional (QSAPP)" means, within the mh/dd/sas system of care:
- (a) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated supervised experience in substance abuse prevention; or
- (b) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; or
- (c) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; or
- (d) a substance abuse prevention professional who is certified as a Certified Substance Abuse Prevention Consultant (CSAPC) by the North Carolina Substance Abuse Professional Certification Board.
- History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; Eff. May 11, 1996; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001; Amended Eff. October 1, 2004; April 1, 2003.*
- 10A NCAC 27G .4202 STAFF**  
Each facility that provides primary prevention programs shall designate a director for the primary prevention program who shall be a Qualified Substance Abuse Prevention Professional (QSAPP).
- History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Amended Eff. October 1, 2004.*
- 10A NCAC 28D .0208 INTERVENTIONS REQUIRING ADDITIONAL SAFEGUARDS**  
(a) The interventions specified in this Rule present a significant risk to the client and therefore require additional safeguards. These procedures shall be followed in addition to the procedures specified in Rule .0203 of this Section.  
(b) The following interventions are designed for the primary purpose of reducing the incidence of aggressive, dangerous or self-injurious behavior to a level which will allow the use of less intrusive treatment/habilitation procedures. Such interventions include the use of:
- (1) seclusion, physical restraint or isolation time-out employed as a measure of therapeutic treatment;
  - (2) seclusion, physical restraint or isolation time-out used on an emergency basis more than 40 hours in a calendar month or one episode in which the original order is renewed for up to a total of 24 hours in accordance with the limits specified in Subparagraph (1)(8) of Rule .0206 of this Section;
  - (3) unpleasant tasting substances;
  - (4) planned non-attention to specific undesirable behaviors when the target behavior is health threatening;
  - (5) contingent deprivation of any basic necessity;
  - (6) contingent application of any noxious substances which include but are not limited to noise, bad smells or splashing with water; and
  - (7) any potentially physically painful procedure or stimulus which is administered to the client for the purpose of reducing the frequency or intensity of a behavior.
- (c) Such interventions shall never be the sole treatment modality for the elimination of target behavior.

(d) The intervention shall always be accompanied by positive treatment or habilitation methods which shall include, but not be limited to:

- (1) the deliberate teaching and reinforcement of behaviors which are non-injurious;
- (2) the improvement of conditions associated with non-injurious behaviors such as an enriched educational and social environment; and
- (3) the alteration or elimination of environmental conditions which are reliably correlated with self-injury.

(e) Prior to the implementation of any planned use of the intervention the following written approvals and notifications shall be obtained. Documentation in the client record shall include:

- (1) approval of the plan by the treatment/habilitation team;
- (2) that each client whose treatment/habilitation plan includes interventions with reasonably foreseeable physical consequences shall receive an initial medical examination and periodic planned monitoring by a physician;
- (3) that the treatment/habilitation team shall inform the internal client advocate that the intervention has been planned for the client and the rationale for utilization of the intervention;
- (4) the treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable;
- (5) the prior written consent of the client or his legally responsible person shall be obtained except for those situations specified in Rule .0206(g)(1) in this Section. If the client or legally responsible person refuses the intervention, the State Facility Director shall follow the right to refuse treatment procedures as specified in this Subchapter;
- (6) that the plan shall be reviewed and approved by a review committee, designated by the State Facility Director, which shall include that:
  - (A) at least one member of the review committee shall be qualified through experience and training to utilize the planned intervention; and
  - (B) no member of the review committee shall be a member of the client's treatment team;
- (7) that the treatment/habilitation plan may be reviewed and approved by the State Facility Director; and
- (8) if any of the persons or committees specified in Subparagraphs (e)(1), (2), (4), (5) or (6) of this Rule do not approve the continued use of a planned intervention, the planned intervention shall be terminated. The State Facility Director shall establish an appeal mechanism

for the resolution of any disagreement over the use of the intervention.

(f) Neither the consents nor the approvals specified in Paragraph (e) of this Rule shall be valid for more than six months. The treatment/habilitation team shall re-evaluate the use of the intervention and obtain the client's and legally responsible person's consent for continued use of the intervention at least every six months.

(g) The plan shall be reviewed at the meeting of the Human Rights Committee following each evaluation within the constraints of 10A NCAC 28A .0209. The Committee, by majority vote, may recommend approval or disapproval of the plan to the State Facility Director or may abstain from making a recommendation. If the State Facility Director does not agree with the decision of the Committee, the Committee may appeal the issue to the Division in accordance with the provisions of 10A NCAC 28A .0208.

(h) The intervention shall be used only when the treatment/habilitation team has determined and documented in the client record the following:

- (1) that the client is engaging in behaviors that are likely to result in injury to self or others;
- (2) that other methods of treatment or habilitation employing less intrusive interventions are not appropriate;
- (3) the frequency, intensity and duration of the target behavior, and the behavior's probable antecedents and consequences; and
- (4) it is likely that the intervention will enable the client to stop the target behavior.

(i) The treatment/habilitation team shall designate a state facility employee to maintain written records on the application of the intervention and accompanying positive procedures. These records shall include the following:

- (1) data which reflect the frequency, intensity and duration with which the targeted behavior occurs (scientific sampling procedures are acceptable);
- (2) data which reflect the frequency, intensity and duration of the intervention and any accompanying positive procedures; and
- (3) data which reflect the state facility employees who administered the interventions.

(j) The interventions shall be evaluated at least weekly by the treatment team or its designee and at least monthly by the State Facility Director. The designee of the State Facility Director shall not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record.

(k) During the use of the intervention, the Human Rights Committee shall be given the opportunity to review the treatment/ habilitation plan within the constraints of 10A NCAC 28A .0209.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147; Eff. November 1, 1993; Amended Eff. October 1, 2004; July 1, 1994.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

**11 NCAC 10 .1106 DEVIATIONS FROM RATES OF THE NORTH CAROLINA RATE BUREAU**

**(a) Definitions:**

- (1) Rate deviation refers to the entire collection of differences from the Rate Bureau rates and rating plan that a company has implemented or proposes to implement. Deviation and aggregate deviation are used synonymously. A company shall have only one rate deviation from each Rate Bureau filing and rating plan.
- (2) Deviation component refers to any individual part of the aggregate deviation. A deviation component may involve a coverage difference, a different territorial relativity, a different class relativity, a different rate for a particular type of insured, etc. Proposed differences in territorial and class relativities (and other similarly related sets of rating factors) shall be treated as one deviation component.
- (3) Introduction of a deviation means that a company has no current rate deviation on file for the particular line but is proposing to implement one.
- (4) Modification of a deviation means that a company has a current rate deviation on file for the particular line and that the company proposes to add, change, or eliminate one of the components of the deviation.
- (5) Withdrawal of a deviation means that a company has a rate deviation on file that it proposes to withdraw in its entirety.

**(b) Filing Guidelines:**

- (1) All rate deviation filings must be made in triplicate.
  - (A) The original and one copy shall be sent to the Department.
  - (B) The second copy shall be sent to the North Carolina Rate Bureau.
- (2) A rate deviation shall be introduced, modified, or withdrawn on an individual company basis even if the company is part of a group.
- (3) All proposed rate deviations shall be expressed in terms of North Carolina Rate Bureau rates, either as percentages or as dollar amounts.
- (4) Filing requirements differ by type of deviation action:
  - (A) To introduce a deviation, see Paragraph (d) of this Rule.
  - (B) To modify a deviation, see Paragraph (e) of this Rule.
  - (C) To withdraw a deviation, see Paragraph (f) of this Rule.

**(c) Application of Deviations:**

- (1) On approval of the introduction, modification, or withdrawal of one or more rate deviations, the department shall transmit to the company a

letter of approval listing all the components in effect for that line and company.

- (2) All deviation components listed shall be applied to all eligible insureds and deviation components not listed shall not be applied to any insured.
- (3) Rate deviations remain in effect until modified or withdrawn.
- (4) Modifications of existing rate deviations are permitted at any time.
- (5) An unmodified rate deviation may be withdrawn only if both of the following conditions have been met:
  - (A) The deviation has been in effect for at least six months.
  - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
- (6) A modified rate deviation may be withdrawn only if both of the following conditions have been met:
  - (A) The deviation has been in effect for at least six months since the date of the last modification.
  - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.

**(d) Filings to introduce rate deviations shall contain only the following information:**

- (1) A cover letter containing the following:
  - (A) Company name;
  - (B) Company's Federal Employer's Number;
  - (C) Line of business involved.
- (2) A completed deviation questionnaire obtained from the Property and Casualty Division.

**(e) Filings to modify rate deviations shall contain only the following information:**

- (1) A cover letter containing the following:
  - (A) Company name;
  - (B) Company's Federal Employer's Number;
  - (C) Line of business involved;
  - (D) Department file number.
- (2) A completed deviation questionnaire obtained from the Property and Casualty Division.

**(f) Filing letters for withdrawals of rate deviations. Filing letters for withdrawal shall contain only the following information:**

- (1) A cover letter including the following information:
  - (A) Company name;
  - (B) Company's Federal Employer's Number;
  - (C) Line of business involved;
  - (D) Department file number.
- (2) A statement that the deviation has been in effect for at least six months.

(g) Deviation questionnaires shall contain the following information (if applicable):

- (1) Company Name;
- (2) Company's Federal Employer's Number;
- (3) Company's file number;
- (4) Line of insurance;
- (5) Subline/Program title;
- (6) Previous Department file number, if applicable;
- (7) Proposed effective date and rules of implementation;
- (8) Company's N.C. volume of business;
- (9) Company's N.C. market share;
- (10) Company's countrywide volume of business;
- (11) Number of N.C. insureds affected;
- (12) Percentage of N.C. insureds affected;
- (13) Total dollar amount of premiums that will not be collected on an annual basis as a result of this deviation;
- (14) Average dollar difference per exposure from manual rates;
- (15) Maximum deviation;
- (16) If the deviation produces a premium greater than manual for an individual insured, explain;
- (17) List of individual deviation components and the proposed action;
- (18) Certification by a company officer or filings department head; and
- (19) Actuarial certification.

*History Note: Authority G.S. 58-2-190; 58-36-30(a) and (c); Eff. January 1, 1989; Amended Eff. October 1, 2004; April 1, 2003; February 1, 1991; January 1, 1990.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 07D .0903 FEES FOR TRAINER CERTIFICATE**

- (a) Trainer certificate fees are as follows:
- (1) forty dollar (\$40.00) non-refundable initial application fee for firearms trainer applicants;
  - (2) twenty-five dollar (\$25.00) non-refundable initial application fee for an unarmed trainer applicant;
  - (3) twenty-five dollar (\$25.00) biennial fee for a renewal or replacement trainer certificate.
- (b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*History Note: Authority G.S. 74C-9; Eff. June 1, 1984; Amended Eff. Pending Consultation; January 1, 2004.*

**12 NCAC 07D .0909 UNARMED GUARD TRAINER CERTIFICATE**

(a) To receive an unarmed guard trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D.0703;
- (2) have a minimum of one year experience in security with contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 24 hours classroom instruction to include the following topic areas:
  - (A) civil liability for the security trainer - two hours;
  - (B) interpersonal communications in instruction – three hours;
  - (C) teaching adults – four hours;
  - (D) principles of instruction - one hour;
  - (E) methods and strategies of instruction - one hour;
  - (F) principles of instruction: audio-visual aids - three hours; and
  - (G) student performance: 45 minute presentation.
- (4) favorable recommendation from the employing or contracting licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0910.

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board a Criminal Justice General Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission or any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of PPS.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; Eff. October 1, 2004.*

**12 NCAC 07D .0910 APPLICATION FOR AN UNARMED GUARD TRAINER CERTIFICATE**

Each applicant for an Unarmed Guard Trainer certificate shall submit an application to the Board. The application shall be accompanied by:

- (1) the certified trainer application fee established in 12 NCAC 07D .0903(a)(2); and
- (2) a certificate of successful completion of the training required. This training shall have been completed within 120 days of the submission of the application or current certificate of other acceptable certification as set forth in 12 NCAC 07D .0909(b).

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; Eff. October 1, 2004.*

**TITLE 14A – DEPARTMENT OF CRIME CONTROL  
AND PUBLIC SAFETY**

**14A NCAC 12 .0101 PURPOSE, APPLICABILITY  
AND SCOPE OF THE RULES**

The rules in this Chapter implement the provisions of G.S. 143, Article 68 of the North Carolina General Statutes, and establish the regulations and standards set forth by the Boxing Authority Section of the Alcohol Law Enforcement Division of the North Carolina Department of Crime Control and Public Safety relative to the conduct, promotion, and performances of boxing and kickboxing matches held in North Carolina.

*History Note: Authority G.S. 143-652.1;  
Temporary Adoption Eff. January 1, 1996;  
Eff. April 1, 1996;  
Transferred and recodified from 18 NCAC 9 effective  
November 8, 2002;  
Amended Eff. October 1, 2004.*

**14A NCAC 12 .0103 NORTH CAROLINA STATE  
BOXING AUTHORITY SECTION OF THE ALE  
DIVISION**

(a) The Division director or his designee shall:

- (1) Approve, issue, withhold or deny licenses and permits subject to review by the Secretary of the Department of Crime Control and Public Safety and according to the provisions of G.S. 143-654 and G.S. 143-655 and the rules set forth in this Chapter;
- (2) Be present at all matches;
- (3) Ensure that all matches are conducted in accordance with the provisions of G.S. 143, Article 68 and the rules set forth in this Chapter. This shall include appointing or causing to be appointed licensed match officials and reviewing and approving or disapproving a match or fight card based on weights, abilities, records or physical condition of the prospective contestants. The Division director or his designee shall not approve a match where it is reasonable to assume, based on weights, abilities, records or physical condition of the prospective contestants that the match would not be competitive.

(b) The Division director or his designee shall:

- (1) Ensure that all the requirements indicated in this Chapter to be the responsibility of the Boxing Authority Section of the Division are properly and timely carried out as set forth in this Chapter;
- (2) Appoint the inspectors for each match for which he is responsible. There shall be a minimum of two referees, three judges (plus two kick count judges for kickboxing

matches), one announcer, and one timekeeper present at each boxing match;

- (3) Inscribe the result of each match on the passport of each participant, if so requested;
- (4) Have rubber gloves available for use by the seconds, physicians and officials; and
- (5) Ensure that all officials are paid by the promoter prior to their leaving the premises of the boxing matches after the matches have been concluded; and that all officials acknowledge by signature, on a form provided by the Division, the receipt of payment.

(c) Each inspector shall observe and report the conduct of the seconds in the corner of his designated contestant during the course of the match and immediately report any violation or suspicious or improper behavior to the Division director or his designee. Each inspector shall be present in his designated contestant's dressing room to insure that:

- (1) No illegal drugs or foreign substances are ingested or used. Any use or suspected use of an illegal drug or foreign substance shall be immediately reported to the Division director or his designee;
- (2) Handwraps are applied in accordance with these Rules;
- (3) Gloves to be used are clean, sanitary and in good condition, and are laced and tied;
- (4) A urine sample is collected, when necessary, in accordance with the prescribed protocol as designated by these Rules; and
- (5) Security is maintained for the protection of the contestant, and the public, and to ensure that the Division director or his designee and inspectors can carry out the provisions of G.S. 143, Article 68 and the rules set forth in this Chapter.

(d) The Division director or his designee may issue subpoenas requiring the attendance and testimony of, or the production of books and papers by, any person whom the Division believes to have information or documents of importance to any Boxing Authority Section investigation.

(e) Forms for applications for licenses and permits shall be available from the Boxing Authority Section of the Division. These forms may be obtained by contacting, and shall be filed with:

NC ALE Boxing Authority Section  
Department of Crime Control and Public Safety  
4704 Mail Service Center  
Raleigh, North Carolina 27699-4704  
Telephone (919) 733-3925.

*History Note: Authority G.S. 143-652.1; 143-651(7a);  
Temporary Adoption Eff. January 1, 1996;  
Eff. April 1, 1996;  
Transferred and recodified from 18 NCAC 9 effective  
November 8, 2002;  
Amended Eff. October 1, 2004.*

**14A NCAC 12 .0104 CONDUCT OF BOXING MATCHES**

(a) Boxers shall be classified by weight as shown in the following schedule. A contestant shall not be permitted if the difference in weight between the contestants exceeds the difference shown in the following schedule:

- (1) Flyweight 112 pounds or under  
not more than 3 pounds.
- (2) Bantamweight over 112 pounds to 118 pounds  
not more than 3 pounds.
- (3) Featherweight over 118 pounds to 126 pounds  
not more than 5 pounds.
- (4) Junior Lightweight over 126 pounds to 130 pounds - not more than 7 pounds.
- (5) Lightweight over 130 pounds to 135 pounds  
not more than 7 pounds.
- (6) Junior Welterweight over 135 pounds to 140 pounds - not more than 9 pounds.
- (7) Welterweight over 140 pounds to 147 pounds  
not more than 9 pounds.
- (8) Junior Middleweight over 147 pounds to 154 pounds - not more than 11 pounds.
- (9) Middleweight over 154 pounds to 160 pounds  
not more than 11 pounds.
- (10) Light Heavyweight over 160 pounds to 175 pounds - not more than 12 pounds.
- (11) Cruiserweight over 175 pounds to 190 pounds  
not more than 15 pounds.
- (12) Heavyweight all over 190 pounds no limit.

(b) Contestants in matches shall be weighed on the same scale at a time and place to be determined by the Division director or his designee, in the presence of the opponent and the Division director or his designee. The weigh-in shall occur 12 hours or less prior to the scheduled starting time of the first match of the program of matches, provided however, that where a program of matches is scheduled to begin in the afternoon, the Division director or his designee, if requested by the promoter, shall approve an early weigh-in time of 8:00 p.m. or later the evening before the day of the program of matches. Substitution of a contestant or contestants shall not be allowed after the weigh-in.

(c) Failure of a contestant to be present at the weigh-in at the time and place designated by the Division director or his designee shall result in the following penalties, which shall be in addition to his loss of right to view the weigh-in of his opponent:

- (1) In lieu of suspension or revocation of the participant's license for the first occurrence, the contestant shall be penalized by assessing a fine of twenty-five dollars (\$25.00);
- (2) In lieu of suspension or revocation of the participant's license for the second occurrence, the contestant shall be penalized by assessing a fine of fifty dollars (\$50.00);
- (3) The third occurrence shall be penalized by suspending the license of the contestant and not allowing the contestant to engage in the program of matches; and
- (4) The fourth occurrence shall be penalized by revoking the license of the participant.

(d) If, at the time of the official weigh-in, the weight of any contestant in a contest fails to meet the weight parameters of the rules set forth herein, he shall have 2 additional hours to meet such weight parameters.

(e) At the time of weigh-in, each contestant in a contest shall provide to the Division director or his designee for inspection a picture identification issued by a federal, state or local unit of government or other similar authority. The contestant may utilize the passport issued by another state in which he is licensed provided that such passport contains the information as required in this Paragraph:

- (1) Legal name of contestant;
- (2) Ring name of contestant;
- (3) A passport type picture which shows the face of the contestant. Passports issued by states that do not require a picture shall be accompanied by another form of positive identification;
- (4) Address of contestant;
- (5) Age of contestant;
- (6) Date, place, opponent and result of the contestant's professional contests since the issuance of the passport, which entries shall be signed by the Division director or his designee as designated by these rules or the rules of the jurisdiction in which the match occurred; and
- (7) Signature of the contestant and a statement attesting to the validity of the information contained in his passport.

(f) The contestant may be required to complete a contestant information form which shall be provided by the Boxing Authority Section of the Division. Any contestant who refuses to complete this form shall not be allowed to engage in any match in North Carolina.

*History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. October 1, 2004.*

**14A NCAC 12 .0105 PHYSICAL EXAMINATION**

(a) Each contestant shall, at the time of the weigh-in, be examined by a physician. The physician shall certify in writing the contestant's physical condition and his professional assessment as to whether or not the contestant may engage in the match. The physician shall, prior to the match, file with the Division director or his designee his written report of examination of the contestant, which report shall state whether or not, in the opinion of the physician, the contestant is physically fit to engage in the match. No contestant shall be permitted to engage in a match unless he has been examined and pronounced fit to do so by a physician. Physicians shall utilize the appropriate forms furnished by the Boxing Authority Section of the Division. The examination given all contestants shall include the following:

- (1) Temperature;
- (2) Pulse; sitting, standing and running;

- (3) Lungs;
  - (4) Heart; and
  - (5) Blood pressure.
- (b) No contestant shall be allowed to engage in any match if any of the following conditions are found by the physician:
- (1) Hernia, or bubonocele;
  - (2) Organic heart murmurs;
  - (3) Active pulmonary lesions;
  - (4) Abnormal temperature as determined by the physician;
  - (5) Systolic pressure over 150;
  - (6) Infectious skin lesions, such as boils or infected wounds;
  - (7) Open wounds;
  - (8) Hand injuries, and fractures less than 6 weeks old, if, in the physician's opinion, the injury would be detrimental to the contestant's health or ability to effectively compete or exhibit;
  - (9) An indication that the contestant is using or is under the influence of narcotics, drugs, stimulants, depressants, alcohol, local anesthetics or such a high level of analgesics as to render the contestant unable to recognize if he is seriously injured. If the physician finds any indication or evidence that the contestant is using, is under the influence, of unauthorized drugs or foreign substances such that the physician cannot make a definite determination and therefor allows the match to proceed, the physician shall immediately advise the Division director or his designee who shall ensure that a urine sample is taken and processed in accordance with these Rules;
  - (10) Retinopathy or detached retina; provided however, that at the request of the applicant the Division shall review individual cases of repaired retinal damage for the purpose of permitting the individual to engage in a boxing match in North Carolina. In order for the Division to consider such request the individual must provide to the Division such medical information as the Division deems appropriate which must include a written statement by the doctor performing the retinal repair that the retina is completely healed; that in his opinion, within a reasonable medical certainty, no unusual or extraordinary risk to the individual is anticipated as a result of the repaired retina; and that he authorizes the individual to engage in the sport of boxing or kickboxing. In the event the physician who made the repair is unavailable, the individual must authorize the Division and the Division's physician total and unlimited access to all medical records pertaining to the damage, repair of the damage and any subsequent treatment regarding the eyes. Nevertheless, the Division shall then direct its physician to review all information and to

- examine the individual seeking licensure and report the results and recommendation to the Division for consideration by the Division. Any costs associated with the review and examination of records or the individual shall be borne by the individual seeking licensure;
- (11) Dental abscess;
- (12) Ophthalmological problem;
- (13) History of epilepsy or seizures;
- (14) Blindness;
- (15) History of kidney problems;
- (16) Change in gait or balance; or
- (17) History of any change in a CAT scan, electroencephalogram (EEG), or electrocardiogram (EKG).

- (c) A referee shall undergo a physical examination prior to acting as a referee in any match.
- (d) If at any time, evidence is revealed that indicates that the match may be adverse to the health of a contestant or referee, the Division director or his designee shall order a medical examination to be given to the contestant or referee, the report of which examination shall be made to the Division director or his designee.

*History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996; Recodified from 18 NCAC 9 .0104(g)-(j) Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. October 1, 2004.*

**14A NCAC 12 .0109 DRUGS AND FOREIGN SUBSTANCES**

- (a) The following limitations shall apply to the ingestion of drugs and foreign substances by contestants:
  - (1) No contestant shall at any time, use or be under the influence of any drug or foreign substance that would increase or decrease his performance, or impair his or the physician's ability to recognize a potentially serious injury or physical condition. No substance, other than plain drinking water, shall be given to or ingested by a contestant during the course of a match.
  - (2) The following drug or foreign substance classifications are prohibited except as otherwise indicated:
    - (A) Stimulants--All stimulants are banned with the following exceptions:
      - (i) Caffeine--provided, however, that an amount greater than 12 mcg/ml in the urine is prohibited;
      - (ii) Beta 2 Agonist--provided it is selected from the following list and is in aerosol or inhalant form only:

- | Drug Chemical                                          | Brand Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (2)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| (I) Mesylate                                           | Tornalate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>The following drugs or foreign substances may be used by contestants under the conditions described in this Chapter:</p> <p>(A) Petroleum Jelly--The discretionary use of petroleum jelly shall be allowed around the eyes. However, the use of petroleum jelly on the arms, legs and body of a contestant is prohibited.</p> <p>(B) The discretionary use of a 1/1000 solution of Adrenalin and Avitine, or their generic equivalents, as approved by the physician, shall be allowed between rounds to stop bleeding of minor cuts and lacerations sustained by a contestant.</p> <p>(C) Any contestant determined to have been using or under the influence of a prohibited drug or foreign substance and who has been adjudged the loser of a match shall forfeit his share of the purse to the Division. Any contestant determined to have been using or under the influence of a prohibited drug or foreign substance and who has been adjudged the winner of a match, shall forfeit the win and a no decision result shall be entered into the official record as the result of the match. The purse shall be redistributed as though the contestant found to be in violation of this Section had lost the match. If redistribution of the purse is not necessary or after redistribution of the purse is accomplished, the contestant found to be in violation of this Section shall forfeit his share of the purse to the Division. The following penalties shall be assessed against any contestant found to be in violation of this Section:</p> <p>(i) The first occurrence shall be penalized by suspending the contestant's license banning his participating in any manner, in any match for a period of 180 calendar days;</p> <p>(ii) The second occurrence shall be penalized by suspending the contestant's license and banning his participation in any manner in any match for a period of one year;</p> <p>(iii) The third occurrence shall be penalized by permanently revoking the contestant's license and banning permanently his participation in any manner</p> |
| (II) Metaproterenol Sulfate                            | Alupent, Metaprel                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (III) Albuterol Sulfate                                | Ventolin, Proventil                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (IV) Terbutaline Sulfate                               | Brethaire                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (B) Narcotics;                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (C) Anabolic Steroids, including human growth hormone; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (D) Diuretics;                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (E) Alcohol;                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (F) Local Anesthetics; and                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (G) Corticosteroids.                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (3)                                                    | Whenever the Division director or his designee has reason to believe that a contestant has ingested or used a prohibited drug or foreign substance, the Division director or his designee shall request and the contestant shall provide, under the supervision of the physician, Division director or his designee or inspector, a sample of his urine taken not more than 1 hour after the conclusion of the match. No contestant shall use substances or methods which would alter the integrity of the urine sample.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (4)                                                    | Failure or refusal to provide a urine sample immediately upon request shall result in the revocation of the contestant's license. Any contestant who has been adjudged the loser of a match and who subsequently refuses or is unable to provide a urine sample shall forfeit his share of the purse to the Division. Any contestant who is adjudged the winner of a match and who subsequently refuses or is unable to provide a urine sample shall forfeit the win and shall not be allowed to engage in any future match in North Carolina. A no decision result shall be entered into the official record as the result of the match. The purse shall be redistributed as though the contestant found to be in violation of this Section had lost the match. If redistribution of the purse is not necessary or after redistribution of the purse is accomplished, the contestant found to be in violation of this Section shall forfeit his share of the purse to the Division. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (5)                                                    | After each match the physician shall advise the Division director or his designee as to whether or not he observed any behavior or other signs that would indicate the advisability of processing the urine sample. The Division director or his designee shall make the final decision as to the processing of the urine sample.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (b)                                                    | The following limitations shall apply to the external use of drugs or foreign substances by contestants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (1)                                                    | No drug or foreign substance shall be used unless expressly provided for in these Rules or as directed by the physician.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



in any match or activity regulated by G.S. 143, Article 68.

(D) No person licensed by the Division shall participate in or contribute to the act of violating this Section and any violation shall be grounds for suspension or revocation of all licenses held by such person. Any person found to be in violation of this Section shall forfeit his share of the purse or other compensation to the Division and shall be assessed the following penalty:

- (i) The first occurrence shall be penalized by suspending the person's license and banning his participating in any manner, in any match for a period of 180 calendar days;
- (ii) The second occurrence shall be penalized by suspending the person's license and banning his participation in any manner, in any match for a period of one year;
- (iii) The third occurrence shall be penalized by permanently revoking the person's license and banning permanently his participation in any manner, in any match or activity regulated by G.S. 143, Article 68.

(c) Drugs, containers and other equipment used in conjunction with the match, regardless of why or how they are used or where they are located shall at all times be available for inspection by the physician, referee or Division director or his designee and shall be seized if there is any evidence that they may have been used to violate or are in violation of any provision of G.S. 143, Article 68 or these Rules.

(d) Every person under the jurisdiction of the Division shall immediately advise the physician, referee or Division director or his designee of any knowledge that any contestant scheduled to be engaged in any match has, in violation of this Section, ingested or is under the influence of any drug or foreign substance prohibited by these Rules.

*History Note: Authority G.S. 143-652.1; Recodified from 18 NCAC 9 .0104(aa)-(dd) Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. October 1, 2004.*

**14A NCAC 12 .0114 EQUIPMENT--KICKBOXING**

(a) Each contestant shall wear the following:

- (1) Kickboxing type trunks or karate style long pants, the belt of which does not extend above the waistline;
- (2) A protective groin cup, which shall be firmly adjusted before entering the ring;
- (3) An individually fitted mouthpiece which shall be in the contestant's mouth at all times during the fight period of each round;
- (4) Breast protectors for female contestants; and
- (5) An abdominal guard which provides sufficient protection to withstand any low blow.

Female contestants may wear a protective pelvic girdle to cover the pubic area, ovaries, coccyx and sides of the hips.

(b) All contestants shall be clean and present a neat appearance. This also applies to the contestants' ring apparel. If the Division director or his designee determines the hair on the contestant's head or face presents any potential hazard to the safety of the contestant, his opponent or will interfere with the supervision of the match, he shall notify the contestant of such determination at the time of the weigh-in. If, at the time the inspector makes the final inspection of the contestant before the match begins, the contestant has not made the necessary corrections, he shall not be permitted to fight and shall be disqualified.

(c) Any contestant who fails to comply with the requirements in this Rule shall not be allowed to participate in a match and such failure to comply with the requirements in this Rule shall be grounds for suspension of the contestant's license.

(d) All contestants shall wear thumb attached kickboxing gloves, and footpads. Kickboxing gloves weighing a minimum of 8 ounces shall be worn by contestants weighing 153 lbs. or less. Kickboxing gloves weighing a minimum of 10 ounces shall be worn by contestants weighing 154 lbs. or more. A supply of kickboxing gloves and footpads in good condition, must be kept on hand by the promoter. All gloves and footpads must pass the inspection of the referee or the Commission representative, and the Commission may require a brand new set of gloves or footpads for any event. Laces of gloves shall be knotted on the back of the wrist with tape applied over the laces so as to prevent injury to the opponent.

(e) Wrapping of hands is required, and shall conform to the standards as described in Rule .0106(b) of this Section. Footpads are required and shall be of a soft material of a type and construction normally used for kickboxing.

(f) Shinguards are required and shall be of a soft material of a type and construction normally used for kickboxing. Shinguards shall be held in place at two locations using no more than two windings of one 2 inch surgical tape.

(g) The ring shall meet the requirements as described under "boxing ring" in Rule .0104(n) of this Section.

(h) The length of each round of a match shall be two minutes with one minute rest intervals between rounds.

(i) A match shall be scheduled for four, six, eight, or 10 rounds.

*History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996; Recodified from 18 NCAC 9 .0108(c)-(k) Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002;*

*Amended Eff. October 1, 2004.*

**14A NCAC 12 .0116 FOULS--KICKBOXING**

(a) A foul, whether intentional or unintentional, shall result in a warning or deduction of a point or points, as determined by the referee:

- (1) The referee shall determine the severity of the penalty using as his criteria the intent of the contestant committing the foul and the result and effect of the foul upon the opponent.
- (2) When the referee determines that he shall deduct a point or points from a participant, he shall immediately notify the Division director or his designee or scorekeeper (if one is used), who shall ensure that the specified number of points are deducted from each of the judge's score cards at the end of the round.
- (3) The referee shall not tolerate continual and repeated commission of fouls by a participant. The referee shall give warning to a contestant who continually and repeatedly commits fouls and when, in the opinion of the referee, the contestant has displayed persistent disregard for the rule governing the commission of fouls, the referee shall disqualify the participant, terminate the match and provide such findings to the Division for appropriate action.
- (4) Points for fouls shall only be deducted in the round in which the fouls occurred. A contestant shall not be penalized in a subsequent round for fouls that occurred in a previous round.
- (5) The following actions are fouls, the committing of which shall result in a deduction of points:
  - (A) Striking an opponent who is down or is getting up after being down;
  - (B) Holding an opponent with one hand and punching with the other;
  - (C) Holding or deliberately maintaining a clinch;
  - (D) Butting with the head;
  - (E) Striking with the knee, elbow or palm-heel;
  - (F) Clubbing blows with the hand;
  - (G) Striking to the face with any part of the arm other than the gloved hand;
  - (H) Deliberately striking or kicking the groin area, women's breasts, women's ovaries, back of the head, neck or throat, or that part of the back near the spine and over the kidneys;
  - (I) The deliberate use of any scraping or rabbit blow;
  - (J) Flicking or jabbing the opponent's eyes with the thumb of the glove;
  - (K) Hitting with the open glove or with the wrist;

- (L) The use of abusive language in the ring or corner, or spitting or biting;
- (M) Kicking with the knee, or kicking into the knee or to the inside region of the thigh, and sweeps to the inside region of the leg or shin-to-shin sweeps;
- (N) Linear or straight-in striking or kicking to the spine;
- (O) Intentionally pushing, shoving or wrestling an opponent to the ring floor or out of the ring, or throwing or taking an opponent to the floor with foot sweeps that make contact with any area above the opponent's ankle knuckle;
- (P) Attacking or striking on the break;
- (Q) Striking after the bell has sounded ending the round;
- (R) Intentionally delaying the contest through any action or failure to act;
- (S) Leg checking which is the act of extending the leg to check an opponent's leg to prevent him from kicking;
- (T) Grabbing or holding an opponent's leg or foot followed by a takedown, strike or kick;
- (U) Pushing an opponent around the ring or into the ropes;
- (V) Anti-joint techniques which is the act of striking or applying leverage against any joint;
- (W) Holding the ropes with one hand while kicking, punching or defending with the other hand or the legs;
- (X) Any unsportsmanlike action which causes or is intended to cause injury to an opponent; or
- (Y) Intentional spitting out of the mouthpiece or allowing the mouthpiece to fall out of the mouth.

(b) Wins or draws shall be determined as follows:

- (1) A contestant who knocks out his opponent shall be declared the winner of the match.
- (2) If both participants are knocked down at the same time and both participants remain down until the count of 10, the match shall be considered a technical draw.
- (3) A contestant who is awarded a technical knockout shall be declared the winner of the match.
- (4) A contestant who is knocked down three times in any one round shall be considered to have lost the match by a technical knockout. If requested by a sanctioning body, this Rule shall be waived for a championship fight.
- (5) When the winner of a match is to be determined by the number of points awarded or deducted or by the number of rounds

- awarded to each participant, the scores for all rounds shall be compiled for each judge and the following criteria shall be used:
- (A) Three wins shall be declared a win;
  - (B) Two wins and one draw shall be declared a win;
  - (C) Two wins and one loss shall be declared a win;
  - (D) One win and two draws shall be declared a draw;
  - (E) One win, one draw and one loss shall be declared a draw;
  - (F) One win and two losses shall be declared a loss;
  - (G) Three draws shall be declared a draw;
  - (H) Two draws and one loss shall be declared a draw;
  - (I) One draw and two losses shall be declared a loss; and
  - (J) Three losses shall be declared a loss.
- (6) If, as the result of a foul, whether unintentional or intentional, except for an unintentional butt, a contestant is unable to continue, the following procedure shall be used to determine the result of the match:
- (A) If the foul occurs prior to the scoring of the first round the result shall be a technical draw;
  - (B) If the foul occurs in any round subsequent to the first round or the foul occurs in the first round but the contestant is not determined to be unable to continue until after the scoring of the first round, the winner shall be the contestant who is leading based upon the score cards of the judges.
- (7) If, as the result of an unintentional butt foul, a contestant is unable to continue, the following procedure shall be used to determine the result of the match:
- (A) If the foul occurs prior to the scoring of the third round and the fouled contestant is unable to continue, the result shall be a technical draw;
  - (B) If the foul occurs in any round subsequent to the third round or the foul occurs in the first, second or third rounds round but the contestant is not determined to be unable to continue until after the scoring of the third round, the winner shall be the contestant who is leading based upon the score cards of the judges;
- (8) When an injury is produced by a fair strike but because of the severity of the injury the match cannot continue, the injured contestant shall be declared the loser by a technical knockout.
- (9) If a contestant refuses to continue a match while physically able to do so, the referee shall disqualify him, and award the match to his opponent. The referee shall provide a written report to the Division. If the Division determines that the contestant refused to continue a match while physically able to do so, the Division shall impose a period of suspension for a period not less than six months and may impose a civil penalty.
- (10) In any case where the referee determines that both participants are not honestly competing, that a knockdown is intentional and predetermined by both parties or a foul has been prearranged so as to cause the match to be terminated, he shall not finish the knockdown count or disqualify either contestant for fouling or render a decision, but shall instead terminate the match not later than the end of the round and order the promoter to surrender the purses of both participants to the Division director or his designee pending an investigation of the alleged violation. The announcer or referee shall inform the audience that no decision has been rendered.
- (11) If, in the opinion of the physician, the referee or judge has received an injury, or has become ill, the seriousness of which prevents him from continuing to officiate, time out shall be called, and another official shall be immediately assigned by the Division director or his designee to replace the incapacitated person.
- (c) Finality of decisions shall be governed by the following:
- (1) A decision rendered at the conclusion or termination of any match is final and shall not be changed unless it is determined that any of the following occurred:
    - (A) There was collusion affecting the result of any match;
    - (B) The compilation of the round or match score cards shows an error which indicates that the decision was awarded to the wrong participant;
    - (C) There was a violation of these Rules relating to drugs or foreign substances; or
    - (D) There was a violation of the rules set forth in this Chapter which violation affected the result of the match.
  - (2) If it is determined that any of the above occurred, the decision rendered shall be changed in an equitable manner as directed by the Division.
- (d) Kickboxers shall conform to the standards set forth for boxers in Rule .0108 of this Section.

*History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996;*

*Recodified from 18 NCAC 9 .0108(m)(5)-(p) Eff. April 1, 1996;  
 Eff. April 1, 1996;  
 Transferred and recodified from 18 NCAC 9 effective  
 November 8, 2002;  
 Amended Eff. October 1, 2004.*

**14A NCAC 12 .0117 TOUGHMAN MATCH**

Contestants and officials in toughman events shall comply with Rule .0104 of this Section, except for the following exceptions or additional rules:

- (1) Each contest shall be limited to three one-minute rounds.
- (2) There shall be four weight classifications: lightweight (up to but not over 140 lbs.); middleweight (over 140 lbs. to but not over 160 lbs.); light heavyweight (over 160 lbs. to but not over 185 lbs.); and heavyweight (over 185 lbs.).
- (3) Boxing gloves weighing a minimum of 16 ounces shall be worn by all contestants.
- (4) Headgear, provided by the promoter, shall be worn by all contestants.
- (5) The seconds shall use clean towels and mouth pieces for each match.
- (6) All equipment shall be inspected by the referee or the Division director or his designee to insure that it provides for the safety of the contestants, and does not give either contestant an unfair advantage.
- (7) A contestant shall not participate in more than four matches in the same calendar day. The ringside physician shall check and record a contestant's blood pressure prior to each event.
- (8) A contestant shall not be allowed to compete in a toughman event if he has:
  - (A) been a competitor in professional boxing or kickboxing; or
  - (B) been a winner of more than five amateur boxing, kickboxing, or toughman events, or more than five of any combination of amateur boxing, kickboxing, or toughman events.
- (9) Competing for or winning a prize in a toughman contest shall not, in itself, make the contestant a professional within the scope of these Rules.

*History Note: Authority G.S. 143-652.1;  
 Temporary Adoption Eff. January 1, 1996;  
 Recodified from 18 NCAC 9 .0109 Eff. April 1, 1996;  
 Eff. May 1, 1996;  
 Transferred and recodified from 18 NCAC 9 effective  
 November 8, 2002;  
 Amended Eff. October 1, 2004.*

**15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:
  - (A) Nags Head:
    - (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
      - (I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.
      - (II) From November 1 through December 15.
    - (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.
  - (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
    - (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
    - (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
  - (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N - 75° 31.7166' W.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used

during the time specified for the following areas:

- (A) Topsail Beach. From January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
- (B) Surf City:
  - (i) From January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach one-quarter mile from the pier and on the northeast by a line beginning at a point on the beach 750 feet from the pier extending seaward to intersect the offshore boundaries.
  - (ii) From July 1 to December 31, those areas around the pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach 750 feet from the pier and on the northeast by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundaries.
- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
  - (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
  - (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
    - (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
      - (I) Strike nets may be used within 900 feet of the beach;
      - (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
    - (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
    - (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to a point on the beach 33°55.0026' N – 77°56.6630' W near the former location of New Inlet during the October surf fishing tournament in Carolina Beach.
  - (4) Pamlico River – Beaufort County. Goose Creek State Park. Commercial fishing gear may not be used from the Friday before Easter through December 31 for the following areas:
    - (A) Within 150 feet of the shoreline within park boundaries;
    - (B) Within the marked channel from Dinah Landing to the mouth of Upper Goose Creek.
  - (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
    - (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
      - (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
      - (B) Within South River.

- (2) Cape Lookout, Carteret County:
  - (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
  - (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
- (3) State Parks/Recreation Areas:
  - (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
  - (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
  - (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
  - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
  - (B) Canals within Pine Knoll Shores, Carteret County;
  - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; Harbor Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
  - (A) Within 300 feet of either rock jetty; and
  - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.
- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.
- (9) Spooners Creek, Carteret County. It is unlawful to use gill nets and seines between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners Creek proper and the adjoining tributary canals and channels.

*History Note: Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52; Eff. March 1, 1996; Amended Eff. October 1, 2004; August 1, 2004; April 1, 2001.*

**15A NCAC 030 .0503 PERMIT CONDITIONS; SPECIFIC**

- (a) Horseshoe Crab Biomedical Use Permit:
  - (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
  - (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
  - (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan

monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
  - (i) Atlantic Ocean;
  - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201.
  - (iii) The joint and coastal waters of the Central/Southern

Management Area as designated in 15A NCAC 03R .0201.

(B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03R .0201. Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(4) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining

an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at [www.nmfs.gov](http://www.nmfs.gov) and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 03J .0107.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
  - (A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
  - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken

under an Aquaculture Collection Permit.

(C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who shall be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
  - (A) without the required license(s) for such sale;
  - (B) to anyone other than a licensed North Carolina fish dealer; and
  - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who shall be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

*History Note: Authority G.S. 113-134; 113-169.1;*



*113-169.3; 113-182; 143B-289.52;  
Temporary Adoption Eff. September 1, 2000; August 1, 2000;  
May 1, 2000;  
Eff. April 1, 2001;  
Amended Eff. October 1, 2004; August 1, 2004; August 1, 2002.*

**15A NCAC 03Q .0109 IMPLEMENTATION OF  
ESTUARINE STRIPED BASS MANAGEMENT PLANS:  
RECREATIONAL FISHING**

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management actions for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

- (1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits whether inland or joint fishing waters shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons or areas to harvest in the Roanoke River management area.
- (2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

*History Note: Authority G.S. 113-132; 113-134; 113-182;  
143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2004; September 1, 1991.*

**15A NCAC 03R .0108 MECHANICAL METHODS  
PROHIBITED**

The dredges and mechanical methods prohibited areas referenced in 15A NCAC 03K .0204 are delineated in the following coastal water areas:

- (1) In Roanoke Sound and tributaries, south of a line beginning at a point 35° 55.1461' N – 75° 39.5618' W on Baum Point, running easterly to a point 35° 55.9795' N - 75° 37.2072' W and north and east of a line beginning at a point 35° 50.8315' N- -75° 37.1909' W on the west

side of the mouth of Broad Creek, running easterly to a point 35° 51.0097' N - 75° 36.6910' W near Beacon "17", running southerly to a point 35° 48.6145" N - 75° 35.3760' W near Beacon "7", running easterly to a point 35° 49.0348' N - 75° 34.3161' W on Cedar Point.

- (2) In Pamlico Sound and tributaries:
  - (a) Outer Banks area, within the area described by a line beginning at a point 35°46.0638' N – 75°31.4385' W on the shore of Pea Island; running southwesterly to a point 35°42.9500' N – 75°34.1500' W; running southerly to a point 35°39.3500' N – 75°34.4000' W; running southeasterly to a point 35°35.8931' N – 75°31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N – 75°31.5825' W on Gull Island; running southerly to a point 35° 22.8671' N – 75° 33.5851' W in Avon Channel near Beacon "1"; running southwesterly to a point 35°18.9603' N – 75°36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35°16.7588' N – 75°44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35°14.0337' N – 75°45.9643' W southwest of Oliver Reef near the quick-flashing beacon; running westerly to a point 35°09.3650' N – 76°00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35°08.4523' N – 76°02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35°07.1000' N – 76°06.9000; running southwesterly to a point 35°01.4985' N – 76°11.4353' W near Beacon "HL"; running southwesterly to a point 35°00.2728' N – 76°12.1903' W near Beacon "2CS"; running southerly to a point 34°59.4383' N – 76°12.3541' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running easterly to a point 34°58.7853' N – 76°09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;
  - (b) Stumpy Point Bay, north of a line beginning at a point 35° 40.9719' N -

- 75° 44.4213' W on Drain Point; running westerly to a point 35° 40.6550' N - 75° 45.6869' W on Kazer Point;
- (c) Pains Bay, east of a line beginning at a point 35° 35.0666' N - 75° 51.2000' W on Pains Point, running southerly to a point 35° 34.4666' N - 75° 50.9666' W on Rawls Island; running easterly to a point 35° 34.2309' N - 75° 50.2695' W on the east shore;
- (d) Long Shoal River, north of a line beginning at a point 35° 35.2120' N - 75° 53.2232' W at the 5<sup>th</sup> Avenue Canal, running easterly to a point 35° 35.0666' N - 75° 51.2000' W on the east shore on Pains Point;
- (e) Wysocking Bay:
- (i) Wysocking Bay, north of a line beginning at a point 35° 25.2741' N - 76° 03.1169' W on Mackey Point, running easterly to a point 35° 25.1189' N - 76° 02.0499' W at the mouth of Lone Tree Creek;
- (ii) Mount Pleasant Bay, west of a line beginning at a point 35° 23.8652' N - 76° 04.1270' W on Browns Island, running southerly to a point 35° 22.9684' N - 76° 03.7129' W on Bensons Point;
- (f) Juniper Bay, north of a line beginning at a point 35° 22.1384' N - 76° 15.5991' W near the Caffee Bay ditch, running easterly to a point 35° 22.0598' N - 76° 15.0095' W on the east shore;
- (g) Swan Quarter Bay:
- (i) Caffee Bay, east of a line beginning at a point 35° 22.1944' N - 76° 19.1722' W on the north shore, running southerly to a point 35° 21.5959' N - 76° 18.3580' W on Drum Point;
- (ii) Oyster Creek, east of a line beginning at a point 35° 23.3278' N - 76° 19.9476' W on the north shore, running southerly to a point 35° 22.7018' N - 76° 19.3773' W on the south shore;
- (h) Rose Bay:
- (i) Rose Bay, north of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southeasterly and passing near Beacon "5" to a point 35° 25.1854' N - 76° 23.2333' W on the east shore;
- (ii) Tooleys Creek, west of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southwesterly to a point 35° 25.1435' N - 76° 25.1646' W on Ranger Point;
- (i) Spencer Bay:
- (i) Striking Bay, north of a line beginning at a point 35° 23.4106' N - 76° 26.9629' W on Short Point, running easterly to a point 35° 23.3404' N - 76° 26.2491' W on Long Point;
- (ii) Germantown Bay, north of a line beginning at a point 35° 24.0937' N - 76° 27.9348' W; on the west shore, running easterly to a point 35° 23.8598' N - 76° 27.4037' W on the east shore;
- (j) Abel Bay, northeast of a line beginning at a point 35° 23.6463' N - 76° 31.0003' W on the west shore, running southeasterly to a point 35° 22.9353' N - 76° 29.7215' W on the east shore;
- (k) Pungo River, Fortescue Creek, east of a line beginning at a point 35° 25.9213' N - 76° 31.9135' W on Pasture Point; running southerly to a point 35° 25.6012' N - 76° 31.9641' W on Lupton Point ;
- (l) Pamlico River:
- (i) North Creek, north of a line beginning at a point 35° 25.3988' N - 76° 40.0455' W on the west shore, running southeasterly to a point 35° 25.1384' N - 76° 39.6712' W on the east shore;
- (ii) Campbell Creek (off of Goose Creek), west of a line beginning at a point 35° 17.3600' N - 76° 37.1096' W on the north shore; running southerly to a point 35° 16.9876' N - 76° 37.0965' W on the south shore;

- (iii) Eastham Creek (off of Goose Creek), east of a line beginning at a point 35° 17.7423' N - 76° 36.5164' W on the north shore; running southeasterly to a point 35° 17.5444' N - 76° 36.3963' W on the south shore;
- (iv) Oyster Creek-Middle Prong, southwest of a line beginning at a point 35° 19.4921' N - 76° 32.2590' W on Cedar Island; running southeasterly to a point 35° 19.1265' N - 76° 31.7226' W on Beard Island Point; and southwest of a line beginning at a point 35° 19.5586' N - 76° 32.8830' W on the west shore, running easterly to a point 35° 19.5490' N - 76° 32.7365' W on the east shore;
- (m) Mouse Harbor, west of a line beginning at a point 35° 18.3915' N - 76° 29.0454' W on Persimmon Tree Point, running southerly to a point 35° 17.1825' N - 76° 28.8713' W on Yaupon Hammock Point;
- (n) Big Porpoise Bay, northwest of a line beginning at a point 35° 15.6993' N - 76° 28.2041' W on Big Porpoise Point, running southwesterly to a point 35° 14.9276' N - 76° 28.8658' W on Middle Bay Point;
- (o) Middle Bay, west of a line beginning at a point 35° 14.8003' N - 76° 29.1923' W on Deep Point, running southerly to a point 35° 13.5419' N - 76° 29.6123' W on Little Fishing Point;
- (p) Jones Bay, west of a line beginning at a point 35° 14.0406' N - 76° 33.3312' W on Drum Creek Point, running southerly to a point 35° 13.3609' N - 76° 33.6539' W on Ditch Creek Point;
- (q) Bay River:
  - (i) Gales Creek-Bear Creek, north and west of a line beginning at a point 35° 11.2833' N - 76° 35.9000' W on Sanders Point, running northeasterly to a point 35° 11.9000' N - 76° 34.2833' W on the east shore;
  - (ii) Bonner Bay, southeast of a line beginning at a point 35° 09.6281' N - 76° 36.2185' W on the west shore; running
- (r) Neuse River:
  - (i) Lower Broad Creek, west of a line beginning at a point 35° 05.8314' N - 76° 35.3845' W on the north shore; running southwesterly to a point 35° 05.5505' N - 76° 35.7249' W on the south shore;
  - (ii) Greens Creek - north of a line beginning at a point 35° 01.3476' N - 76° 42.1740' W on the west shore of Greens Creek; running northeasterly to a point 35° 01.4899' N - 76° 41.9961' W on the east shore;
  - (iii) Dawson Creek, north of a line beginning at a point 34° 59.5920' N - 76° 45.4620' W on the west shore; running southeasterly to a point 34° 59.5800' N - 76° 45.4140' W on the east shore;
  - (iv) Clubfoot Creek, south of a line beginning at a point 34° 54.5424' N - 76° 45.7252' W on the west shore, running easterly to a point 34° 54.4853' N - 76° 45.4022' W on the east shore;
  - (v) Turnagain Bay, south of a line beginning at a point 34° 59.4065' N - 76° 30.1906' W on the west shore; running easterly to a point 34° 59.5668' N - 76° 29.3557' W on the east shore;
- (s) West Bay:
  - (i) Long Bay-Ditch Bay, west of a line beginning at a point 34° 57.9388' N - 76° 27.0781' W on the north shore of Ditch Bay; running southwesterly to a point 34° 57.2120' N - 76° 27.2185' W on the south shore of Ditch Bay; then south of a line running southeasterly to a point 34° 56.7633' N - 76° 26.3927' W on the east shore of Long Bay;
  - (ii) West Thorofare Bay, south of a line beginning at a point 34° 57.2199' N - 76° 24.0947' W on the west
- northeasterly to a point 35° 10.0888' N - 76° 35.2587' W on Davis Island Point;

shore; running easterly to a point 34° 57.4871' N - 76° 23.0737' W on the east shore;

(iii) Merkle Bay, east of a line beginning at a point 34° 58.2286' N - 76° 22.8374' W on the north shore, running southerly to a point 34° 57.5920' N - 76° 23.0704' W on Merkle Bay Point;

(iv) North Bay, east of a line beginning at a point 35° 01.8982' N - 76° 21.7135' W on Point of Grass, running southeasterly to a point 35° 01.3320' N - 76° 21.3353' W on Western Point.

(3) In Core Sound and its tributaries, southwest of a line beginning at a point 35°00.1000' N – 76°14.8667' W near Hog Island Reef; running easterly to a point 34°58.7853' N – 76°09.8922' W on Core Banks; and in the following waterbodies and their tributaries: Back Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound and White Oak River.

(4) In any of the coastal waters of Onslow, Pender, New Hanover, and Brunswick counties.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; October 1, 1992; September 1, 1991; Recodified from 15A NCAC 03R .0008 Eff. December 17, 1996; Amended Eff. October 1, 2004.*

**15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard system of AECs contains all of the following areas:

(1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes

of this Rule, the erosion rates shall be the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "Long Term Annual Shoreline Change Rates updated through 1998 and approved by the Coastal Resources Commission on January 29th, 2004 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The maps are available without cost from any local permit officer or the Division of Coastal Management; and

(b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including, but not limited to, hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the mean low water line a distance sufficient to encompass that area within which the inlet will, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet (such as an unusually narrow barrier island, an unusually long channel feeding the inlet, or an overwash area), and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference without future changes are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard Area as shown on said map shall not extend northeast of the Baldhead Island marina

entrance channel. In all cases, this area shall be an extension of the adjacent ocean erodible area and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 1638 Mail Service Center, Raleigh, North Carolina. Small scaled photo copies are available at no charge.

(4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an unvegetated beach area on either a permanent or temporary basis:

(a) An area appropriate for permanent designation as an unvegetated beach area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following detailed studies by the Coastal Resources Commission. These areas shall be designated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an unvegetated beach area for a specific period of time. At the expiration of the time specified by the Commission, the area shall return to its pre-storm designation. Areas appropriate for such designation are those in which vegetation has been lost over such a large land area that extrapolation of the vegetation line under the procedure set out in Rule .0305(e) of this Section is inappropriate.

The Commission designates as temporary unvegetated beach areas those oceanfront areas in New Hanover, Pender, Carteret and Onslow Counties in which the vegetation line as shown on aerial photography dated August 8, 9, and 17, 1996, was destroyed as a result of Hurricane Fran on September 5, 1996. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (4)(a) of this Rule.

The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation

line as shown on Dare County orthophotographs dated February 4, 2002 through February 10, 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (4)(a) of this Rule.

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985; Temporary Amendment Eff. October 10, 1996; Amended Eff. April 1, 1997; Temporary Amendment Expired July 29, 1997; Temporary Amendment Eff. October 22, 1997; Amended Eff. October 1, 2004; April 1, 2004; August 1, 1998.*

**15A NCAC 07H .2601 PURPOSE**

This general permit shall allow for the construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program. This permit shall be applicable only where the restoration, creation or enhancement of a wetland, stream or buffer system is proposed. However, this permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. October 1, 2004.*

**15A NCAC 07H .2602 APPROVAL PROCEDURES**

(a) The applicant shall contact the Division of Coastal Management (DCM) and request approval for development. The applicant shall provide information on site location, a mitigation plan outlining the proposed mitigation activities, and the applicant's name and address.

(b) The applicant shall provide either confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.

(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section.

(d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued. Construction of the mitigation site shall be started within 180 days of the issuance date of this permit or the general authorization expires and it shall be necessary to re-examine the proposed development to determine if the general authorization shall be reissued.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. October 1, 2004.*

**15A NCAC 07H .2603 PERMIT FEE**

The applicant shall pay a permit fee of one hundred dollars (\$100.00). This fee shall be paid by check or money order made payable to the Department of Environment and Natural Resources (DENR).

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1; Eff. October 1, 2004.*

**15A NCAC 07H .2604 GENERAL CONDITIONS**

(a) This permit authorizes only the following activities associated with the construction of wetland, stream or buffer restoration: creation or enhancement projects conforming to the standards herein; the removal of accumulated sediments; the installation, removal and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the placement of in-stream habitat structures; modifications of the stream bed or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; the planting of submerged aquatic vegetation; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive exotic or nuisance vegetation; and other related activities.

(b) Individuals shall allow authorized representatives of DENR to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.

(d) This permit shall not be applicable to proposed construction where the DENR has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining

properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) At the discretion of DCM staff, review of individual project requests shall be coordinated with Division of Marine Fisheries or Wildlife Resources Commission personnel. This coordination may result in a construction moratorium during periods of significant biological productivity or critical life stages.

(f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

(g) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. October 1, 2004.*

**15A NCAC 07H .2605 SPECIFIC CONDITIONS**

(a) This general permit shall be applicable only for mitigation site proposals made by the North Carolina Ecosystem Enhancement Program or North Carolina Wetlands Restoration Program.

(b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

(c) The need to cross wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low pressure equipment or temporary construction mats shall be utilized for the area(s) to be crossed. The temporary mats shall be removed immediately upon completion of construction.

(d) No permanent structures shall be authorized by this general permit, except for fences, water control structures, or those structures needed for site monitoring or shoreline stabilization of the mitigation site.

(e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with the regulatory policies and procedures in place at the time such a future project is authorized.

(f) The authorized work shall result in a net increase in coastal resource functions and values.

(g) The entire mitigation site shall be protected in perpetuity in its mitigated state and shall be owned by the permittee or its approved designee. An appropriate conservation easement, deed restriction or other appropriate instrument shall be attached to the title for the subject property.

(h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared for the authorized mitigation site.

(i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.

(j) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).

(k) If one or more contiguous acre of property is to be graded, excavated or filled, the applicant shall file an erosion and sedimentation control plan with the Division of Land Resources, Land Quality Section, or government having jurisdiction. The plan shall be approved prior to commencing the land-disturbing activity.

(l) All fill material shall be clean and free of any pollutants, except in trace quantities.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. October 1, 2004.*

**15A NCAC 18A .2601 DEFINITIONS**

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved. National Sanitation Foundation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113-0140 and are also available for inspection at the Division of Environmental Health.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment,

or who is employed at any time in a room in which food or drink is prepared or served.

- (7) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (8) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- (9) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (11) "Food stand" means a food service establishment which prepares or serves foods and which does not provide seating facilities for customers to use while eating or drinking.
- (12) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (13) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (14) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- (15) "Local health director" means the administrative head of a local health department or his authorized representative.
- (16) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (17) "Meat market" means those food service establishments as defined in 130A-247 (1)(v).
- (18) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (19) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (20) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form

capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

- (21) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- (22) "Private club" means a private club as defined in G.S. 130A-247(2).
- (23) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (24) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (25) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (26) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (27) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (28) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (29) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- (30) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (31) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

*July 1, 1993;*  
*Temporary Amendment Eff. April 8, 1996;*  
*Amended Eff. October 1, 2004; January 1, 2002;*  
*August 1, 1998; April 1, 1997.*

**15A NCAC 18A .2606 GRADING**

(a) The sanitation grading of all restaurants, food stands, drink stands and meat markets shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Restaurants or other Food Handling Establishments shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Rules .2608, .2612, .2615, or .2622 of this Section related to food from approved sources, free of spoilage, adulteration or contamination shall equal no more than 5 percent.
- (2) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, or .2632 of this Section related to potentially hazardous food temperatures or time requirements for food during storage, preparation, display, service or transportation shall equal no more than 5 percent.
- (3) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, or .2632 of this Section related to food storage, thawing, and preparation, cooking, handling, display, service, or transportation in a manner to prevent contamination, adulteration, or spoilage shall equal no more than 5 percent.
- (4) Violation of Rule .2611 of this Section related to re-serving food shall equal no more than 5 percent.
- (5) Violation of Rule .2609 of this Section related to accurate thermometer availability shall equal no more than 3 percent.
- (6) Violation of Rule .2610 of this Section related to written notice to customers about use of clean plates for return trips to buffet shall equal no more than 1 percent.
- (7) Violation of Rule .2610 of this Section related to properly labeling or storage of dry food shall equal no more than 2 percent.
- (8) Violation of Rule .2616 of this Section related to personnel with infections or communicable diseases restricted shall equal no more than 5 percent.
- (9) Violation of Rule .2609 of this Section related to proper handwashing or good hygienic practices shall equal no more than 5 percent.

*History Note: Authority G.S. 130A-248;*  
*Eff. May 5, 1980;*  
*Amended Eff. January 1, 1996; July 1, 1994; January 4, 1994;*



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| <p>(10) Violation of Rule .2616 of this Section related to clean clothes or hair restraints shall equal no more than 1 percent.</p> <p>(11) Violation of Rules .2618 or .2619 of this Section related to food contact surfaces cleaned or sanitized by approved methods, sanitizing solution required shall equal no more than 5 percent.</p> <p>(12) Violation of Rules .2618, or .2619 of this Section related to approved utensil-washing facilities of sufficient size, with accurate thermometers or test methods available or used shall equal no more than 3 percent.</p> <p>(13) Violation of Rules .2617, .2618, or .2622, of this Section related to food contact surfaces shall equal no more than 3 percent.</p> <p>(14) Violation of Rules .2601, .2608, .2617 or .2621 of this Section related to food service equipment NSF or equal or approved utensils shall equal no more than 2 percent.</p> <p>(15) Violation Rule .2618 of this Section related to air-drying clean equipment or utensils shall equal no more than 3 percent.</p> <p>(16) Violation of Rule .2620 of this Section related to the storage of single service utensils shall equal no more than 2 percent.</p> <p>(17) Violation of Rules .2617 or .2622 of this Section related to non-food contact surfaces clean or in good repair shall equal no more than 2 percent.</p> <p>(18) Violation of Rules .2618 or .2623 of this Section related to source of water supply, hot or cold water under pressure, or meets water temperature requirements shall equal no more than 5 percent.</p> <p>(19) Violation of Rule .2623 of this Section related to cross connections or other potential sources of contamination shall equal no more than 5 percent.</p> <p>(20) Violation of Rules .2624, or .2625 of this Section related to lavatory or toilet facilities approved, accessible, or in good repair shall equal no more than 4 percent.</p> <p>(21) Violation of Rules .2609, .2624, or .2625 of this Section related to lavatory facilities or toilet facilities with self-closing doors, fixtures or rooms clean, mixing faucet, soap, towels, dryer, or sign shall equal no more than 2 percent.</p> <p>(22) Violation of Rules .2612, .2613, or .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment and disposal system: other by-products disposed of properly shall equal no more than 5 percent.</p> <p>(23) Violation of Rule .2626 of this Section related to garbage cans, containerized systems properly maintained, cleaning facilities</p> | <p>provided or contract maintained for cleaning shall equal no more than 2 percent.</p> <p>(24) Violation of Rule.2633 of this Section related to animal or pest presence shall equal no more than 4 percent.</p> <p>(25) Violation of Rule .2633 of this Section related to self-closing doors or screened windows shall equal no more than 2 percent.</p> <p>(26) Violation of Rule .2633 of this Section related to pest breeding places or rodent harborages shall equal no more than 1 percent.</p> <p>(27) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings properly constructed shall equal no more than 2 percent.</p> <p>(28) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings clean or in good repair shall equal no more than 1 percent.</p> <p>(29) Violation of Rule .2630 of this Section related to lighting or ventilation that meets illumination or shield requirements shall equal no more than 1 percent.</p> <p>(30) Violation of Rule .2631 of this Section related to ventilation clean or in good repair shall equal no more than 1 percent.</p> <p>(31) Violation of Rule .2633 of this Section related to storage or labeling of toxic substances shall equal no more than 5 percent.</p> <p>(32) Violation of Rules .2620, 2632, or .2633 of this Section related to outside premise clean, storage spaces clean, or storage above the floor shall equal no more than 1 percent.</p> <p>(33) Violation of Rule .2633 of this Section related to storage space not used for domestic purpose shall equal no more than 1 percent.</p> <p>(34) Violation of Rule .2633 of this Section related to work clothing and linen properly handled or stored and proper storage of mops, brooms and hoses shall equal no more than 1 percent.</p> |
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One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.

(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. An approved food service sanitation program shall be equivalent to the ServSafe Manager Certification course of the National Restaurant Association. The course shall include a minimum of 12 contact hours. Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An

establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

(d) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the local health department, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be clearly labeled as an award.

(e) Nothing herein shall effect the right of a permit holder to a reinspection pursuant to Rule .2604 of this Section.

(f) Nothing herein shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

*History Note: Authority G.S. 130A-248;*

*Eff. May 5, 1980;*

*Amended Eff. October 1, 2004; August 1, 2004; August 1, 1998;*

*July 1, 1993; March 1, 1988.*

**15A NCAC 18A .2608 SOURCES OF FOOD**

All food shall be obtained from sources that comply with all laws relating to food and food labeling and shall be identified. All meat, meat food products, poultry and poultry products shall have been inspected for wholesomeness, where required, under an official federal, state, or local regulatory program; and, in all cases, the source shall be identifiable from labeling on carcasses, cuts, unit packages, bulk packages, or from bills of sale. Food in hermetically sealed containers shall have been processed in a commercial food processing establishment operated in compliance with G.S. 106-120 through 106-145. Copies of G.S. 106-120 through 106-145 may be obtained from the Food and Drug Protection Division, North Carolina Department of Agriculture. All food shall be clean, wholesome, free from adulteration and spoilage, safe for human consumption, and shall be handled, served, or transported in such a manner as to prevent contamination, adulteration, and spoilage. Approved containers and utensils shall be used. Foods that are spoiled or otherwise unfit for human consumption shall be immediately disposed of as garbage or returned to the source except as specified in Rule .2641 of this Section. Foods to be returned to the source shall be marked as such and stored in a fashion so as not to contaminate other food.

*History Note: Authority G.S. 130A-248;*

*Eff. May 5, 1980;*

*Amended Eff. October 1, 2004; August 1, 1998; May 1, 1991;*

*July 1, 1984.*

**15A NCAC 18A .2609 REFRIGERATION: THAWING: AND PREPARATION OF FOOD**

(a) All potentially hazardous foods requiring refrigeration shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to 3° F (1.5°C) shall be provided in all refrigerators.

(b) Refrigeration and freezer space shall be provided to accommodate the volume of food handled.

(c) Potentially hazardous foods shall be thawed:

- (1) in refrigerated units at a temperature not to exceed 45° F (7° C);
- (2) under potable running water of a temperature of 70° F (21° C), or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) as a part of the conventional cooking process; or
- (4) in a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.

(d) Employees preparing food shall have used antibacterial soap, dips or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Section .2600 of these Rules. Food shall be prepared with the least possible manual contact, with utensils and on preparation surfaces that have been cleaned and rinsed prior to use. Preparation surfaces which come in contact with potentially hazardous foods shall be sanitized as provided in Rule .2618(c) of this Section. Raw fruits and raw vegetables shall be washed with potable water to remove soil and other contaminants before being cooked or served.

(e) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) except as follows:

- (1) poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F (74°C) with no interruption of the cooking process, and
- (2) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and
- (3) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C), and
- (4) rare roast beef shall be cooked to an internal temperature of at least 130° F (54° C), and
- (5) rare beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.

(f) Liquid eggs, or uncooked frozen eggs, dry eggs and egg products shall be used only for cooking and baking purposes. This Paragraph does not apply to pasteurized products.

(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from processing plants that are regulated by the food regulatory agency that has jurisdiction over the plants may initially be

reheated to 140° F (60° C). Reheating time shall not exceed two hours.

(h) All potentially hazardous foods shall be stored at temperatures of 140° F (60° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. However, rare roast beef shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

(i) Time only, rather than the temperature requirements set forth in Paragraph (h) of this Rule, may be used in connection with potentially hazardous foods that are displayed or held for service for immediate consumption if:

- (1) The food is labeled with the time of completion of the cooking process or the point in time when the food was otherwise removed from temperature control;
- (2) The food is served to the public within two hours of the time of completion of the cooking process or when the food was otherwise removed from required temperature control; and
- (3) The establishment maintains written procedures approved by the Department for the handling of food from the time of completion of the cooking process or when the food is otherwise removed from required temperature control.

(j) Potentially hazardous food that is displayed or held for service for immediate consumption shall not be served to the public unless it has been maintained at the temperature required in Paragraph (h) of this Rule; or

- (1) it is marked with the time of completion of the cooking process or when it was otherwise removed from required temperature control; and
- (2) the two hour period referenced in Subparagraph (i)(2) of this Rule has not expired.

(k) All potentially hazardous food that is transported must be maintained at temperatures as noted in Paragraph (h) of this Rule.

(l) A metal stem-type thermometer accurate to 2°F (1° C) shall be available to check food temperatures.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; August 1, 1998; October 1, 1993; May 1, 1991; October 1, 1990.*

**15A NCAC 18A .2610 STORAGE: HANDLING: AND DISPLAY OF FOOD**

(a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that hand openings may be permitted on counter fronts. A beverage station staffed with an employee who is serving on a continual basis is not required to provide glass or similar shields for beverages, ice and

beverage garnishes. The employee shall remove contaminated beverages, ice or beverage garnishes from the beverage station. Counter protector installations are required for all cafeteria counters, salad bars, and similar type service to prevent contamination by customers' coughing and sneezing. Nothing in this Rule requires food kept in enclosed cases to be wrapped or covered so long as effective measures are taken to prevent contamination in multi-level shelving units.

(b) Customer self-service is permitted only under the following conditions:

- (1) Buffet-style Service. Protective shields, equivalent to counter protectors, are provided to intercept contamination.
- (2) Customer Self-Service. When customers are allowed to return to a self-service area, clean and sanitized tableware other than flatware, beverage cups and glasses, shall be made available for each return trip. Written notice shall be provided informing customers that clean tableware must be used for return trips.
- (3) Family-style Service. In establishments featuring this style of service, patrons elect to participate in the family dining-table type of service. Ordinary serving dishes and utensils are acceptable.
- (4) Private events. When service is provided for a club, organization or private individual at a planned event from which the public is excluded:
  - (A) Potentially hazardous foods shall be replaced at least every two hours;
  - (B) Food containers shall be arranged so customers' clothing does not come in contact with food;
  - (C) Long-handled serving spoons, tongs, or other utensils shall be provided and used;
  - (D) At the conclusion of the event, food that has not been consumed, shall be discarded; and
  - (E) Protective shields are not required for buffet-style service.

(c) Foods, except raw vegetables which are to be cooked, shall be kept under cover when not in the process of preparation and serving. Food shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper, or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper or foil. Food transported to a food service establishment shall not be accepted unless wrapped, boxed, or covered so as to prevent contamination and maintained at temperatures required in Rule .2609 of this Section. Food and drink shall not be served to the general public in the kitchen. In the case of "drive-in" restaurants, all food shall be covered or wrapped before delivery to patrons' vehicles, to exclude vermin or insects, dust, and other contamination.

(d) Containers for onions, slaw, mustard, and other condiments not kept in accordance with the requirements of Paragraph (a) of

this Rule shall have covers and be kept covered when not in use. Sugar shall be dispensed with either pour-type dispensers or individual packages. Waiters and waitresses shall avoid unnecessary handling of food in the process of serving.

(e) Dustless methods of floor cleaning shall be used and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.

(f) The offering of free unwrapped food samples which were prepared by, or served by, the establishment on its premises, shall be maintained at a location within sight of and under the immediate supervision of an employee or agent for the purposes of observing customer use.

(g) Foods shall not be stored under exposed sewer lines.

(h) Dry beans, grits, flour, sugar, and similar food products shall be stored in approved, covered containers, glass jars, or equal and labeled accordingly.

*History Note: Authority G.S. 130A-248;  
Eff. May 5, 1980;  
Amended Eff. October 1, 2004; August 1, 1998; July 1, 1994;  
April 1, 1994; July 1, 1992; May 1, 1991.*

**15A NCAC 18A .2615 MILK AND MILK PRODUCTS**

(a) Only Grade "A" pasteurized milk and milk products shall be used. The term "milk products" means those products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Department of Environment and Natural Resources, Division of Environmental Health, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632.

(b) Mixing of cream and milk or the pouring of either into jars, bottles, or other containers for storage therein is prohibited.

(c) Bulk milk dispenser containers, as received from the distributor, shall be sealed, labeled with the name and grade of the contents and identity of the distributor. Only the outlet seal shall be broken in the establishment.

(d) Milk and milk products shall be stored in a sanitary manner and shall be kept refrigerated, except when being served. Milk containers shall not be completely submerged in water; however, nothing in the rules of this Section shall prohibit the placement of these items on ice while on display or being served.

(e) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

*History Note: Authority G.S. 130A-248;  
Eff. May 5, 1980;  
Amended Eff. October 1, 2004; August 1, 1998;  
December 1, 1991; May 1, 1991; July 1, 1986; July 1, 1984.*

**15A NCAC 18A .2617 UTENSILS AND EQUIPMENT**

(a) All eating, drinking, and cooking utensils, tables, sinks, cabinets, hoods, shelves, equipment, fixtures, and other items used in connection with the preparation of food shall be kept clean and in good repair.

(b) All surfaces with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic materials in which there are no open cracks or joints that will collect food particles and slime, and be kept clean.

(c) Shelves, tables, and counters shall not be covered with paper, cardboard, oil cloth, or other absorbent material, and shall be free of crevices. Dining table linen or similar dining table coverings, if used, shall be kept clean and in good repair.

(d) Equipment shall meet National Sanitation Foundation standards. If equipment does not meet National Sanitation Foundation standards the owner or operator shall submit documentation to the Department that demonstrates that the equipment is at least equivalent to National Sanitation Foundation standards. The Department shall determine if the equipment is at least equivalent to National Sanitation Foundation standards. In doing so, if the components of the equipment are the same as those meeting National Sanitation Foundation standards, then the Department shall deem the equipment equivalent. For purposes of these Rules, toasters, mixers, microwave ovens, hot water heaters and hoods shall not be considered to be equipment and shall not be required to meet National Sanitation Foundation standards.

(e) Beverage dispensers installed or replaced after August 1, 1998 shall be designed to avoid activation by the lip of a cup or glass when these dispensers are used to refill customer cups or glasses.

*History Note: Authority G.S. 130A-248;  
Eff. May 5, 1980;  
Amended Eff. October 1, 2004; August 1, 1998; May 1, 1991.*

**15A NCAC 18A .2618 CLEANING OF EQUIPMENT AND UTENSILS**

(a) All equipment and fixtures shall be kept clean. All cloths used by chefs and other employees in the kitchen shall be clean.

(b) Single-use articles such as formed buckets, bread wrappers, aluminum pie plates and No. 10 cans shall be used only once except that containers made of plastic, glass or other food grade material having smooth sides and of a construction so as to be easily cleaned may be reused.

(c) All multi-use eating and drinking utensils shall be washed, rinsed, and subjected to a bactericidal treatment specified in Rule .2619 of this Section after each usage. The supply of eating and drinking utensils shall be of sufficient quantity to allow washing, rinsing, sanitizing and air-drying before re-use. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking, or serving of food or drink shall be cleaned and rinsed immediately after the days' operations, after each use, or upon completion of each meal as indicated. Pizza pans and similar type pans (not used for table service) which are continually subjected to high temperatures do not require cleaning after each use or day's use but shall be kept clean and maintained in good repair.

(d) In addition to washing and rinsing multi-use utensils as indicated in Paragraph (c) of this Rule, preparation surfaces which come in contact with potentially hazardous foods and are not subjected to heat during routine cooking operations shall be sanitized. Utensils and equipment that have been used for the preparation of raw meat or raw poultry shall not be used for the preparation of cooked meat, cooked poultry, or other ready-to-eat products unless such utensils and equipment have been cleaned and sanitized. Examples of food contact surfaces which

must be sanitized are utensils used in preparing cold salads and cold beverages, cutting boards, table tops, knives, saws, and slicers. For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, and for those establishments which do not have dishwashing equipment, a spray-on or wipe-on sanitizer may be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required in Rule .2619 of this Section for sanitizing multi-use eating and drinking utensils.

(e) Hand dishwashing facilities shall consist of an approved three-compartment sink of sufficient size and depth to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of a sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks or by cross-stacking.

(f) Where the Department determines that the volume of dishes, glasses and utensils to be washed cannot be processed in a single warewashing facility, separate dish, glass or utensil washing facilities shall be required. Separate vegetable washing facilities shall be provided in establishments which wash raw vegetables except where plan review shows that volume and preparation frequency do not require separate vegetable washing facilities or where vegetables are purchased prewashed and packaged. Establishments which scale, eviscerate, thaw, or wash fish, raw poultry, or other food shall provide separate sinks with preparation space for these processes except where plan review shows that volume and preparation frequency do not require separate washing facilities.

(g) When warewashing machines are used, the machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions. Machines shall be fitted with drainboards on each side, and include a countersunk sink or other approved means for pre-cleaning, pre-flushing, or pre-soaking of the utensils in the dirty dish lane. Thermometers indicating the wash and rinse water temperatures shall be provided and kept in good repair.

(h) When warewashing machines are used, the machines shall be approved as sufficient for size, capacity, and type for the number of utensils to be washed. Glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for final rinse and bactericidal treatment. For this method, a motor-driven glass-washer and a single-vat sink shall suffice.

(i) Warewashing machines shall render equipment clean to sight and touch and provide bactericidal treatment in accordance with Rule .2619 of this Section.

(j) At least an approved two-compartment sink shall be provided in meat markets and those food service establishments which only use single-service eating and drinking utensils. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished

with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks.

(k) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of warewashing machines, and other food service and cleaning needs. Hot water storage tanks shall provide at least 130° F (54° C) hot water when water is not used for sanitizing. When hot water is used for sanitizing, a minimum storage temperature of 140° F (60° C) hot water is required.

(l) No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

(m) In determining the sufficiency of the size of drainboards, machine dishwashers and sinks in an establishment, the Environmental Health Specialist shall consider the number and size of multi-use utensils regularly cleaned. For drainboards only, the Specialist shall also consider the available shelf space, racks and other areas which may be used for air drying.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; September 1, 1999; August 1, 1998; January 1, 1996; July 1, 1993; July 1, 1991.*

**15A NCAC 18A .2622 STORAGE: HANDLING: AND USE OF ICE**

(a) Ice which is to be used in fountain drinks, ice water, tea, and coffee, or in connection with the chilling or serving of food shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner.

(b) Storage boxes shall be covered, located away from sources of contamination, maintained in good repair, and kept clean. Storage bins or boxes shall be provided with rims and covers designed to exclude spillage and drip.

(c) Ice grinders, pans, and buckets used in preparing chipped or crushed ice shall be protected from contamination, cleaned between usages, and kept in good repair; buckets and other containers used in the transportation of ice shall be stored above the floor in a clean place.

(d) Ice shall be dispensed or transferred with a scoop, spoon, or other sanitary method. When not in use, an ice scoop or spoon may be stored in the ice with the handle protruding or on a clean surface. Ice scoops shall not be stored in water. Fountain ice compartments, bowls, buckets, or other containers shall be in good repair; washed and kept free of scum, rust; and shall be protected from drip, dust, splash, and other means of contamination. Ice shall not be received, used, or accepted when there is evidence that it is not being handled and transported in a sanitary manner.

(e) Ice machines shall be kept clean.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; August 1, 1998.*

**15A NCAC 18A .2624 TOILET FACILITIES**

(a) Unless specified elsewhere in the rules of this Section every food service establishment shall be provided with toilet facilities conveniently located and readily accessible to employees during

all business hours. Restaurants, in addition, shall be provided with toilet facilities conveniently located and readily accessible to customers during all business hours. Toilets shall be under control of the management. Toilets for patrons shall be so located that the patrons do not pass through the kitchen to enter the toilet rooms. Intervening rooms or vestibules, if provided, shall be constructed and maintained in accordance with this Rule. Floors and walls shall be constructed of non-absorbent, washable materials. Floors, walls, and ceilings shall be kept clean and in good repair. Toilet rooms shall be provided with self-closing doors, and kept free of flies. Windows shall be screened if used for ventilation. Toilet rooms shall not be used for storage of food, utensils, or equipment. Fixtures shall be kept clean and in good repair.

(b) Signs shall be posted to advise the public of the locations and identities of the toilet rooms. Legible signs which read that employees must wash their hands before returning to work shall be posted conspicuously in each employees' toilet room.

(c) Screens and doors are not required for toilet rooms at stadiums or facilities in which toilet rooms open into the interior of a building and the exterior doors of the building are self-closing.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; August 1, 1998; January 1, 1996; July 1, 1992; April 1, 1992; May 1, 1991.*

**15A NCAC 18A .2627 FLOORS**

(a) The floors of all rooms in which food is stored, prepared, handled, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, and shall be kept clean and in good repair. Food waste on the floor as a result of that day's preparation process is not a violation of the rules of this Section so long as the food waste is removed at regular intervals and prior to closing.

(b) Floors in areas where food is to be prepared or stored shall be of sealed concrete, terrazzo, quarry or vinyl tile, wood covered with composition flooring, or equal, except that:

- (1) carpet may be used in wait stations and self-service bars.
- (2) there are no flooring requirements for portable cooking units which may be used in a dining room for occasional service at individual tables.
- (3) nothing in this Section shall prohibit the use of approved anti-skid floor applications where needed for safety reasons.

(c) The joints between walls and floors shall be rounded or be otherwise constructed to provide a tight seal between the floor and wall.

(d) Floors which are subjected to flood type cleaning shall be provided with floor drains and shall slope to drain.

(e) Clean carpet, in good repair, may be used in dining areas.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; August 1, 1998; May 1, 1991.*

**15A NCAC 18A .2633 PREMISES: MISCELLANEOUS: VERMIN CONTROL**

(a) None of the operations shall be conducted in any room used for domestic purposes. A domestic kitchen shall not be used in connection with the operation of a food service establishment. When a meat market is located in the same room with a grocery store or other establishment, the area in which the meat, meat food products, poultry, or poultry products are stored, handled, and displayed shall be kept free from other merchandise, and the grocery store or other establishment shall be kept clean and free of vermin.

(b) Soiled linens, coats, and aprons shall be kept in containers provided for this purpose. Laundered table linen and cleaning cloths shall be stored in a clean place until used.

(c) Toxic materials, cleaners, sanitizers, or similar products used in a food service establishment shall be labeled with the common name or manufacturers label.

(d) A special area for storage of toxic materials shall be provided and marked as toxic materials. This requirement shall not apply to cleaners and sanitizers used frequently in the operation of the food service establishment that are stored for availability and convenience if the materials are stored to prevent the contamination of food, equipment, utensils, linens and single-service items.

(e) Storage shall be provided for mops, brushes, brooms, hoses, and other items in routine use.

(f) Effective measures such as fly repellent fans, self-closing doors, screens, and routine use of approved pesticides shall be taken to keep insects, rodents, animals and other public health pests out of the establishment and to prevent their breeding or presence on the premises.

(g) Except as specified below, live animals shall not be allowed in a food preparation or storage area. Live animals shall be allowed in the following situations if their presence will not result in the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use items:

- (1) fish or crustacea in aquariums or display tanks;
- (2) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and
- (3) service animals accompanying persons with disabilities in areas that are not used for food preparation.

(h) Only those pesticides which have been registered with the U.S. Environmental Protection Agency and with the North Carolina Department of Agriculture and Consumer Services shall be used. Such pesticides shall be used as directed on the label and shall be handled to avoid health hazards.

*History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. October 1, 2004; August 1, 1998; May 1, 1991.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**21 NCAC 25 .0103 CONTACT INFORMATION**

(a) The Board's mailing address is: PO Box 1632, Garner, NC 27529.

- (b) The Board's e-mail address is: [contact@ncitlb.org](mailto:contact@ncitlb.org)
- (c) The Board's telephone number is: 919-779-5709.
- (d) The Board's fax number is: 919-779-5642.

*History Note: Authority G.S. 90D-6; Eff. April 1, 2005.*

**21 NCAC 25 .0202 THE APPLICATION PACKAGE**

(a) An applicant for licensure shall submit the following materials to the Board:

- (1) A completed, signed, and dated application in the format provided by the Board;
- (2) A clear, two-inch by two-inch, passport-style photograph of the head and shoulders of the applicant, made within two years of the date of application;
- (3) A legible, fully-completed finger print card obtained from a local law enforcement agency;
- (4) The applicant's signed, written consent to a criminal record check;
- (5) One or more cashier's checks, certified checks or money orders made payable to the North Carolina Interpreter and Transliterators Licensing Board in the amounts necessary to cover the cost of all necessary local, State and federal criminal record checks; and
- (6) A cashier's check, certified check or money order made payable to the North Carolina Interpreter and Transliterators Licensing Board in the amount specified by Rule .0203 of this Section.

(b) An applicant for an initial license under S.L. 2002-182, s. 7, as amended by S.L. 2003-56, shall submit the following materials to the Board:

- (1) Written verification that the applicant was actively engaged as an interpreter or transliterator in this State for at least 200 hours for each of the two years immediately preceding 31 October 2002. The written verification must be signed by the individual who paid or approved payment for the services or the individual who supervised the applicant when the services were rendered;
- (2) Letters of recommendation from any two individuals who are:
  - (A) Interpreters who hold valid National Association of the Deaf level 4 or 5 certifications; or
  - (B) Interpreters who are nationally certified by the Registry of Interpreters for the Deaf, Inc.; or
  - (C) Transliterator who have national certifications recognized by the National Cued Speech Association ("NCSA"); or
  - (D) Interpreters who hold quality assurance North Carolina Interpreter Classification System ("NCICS")

- (E) level A or B classifications in effect on January 1, 2000; or Consumers of interpreter or transliterator services who have observed the applicant's performance as an interpreter or transliterator; or
- (F) The parent or legal guardian of a deaf consumer of interpreter or transliterator services who has observed the applicant's performance as an interpreter or transliterator.

*History Note: Authority G.S. 90D-6; 90D-7; 90D-10; S.L. 2002-182, s. 7, as amended by S.L. 2003-56; Eff. April 1, 2005.*

**21 NCAC 25 .0203 APPLICATION FEES**

(a) The Board shall not review a license application until the appropriate license fee has been paid pursuant to the following fee schedule:

Application for Initial Full License under G.S. 90D-7 and -9	\$225.00
Application for Renewal of Full License	\$150.00
Application for Initial Provisional License under G.S. 90D-8	\$225.00
Application for Renewal of Provisional License	\$150.00
Application for Initial Full License under S. L. 2002-182, s. 7 (Grandfather provision)	\$75.00
Application for Replacement of Lost, Damaged or Destroyed License	\$10.00

(b) These fees shall be nonrefundable and shall be paid by cash or by cashier's check, certified check, or money order made payable to the North Carolina Interpreter and Transliterator Licensing Board.

*History Note: Authority G.S. 90D-6(6); 90D-10(b); Eff. April 1, 2005.*

**21 NCAC 25 .0301 CODE OF ETHICS**

(a) The Board hereby adopts and incorporates by reference the Code of Ethics adopted by The Registry of Interpreters for the Deaf, Inc., including all subsequent amendments and editions of that code.

(b) A copy of the code may be obtained free of charge from the Board. The code may also be viewed on-line at RID's web page at: <http://www.rid.org/>.

*History Note: Authority G.S. 90D-6; 90D-7(a)(2); 90D-12; Eff. April 1, 2005.*

**21 NCAC 25 .0302 CRIMINAL CONVICTIONS**

(a) Except as provided in Paragraph (c) of this Rule, a person shall not be eligible to seek a license if the person has been convicted of:

- (1) Two or more felonies, regardless of the dates of conviction;
- (2) Three or more misdemeanors, regardless of the dates of conviction;
- (3) A combination of a single felony and two or more misdemeanors, regardless of the dates of conviction;
- (4) A single felony within the 5 years next preceding the date the person applies for a license;
- (5) A single misdemeanor within the 2 years next preceding the date the person applies for a license.

(b) Except as provided in Paragraph (c) of this Rule, the Board shall revoke a licensee's license upon the licensee's conviction of a single felony or misdemeanor.

(c) Notwithstanding the provisions of Paragraphs (a) and (b) of this Rule, a misdemeanor conviction shall not bar a person from obtaining a license and shall not require the Board to revoke an existing license if the applicant or licensee demonstrates to the Board's satisfaction that:

- (1) The applicant or licensee did not deceive or defraud the public while committing the misdemeanor offense; and
- (2) The misdemeanor offense has no bearing upon the person's fitness to perform interpreter or transliterator services.

*History Note: Authority G.S. 90D-6; 90D-7(a)(2); 90D-12(2); Eff. April 1, 2005.*

**21 NCAC 25 .0401 DUTY TO REPORT CHANGES IN PERSONAL INFORMATION**

A licensee shall notify the Board in writing of any change in the licensee's current:

- (1) Name;
- (2) Home street address;
- (3) Home mailing address;
- (4) Home and work telephone numbers;
- (5) Home and work fax numbers; and
- (6) Email address;

within 30 days after the change occurs.

*History Note: Authority G.S. 90D-6(2),(4); 90D-7(a)(2) and (c); Eff. April 1, 2005.*

**21 NCAC 25 .0402 DUTY TO REPORT CONSUMER COMPLAINTS**

(a) A licensee shall notify the Board of any complaint made against the licensee:

- (1) to any interpreter and transliterator licensing board or agency in any other State; or
- (2) to any local, regional or national certifying agency, such as NAD, RID, and NCSA.

(b) The licensee shall give the notice to the Board within 30 days after the licensee receives notice of the complaint.

*History Note: Authority G.S. 90D-6(2) and (4); 90D-7(a)(2) and (c); Eff. April 1, 2005.*

**21 NCAC 25 .0404 DUTY TO REPORT CRIMINAL PROSECUTIONS**

Any licensee named as a defendant in any criminal prosecution shall:

- (1) Mail a copy of the criminal process, including the criminal warrant, indictment, information, presentment or other criminal process, to the Board within 30 days after the licensee is served with a copy of the criminal warrant, indictment, information, presentment or other criminal process; and
- (2) Notify the Board of the outcome of the criminal prosecution within 30 days after the prosecution is resolved by dismissal, pleas of guilty or no contest, trial, or any other means.

*History Note: Authority G.S. 90D-6(2) and (4); 90D-7(a)(2) and (c); Eff. April 1, 2005.*

**21 NCAC 25 .0405 MANDATORY DISCLOSURES**

Upon the request of any consumer, a licensee shall give the consumer a business card that bears:

- (1) the licensee's name; and
- (2) the licensee's license number in the following format: "NCITLB License # [number]".

*History Note: Authority G.S. 90D-2; 90D-4(a); 90D-6(2) and (7); Eff. April 1, 2005.*

**21 NCAC 25 .0501 CONTINUING EDUCATION REQUIREMENTS**

(a) A licensee shall earn at least two continuing education units ("CEUs") each licensure year. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting. A traditional classroom setting is a setting in which three or more persons come together at the same location at the same time as a group to listen to a lecture, to view a demonstration, to participate in group discussions, or to learn through any combination of these or similar activities.

(b) Surplus CEUs shall not be carried forward from the licensure year in which they were earned to any subsequent licensure year.

(c) A licensee may earn CEUs by enrolling in and completing a class or course sponsored by a college or university accredited by the Southern Association of Colleges and Schools or by any other accrediting agency recognized by the U.S. Department of Education. In order to receive CEU credit for the class or course, the licensee must authorize and direct the sponsoring college or university to mail to the Board a certified transcript documenting that the licensee completed the class or course and that the licensee earned at least a 2.0 grade point average in the class or course.



(d) A licensee may earn CEUs by attending workshops and conferences approved by The Registry of Interpreters for the Deaf, Inc. ("RID"). In order to receive CEU credit for attendance at a workshop or conference approved by RID, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by attendance at an RID approved workshop or conference.

(e) A licensee may earn CEUs by independently studying instructional materials in any format -- including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been approved by RID. In order to receive CEU credit for such independent study, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by the completion of any independent study approved by RID.

(f) If a licensee does not have an RID CEU transcript because the licensee is neither a certified member of RID nor an associate member of RID who is participating in the Associate Continuing Education Tracking ("ACET") Program, the licensee may receive CEU credit for attendance at an RID approved workshop or conference or for completion of an RID approved course of independent study by submitting to the Board a certificate of completion signed by the CE sponsor, provider, or presenter.

(g) A licensee may not earn CEUs while interpreting, whether or not the licensee is compensated for his or her services.

*History Note: Authority G.S. 90D-6; 90D-8; 90D-11; Eff. April 1, 2005.*

**TITLE 25 – OFFICE OF STATE PERSONNEL**

**25 NCAC 01C .0202 EQUAL EMPLOYMENT OPPORTUNITY**

Neither race, religion, color, creed, national origin, sex, age, political affiliation, or handicapping condition shall be considered in the recruitment and selection of new employees, selection of employees for promotion, training, career development, transfer, demotion, or reduction-in-force; administration of disciplinary policies or termination for cause; and establishment of rates of pay including the awarding of salary adjustments or annual salary increases. See 25 NCAC Subchapter 01L.

*History Note: Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261, March 24, 1972; Eff. February 1, 1976; Amended Eff. October 1, 2004; November 1, 1988; July 1, 1988; October 1, 1983; December 1, 1978.*

**25 NCAC 01C .0301 MAINTENANCE OF RECORDS**

The Office of State Personnel and the employing agency shall maintain such personnel records as required by statute and as the agency deems necessary for the proper administration of the personnel system. Personnel records shall be kept open for

public inspection in accordance with Article 7 of Chapter 126 of the North Carolina General Statutes.

*History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. October 1, 2004.*

**25 NCAC 01C .0303 PUBLIC INSPECTION**

The information listed in G.S. 126-23 shall be made available for inspection and examination and copies thereof made by any person during regular business hours, subject to the following provisions:

- (1) All disclosures of records shall be accounted for by keeping a written record of the following information: name of employee, information disclosed, data information requested, name and address of the person to whom the disclosure is made. The information must be retained for a period of two years. This does not apply to the processing of personnel records or credit references.
- (2) Upon request, record of disclosure shall be made available to the employee to whom it pertains.
- (3) An individual examining a personnel record may copy the information; any available photocopying facilities may be provided and the cost may be assessed to the individual.

*History Note: Authority G.S. 126-23; 126-26; Eff. February 1, 1976; Amended Eff. October 1, 2004; November 1, 1988; October 1, 1977.*

**25 NCAC 01C .0304 CONFIDENTIAL INFORMATION IN PERSONNEL FILES**

(a) All information not specified in G.S. 126-23 and which relates to the individual's application, selection or nonselection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment is confidential.

(b) Agencies shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes.

(c) Information used in making a determination about employment or other personnel actions shall, to the extent practical, be obtained directly from the individual. There may be instances where it is necessary to obtain information from other sources. This may be obtained either directly from those sources or by the use of a consumer reporting agency. If the consumer reporting agency is utilized, the requirements of the Fair Credit Reporting Act, Title VI of The Consumer Credit Protection Act (Public Law 91-508) must be followed.

(d) All information in an employee's personnel file shall be open for inspection and examination as set forth in G.S. 125-24. For this purpose, supervisor is any individual in the chain of administrative authority above a given state employee within a pertinent state agency. An official is a person who has official or authorized duties or responsibilities in behalf of an agency; it

does not imply a necessary level of duty or responsibility. This right to access includes the circumstances where one state agency is considering for employment a person who is or has been employed in another state agency; the head of the latter agency may release to an official of another agency information relative to the employee's job performance.

(e) Each individual requesting access to confidential information shall submit proof of identity.

(f) A record shall be made of each disclosure except to the employee or the supervisor.

*History Note: Authority G.S. 126-24; 126-26; 126-29; Eff. February 1, 1976; Amended Eff. October 1, 2004; November 1, 1988; December 1, 1978; October 1, 1977.*

**25 NCAC 01C .0402 PERMANENT APPOINTMENT**

(a) Permanent - A permanent appointment is a permanent full-time appointment to a permanent full-time established position. A permanent appointment shall be given when:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements, or
- (3) a time-limited appointment extends beyond three years.

(b) Time-limited Permanent - A time-limited permanent appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited permanent position. If an employee is retained in a time-limited permanent position beyond three years, the employee shall be designated as having a permanent appointment.

(c) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration.

(d) Employees with a time-limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.

*History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. October 1, 2004; August 1, 1995; January 1, 1989; June 1, 1983; July 1, 1979.*

**25 NCAC 01C .0403 TRAINEE APPOINTMENTS**

(a) A trainee appointment may be made to a permanent position when:

- (1) the job specification includes provisions for a trainee progression leading to regular appointment,

- (2) recruitment efforts fail to attract qualified candidates,
- (3) operating need warrants a trainee, or
- (4) the recommended applicant fails to meet State education and experience requirements.

(b) Employees with a trainee appointment earn leave, and receive total state service credit, retirement and health benefits. When applicable, trainees who have completed six months of service or who had a permanent appointment prior to entering a trainee appointment shall receive severance pay and priority reemployment consideration.

*History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. October 1, 2004; August 1, 1995; August 1, 1978.*

**25 NCAC 01C .0701 POLICY**

The employment responsibilities to the state are primary for any employee working full-time; any other employment in which that person chooses to engage is secondary. An employee shall have approval from the agency head before engaging in any secondary employment. The purpose of this approval procedure is to determine that the secondary employment does not have an adverse effect on the primary employment and does not create a conflict of interest. The rules in this Section for secondary employment apply to all employment not covered by the policy on Dual Employment in the North Carolina State Budget Manual.

*History Note: Authority G.S. 126-4; Eff. August 1, 1978; Amended Eff. October 1, 2004; May 1, 1989.*

**25 NCAC 01C .0702 AGENCY RESPONSIBILITY**

(a) Secondary employment shall not be permitted when it would:

- (1) create either directly or indirectly a conflict of interest with the primary employment;
- (2) impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.

(b) If the secondary employment has any impact on or may create any possibility of conflict with State operations, the Secondary Employment Form must be approved by the State Personnel Director in conjunction with the Board of Ethics.

(c) Each agency shall establish its own specific criteria for approval of secondary employment based on work situation needs. Established criteria shall not be inconsistent with 25 NCAC 01C .0701 and .0702.

(d) Each agency shall use a Secondary Employment Form that is consistent with the model provided by the Office of State Personnel.

*History Note: Authority G.S. 126-4; Eff. August 1, 1978; Amended Eff. October 1, 2004; January 1, 2004.*

**25 NCAC 01C .0703 EMPLOYEE RESPONSIBILITY**

(a) The employee shall complete a Secondary Employment Form for any employment that is not covered by the Dual Employment Policy in the North Carolina State Budget Manual.

(b) The employee shall update the Secondary Employment Form whenever there is any change in status or annually whichever occurs first.

*History Note* Authority G.S. 126-4;  
Eff. October 1, 2004.

**25 NCAC 01C .0804 OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

The Office of State Personnel shall provide guidance to State agencies developing teleworking programs.

*History Note:* Authority G.S. 126-4; S.L. 1999-328;  
Temporary Adoption Eff. January 19, 2000;  
Temporary Adoption Expired on November 11, 2000;  
Eff. April 1, 2001;  
Amended Eff. October 1, 2004.

**25 NCAC 01C .1002 RESIGNATION**

An employee may terminate his services with the state by submitting a resignation to the appointing authority. Employees shall be paid in a lump sum for accumulated vacation leave.

*History Note:* Authority G.S. 126-4;  
Eff. February 1, 1976;  
Recodified from 25 NCAC 01D .0502 Eff. December 29, 2003;  
Amended Eff. October 1, 2004; November 1, 1988;  
February 1, 1983.

**25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED**

(a) An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include lack of suitable temporary assistance, criticality of the position, budgetary constraints. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.

(b) Prior to separation, the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful.

(c) The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations.

(d) Definitions:

- (1) Unavailability is defined as the employee's inability to return to all of the position's

essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the operating needs of the agency and the employee's medical/health.

- (2) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

*History Note:* Authority G.S. 126-4(7a); 126-35;  
Eff. November 1, 1989;  
Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;  
Amended Eff. October 1, 2004.

**25 NCAC 01C .1009 SEPARATION: PAYMENT OF VACATION LEAVE**

(a) Lump sum payment for vacation leave shall be made only at the time of separation. An employee shall be paid in a lump sum for accumulated leave not to exceed a maximum of 240 hours when separated from state service due to resignation, dismissal, or reduction in force. In case of death, the employee's estate shall be paid for all unused vacation leave.

(b) An employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation. Employees separating from state service due to service retirement or early retirement may elect to exhaust vacation leave after the last day of work but prior to the effective date of retirement. All benefits accrue while leave is being exhausted. If leave is exhausted, the last day of leave is the date of separation. Any unused leave not exhausted must be paid in a lump sum not to exceed 240 hours. If no leave is exhausted, the last day of work is the date of separation.

(c) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check. Deductions shall be in units nearest to a tenth of an hour, i.e. 1/10 of an hour for each six minutes overdrawn.

*History Note:* Authority G.S. 28-A-25-6(a)(c); 126-4;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1989, December 1, 1988,  
January 1, 1983;  
Temporary Amendment Eff. January 1, 1989, for a Period of 180 Days to Expire June 29, 1989;  
Amended Eff. July 1, 1995;  
Recodified from 25 NCAC 01E .0210 Eff. December 29, 2003;  
Amended Eff. October 1, 2004.

**25 NCAC 01E .0102 TYPES OF LEAVE**

Various types of leave recognized by the State Personnel Commission are set up in Sections .0200 to .1600 of this Subchapter. They are: vacation leave, sick leave, workers' compensation leave, military leave, holidays, miscellaneous leave, voluntary shared leave, family and medical leave, community service leave, and leave without pay.

*History Note: Authority G.S. 126-4; 126-8;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; January 1, 1983.*

**25 NCAC 01E .0207 LEAVE CHARGES**

Vacation leave shall be charged in units of time determined by the agency to be appropriate and consistent with the responsibility of managing absences in keeping with operational needs. Time lost for late reporting may be charged to the appropriate leave account in accordance with 25 NCAC 01C .0504.

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; July 1, 1995; January 1, 1983.*

**25 NCAC 01E .0208 LEAVE TRANSFERABLE**

(a) Unused leave shall be transferred when an employee transfers between state agencies.  
(b) Unused leave may be transferred to or from a public school, community college, technical institute, or a local Mental Health, Public Health, Social Services or Emergency Management Agency, if the agency is willing to accept the leave; otherwise, it shall be handled in accordance with 25 NCAC 01C .1009.

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; December 1, 1988;  
April 1, 1984; December 1, 1983; January 1, 1983.*

**25 NCAC 01E .0211 LEAVE RECORDS**

(a) Each agency shall maintain leave records for each employee and balance them at least once by the end of each calendar year.  
(b) Agencies shall retain leave records for all separated employees for a period of at least five years from the date of separation.

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; January 1, 1983; March 1, 1980.*

**25 NCAC 01E .0212 SPECIAL LEAVE**

An employee may be granted up to twenty-four hours of leave as part of an award given under the department or university program which supports the State Employee's Award for Excellence program (reference 25 NCAC 01C .0212).

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; December 1, 1988;  
January 1, 1983; March 1, 1978.*

**25 NCAC 01E .0315 LEAVE RECORDS**

(a) Each agency shall maintain annual records for sick leave for each employee and balance them at least once each year.  
(b) Agencies shall retain sick leave records for all separated employees for a period of at least five years from the date of separation.

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004; July 1, 1995; January 1, 1983.*

**25 NCAC 01E .0707 USE OF LEAVE**

(a) When an employee is injured, the employee shall go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

- (1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.
- (2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

(b) Under Subparagraphs (a)(1) and (a)(2) of this Rule, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial sick or vacation leave, earned prior to the injury, in accordance with a schedule that is based on a formula designed to ensure that the monetary amount of leave an employee may supplement, combined with the workers' compensation benefit, is as close as possible to the employee's net pay after State and Federal taxes. This schedule is published by the Office of State Personnel each year.

*History Note: Authority G.S. 97-28; 126-4;  
Eff. November 1, 1987;  
Amended Eff. October 1, 2004; April 1, 2001; August 1, 1998;  
December 1, 1993; September 1, 1989; December 1, 1988.*

**25 NCAC 01E .0709 RETURN TO WORK**

When an employee, who has been injured on the job and placed on workers' compensation leave, has been released to return to work by the treating physician, the agency shall:

- (1) return the employee to the same position or of like seniority, status and pay held prior to the injury; or
- (2) attempt to place the employee in a position best suited to the employee's post-injury capacity.

*History Note: Authority G.S. 126-4;  
Eff. November 1, 1987;  
Amended Eff. October 1, 2004; August 1, 1998;  
December 1, 1993; September 1, 1989; December 1, 1988.*

**25 NCAC 01E .0902 RELIGIOUS OBSERVANCES**

(a) An agency shall make efforts to accommodate an employee's request to be away from work for religious holiday observances; however, nothing shall obligate the agency to make accommodation if, in accommodating the request, it would result in hardship on the agency or its employees.

(b) If the religious holidays cannot be accommodated by this Rule, the vacation rules in 25 NCAC 1E .0200 shall be used. If an employee has accrued vacation leave, no request for vacation leave shall be denied unless it would create an emergency condition which cannot be prevented in any other manner.

*History Note:* Authority G.S. 126-4;  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 2004; April 1, 1995;*  
*December 1, 1988; February 1, 1983; April 1, 1982.*

**25 NCAC 01E .0909 FOUR-DAY WORKWEEKS**

Where a workday greater than eight hours has been established all hours above eight shall be charged to vacation leave to equalize holiday benefits.

*History Note:* Authority G.S. 126-4;  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 2004; February 1, 1983.*

**25 NCAC 01E .1101 POLICY**

Leave without pay may be granted to a full-time or part-time permanent, trainee or probationary employee for illness, educational purposes, vacation, or for any other reasons deemed justified by the agency head.

*History Note:* Authority G.S. 126-4;  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 2004; November 1, 1990; June 1, 1983; June 1, 1982; January 1, 1979.*

**25 NCAC 01E .1102 MAXIMUM AMOUNT**

Leave without pay shall not exceed 12 months unless a longer time is specifically provided under the rules in this Section. Any extension of leave without pay longer than 12 months shall be the responsibility of the agency head contingent upon providing written documentation in the file with justification. Leave Without Pay for military purposes is covered under Military Leave, Section .0800 of this Subchapter. Leave without pay for employees receiving Worker's Compensation Benefits is described in Section .0700 of this Subchapter. Leave without pay for employees eligible for family and medical Leave is covered under Family and Medical Leave, Section .1400 of this Subchapter. Parental leave without pay for employees not eligible for family and medical leave is covered in 25 NCAC 01E .1110.

*History Note:* Authority G.S. 126-4;  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 2004; December 1, 1993;*  
*December 1, 1988; June 1, 1982.*

**25 NCAC 01E .1111 EXTENDED LEAVE WITHOUT PAY**

Extended leave without pay is defined as leave in excess of one-half the workdays in the pay period. Extended leave without pay shall be administered in accordance with the provisions outlined in 25 NCAC 01E .1102 through .1110.

*History Note:* Authority G. S. 126-4;  
*Eff. November 1, 1990;*  
*Amended Eff. October 1, 2004.*

**25 NCAC 01E .1112 SHORT LEAVE WITHOUT PAY**

(a) Short leave without pay is defined as leave for less than one-half the workdays pay period. This is used to account for time that an employee is absent and has no accumulated or advanced leave credits. The employee shall have approval from the supervisor. The employee shall earn all benefits for which eligible.

(b) Employees who are absent without approved leave may be subject to disciplinary action from their supervisor. Agency management shall determine whether leave without pay is appropriate or whether the time may be charged to the appropriate leave account.

*History Note:* Authority G. S. 126-4;  
*Eff. November 1, 1990;*  
*Amended Eff. October 1, 2004.*

**25 NCAC 01E .1302 POLICY**

(a) In cases of a prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee or from the sick leave or vacation account of an immediate family member as defined in Section .0300, .0317 of this Rule. For purposes of this Rule, prolonged medical condition means medical condition that is likely to require an employee's absence from duty for a period of at least 20 consecutive workdays. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, the agency may make an exception to the 20 day period.

(b) An employee who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program shall be limited to 1,040 hours, (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program shall be limited to use with the supplemental leave schedule as described in 25 NCAC 01E .0707.

(e) The employee shall exhaust all available leave before using donated leave.

(f) Nonqualifying conditions: This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected or anticipated. This includes such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term,

recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

*History Note: Authority G.S. 126-4; Eff. May 1, 1990; Amended Eff. October 1, 2004; July 1, 1995; September 1, 1992.*

**25 NCAC 01E .1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM**

In order to participate in the Voluntary Shared Leave Program, an employee shall meet the following conditions:

- (1) Employee shall be a full-time or part-time (half-time or more) employee with a permanent, probationary, trainee or time-limited appointment. (The limitation and leave balance for permanent part-time employees shall be prorated.)
- (2) A recipient shall apply, or be nominated by a fellow employee to participate in the program.
- (3) The parent department or university shall review the merits of the request and approve or disapprove it.

*History Note: Authority G.S. 126-4; Eff. May 1, 1990; Amended Eff. October 1, 2004; July 1, 1995; September 1, 1992.*

**25 NCAC 01E .1306 LEAVE ACCOUNTING PROCEDURES**

The following conditions shall control the accounting and usage procedures for leave donations in the Voluntary Shared Leave program:

- (1) The agency may establish a specific time period during which leave can be donated.
- (2) All leave donated shall be credited to the recipient's sick leave account.
- (3) At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:
  - (a) The recipient's vacation and sick leave account balance shall not exceed a combined total of 40 hours (prorated for part-time employees).
  - (b) Any additional unused donated leave shall be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fraction(s) of one hour shall not be returned to an individual donor.
- (4) If a recipient separates due to resignation, death, or retirement from state government, participation in the program ends. Donated leave shall be returned to the donor(s) on a pro rata basis.

*History Note: Authority G.S. 126-4; Eff. May 1, 1990; Amended Eff. October 1, 2004; July 1, 1995; December 1, 1993; September 1, 1992.*

**25 NCAC 01E .1401 PURPOSE AND SCOPE**

The State of North Carolina shall follow all provision of the Family and Medical Leave Act of 1993. The rules in this Section stipulate the additional provisions applicable to employees subject to G.S. 126.

*History Note: Authority G.S. 126-4(5); P.L. 103-3; Eff. August 2, 1993; Amended Eff. October 1, 2004.*

**25 NCAC 01E .1402 ELIGIBLE EMPLOYEES**

(a) Permanent, Probationary, Trainee, and Time-Limited - An employee who has been employed with State government for at least 12 months and who has been in pay status at least 1040 hours (half-time) during the previous 12 month period shall be entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the reasons listed in the Family and Medical Leave Act.

(b) Additional leave without pay shall be provided for employees to care for the employee's child, spouse or parent who has a serious health condition. See 25 NCAC 01E .1412 Family Illness Leave.

(c) Leave without pay for other reasons not covered under this Section shall be administered under 25 NCAC 01E .1100 Other Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.

(d) Temporary Employees - A temporary employee shall be covered if the employee has worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to intermittent appointments.

*History Note: Authority G.S. 126-4(5); P.L. 103-3; Eff. August 2, 1993; Amended Eff. October 1, 1995; December 1, 1993; Temporary Amendment Eff. November 1, 2002; Temporary Amendment Expired August 29, 2003; Amended Eff. October 1, 2004; December 1, 2003.*

**25 NCAC 01E .1406 AGENCY RESPONSIBILITY**

Designation of Leave as Family and Medical Leave. The agency shall:

- (1) determine that leave requested is for a family and medical leave qualifying reason, and
- (2) designate leave, whether paid or unpaid, as family and medical leave even when an employee would rather not use any of the employee's family and medical leave entitlement.

When an employee is on paid leave but has not given notice of the need for family and medical leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish whether the leave is for a

family and medical leave qualifying reason. This does not preclude the agency from requesting the information sooner, or at any time an extension is requested.

*History Note: Authority G.S. 126-4(5); P.L. 103-3; Eff. August 2, 1993; Amended Eff. October 1, 2004; October 1, 1995; December 1, 1993.*

**25 NCAC 01E .1407 EMPLOYEE RESPONSIBILITY**

- (a) The employee shall give notice to the supervisor for leave requested.
- (b) If the employee is not going to return to work, the agency shall be notified in writing by the employee or someone acting on behalf of the employee. The agency shall consider failure to report at the expiration of the leave as a resignation unless an extension has been requested.

*History Note: Authority G.S. 126-4(5); P.L. 103-3; Eff. August 2, 1993; Amended Eff. October 1, 2004; October 1, 1995.*

**25 NCAC 01L .0401 SPECIAL PROVISIONS RELATIVE TO PERSONS WITH A DISABILITY**

- (a) The definitions in G.S. 168A-3 apply to this Rule.
- (b) Equal employment opportunity for persons with a disability includes the making of a reasonable accommodation to the known physical limitations of a qualified applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:
  - (1) making facilities used by employees accessible to and usable by such person;
  - (2) job restructuring (reassigning non-essential duties or using part-time or modified work schedules);
  - (3) acquisition or modification of equipment or devices;
  - (4) provision of readers or interpreters; or other similar actions.

Agencies shall make such adjustments for the known limitations of otherwise qualified applicants and employees with a disability unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

- (c) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:
  - (1) the nature and cost of the accommodation needed;
  - (2) the type of the agency's operation, including the composition and structure of its work force; and
  - (3) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.
- (d) Bona Fide Occupational Qualifications:
  - (1) Age, sex or physical requirements may be considered if they constitute a bona fide

occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification shall depend on the facts in each case. This exemption shall be construed very narrowly and the agency shall have the burden of proving the exemption is justified.

- (2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards for employment may be a reasonable employment factor, provided that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age or sex.
- (3) A differentiation may be based on a physical examination in job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.
- (4) To establish age, sex or physical requirements as a bona fide occupational qualification, it shall be necessary to submit a recommendation to the Office of State Personnel setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.
- (e) Special Provisions Relative to Communicable and Infectious Diseases:
  - (1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are persons with a disability if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with a disability are applicable to persons with communicable and infectious diseases, including the requirements for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.
  - (2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with

private physicians and public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons. There is no evidence that employing a person

with AIDS would present a health hazard to other persons in the usual workplace.

*History Note: Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261; Eff. October 1, 2004.*



## 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 <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*

### RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ABC COMMISSION</u></b>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
<b><u>VICTIMS COMPENSATION</u></b>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
<b><u>DEPARTMENT OF AGRICULTURE</u></b>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<b><u>DEPARTMENT OF ADMINISTRATION</u></b>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04	
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04	
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04	
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Medical Assistance	03 DHR 1113	Gray	10/15/04	

**CONTESTED CASE DECISIONS**

Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncoah.com/decisions](http://www.ncoah.com/decisions).

**DEPARTMENT OF JUSTICE**

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04

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Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriff's Education & Training Standards Commission	04 DOJ 0318	Mann	06/24/04
Guy Wesly Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Creo Melvin Meiver, II v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0567	Gray	10/15/04
Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0658	Gray	09/20/04
Robert Dustin Bryan v. Private Protective Services Board	04 DOJ 0708	Gray	09/16/04
Joshua Adam Greene v. Sheriff's Education & Training Standards Comm	04 DOJ 0730	Mann	10/08/04
George Eugene White v. Sheriff's Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04
Jerry Adrian Crawley v. Sheriff's Education & Training Standards Comm	04 DOJ 0828	Gray	09/16/04
Maureen Cleary Williams v. Sheriff's Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriff's Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04
Randall Douglas Hughes v. Criminal Justice Education & Training Standards Comm	04 DOJ 1078	Elkins	09/30/04
Kenneth R. Moore v. Dept of Justice, Company Police Program Comm	04 DOJ 1180	Gray	09/29/04
Gordon Shane Smith v. Criminal Justice Education & Training Standards Comm	04 DOJ 1241	Gray	09/29/04
Jacquelyn M. McClaud v. DOJ, Company Police Program	04 DOJ 1398	Lassiter	10/18/04

**DEPARTMENT OF TRANSPORTATION**

Harrison Holdings, LLC d/b/a Ultimate Imports v. Dept. & Comm. Of Motor Vehicles	04 DOT 0452	Chess	09/13/04
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**DEPARTMENT OF TREASURER**

Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04
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**DEPARTMENT OF PUBLIC INSTRUCTION**

Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR	153
Emily H. Thompson v. Dept. of Public Instruction	03 EDC 1958	Chess	09/15/04		

**ENVIRONMENT AND NATURAL RESOURCES**

Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04
Friends of the Green Swamp, et al, v. DENR, Div. of Water Quality and Riegel Ridge, LLC, and Waste Management of Carolinas, Inc	03 EHR 0058	Conner	08/26/04
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04
Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an unincorporated association), Alberta Anderson, Cameron Anderson, Jean Black, Richard Black, Walter S. Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith, Jr., and Vassilia Smith v. Div of Water Quality of DENR And Piedmont Triad Airport Authority	03 EHR 1664	Gray	09/08/04
Herbert B. Simmons, Sr., v. DENR	03 EHR 1773	Gray	10/21/04
Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04

James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 <sup>1</sup>	Wade	08/13/04
R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond	04 EHR 0150 <sup>1</sup>	Wade	08/13/04
Joseph Glenn Henson v. DENR, Div. of Air Quality	04 EHR 0566	Conner	10/04/04
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04
Brookside Montessori School, Inc v. DENR, Div. of Environmental Health	04 EHR 1219	Gray	08/27/04

**DEPARTMENT OF INSURANCE**

Speros J. Fleggas vs. DOI	04 INS 0251	Elikins	06/10/04
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**MISCELLENOUS**

Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services	04 MIS 0146	Gray	06/18/04
O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6,7,8,9,10	04 MIS 0682	Elkins	06/22/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04
Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04

**CONTESTED CASE DECISIONS**

**OFFICE OF STATE PERSONNEL**

Kathy M Sledge v. DOC	02 OSP 2117	Conner	08/03/04	
Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04	
Phillip Harris v. Dept. of Juvenile Justice & Delinquency Prevention	03 OSP 0836	Gray	09/17/04	
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04	
James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04	
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04	
Terry H. Mitchell v. Elizabeth City State University	04 OSP 0015	Conner	07/23/04	
Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04	
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04	
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04	
Donnie Gordon v. Southern Correctional Institution	04 OSP 0280	Wade	10/11/04	
Lillian Marie Adcock v. UNCG	04 OSP 0380	Lassiter	09/23/04	
Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04	
Jeff Nichols v. DOC	04 OSP 0419	Conner	06/29/04	
Adriel Williams v. UNC Chapel Hill	04 OSP 0435	Chess	09/20/04	
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04	
John V. Smith v. NCSU	04 OSP 0505	Chess	06/17/04	
David Earl Beasley v. NCSU	04 OSP 0513	Gray	08/27/04	
Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04	
Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown	04 OSP 0582	Wade	06/24/04	
Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04	
Jesse D. Goodman v. NC A&T University	04 OSP 0719	Lassiter	09/23/04	
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04	
Gwendolyn Robertson Horton v. DHHS	04 OSP 0792	Morrison	07/26/04	
Melvin B. Jones v. Elizabeth City State University	04 OSP 0841	Wade	10/14/04	
Lekisha Branch Thorpe v. The Whitaker School		04 OSP 0923	Morrison	09/09/04
Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab	04 OSP 0930	Lassiter	08/06/04	
Veronica J. Johnson v. SOS	04 OSP 0961	Morrison	07/23/04	
Gregory Tabron v. John Umstead Hospital	04 OSP 1014	Lassiter	07/26/04	
James Clint Dixon Sr. v. Butner Public Safety, Crime Control & Public Safety	04 OSP 1104	Lassiter	10/08/04	
Emily Deveaugh v. Pender Correctional Institution	04 OSP 1149	Elkins	10/20/04	
Sharon Carr v. DHHS, Div of Social Services, Human Resources Gwen Sanders	04 OSP 1270	Mann	09/24/04	

**UNC HOSPITALS**

Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04	
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04	
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
Garris Faison v. UNC Hospitals	04 UNC 0396	Conner	10/08/04	
Vanessa Bailey v. UNC Hospitals	04 UNC 0440	Conner	08/09/04	
Dennis McCuller v. UNC Hospitals	04 UNC 0458	Chess	08/02/04	
Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04	
Cattrual Heggins v. UNC Hospitals	04 UNC 0496	Chess	08/09/04	
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04	
Sandra Lee Petty v. UNC Hospitals	04 UNC 0522	Chess	07/23/04	
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04	
Sherry Smith v. UNC Hospitals	04 UNC 0585	Wade	10/01/04	
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04	
Carl Graves, Jr. v. UNC Hospitals	04 UNC 0613	Wade	09/21/04	
Betty Tripp v. UNC Hospitals	04 UNC 0660	Wade	10/01/04	
Ellen Lamoureux v. UNC Hospitals	04 UNC 0677	Wade	10/01/04	
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04	
Pamela L. Chevalier v. UNC Hospitals	04 UNC 0773	Morrison	07/26/04	

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1 Combined Cases