

REGISTER



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

| 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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| | | 40 Opticians | |
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| | | 46 Pharmacy | |
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| | | 50 Plumbing, Heating & Fire Sprinkler Contractors | |
| | | 52 Podiatry Examiners | |
| | | 53 Professional Counselors | |
| | | 54 Psychology | |
| | | 56 Professional Engineers & Land Surveyors | |
| | | 57 Real Estate Appraisal | |
| | | 58 Real Estate Commission | |
| | | 60 Refrigeration Examiners | |
| | | 61 Respiratory Care | |
| | | 62 Sanitarian Examiners | |
| | | 63 Social Work Certification | |
| | | 64 Speech & Language Pathologists & Audiologists | |
| | | 65 Therapeutic Recreation Certification | |
| | | 66 Veterinary Medical | |
| | | 68 Substance Abuse Professionals | |
| | | 69 Soil Scientists | |

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 2005 – December 2005

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

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.

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

Kim's Greensboro Real Estate, LLC

Pursuant to N.C.G.S. § 130A-310.34, Kim's Greensboro Real Estate, 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 Greensboro, Guilford County, North Carolina. The Property consists of 19.69 acres and is located at 4925 West Market Street. Environmental contamination exists on the Property in soil and groundwater. Kim's Greensboro Real Estate, LLC has committed itself to make no use of the Property other than commercial ones consisting of retail establishments, restaurants and other service businesses, recreational and festival space, office condominiums and warehousing. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR Kim's Greensboro Real Estate, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Second Floor Reference Desk of the Greensboro Public Library, 219 North Church Street, Greensboro, North Carolina 27401 by contacting Mr. Frank Barefoot at that address, at (336) 373-2715 or at frank.barefoot@greensboro-nc.gov; or at 401 Oberlin Rd., Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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

The effective date of this Notice is May 2, 2005.

Editor's Note: Approved Rules Pending the General Assembly

Rules approved by the Rules Review Commission pending this session of the General Assembly pursuant to G.S. 150B-21.3 have completed 30 legislative days. The rules have been entered into the NC Administrative Code with the exceptions listed below.

Pursuant to G.S. 150B-21.3, if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. A rule that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

Legislation has been introduced to disapprove the following rules. These rules may be viewed on the OAH website:
http://ncrules.state.nc.us/2005rulespendin_/default.htm

BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0102, .0203-.0206, .0301-0303, .0404, .0501-.0515, .0604, .0701-.0702, .0901-.0905
House Bill 567

DEPARTMENT OF LABOR

13 NCAC 07F .0605
House Bill 806

BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGIST AND AUDIOLOGIST

21 NCAC 64 .0212
Senate Bill 680

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 & HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to amend the rules cited as 10A NCAC 05I .0101, .0201-.0205.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: May 23, 2005

Time: 2:00 p.m.

Location: Taylor Hall, Room 229, Dorothea Dix Campus, 693 Palmer Drive, Raleigh, NC

Reason for Proposed Action: DHHS Secretary, Carmon Hooker-Odem authorized the merger of the Adult Services Section of the Division of social Services with the Division of Aging in September, 2003. In addition, the federal Older Americans Act was reauthorized in 2000 which modified the requirements related to cost sharing by states. The Division of Aging and Adult Services have combined the two current policies on cost sharing into one policy. Therefore, both rules are being updated, modified and written to consistently meet federal guidelines and change the name to "consumer contributions" to more accurately reflect the intent of this new policy. The Social Services Block Grant, the Home & Community Care Block Grant, and other fund sources administered by both divisions target families, families with children and older adults. It is more logical to have one policy on consumer contributions for use by all providers of these services. Modification of these rules is necessary to consistently guide the administration of consumer contributions with these programs in North Carolina.

Procedure by which a person can object to the agency on a proposed rule: Contact Mark Hensley, Lead Monitor with the Division of Aging and Adult Services at 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919) 733-8390 or email mark.hensley@ncmail.net.

Written comments may be submitted to: Mark Hensley, Lead Monitor, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919) 733-8390, fax (919) 733-0443 or email mark.hensley@ncmail.net

Comment period ends: July 1, 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 05 – AGING: GENERAL PROVISIONS

SUBCHAPTER 05I - CONSUMER CONTRIBUTIONS

SECTION .0100 - PURPOSE AND DEFINITIONS

10A NCAC 05I .0101 PURPOSE AND DEFINITION

(a) As used in this Subchapter, the following ~~definition~~ ~~definitions of Service Cost Sharing~~ shall apply:

- (1) Consumer Contributions – A monetary amount voluntarily given to the service provider by the service recipient or their designated representative toward the cost of the service received.
- (2) Recommended Contribution Schedule – a listing of income ranges and corresponding recommended contribution percentages for use with clients at or above the federal poverty level.

(b) The purpose of Service Cost Sharing—consumer contributions is to extend the availability of services which are subject to consumer contribution administered by the Division of Aging and Adult Service by providing the opportunity for each service recipient to voluntarily contribute toward the cost of the service(s) received, solicits from all service recipients a portion of the cost for services rendered based upon their ability to pay in order to extend the availability of in-home and community

~~based services administered by the Division of Aging. Revenue collected from clients will be retained by the service provider.~~

~~Authority G.S. 143B-181.1(a)(10); 143B-181.1(c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.~~

SECTION .0200 – REQUIREMENTS

10A NCAC 05I .0201 SERVICES SUBJECT TO CONSUMER CONTRIBUTIONS

~~(a) Services/Consumer contributions may be accepted for all services administered by the Division of Aging and Adult Services. Service Cost Sharing are Adult Day Care, Adult Day Health Care, Congregate Nutrition, Home Delivered Meals, Home Health, Housing and Home Improvement, In Home Aide, Institutional Respite, and Transportation as provided under this Subchapter.~~

~~(b) The use of a Recommended Contribution Schedule is prohibited for individuals receiving:~~

- ~~(1) Information and Assistance, Outreach, Benefits Counseling, Case Management Services;~~
- ~~(2) Congregate Nutrition and Home Delivered Meals, Senior Companion;~~
- ~~(3) Ombudsman, Elder Abuse Prevention, Legal Assistance or other consumer protection services or~~
- ~~(4) Any services delivered through tribal organizations.~~

~~(c) When any services administered by the Division of Aging and Adult Services are provided to adults or children as part of a Protective Services Plan, these individuals will be excluded from consumer contributions, up to a maximum of 12 months. Consumer contributions shall not apply to children in foster care, children who have been approved to receive adoption assistance, persons receiving Work First assistance, or federally administered Supplemental Security Income (SSI) applicants or recipients.~~

~~Authority G.S. 143B-181.1(a)(10); 143B-181.1(c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.~~

10A NCAC 05I .0202 INITIAL AND ANNUAL REVIEWS

~~(a) Upon initiation of the provision of the service(s) subject to consumer contributions and at least annually thereafter, the following information shall be reviewed with each client who has been determined eligible to receive services subject to consumer contributions: Agencies providing Adult Day Care, Adult Day Health Care, Home Delivered Meals, Home Health, Housing and Home Improvement, In Home Aide, and Institutional Respite services shall develop a Service Cost Sharing Form which includes the following:~~

- ~~(1) a service cost sharing schedule which includes income ranges and corresponding cost sharing percentages;~~
- ~~(2) space to indicate the service recipient's income range;~~
- ~~(3) space to list services to be received;~~

- ~~(4) space to indicate the cost of service to which the cost sharing percentage is being applied;~~
- ~~(5) space to indicate the individual's calculated or negotiated cost sharing amount per unit or hour for each service, if applicable;~~
- ~~(6) a statement indicating that services will not be terminated for failure to pay the agreed upon cost sharing amount;~~
- ~~(7) information regarding whom the service recipient should contact if he or she has questions regarding Service Cost Sharing procedures; and~~
- ~~(8) space for signatures by the service recipient or designated representative and the agency representative indicating that the form has been reviewed with the service recipient and the date.~~
- ~~(1) that the contribution is entirely voluntary and that there is no obligation to contribute;~~
- ~~(2) that all contributions collected shall be used to expand the service(s);~~
- ~~(3) that information about the client's participation in consumer contributions shall be confidential;~~
- ~~(4) who should be contacted, including the telephone number, if the client has questions regarding consumer contributions;~~
- ~~(5) the total cost of the service (actual or per unit); and~~
- ~~(6) that services shall not be reduced or terminated for failure to contribute.~~

~~(b) A copy of the Recommended Contribution Schedule from the North Carolina Division of Aging and Adult Services shall be provided to clients above the federal poverty level. The Recommended Contribution Schedule shall not be provided to clients at or below the poverty level. Agencies providing Congregate Nutrition and Transportation services shall display a poster or distribute a brochure or flyer to service recipients, or both which includes:~~

- ~~(1) the purpose of Service Cost Sharing;~~
- ~~(2) the agency's Service Cost Sharing schedule;~~
- ~~(3) the total cost of the service per unit; and~~
- ~~(4) a statement indicating that services will not be denied for failure or inability to make a cost sharing contribution.~~

~~(c) Documentation shall be maintained in the client's file that the above information has been shared with the client or the designated representative.~~

~~Authority G.S. 143B-181.1(a)(10); 143B-181.1(c).~~

10A NCAC 05I .0203 COLLECTION OF CONSUMER CONTRIBUTION REVENUE

~~Agencies/Service providers shall develop/have written policies and procedures to collect, account for, and safeguard all contributions regarding the collection of Service Cost Sharing revenues.~~

~~Authority G.S. 143B-181.1(a)(10); 143B-181.1(c);~~

42 U.S.C. 3001; 45 C.F.R. 1321.67.

10A NCAC 05I .0204 TERMINATION

Service recipients ~~Service(s) to the client~~ shall not be terminated or reduced from services for failure to pay ~~contribute to the agreed upon Service Cost Sharing amount.~~ cost of the service(s) rendered.

Authority G.S. 143B-181.1(a)(10); 143B-181.1(c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

10A NCAC 05I .0205 DEDUCTING CONSUMER CONTRIBUTION REVENUES FROM MONTHLY SERVICE REIMBURSEMENT

The North Carolina Division of Aging and Adult Services will shall deduct the amount of ~~Service Cost Sharing Consumer Contribution~~ revenues reported ~~collected~~ from the amount of monthly reimbursement due to each service provider for each service subject to ~~Service Cost Sharing consumer contributions~~ as specified in Rule .0201 of this Section.

Authority G.S. 143B-181.1(a)(10); 143B-181.1(c); 42 U.S.C. 3001; 45 C.F.R. 92.25.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to amend the rule cited as 10A NCAC 27G .0810.

Proposed Effective Date: October 1, 2005

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by May 17, 2005.

Reason for Proposed Action: The proposed amendment is necessary to provide accurate information concerning resolution of differences of opinion between an area authority/county program and a state operated hospital regarding admission, treatment or discharge issues.

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

Written comments may be submitted to: Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919)715-2780, fax (919)733-1221, email cindy.kornegay@ncmail.net.

Comment period ends: July 1, 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 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

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

SECTION .0800 - WAIVERS AND APPEALS

10A NCAC 27G .0810 PANEL APPEALS PROCEDURES

(a) Appeals of the decision of local area ~~authorities~~ authorities/county programs shall be forwarded, along with all supplementary documentation considered during the local ~~area~~ appeals process, to the Division Director within 15 days of the local decision being rendered.

(b) As set forth in 10A NCAC 28F .0212, differences of opinion between area authorities/county programs and state operated hospitals regarding admission, treatment or discharge issues that are not resolved by the Directors of both parties shall be resolved by following the procedures specified in Paragraphs (b)-(g) of this Rule and the procedures specified in Rules .0811-.0812 of this Section.

(~~b~~)(c) The Division Director shall forward all information to the Chairman of the Panel within five working days.

(~~e~~)(d) The Panel shall complete an administrative review and notify the involved parties ~~appealing party and the area program~~ of its decision, in writing, within 15 days of receipt of the appeal. Unless further appealed within 15 days of the date of this decision, this decision shall be considered final.

(~~d~~)(e) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final by submitting a written request to the Chairman of the Panel within 15 days of the date of the administrative review decision.

(~~e~~)(f) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chairman.

(f)(g) The hearing shall be scheduled at a time and place designated by the Chairman.
(e)(h) The ~~involved parties appealing party and the area program~~ shall be notified of the time and place of the hearing no less than 15 days prior to the hearing.

Authority G.S 122C-112.1; 122C-151.2; 122C-151.4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to amend the rule cited as 10A NCAC 28F .0212.

Proposed Effective Date: October 1, 2005

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by May 17, 2005.

Reason for Proposed Action: The proposed amendment is necessary to provide accurate information concerning resolution of differences of opinion between an area authority/county program and a state operated hospital regarding admission, treatment or discharge issues.

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

Written comments may be submitted to: Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919)715-2780, fax (919)733-1221, email cindy.kornegay@ncmail.net.

Comment period ends: July 1, 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 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

SUBCHAPTER 28F – ADMISSION AND DISCHARGE

SECTION .0200 – VOLUNTARY ADMISSIONS, INVOLUNTARY COMMITMENTS AND DISCHARGES OF ADULTS FROM REGIONAL PSYCHIATRIC HOSPITALS

10A NCAC 28F .0212 RESOLUTION OF DIFFERENCES OF OPINION

Note: ~~Until the effective date of the repeal of Rule .0129 of this Section, this Rule shall supersede.~~

(a) Differences of opinion between area authority/county program staff and hospital staff regarding admission, treatment or discharge issues shall be resolved through negotiation involving hospital and area authority/county program staff, clients, legally responsible persons, and with client consent, family members.

(b) If resolution of issues regarding authorization, admission or discharge is not reached by the Directors of the two organizations, the dispute shall be resolved following the procedures as set forth in 10A NCAC 26A .0200; 10A NCAC 27G .0810-.0812 contained in G.S. 122C 151 4(b) Appeals Panel, 10A NCAC 27G .0708, .0710, .0711 and .0712, rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities and Services, and rules contained in 10A NCAC 26A .0200 Contested Cases, and continuing to the final level of appeal, if necessary, with procedures in G.S. 150B, Article 3 Administrative Hearings.

(c) During the resolution of differences of opinion between area authority/county program and hospital staff, the client shall be provided with the more conservative and secure treatment option.

Authority G.S. 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 10A NCAC 39A .1002, .1005-1006.

Proposed Effective Date: October 1, 2005

Public Hearing:
Date: June 2, 2005
Time: 2:30 p.m.
Location: Room G1A, 1330 St. Mary's Street, Raleigh, NC

Reason for Proposed Action: The purpose of this action is to clarify the medications available and change the way in which medications are provided to eligible clients and the way in which the State ADAP Program pays for these medications. The

net effect of these changes is anticipated to be reduced cost per client, enabling the Program to provide essential life-sustaining medications to additional low-income, HIV + North Carolinians using the financial resources available.

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 this rule.*

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: *July 2, 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 39 - ADULT HEALTH

SUBCHAPTER 39A - CHRONIC DISEASE

SECTION .1000 - HIV MEDICATIONS PROGRAM

10A NCAC 39A .1002 COVERED MEDICATIONS

(a) ~~Reimbursement shall be provided directly to pharmacies for Medications covered by the Program shall be specified on a formulary established by the Program based upon the following factors: the medical needs of persons living with HIV disease, the cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients using finite Program dollars. The covered medications include: antiretroviral medications, medications used to treat HIV infection in accordance with FDA approved indications included in the official product labeling; labeling and for sulfamethoxazole/trimethoprim, dapsone, fluconazole, azithromycin, clarithromycin, rifabutin, clindamycin, pyrimethamine, sulfadiazine, itraconazole, ketoconazole,~~

~~mefenon, pentamidine, nystatin, paromomycin, acyclovir, oral ganciclovir and other FDA approved medications as approved by the program, used for the prevention and treatment of the side effects of and opportunistic infections related to a diagnosis of HIV disease, and to treat the side effects and toxicities of the some of the other covered medications.~~

(b) Other medications shall be approved by the program based on:

- (1) the expert input and recommendations received from a panel of physicians in North Carolina working directly with the HIV infected community, including physicians at the tertiary care centers, in community practice, in research, and represented on the AIDS Care Advisory Committee; and
- (2) an evaluation of the availability of adequate financial resources.

(c) A list of medications on the HIV Medications Program formulary shall be made available upon request by the Purchase of Medical Care Services or the Division of Public Health, Health – AIDS Drug Assistance Program, 1902 Mail Service Center, Raleigh, NC 27699-1902. Additionally, as medications are added to the program, announcements will be made through the monthly newsletter distributed by the Purchase of Medical Care Services to participating pharmacies and through announcements mailed to HIV care consortia, tertiary care centers and other agencies serving HIV infected individuals by the Division of Public Health.

Authority G.S. 130A-5(3).

10A NCAC 39A .1005 APPLICATION PROCESS

(a) Applications for assistance must be submitted and will be processed in accordance with 15A NCAC 45A. All necessary forms may be obtained from the Purchase of Medical Care Services, Office of the Controller, Department of Health and Human Services, 1904 Mail Service Center, Raleigh, N.C. 27699-1904.

(b) Applications must be renewed at least annually for the fiscal year beginning July 1, and ending June 30. ~~Only one pharmacy of the patient's choice shall be authorized to receive reimbursement at any given time. Changes of patient-selected pharmacy during the course of the fiscal year require that Purchase of Medical Care Services which is located in the Office of the Controller be notified in writing at 1904 Mail Service Center, Raleigh, NC 27699-1904.~~

Authority G.S. 130A-5(3).

10A NCAC 39A .1006 PROGRAM OPERATIONS

Medications provided to eligible clients through this Program shall be dispensed and provided by a pharmacy (or pharmacies) under contract with the Program.

Authority G.S. 130A-5(3).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 10A NCAC 41A .0401.

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

Proposed Effective Date: October 1, 2005

Public Hearing:

Date: June 2, 2005

Time: 2:00 p.m.

Location: Room G1A, 1330 St. Mary's Street, Raleigh, NC

Reason for Proposed Action: In the May 19, 2000 Advisory Committee on Immunization Practices (ACIP) recommendations, the Committee determined that, "Children who have initiated the poliovirus vaccination series with one or more doses of OPV should receive IPV to complete the series. If the vaccines are administered according to their licensed indications for minimum ages and intervals between doses, four doses of OPV or IPV in any combination by age 4-6 years is considered a complete series, regardless of age at the time of third dose, "[MMWR 2000/49 (RR05); 1-22]. Previously the requirement was that the fourth or booster dose be given on or after the fourth birthday and before enrolling in school (K-1) for the first time. The purpose of this resolution is to ensure we are consistent with the national standards of the ACIP for the use of Poliomyelitis vaccine.

Procedure by which a person can object to the agency on a proposed rule: The 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 this rule.

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

Comment period ends: July 2, 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

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0400 - IMMUNIZATION

10A NCAC 41A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
 - (A) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen;
 - (B) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;
 - (C) Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid of which one must have been within the last 10 years;
 - (D) The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type ~~on or after the fourth birthday and~~ before enrolling in school (K-1) for the first time. However:
 - (A) An individual attending school who has attained his or her 18th birthday

- shall not be required to receive polio vaccine;
- (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
- (C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 28 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:
- (A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
- (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;
- (C) An individual born prior to 1957 shall not be required to receive measles vaccine;
- (D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
- (B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine except in outbreak situations;
- (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:
- (A) An individual born prior to 1957 shall not be required to receive mumps vaccine;
- (B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994.
- (C) An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.
- (6) *Haemophilus influenzae, b*, conjugate vaccine--three doses of HbOC or PRP-T or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. However:
- (A) Individuals born before October 1, 1988 shall not be required to be vaccinated against *Haemophilus influenzae, b*;
- (B) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC, PRP-T or PRP-OMP;
- (C) Individuals who receive the first dose of *Haemophilus influenzae, b*, vaccine on or after 15 months of age shall be required to have only one dose of any of the *Haemophilus influenzae* conjugate vaccines, including PRP-D;
- (D) No individual who has passed their fifth birthday shall be required to be vaccinated against *Haemophilus influenzae, b*.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. However:
- (A) The last dose of the hepatitis B vaccine series shall not be administered prior to 24 weeks of age;
- (B) Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
- (A) An individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be

required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:

- (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
 - (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
- (B) An individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.
- (9) The healthcare provider shall administer immunizations in accordance with this rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose will not be required to be repeated. Doses administered more than 4 days prior to the requirements are considered invalid doses and shall be repeated.

(b) The State Health Director may suspend temporarily any portion of the requirements of these immunization rules due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be required to be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices.

Authority G.S. 130A-152(c); 130A-155.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to repeal the rule cited as 10A NCAC 71U .0208.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: July 6, 2005

Time: 10:00 a.m.

Location: Albemarle Building, Room 832, 325 North Salisbury Street, Raleigh, NC

Reason for Proposed Action: Additional Mandatory Verifications were last amended in 1989 and are out of date. The rule specified verification procedures for certain eligibility elements in the Food Stamp Program. Now, Federal regulations provide instructions for verification. The rule currently provides for verification of household size; Federal Regulations now allow us to accept client statement unless questionable. The rule currently provides for verification of the household's major utility expense; Federal Regulations now state that utilities must be verified. Currently the county departments check Property Tax Listings at initial application and once every twelve months thereafter; real property is no longer a countable resource. Currently the county departments check the Division of Motor Vehicles (DMV) file for licensed vehicles at initial applications and at each subsequent recertification, not to exceed once every six months; the county departments will no longer be required to use DMV as a mandatory source of verification. DMV can be source of verification for those households that are subject to verification.

Procedure by which a person can object to the agency on a proposed rule: Written or verbal comments can be made to: Carlotta Dixon, NC Division of Social Services, 325 North Salisbury Street, MSC 2401, Raleigh, NC 27699-2401, phone (919)733-3055, email carlotta.dixon@ncmail.net.

Written comments may be submitted to: Carlotta Dixon, NC Division of Social Services, 325 North Salisbury Street, MSC 2401, Raleigh, NC 27699-2401, phone (919)733-3055, fax (919)733-9386, email carlotta.dixon@ncmail.net.

Comment period ends: July 6, 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 (\geq \$3,000,000)

None

Comment period ends: July 1, 2005

CHAPTER 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71U – FOOD ASSISTANCE

SECTION .0200 - MANUAL

10A NCAC 71U .0208 ADDITIONAL MANDATORY VERIFICATIONS

~~(a) The county department will verify household size. Verification will be accomplished through a collateral contact or readily available documentary evidence. A collateral contact is defined as a verbal confirmation of a household's circumstances by someone outside the household, such as employees, landlords, neighbors, etc. A collateral contact may be made in person or by telephone.~~

~~(b) The county department will verify that the household actually incurs a major utility expense. Verification is required on a one time basis unless the household has moved or changed its utilities or unless questionable.~~

~~(c) The county department will check Property Tax Listings at initial application and once every twelve months thereafter.~~

~~(d) The county department will check the Division of Motor Vehicles (DMV) file for licensed vehicles at initial application and at each subsequent recertification, not to exceed once every six months.~~

Authority G.S. 108A-51; 143B-153;
7 C.F.R. 273.2(f)(3)(iii), (v), (vi).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 11F .0701.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: May 27, 2005

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, Raleigh, NC

Reason for Proposed Action: Incorporates by reference NAIC Model Law that establishes a new minimum standard valuation table for companies to use in calculating reserves.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to this rule until the expiration of the comment period on July 1, 2005.

Written comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email esprenke@ncdoi.net.

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 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0700 – DETERMINING MINIMUM RESERVE LIABILITIES FOR CREDIT LIFE INSURANCE

11 NCAC 11F .0701 DETERMINING RESERVE LIABILITIES FOR CREDIT LIFE INSURANCE MODEL REGULATION

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Model No. 818, Determining Reserve Liabilities for Credit Life Insurance Model Regulation. Copies of Model No. 818 may be obtained from: The National Association of Insurance Commissioners, 2301 McGee Street, Kansas City, MO 64108-1662; the North Carolina Department of Insurance, Actuarial Services Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page at <http://www.ncdoi.com/>.

(b) For purposes of this Rule, Section 4.C. of Model No. 818 shall read as follows:

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction as defined in G.S. 58-58-10.

(c) For purposes of this Rule, Section 6.A. of Model No. 818 shall read as follows:

11 NCAC 11F .0400 shall not apply to credit life insurance.

(d) For purposes of this Rule, Section 6.B. of Model No. 818 shall read as follows:

The interest rates used in determining the minimum standard for valuation shall be the calendar year

statutory valuation interest rates as defined in G.S. 58-58-50(c)(4).

(e) For purposes of this Rule, Section 6.C. of Model No. 818 shall read as follows:

The method used in determining the minimum standard for valuation shall be the Commissioner's Reserve Valuation Method as defined in G.S. 58-58-50(d).

(f) This Rule applies to credit life insurance policies and certificates issued on or after January 1, 2006. For credit life insurance policies and certificates issued prior to January 1, 2006, the minimum standard mortality tables and interest rates shall be those provided by the statutes and rules in effect as of the issue date of those policies and certificates.

Authority G.S. 58-2-40; 58-58-50(k).

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Community College System intends to amend the rule cited as 23 NCAC 02C .0301.

Proposed Effective Date: *January 1, 2006*

Public Hearing:

Date: *May 26, 2005*

Time: *1:00 p.m.*

Location: *NCCCS, 200 West Jones Street, Raleigh, NC*

Reason for Proposed Action: *To allow local boards trustees to refuse admission to student applicants during periods in which the applicant is suspended or expelled from any other college or university.*

Procedure by which a person can object to the agency on a proposed rule: *Send written objections to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period and must be post-marked by 11:59 p.m. on the last day of the comment period.*

Written comments may be submitted to: *President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001, sullivand@ncccs.cc.nc.us.*

Comment period ends: *July 11, 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 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 - STUDENTS

23 NCAC 02C .0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are high school graduates or who are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

(c) Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other college or university. Any college suspending or expelling a student shall record the suspension or expulsion in the student's educational record. Upon written request and subject to all applicable privacy laws, each college shall inform other colleges and universities to which the student may seek admission of the suspension or expulsion and the term thereof.

Authority G.S. 7A-717 through 7A-726; 115D-1; 115D-5; 115D-20.

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting March 17, 2005, 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.

| APPROVED RULE CITATION | | | | REGISTER CITATION TO THE NOTICE OF TEXT |
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| 10A | NCAC | 06T | .0201 | 19:11 NCR |
| 10A | NCAC | 13B | .3707* | 19:08 NCR |
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| 11 | NCAC | 08 | .1103* | 19:08 NCR |
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| 11 | NCAC | 08 | .1107-.1109* | 19:08 NCR |
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| 21 | NCAC | 06O | .0104* | 19:10 NCR |
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| 25 | NCAC | 01O | .0206* | 19:03 NCR |

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

10A NCAC 13B .3707 MEDICAL ORDERS

(a) No medication or treatment shall be administered or discontinued except in response to the order of a member of the medical staff in accordance with established rules and regulations and as provided in Paragraph (f) below.

(b) Such orders shall be dated and recorded directly in the patient chart or in a computer or data processing system which provides a hard copy printout of the order for the patient chart. A method shall be established to safeguard against fraudulent recordings.

(c) All orders for medication or treatment shall be authenticated according to hospital policies. The order shall be taken by personnel qualified by medical staff rules and shall include the date, time, and name of persons who gave the order, and the full signature of the person taking the order.

(d) The names of drugs shall be recorded in full and not abbreviated except where approved by the medical staff.

(e) The medical staff shall establish a written policy in conjunction with the pharmacy committee or its equivalent for all medications not specifically prescribed as to time or number of doses to be automatically stopped after a reasonable time limit, but no more than 14 days. The prescriber shall be notified according to established policies and procedures at least 24 hours before an order is automatically stopped.

(f) For patients who are under the continuing care of an out-of-state physician but are temporarily located in North Carolina, a hospital may process the out-of-state physician's prescriptions or orders for diagnostic or therapeutic studies which maintain and support the patient's continued program of care, where the authenticity and currency of the prescriptions or orders can be verified by the physician who prescribed or ordered the treatment requested by the patient, and where the hospital verifies that the out-of-state physician is licensed to prescribe or order the treatment.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. January 1, 1996;

Amended Eff. April 1, 2005; August 1, 1998.

10A NCAC 13B .3905 PATIENT MEDICAL RECORDS

(a) Hospital management shall maintain medical records for each patient treated or examined in the facility.

(b) The medical record or medical record system shall provide data for each episode of care and treatment rendered by the facility.

(c) Where the medical record does not combine all episodes of inpatient, outpatient and emergency care, the medical records system shall:

- (1) assemble, upon request of the physician, any or all divergently located components of the medical record when a patient is admitted to the facility or appears for outpatient or clinic services; or
- (2) require placing copies of pertinent portions of each inpatient's medical record, such as the discharge resume, the operative note and the pathology report, in the outpatient or combined outpatient emergency unit record file as directed by the medical staff.

(d) The manager of medical records shall ensure that:

- (1) each patient's medical record is complete, readily accessible and available to the professional staff concerned with the care and treatment of the patient;
- (2) all clinical information pertaining to a patient is incorporated in his medical record;
- (3) all entries in the record are dated and authenticated by the person making the entry;
- (4) symbols and abbreviations are used only when they have been approved by the medical staff and when there exists a legend to explain them;
- (5) verbal orders include the date and signature of the person recording them. They shall be given and authenticated in accordance with the provisions of Rule .3707(c) of this Subchapter; and
- (6) records of patients discharged are completed within 30 days following discharge or disciplinary action is initiated as defined in the medical staff bylaws.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. January 1, 1996; Amended Eff. April 1, 2005.

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 or 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.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004; Amended Eff. July 1, 2005.

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

(a) An adult care home administrator shall be responsible for the total operation of an adult care home and shall also be responsible to the Division of Facility Services and the county department of social services for meeting and maintaining the rules of this Subchapter. The co-administrator, when there is one, shall share 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 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;
- (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
- (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 and directly responsible for assuring that all required duties are carried out in each home.

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

- (1) For absences of a non-routine nature that do not exceed 24 hours per week, a relief-person-in-charge designated by the administrator shall be in charge of the home during the 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.

- (2) For recurring or planned absences, a relief-administrator-in-charge designated by the administrator shall be in charge of the home during the 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 Item (4) pertaining to the continuing education requirement.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984; Temporary Amendment Eff. January 1, 2000; December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

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

(a) 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 Division of Facility Services and the county departments of social services.

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

- (1) At all times there shall be an administrator or administrator-in-charge in the home or within 500 feet of the home with a means of two-way telecommunication.
- (2) When the administrator or 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.
- (3) When the administrator or 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, 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.

(4) 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 the Division of Facility Services and the county department of social services.

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

(6) Between the hours of 9 p.m. and 7 a.m. the staff member on duty and the person on call may perform housekeeping and food service duties as long as a staff member can respond immediately to resident calls or the residents are otherwise supervised. The duties shall not hinder care of residents or immediate response to resident calls, disrupt residents' normal lifestyles and sleeping patterns, nor take a staff member out of view of where the residents are.

(7) There shall be staff available daily to assure housekeeping and food service.

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

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

(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.

(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 administrator-in-charge in the home or within 500 feet of the home with a means of two-way telecommunication.

- (2) When the administrator or 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.
 - (3) When the administrator or administrator-in-charge is on duty within the home, another staff member (i.e. co-administrator, 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.
 - (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.
 - (5) In addition to the staff member(s) on duty to attend to the residents, there shall be staff available daily to perform 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) The home shall have staff on duty to meet the needs of the residents. The daily total of aide duty hours on each 8-hour shift shall at all times 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.
 - (E) The Department shall require additional staff if it determines the needs of residents cannot be met by the staffing requirements of this Rule.
- (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.
 - (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.
 - (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.
 - (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.

(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 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).

History Note: Authority G.S. 131D-2; 131D-4.3; 143B-153; S.L. 99-0334; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. December 1, 1991; September 1, 1990; July 1, 1990; April 1, 1984; Temporary Amendment Eff. January 1, 2000; December 1, 1999; Amended Eff. July 1, 2005; July 1, 2000.

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, including emergency contact. Whenever significant behavioral changes described in Rule .0801(c)(1)(D) of this Subchapter are identified, the facility shall refer the resident to a provider of mental health, developmental disabilities or substance abuse services in accordance with Rule .0801(d) of this Subchapter.

History Note: Authority G.S. 131D-2; 131D-4.3; 131D-4.5;

143B-165; S.L. 99-0334; 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

10A NCAC 13F .0901 PERSONAL CARE AND SUPERVISION

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

History Note: Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2003-0284; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 2004; April 1, 1984.

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 referral and follow-up to meet the routine and acute health care needs of residents.

(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 (c)(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.

- (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 stated indication for use.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160; 2003-0284; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

- (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 staff responsible for medication administration.

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

In addition to the requirements in Rule .1211(a)(1) of this Subchapter, an 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.

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

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334; Eff. January 1, 1977; Amended Eff. April 22, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2005; July 1, 2000.

(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 licensed 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 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1002 MEDICATION ORDERS

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

- (1) if orders for admission or readmission of the resident are 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;

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 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 licensed 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 licensed pharmacist or dispensing practitioner shall alter a prescription label.
- (d) Non-prescription medications shall have the manufacturer's label with the expiration date visible, unless the container has been labeled by a licensed 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 licensed pharmacist or a dispensing practitioner. Non-prescription medications that are not packaged or labeled by a licensed 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1004 MEDICATION ADMINISTRATION

- (a) An 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 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 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 Subparagraph (1) or (2) of this Paragraph; and
- (4) All containers are placed together on a separate tray or other device that is labeled 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 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 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, the borrowed medications shall be replaced promptly and the borrowing and replacement of the medication shall be 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

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

(a) An 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

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 may 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

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 licensed pharmacist, dispensing practitioner, or designee of a licensed pharmacist or dispensing practitioner. 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 licensed pharmacist, dispensing practitioner or designee of the licensed pharmacist or dispensing practitioner. 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.

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

Eff. July 1, 2005.

10A NCAC 13F .1008 CONTROLLED SUBSTANCES

(a) An 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 such an 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 administrator or the administrator's designee shall destroy the controlled substance within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident. The destruction shall be witnessed by a licensed pharmacist, dispensing practitioner, or designee of a licensed pharmacist or dispensing practitioner. 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 licensed pharmacist, dispensing practitioner or designee of the licensed pharmacist or dispensing practitioner.

(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 law, and that all suspected drug diversions are reported to the pharmacy. There shall be documentation of the contact and action taken.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1009 PHARMACEUTICAL CARE

(a) An adult care home shall obtain the services of a licensed pharmacist or a prescribing practitioner for the provision of pharmaceutical care at least quarterly. The Department may require more frequent visits if it documents during monitoring visits or other investigations that there are medication problems in which the safety of residents may be at risk.

Pharmaceutical care involves the identification, prevention and resolution of medication related problems which includes the following:

- (1) an on-site medication review for each resident which includes 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 (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 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 (6) of this Rule in the facility, including action taken by the facility.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1010 PHARMACEUTICAL SERVICES

(a) An adult care home shall allow the residents 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 residents 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1101 MANAGEMENT OF RESIDENTS FUNDS

(a) Residents shall manage their own funds if 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.

History Note: Authority G.S. 35A-1203; 108A-37; 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005.

10A NCAC 13F .1102 REFUND POLICY

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

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005.

10A NCAC 13F .1103 LEGAL REPRESENTATIVE OR PAYEE

- (a) In situations where a resident of an adult care home 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.

History Note: Authority G.S.; 35A-1203; 108A-37; 131D-2; 143B-165; Eff. July 1, 2005.

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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. July 1, 2005.

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 require 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 require 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1202 DISPOSAL OF RESIDENT RECORDS

After a resident has left an 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.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. July 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

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

(a) An 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 referral for emergency medical evaluation, hospitalization, or medical treatment other than first aid.

(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 (e) 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 in accordance with G.S. 108A-102 and the local law enforcement authority as required by law of any mental or physical abuse, neglect or exploitation of a resident.

(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 risk that death or 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.

(g) In the case of physical assault by a resident or whenever there is a risk that death or physical harm will occur due to the actions or behavior of a resident, the facility shall immediately:

- (1) seek the assistance of the local law enforcement authority;
- (2) provide additional supervision of the threatening resident to protect others from harm;
- (3) seek any needed emergency medical treatment;
- (4) make a referral to the Local Management Entity for Mental Health Services or mental health provider for emergency treatment of the threatening resident; and
- (5) cooperate with assessment personnel assigned to the case by the Local Management Entity for Mental Health Services or mental health provider to enable them to provide their earliest possible assessment.

(h) The facility shall immediately report any assault resulting in harm to a resident or other person in the facility to the local law enforcement authority.

History Note: Authority G.S. 131D-2; 143B-165; Eff. July 1, 2005.

10A NCAC 13F .1213 AVAILABILITY OF

CORRECTIVE ACTION AND SURVEY REPORTS

An 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.

History Note: Authority 131D-2; 143B-165; Eff. July 1, 2005.

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 shall be completed and submitted to the Division of Facility Services for consideration.

(c) The applicant shall submit the following forms and reports through the county department of social services to the Division of Facility Services:

- (1) the Initial Licensure Application;
- (2) an approval letter from the local zoning jurisdiction for the proposed location;
- (3) a photograph of each side of the existing structure and at least one of each of the interior spaces if an existing structure;
- (4) 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;
- (5) 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; and
- (6) a construction review fee according to G.S. 131E-267.

(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 shall 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 .

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984; ARRC Objection Lodged November 14, 1990; Amended Eff. May 1, 1991; Temporary Amendment Eff. September 1, 2003; Amended Eff. July 1, 2005; July 1, 2004.

10A NCAC 13G .0206 CAPACITY

(a) Pursuant to G.S. 131D-2(a)(5), family care homes have a capacity of two to six residents.

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

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

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

(e) The licensee or the licensee's designee shall notify the Division of Facility Services 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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; July 1, 1990; April 1, 1984; January 1, 1983.

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

The physical plant requirements for each family care 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 requirements of this Section;
- (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 shall 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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. July 1, 2005.

10A NCAC 13G .0302 DESIGN AND CONSTRUCTION

(a) Any building licensed for the first time as a family care home shall meet the applicable requirements of the North Carolina State Building Code. 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 Division of Facility Services for review and approval prior to commencement of the work.

(f) If the building is two stories in height, it shall meet the following requirements:

- (1) Each floor shall be less than 2500 square feet in 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 any floor above or below grade level;
- (3) Required resident facilities are not to be located on 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 emergency fire department dispatch center, either directly or through a central station monitoring company connection.

(g) The basement and the attic shall not to be used for storage or sleeping.

(h) The ceiling shall be at least seven and one-half feet from the floor.

(i) In homes licensed on or after April 1, 1984, all required resident areas shall be on the same floor level. Steps between levels are not permitted.

(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.

(m) The building shall meet sanitation requirements as determined by the North Carolina Department of Environment and Natural Resources; Division of Environmental Health.

(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.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1984; January 1, 1983; Temporary Amendment Eff. September 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

10A NCAC 13G .0304 LIVING ARRANGEMENT

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

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1984; Recodified from 10A NCAC 13G .0303 Eff. July 1, 2005.

10A NCAC 13G .0306 DINING ROOM

(a) Family care homes licensed on or after April 1, 1984 shall have a dining room or area of at least 120 square feet. The dining room may be used for other activities during the day.

(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas. The work space shall not be used as the dining area.

(c) The dining room shall have operable windows and be lighted to provide 30 foot candles of light at floor level.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; July 1, 1990; April 1, 1984; Recodified from 10A NCAC 13G .0305 Eff. July 1, 2005.

10A NCAC 13G .0307 KITCHEN

(a) The kitchen in a family care home shall be large enough to provide for the preparation and preservation of food and the washing of dishes.

(b) The cooking unit shall be mechanically ventilated to the outside or be an unvented, recirculating fan provided with any special filter per manufacturers' instructions for ventless use.

(c) The kitchen floor shall have a non-slippery water-resistant covering.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Amended Eff. April 22, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. July 1, 2005; April 1, 1984;

Recodified from 10A NCAC 13G .0306 Eff. July 1, 2005.

10A NCAC 13G .0308 BEDROOMS

(a) There 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 a family care home. Residents are not to share bedrooms with staff or other live-in non-residents.

(b) Only rooms authorized by the Division of Facility Services as bedrooms shall be used for bedrooms.

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

(d) There 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 persons.

(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Facility Services for that particular bedroom.

(f) A bedroom shall not be occupied by more than 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 shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height.

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

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. July 1, 2005; July 1, 1990; April 1, 1984;

Recodified from 10A NCAC 13G .0307 Eff. July 1, 2005.

10A NCAC 13G .0311 CORRIDOR

(a) Corridors shall be a minimum clear width of three feet in family care homes.

(b) Corridors shall be lighted with night lights providing 1 foot-candle power at the floor.

(c) Corridors shall be free of all equipment and other obstructions.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. July 1, 2005; April 1, 1984;

Recodified from 10A NCAC 13G .0310 Eff. July 1, 2005.

10A NCAC 13G .0312 OUTSIDE ENTRANCE AND EXITS

(a) In family care homes, all floor levels shall have at least two exits. If there are only two, 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 shall be a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) At least one principal outside entrance/exit for the residents' use shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance/exit is one that is most often used by residents for vehicular access. If the home has any resident that must have physical assistance with evacuation, the home shall have two outside entrances/exits at grade level or accessible by a ramp.

(d) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without keys. Existing deadbolts or turn buttons on the inside of exit doors shall be removed or disabled.

(e) All entrances/exits 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 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 exit door for resident use shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. 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 location accessible only to staff authorized by the administrator to operate the control panel.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1987; July 1, 1984; April 1, 1984; Recodified from 10A NCAC 13G .0311 Eff. July 1, 2005.

10A NCAC 13G .0313 LAUNDRY ROOM

The laundry equipment in a family care home shall be located out of the living, dining, and bedroom areas.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1984; Recodified from 10A NCAC 13G .0312 Eff. July 1, 2005.

10A NCAC 13G .0314 FLOORS

(a) All floors in a family care home shall be of smooth, non-skid material and so constructed as to be easily cleanable.

(b) Scatter or throw rugs shall not be used.

(c) All floors shall be kept in good repair.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977;

Amended Eff. July 1, 2005; April 1, 1984; Recodified from 10A NCAC 13G .0313 Eff. July 1, 2005.

10A NCAC 13G .0315 HOUSEKEEPING AND FURNISHINGS

(a) Each family care home 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 a North Carolina Division of Environmental Health approved sanitation classification at all times;
- (5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
- (6) have supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings adequate for resident use 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;
- (9) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;
- (10) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents;
- (11) have a clock that has numbers at least 1½ inches tall in an area commonly used by the residents; and
- (12) have at least one telephone that does not depend on electricity or cellular service to operate.

(b) Each bedroom shall have the following furnishings in good repair and clean for each resident:

- (1) A bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Hospital bed appropriately equipped shall be arranged for as needed. 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, wash cloth, and towel 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 shall provide a minimum of 30 foot-candle power of illumination for reading.
- (c) The living room shall have functional living room furnishings for the comfort of aged and disabled persons, with coverings that are easily cleanable.
- (d) The dining room shall have the following furnishings:
- (1) tables and chairs to seat all residents eating in the dining room; and
 - (2) chairs that are sturdy, non-folding, without rollers unless retractable or on front legs only, and designed to minimize tilting.
- (e) This Rule shall apply to new and existing homes.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; September 1, 1987; April 1, 1987; April 1, 1984; Recodified from 10A NCAC 13G .0314 Eff. July 1, 2005.

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

- (a) Fire extinguishers shall be provided which meet these minimum requirements in a family care home:
- (1) one five pound or larger (net charge) "A-B-C" type centrally located;
 - (2) one five pound or larger "A-B-C" or CO/2 type located in the kitchen; and
 - (3) any other location as determined by the code enforcement official.
- (b) The building shall be provided with smoke detectors as required by 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 fire safety requirements required by city ordinances or county building inspectors shall be met.
- (d) A written fire evacuation plan (including a diagrammed drawing) which has the approval of the local code enforcement official shall be prepared in large print and posted in a central

- location on each floor. The plan shall be reviewed with each resident on admission and shall be a part of the orientation for all new staff.
- (e) There shall be at least four rehearsals of the fire evacuation plan each year. Records of rehearsals shall be maintained and copies furnished to the county department of social services annually. The records shall include the date and time of the rehearsals, staff members present, and a short description of what the rehearsal involved.
- (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. This written disaster plan requirement shall apply to new and existing homes.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Amended Eff. April 22, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; July 1, 1990; April 1, 1987; April 1, 1984; Recodified from 10A NCAC 13G .0315 Eff. July 1, 2005.

10A NCAC 13G .0317 BUILDING SERVICE EQUIPMENT

- (a) The building and all fire safety, electrical, mechanical, and plumbing equipment in a family care home shall be maintained in a safe and operating condition.
- (b) There shall be a 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 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 call system shall be provided connecting each resident bedroom to the live-in staff bedroom. The resident call system activator shall be such that it can be activated with a single action and remain on until deactivated by staff. The call 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 according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.
- (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, shall 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.
- (j) This Rule shall apply to new and existing family care homes.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 1999-0334; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1987; April 1, 1984; July 1, 1982; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2005; July 1, 2000; Recodified from 10A NCAC 13G .0316 Eff. July 1, 2005.

10A NCAC 13G .0318 OUTSIDE PREMISES

- (a) The outside grounds of new and existing family care homes shall be maintained in a clean and safe condition.
- (b) If the home has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous.
- (c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

History Note: Authority G.S. 131D-2; 143B-165; Eff. April 1, 1984; Amended Eff. July 1, 2005; July 1, 1990; Recodified from 10A NCAC 13G .0317 Eff. July 1, 2005.

10A NCAC 13G .0802 RESIDENT CARE PLAN

- (a) A family 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 shall be 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 Subchapter.
- (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, including emergency contact. Whenever significant behavioral changes described in Rule .0801(c)(1)(D) of this Subchapter are identified, the facility shall refer the resident to a provider of mental health, developmental disabilities or substance abuse services in accordance with Rule .0801(d) of this Subchapter.

History Note: Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-165; S.L. 99-0334; 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. September 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

10A NCAC 13G .0901 PERSONAL CARE AND SUPERVISION

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

History Note: Authority G.S. 131D-2; 143B-153; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; May 1, 1999; July 1, 1990; April 1, 1987; April 1, 1984.

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 referral and follow-up to meet the routine and acute health care needs of residents.
- (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 (c)(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.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. December 1, 1993; May 1, 1992, July 1, 1990; September 1, 1987; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. September 1, 2003; Amended Eff. July 1, 2005; June 1, 2004.

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

In addition to the requirements in Rule .1211(a)(1) of this Subchapter, a 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.

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

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000;

Amended Eff. July 1, 2005.

10A NCAC 13G .1002 MEDICATION ORDERS

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

- (1) if orders for admission or readmission of the resident are 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 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 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 licensed 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 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Amended Eff. July 1, 2005.

10A NCAC 13G .1004 MEDICATION ADMINISTRATION

(a) A 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.

(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 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 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 Subparagraph (1) or (2) of this Paragraph; and
- (4) All containers are placed together on a separate tray or other device that is labeled 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 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 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 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, the borrowed medications shall be replaced promptly and that the borrowing and replacement of the medication shall be 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Amended Eff. July 1, 2005.

10A NCAC 13G .1008 CONTROLLED SUBSTANCES

(a) A 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 such an 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 administrator or the administrator's designee shall destroy the controlled substance within 90 days of the expiration

or discontinuation of the controlled substance or following the death of the resident. The destruction shall be witnessed by a licensed pharmacist, dispensing practitioner, or designee of a licensed pharmacist or dispensing practitioner. 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 licensed pharmacist, dispensing practitioner or designee of the licensed pharmacist or dispensing practitioner.

(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 law and that all suspected drug diversions are reported to the pharmacy. There shall be documentation of the contact and action taken.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Amended Eff. July 1, 2005.

10A NCAC 13G .1010 PHARMACEUTICAL SERVICES

(a) A family care home shall allow the residents 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 pharmaceutical services to meet the needs of the residents, 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.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Amended Eff. July 1, 2005.

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

- (a) Residents shall manage their own funds if 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 .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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1984.

10A NCAC 13G .1102 LEGAL REPRESENTATIVE OR PAYEE

- (a) In situations where a resident of a family care home 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.

History Note: Authority G.S. 35A-1203; 108A-37; 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1984.

10A NCAC 13G .1104 REFUND POLICY

A family care home's refund policy 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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; July 1, 1990.

10A NCAC 13G .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 a family care 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.

History Note: Authority G.S. 131D-2; 143B-165; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1984.

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

(a) If a resident of a family care home, after being notified by the home of its intent to discharge the resident in accordance with Rule .0705 of this Subchapter, moves out of the home before the period of time specified in the notice has elapsed, 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 notice period. The refund shall be made within 14 days after the resident leaves the home.

(b) If a resident 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 home's required notice period has elapsed, the resident owes the home an amount equal to the cost of care for the required notice period. If a resident receiving State-County Special Assistance moves 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 home 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 of the resident 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 shall be made to the resident by the home within 14 days from the date of notice.

(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.

(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 home and the resident or his responsible person and thereby require payment for the days the bed is 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 14-day written notice that he is not returning.

- (3) Requirement of a notice, if it is to be applied by the home, shall be a part of the written agreement and explained by the home 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 home, the 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 period covered by the agreement. The refund shall be made within 14 days after notification that the resident will not be returning to the home.
- (5) In no situation involving a recipient of State-County Special Assistance may a home require payment for more than 30 days since State-County Special Assistance is not authorized unless the resident is actually residing in the home or it is anticipated that he will return to the home within 30 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 home shall refund the rest of any advance payment calculated beginning with the day the home 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 home during the month. This is to be done within 30 days after the resident's death.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; June 1, 1987; April 1, 1984; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Amended Eff. July 1, 2005.

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

After a resident has left a 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.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 2005; April 1, 1987; April 1, 1984.

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

(a) A 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 referral for emergency evaluation, hospitalization, or medical treatment other than first aid.

(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 (e) 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 in accordance with G.S. 108A-102 and the local law enforcement authority as required by law of any mental or physical abuse, neglect or exploitation of a resident.

(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 risk that death or 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.

(g) In the case of physical assault by a resident or whenever there is a risk that death or physical harm will occur due to the actions or behavior of a resident, the facility shall immediately:

- (1) seek the assistance of the local law enforcement authority;
- (2) provide additional supervision of the threatening resident to protect others from harm;
- (3) seek any needed emergency medical treatment;
- (4) make a referral to the Local Management Entity for Mental Health Services or mental health provider for emergency treatment of the threatening resident; and
- (5) cooperate with assessment personnel assigned to the case by the Local Management Entity for Mental Health Services or mental health provider to enable them to provide their earliest possible assessment.

(h) The facility shall immediately report any assault resulting in harm to a resident or other person in the facility to the local law enforcement authority.

History Note: Authority G.S. 131D-2; 143B-165; Eff. July 1, 2005.

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

A 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.

History Note: Authority 131D-2; 143B-165; Eff. July 1, 2005.

10A NCAC 130 .0102 INVESTIGATING AND REPORTING HEALTH CARE PERSONNEL

The reporting by health care facilities to the Department of all allegations against health care personnel as defined in G.S. 131E-256 (a)(1), including injuries of unknown source, shall be done within 24 hours of the health care facility becoming aware of the allegation. The results of the health care facility's investigation shall be submitted to the Department in accordance with G.S. 131E-256(g).

History Note: Authority G.S. 131E-256; Temporary Adoption Eff. December 20, 1996; Eff. August 1, 1998; Amended Eff. April 1, 2005.

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 with either a Level I trauma center as designated by the North Carolina Office of Emergency Medical Services pursuant to 10A NCAC 13P .0901 or .0902 that reported more than 1500 trauma patients to the North Carolina Trauma Registry during

- the most recent 12 month reporting period; or a Level I or Level II trauma center as designated by the North Carolina Office of Emergency Medical Services pursuant to 10A NCAC 13P .0901 or .0902 that shall not be based within 60 miles of the base of an existing air ambulance service.
- (6) For acquisition of an air ambulance that shall be utilized less than 25 percent 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 percent 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.

- (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 and near the lab site (e.g., dumping, burning, burial, venting, and 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 wastes, hazardous wastes, 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 in accordance with Rule .0104 of this Section.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. May 15, 2002; Amended Eff. April 1, 2005; April 1, 2003.

10A NCAC 41D .0102 PRE-DECONTAMINATION ASSESSMENT

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

- (1) Contact hazardous materials (HAZMAT) team member(s) or law enforcement personnel 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 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.

History Note: Authority G.S. 130A-284; Temporary Adoption Eff. January 1, 2005; Eff. April 1, 2005.

10A NCAC 41D .0103 DECONTAMINATION

Decontamination shall be performed in accordance with the pre-decontamination assessment report prepared pursuant to .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 items listed in this Rule.

- (1) Site ventilation shall include:
 - (A) not operating the HVAC system until cleanup is completed;
 - (B) venting the structure by opening doors and windows or using equipment such as fans, blowers and 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 disposed of in puncture proof containers.
- (3) Chemical remnants and spills shall be remediated as follows:
 - (A) determine pH of liquid spills with litmus (pH) paper;
 - (B) neutralize liquid acids and bases to a pH of 6 through 8;
 - (C) absorb liquids with a non-reactive material and package for waste disposal; and
 - (D) 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 system 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 system 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 system 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 disposed, and the attached plumbing shall be flushed; plumbing fixtures that are not removed shall be cleaned; and

(2) 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 removed two feet from the opening and replaced.

(6) All appliances (such as refrigerators, stoves, hot plates, microwaves, toaster ovens, and coffee makers) 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 used in the manufacture of methamphetamine shall be cleaned.

(7) Ceilings, walls, floors and non-porous materials in rooms where methamphetamine was manufactured, rooms serviced by the same HVAC system as the room where methamphetamine was manufactured, and in other rooms assessed as contaminated 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 fresh detergent solution and fresh rinse water with each cleaning of each surface (ceilings, walls, and floors). 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 until the odor and visible contamination is no longer observable. If staining or odors persist the surface must be removed. After cleaning, room(s) used for the manufacture of methamphetamine shall have ceilings and walls painted with a non-water based paint. Resilient floor covering(s), such as sheet, laminate or tile vinyl, in the room(s) used for the manufacture of methamphetamine shall be removed and replaced or after cleaning, covered in place with new floor coverings. Ceramic or stone tiled surfaces, (floors, countertops, walls, or other ceramic or stone tiled surfaces) in the room(s) used for the manufacture of methamphetamine shall be removed after cleaning, re-glazed or have grout stained using an epoxy-based stain. Wooden materials (floors, walls, ceilings, cabinets, or other wooden materials) in the

- room(s) used for the manufacture of methamphetamine shall be removed or after cleaning, sealed with a non-water based coating.
- (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 exhaust air out of the house. During this time, the property shall remain off limits unless it is necessary to make 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.

History Note: Authority G.S. 130A-284; Temporary Adoption Eff. January 1, 2005; Eff. April 1, 2005.

10A NCAC 71U .0216 MEDICAL DEDUCTIONS FOR MEDICARE PRESCRIPTION DRUG CARD BENEFITS

The county department shall allow a monthly medical deduction of twenty-three dollars (\$23.00) as a standard medical expense for all individuals who own a Medicare-approved Prescription Drug Card. For individuals whose income does not exceed 135% of the federal poverty level, the county department shall also allow a medical deduction for the Medicare-approved Prescription Drug Card subsidy. The total subsidies received in 2004 and in 2005 shall be prorated to a monthly amount and used in calculating the individual's monthly benefits for applications and recertifications processed through the end of calendar year 2005.

History Note: Authority 143B-153; P.L 108-173; Eff. April 1, 2005.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1101 DEFINITIONS

The following definitions apply to this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
- (2) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (3) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as

- boards or nails where many similar pieces make up the component.
- (4) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (5) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- (6) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.
- (7) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose.
- (8) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.
- (9) "Enter" means to go into an area to inspect all visible components.
- (10) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.
- (11) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (12) "Inspect" means the act of making a visual examination.
- (13) "Installed" means attached or connected such that an item requires tools for removal.
- (14) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.
- (15) "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water.
- (16) "On-site water supply quantity" means the rate of flow of on-site well water.
- (17) "Operate" means to cause systems or equipment to function.
- (18) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (19) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a

- four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (20) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.
- (21) "Representative number means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building.
- (22) "Roof drainage systems" means gutters, downspouts, leaders, splashblocks, and similar components used to carry water off a roof and away from a building.
- (23) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (24) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices.
- (25) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).
- (26) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
- (27) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
- (28) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

- (b) Home inspectors shall:
 - (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
 - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
 - (B) Describe what services shall be provided and their cost; and
 - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
 - (2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
 - (3) Submit a written report to the client that shall:
 - (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
 - (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
 - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (D) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist; and
 - (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.
- (c) This Section does not limit home inspectors from:
 - (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
 - (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.
- (d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:
 - (1) does not function as intended or adversely affects the habitability of the dwelling; or
 - (2) warrants further investigation by a specialist or requires subsequent observation.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. April 1, 2005; May 1, 2003.

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function, efficiency, or safety of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. April 1, 2005; May 1, 2003; July 1, 2000.

11 NCAC 08 .1107 EXTERIOR

- (a) The home inspector shall inspect:
 - (1) Wall cladding, flashings, and trim;
 - (2) Entryway doors and a representative number of windows;
 - (3) Garage door operators;
 - (4) Decks, balconies, stoops, steps, areaways, porches and applicable railings;
 - (5) Eaves, soffits, and fascias; and
 - (6) Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.
- (b) The home inspector shall:
 - (1) Describe wall cladding materials;
 - (2) Operate all entryway doors and a representative number of windows;
 - (3) Operate garage doors manually or by using permanently installed controls for any garage door operator;
 - (4) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
 - (5) Probe exterior wood components where deterioration is suspected.
- (c) The home inspector is not required to inspect:
 - (1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
 - (2) Fences;
 - (3) For the presence of safety glazing in doors and windows;
 - (4) Garage door operator remote control transmitters;
 - (5) Geological conditions;
 - (6) Soil conditions;
 - (7) Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); except as otherwise provided in 11 NCAC 08 .1109(d)(5)(F);

- (8) Detached buildings or structures; or
- (9) For the presence or condition of buried fuel storage tanks.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. April 1, 2005; July 1, 2000.

11 NCAC 08 .1108 ROOFING

- (a) The home inspector shall inspect:
 - (1) Roof coverings;
 - (2) Roof drainage systems;
 - (3) Flashings;
 - (4) Skylights, chimneys, and roof penetrations; and
 - (5) Signs of leaks or abnormal condensation on building components.
- (b) The home inspector shall:
 - (1) Describe the type of roof covering materials; and
 - (2) Report the methods used to inspect the roofing.
- (c) The home inspector is not required to:
 - (1) Walk on the roofing; or
 - (2) Inspect attached accessories including solar systems, antennae, and lightning arrestors.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Amended Eff. April 1, 2005; July 1, 1998.

11 NCAC 08 .1109 PLUMBING

- (a) The home inspector shall inspect:
 - (1) Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
 - (2) Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
 - (3) Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents;
 - (4) Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and
 - (5) Sump pumps.
- (b) The home inspector shall describe:
 - (1) Water supply and distribution piping materials;
 - (2) Drain, waste, and vent piping materials;

- (3) Water heating equipment; and
 - (4) The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
- (1) State the effectiveness of anti-siphon devices;
 - (2) Determine whether water supply and waste disposal systems are public or private;
 - (3) Operate automatic safety controls;
 - (4) Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 - (5) Inspect:
 - (A) Water conditioning systems;
 - (B) Fire and lawn sprinkler systems;
 - (C) On-site water supply quantity and quality;
 - (D) On-site waste disposal systems;
 - (E) Foundation irrigation systems;
 - (F) Bathroom spas, except as to functional flow and functional drainage;
 - (G) Swimming pools;
 - (H) Solar water heating equipment; or
 - (6) Inspect the system for proper sizing, design, or use of proper materials.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. April 1, 2005.

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

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS

- (a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.
- (b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:
- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.
 - (2) Where two or more substances exist in combination, the Director shall consider the

effects of chemical interactions as determined by the Division of Public Health and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c), (g), or (h) of this Rule. In the absence of information to the contrary, in accordance with Paragraph (d) of this Rule, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.

- (3) Where naturally occurring substances exceed the established standard, the standard shall be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Public Health to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for a substance for which a standard has not been established under this Rule. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the least of:

- (1) Systemic threshold concentration calculated as follows: [Reference Dose (mg/kg/day) x 70 kg (adult body weight) x Relative Source Contribution (.10 for inorganics; .20 for organics)] / [2 liters/day (avg. water consumption)];
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1×10^{-6} ;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or
- (6) National secondary drinking water standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable

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concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a triennial basis. Appropriate modifications to established standards shall be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures.

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| (1) | acetone: 0.7 | (44) | 1,2-dibromo-3-chloropropane: 2.5×10^{-5} |
| (2) | acenaphthene: 0.08 | (45) | dichlorodifluoromethane (Freon-12; Halon): 1.4 |
| (3) | acenaphthylene: 0.21 | (46) | p,p'-dichlorodiphenyl dichloroethane (DDD): 1.4×10^{-4} |
| (4) | acrylamide (propenamide): 0.000008 | (47) | p,p'-dichlorodiphenyltrichloroethane (DDT): 1.0×10^{-4} |
| (5) | anthracene: 2.1 | (48) | 1,1-dichloroethane: 0.07 |
| (6) | arsenic: 0.05 | (49) | 1,2-dichloroethane (ethylene dichloride): 0.00038 |
| (7) | atrazine and chlorotriazine metabolites: 0.0030 | (50) | 1,1-dichloroethylene (vinylidene chloride): 0.007 |
| (8) | barium: 2.0 | (51) | 1,2-dichloropropane: 0.00051 |
| (9) | benzene: 0.001 | (52) | 1,3-dichloropropene (cis and trans isomers): 0.00019 |
| (10) | benzo(a)anthracene (benz(a)anthracene): 0.0000479 | (53) | dieldrin: 2.2×10^{-6} |
| (11) | benzo(b)fluoranthene: 4.79×10^{-5} | (54) | di-n-butyl (or dibutyl) phthalate (DBP): 0.7 |
| (12) | benzo(k)fluoranthene: 4.79×10^{-4} | (55) | diethylphthalate (DEP): 5.0 |
| (13) | benzo(g,h,i,)perylene: 0.21 | (56) | di(2-ethylhexyl) phthalate (DEHP): 0.0025 |
| (14) | benzo(a)pyrene: 4.79×10^{-6} | (57) | 2,4-dimethylphenol (m-xyleneol): 0.14 |
| (15) | boron: 0.315 | (58) | di-n-octyl phthalate: 0.14 |
| (16) | bromodichloromethane: 0.00056 | (59) | p-dioxane (1,4-diethylene dioxide): 0.007 |
| (17) | bromoform (tribromomethane): 0.00443 | (60) | dioxin: 2.2×10^{-10} |
| (18) | n-butylbenzene: 0.07 | (61) | diphenyl (1,1- diphenyl): 0.35 |
| (19) | sec-butylbenzene: 0.07 | (62) | dissolved solids (total): 500 |
| (20) | tert-butylbenzene: 0.07 | (63) | disulfoton: 2.8×10^{-4} |
| (21) | butylbenzyl phthalate: 0.10 | (64) | diundecyl phthalate (Santicizer 711): 0.14 |
| (22) | cadmium: 0.00175 | (65) | endosulfan II (beta-endosulfan): 0.0420 |
| (23) | caprolactam: 3.5 | (66) | endrin: 0.002 |
| (24) | carbofuran: 0.035 | (67) | endrin (total endrin: includes endrin, endrin aldehyde, and endrin ketone): 2.1×10^{-3} |
| (25) | carbon disulfide: 0.7 | (68) | epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354 |
| (26) | carbon tetrachloride: 0.000269 | (69) | ethylbenzene: 0.550 |
| (27) | chlordane: 1.0×10^{-4} | (70) | ethylene dibromide (EDB; 1,2-dibromoethane): 4.0×10^{-7} |
| (28) | chloride: 250.0 | (71) | ethylene glycol: 14.0 |
| (29) | chlorobenzene: 0.05 | (72) | fluoranthene: 0.28 |
| (30) | chloroethane: 2.80 | (73) | fluorene: 0.28 |
| (31) | chloroform (trichloromethane): 0.07 | (74) | fluoride: 2.0 |
| (32) | chloromethane (methyl chloride): 2.6×10^{-3} | (75) | foaming agents: 0.5 |
| (33) | 2-chlorophenol: 0.00036 | (76) | gross alpha (adjusted)particle activity (excluding radium-226 and uranium): 15 pCi/l |
| (34) | 2-chlorotoluene: 0.14 | (77) | heptachlor: 7.8×10^{-6} |
| (35) | chromium: 0.05 | (78) | heptachlor epoxide: 3.8×10^{-6} |
| (36) | chrysene: 0.00479 | (79) | heptane: 0.42 |
| (37) | cis-1,2-dichloroethene: 0.07 | (80) | hexachlorobenzene (perchlorobenzene): 0.00002 |
| (38) | coliform organisms (total): 1 per 100 milliliters | (81) | hexachlorocyclohexane isomers (total hexachlorocyclohexane: includes alpha,beta,delta,gamma, and epsilon isomers): 1.9×10^{-5} |
| (39) | color: 15 color units | (82) | n-hexane: 0.42 |
| (40) | copper: 1.0 | (83) | indeno(1,2,3-cd)pyrene: 4.79×10^{-5} |
| (41) | cyanide (free cyanide): 0.07 | (84) | iron: 0.3 |
| (42) | 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07 | (85) | isophorone: 0.0368 |
| (43) | dibenz(a,h)anthracene: 4.7×10^{-6} | (86) | isopropylbenzene: 0.070 |
| | | (87) | isopropyl ether (diisopropyl ether): 0.070 |
| | | (88) | lead: 0.015 |

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| (89) | lindane: 2.0×10^{-4} | (139) | xylenes (o-, m-, and p-): 0.53 |
| (90) | manganese: 0.05 | (140) | zinc: 1.05 |
| (91) | mercury: 0.00105 | (h) | Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows: |
| (92) | metadichlorobenzene (1,3-dichlorobenzene): 0.170 | (1) | chloride: allowable increase not to exceed 100 percent of the natural quality concentration. |
| (93) | methanol: 3.5 | (2) | total dissolved solids: 1000 mg/l. |
| (94) | methoxychlor: 0.035 | (i) | Class GC Waters. |
| (95) | methylene chloride (dichloromethane): 0.0046 | (1) | The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC. |
| (96) | methyl ethyl ketone (MEK; 2-butanone): 4.20 | (2) | The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class. |
| (97) | 2-methylnaphthalene: 0.0140 | (3) | Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter. |
| (98) | 3-methylphenol (m-cresol): 0.0350 | | |
| (99) | 4-methylphenol (p-cresol): 3.5×10^{-3} | | |
| (100) | methyl tert-butyl ether (MTBE): 0.2 | | |
| (101) | naphthalene: 0.021 | | |
| (102) | nickel: 0.1 | | |
| (103) | nitrate: (as N) 10.0 | | |
| (104) | nitrite: (as N) 1.0 | | |
| (105) | N-nitrosodimethylamine: 7.0×10^{-7} | | |
| (106) | orthodichlorobenzene (1,2-dichlorobenzene): 0.024 | | |
| (107) | oxamyl: 0.175 | | |
| (108) | paradichlorobenzene (1,4-dichlorobenzene): 0.0014 | | |
| (109) | pentachlorophenol: 0.00029 | | |
| (110) | petroleum aliphatic carbon fraction class C5 - C8: 0.42 | | |
| (111) | petroleum aliphatic carbon fraction class C9 - C18: 4.20 | | |
| (112) | petroleum aliphatic carbon fraction class C19 - C36: 42.0 | | |
| (113) | petroleum aromatics carbon fraction class C9 - C22: 0.210 | | |
| (114) | pH: 6.5 - 8.5 | | |
| (115) | phenanthrene: 0.21 | | |
| (116) | phenol: 0.30 | | |
| (117) | phorate: 1.4×10^{-3} | | |
| (118) | n-propylbenzene: 0.070 | | |
| (119) | pyrene: 0.21 | | |
| (120) | selenium: 0.05 | | |
| (121) | silver: 0.0175 | | |
| (122) | simazine: 0.004 | | |
| (123) | styrene (ethenylbenzene): 0.1 | | |
| (124) | sulfate: 250.0 | | |
| (125) | tetrachloroethylene (perchloroethylene; PCE): 0.0007 | | |
| (126) | 2,3,4,6-tetrachlorophenol: 0.210 | | |
| (127) | toluene (methylbenzene): 1.0 | | |
| (128) | toxaphene: 3.1×10^{-5} | | |
| (129) | 2, 4, 5,-TP (Silvex): 0.05 | | |
| (130) | trans-1,2-dichloroethene: 0.10 | | |
| (131) | 1,1,1-trichloroethane (methyl chloroform): 0.2 | | |
| (132) | trichloroethylene (TCE): 0.0028 | | |
| (133) | trichlorofluoromethane: 2.1 | | |
| (134) | 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113): 210.0 | | |
| (135) | 1,2,3- trichloropropane: 5.0×10^{-6} | | |
| (136) | 1,2,4-trimethylbenzene: 0.350 | | |
| (137) | 1,3,5-trimethylbenzene: 0.350 | | |
| (138) | vinyl chloride (chloroethylene): 1.5×10^{-5} | | |

History Note: Authority G.S. 143-214.1; 143B-282(a)(2); Eff. June 10, 1979; Amended Eff. November 1, 1994; October 1, 1993; September 1, 1992; August 1, 1989; Temporary Amendment Eff. June 30, 2002; Amended Eff. August 1, 2002; Temporary Amendment Expired February 9, 2003; Amended Eff. April 1, 2005.

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) Bulkheads and riprap material shall be positioned as follows:
- (1) Bulkheads shall be positioned so as not to exceed more than an average distance of 2 feet waterward of the 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 normal high water or normal water level contour at any point along its alignment.
 - (2) Riprap 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. 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 1½ 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 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 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 shall occur as described in 07H .1105(b).
- (d) Construction authorized by this general permit 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 shall be constructed, or the riprap shall be in place prior to any backfilling activities.
- (g) The bulkhead or riprap 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 shall be of a size sufficient to prevent its movement from the site by wave or current action.
- (i) Riprap material 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 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 shall be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan shall be approved prior to commencing the land-disturbing activity.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. April 1, 2005; December 1, 1991; January 1, 1989; December 1, 1987.

15A NCAC 07H .2701 PURPOSE

A general permit pursuant to this Section shall allow for the construction of riprap sills for wetland enhancement in estuarine and public trust waters as set out in Subchapter 07J .1100 and according to the rules in this Section.

History Note: Authority G.S. 113A-107; 113A-118.1; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005.

15A NCAC 07H .2702 APPROVAL PROCEDURES

- (a) The applicant shall contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and applicant name and address.
- (b) The applicant shall provide:
 - (1) 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
 - (2) 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 will 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 can be approved by a General Permit.
- (d) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued by the Division of Coastal Management. Construction of the project shall start within 90 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; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005.

15A NCAC 07H .2704 GENERAL CONDITIONS

- (a) Structures authorized by a permit issued pursuant to this Section shall be riprap or stone sills conforming to the standards in these Rules.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources (DENR) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
- (c) The placement of riprap or stone sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the Department 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) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 07H .0200, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107; 113A-118.1; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

(a) A general permit issued pursuant to this Section shall be applicable only for the construction of riprap or stone sill structures built in conjunction with existing, created or restored wetlands.

(b) This general permit shall not apply within the Ocean Hazard System 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 Erodible Area.

(c) On shorelines where no fill is proposed, the landward edge of the sill shall be positioned no more than 5 feet waterward of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, whichever is greater. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the mean high water or normal high water line.

(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.

(e) The permittee shall maintain the authorized sill and existing or planted wetlands in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.

(f) The height of sills shall not exceed six inches above mean high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater.

(g) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

(h) Sills shall be porous to allow water circulation through the structure.

(i) The sills shall have at least one five-foot drop-down or opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot drop-down or separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these drop-down requirements shall be allowable following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service.

(j) The riprap structure shall not exceed a slope of a one foot rise over a two foot horizontal distance and a minimum slope of a one and a half foot rise over a one foot horizontal distance. The width of the structure on the bottom shall be no wider than 15 feet.

(k) For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.

(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.

(m) For water bodies more narrow than 150 feet, the structures shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

(n) The sill shall not be within a navigation channel marked or maintained by a state or federal agency.

(o) The sill shall not interfere with leases or franchises for shellfish culture.

(p) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the mean high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge.

(q) The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

(r) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high water level.

(s) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the riprap structure.

(t) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

(u) No excavation or filling of any native submerged aquatic vegetation is authorized by this general permit.

(v) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

(w) No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

(x) Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

(y) The riprap material shall consist of clean rock or masonry materials such as granite or broken concrete. Riprap material shall be free of loose sediment or any pollutant. The structures shall be of sufficient size and slope to prevent its movement from the site by wave or current action.

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

(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.

(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.

(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the appropriate agency(s) that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

History Note: Authority G.S. 113A-107; 113A-118.1; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005.

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 equipment that is certified for sanitation by an American National Standards Institute (ANSI) – accredited program shall be approved. ANSI sanitation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) 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) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:

- (a) immunocompromised, preschool age children or adults, 55 years of age or older; and
- (b) obtaining food as a patient or client at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- (15) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- (16) "Local health director" means the administrative head of a local health department or his authorized representative.
- (17) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (18) "Meat market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- (19) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (20) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (21) "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.
- (22) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- (23) "Private club" means a private club as defined in G.S. 130A-247(2).
- (24) "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.
- (25) "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.
- (26) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (27) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (28) "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.
- (29) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- (30) "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.
- (31) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- (32) "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.
- (33) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. January 1, 1996; July 1, 1994; January 4, 1994; July 1, 1993; Temporary Amendment Eff. April 8, 1996; Amended Eff. April 1, 2005; 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.

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| <p>(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.</p> <p>(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.</p> <p>(4) Violation of Rule .2611 of this Section related to re-serving food shall equal no more than 5 percent.</p> <p>(5) Violation of Rule .2609 of this Section related to accurate thermometer availability shall equal no more than 3 percent.</p> <p>(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.</p> <p>(7) Violation of Rule .2610 of this Section related to properly labeling or storage of dry food shall equal no more than 2 percent.</p> <p>(8) Violation of Rule .2616 of this Section related to personnel with infections or communicable diseases restricted shall equal no more than 5 percent.</p> <p>(9) Violation of Rule .2609 of this Section related to proper handwashing or good hygienic practices shall equal no more than 5 percent.</p> <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 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> |
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- (30) Violation of Rule .2631 of this Section related to ventilation clean or in good repair shall equal no more than 1 percent.
- (31) Violation of Rule .2633 of this Section related to storage or labeling of toxic substances shall equal no more than 5 percent.
- (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.
- (33) Violation of Rule .2633 of this Section related to storage space not used for domestic purpose shall equal no more than 1 percent.
- (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.

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. Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health. The course shall include a minimum of 12 contact hours and provide instruction in the following subject areas:

- (1) basic food safety;
- (2) requirements for food handling personnel;
- (3) basic HACCP;
- (4) purchasing and receiving food;
- (5) food storage;
- (6) food preparation and service;
- (7) facilities and equipment;
- (8) cleaning and sanitizing;
- (9) pest management program; and
- (10) regulatory agencies and inspections.

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 affect 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. April 1, 2005; October 1, 2004; August 1, 2004; August 1, 1998; July 1, 1993; March 1, 1988.

15A NCAC 18A .2612 SHELLFISH

(a) All shellfish and crustacea meat shall be obtained from sources in compliance with 15A NCAC 18A .0100 through .0900 which may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall appear on the "Interstate Certified Shellfish Shippers List" as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. If the source of the cooked crustacea meat is within the United States, the processor's name, address, and certificate number with State abbreviation shall appear on the container. If the source of the cooked crustacea meat is outside the United States, containers must meet Federal labeling requirements, Food and Drug Administration, HHS Food Labeling requirements, 21 CFR Chapter 1, Part 101-Food Labeling.

(b) All shucked shellfish and all cooked crustacea meat shall be stored in the original container. Each original container shall be identified with the name and address of the packer or repacker, and the certification number, and the abbreviated name of the state or territory. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be clearly identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were taken, the date of harvest, the kind and quantity of the shellstock in the container, and the name and address of the consignee.

(d) Shellstock shall be stored at temperatures and by methods in accordance with 15A NCAC 18A .0100 through .0900. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(e) After each container of shellstock has been emptied, the management shall remove the tag and retain it for a period of at least 90 days.

(f) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the establishment holds a valid shellfish shucking permit.

(g) Shellstock washing facilities shall consist of a mechanical shellfish washer, or a sink or slab with catch basin, indirectly drained into a sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(h) The cooking of shellfish shall be accomplished in an area meeting the requirements of the rules of this Section.

(i) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(j) All establishments that prepare, serve, or sell raw shellfish shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

"Consumer Advisory

Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

(k) Cooked crustacea meat shall be held at 40° F or less.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. May 1, 1991; July 1, 1984; Temporary Amendment Eff. February 1, 1998; Amended Eff. August 1, 1998; Temporary Amendment Eff. October 12, 1998; Amended Eff. April 1, 2005; April 1, 1999.

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.

21 NCAC 06N .0101 FEES

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

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| (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 |

(d) Equipment shall meet ANSI sanitation standards. If equipment is not listed by an ANSI accredited education service program, the owner or operator shall submit documentation to the Department that demonstrates that the equipment is equivalent to ANSI sanitation standards. If the components of the equipment are the same as those meeting ANSI sanitation standards, then the Department shall deem the equipment equivalent. For purposes of these Rules, toasters, mixers, microwave ovens, water heaters and hoods shall not be considered to be equipment and shall not be required to meet ANSI sanitation 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. April 1, 2005; October 1, 2004; August 1, 1998; May 1, 1991.

15A NCAC 18A .2621 DRINKING WATER FOUNTAINS

If drinking fountains are provided, they shall meet ANSI sanitation standards, be of approved angle-jet type and be kept clean. This Rule shall not be interpreted as prohibiting the pitcher service of ice water or the service of bottled water.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. April 1, 2005; August 1, 1998.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 06 – BARBER EXAMINERS

SUBCHAPTER 06N - FORMS

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| (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 |

History Note: Authority G.S. 86A-25; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. April 1, 2005; May 1, 1989; March 1, 1983.

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 supervision as required by G.S. 86A-24(b):

- (1) 1st offense \$250.00
- (2) 2nd offense \$250.00

(b) The presumptive civil penalty for an apprentice or holder of permission to work engaging in barbering without supervision as required by G.S. 86A-24(b):

- (1) 1st offense \$150.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-5(a)(6); 86A-24; 86A-27; Eff. April 1, 2005.

21 NCAC 060 .0110 ADEQUATE PREMISES

(a) The presumptive civil penalty for a school to fail to maintain facilities as required by G.S. 86A-15 and 21 NCAC 06F .0101, after two written warnings:

- (1) 1st offense \$200.00
- (2) 2nd offense \$350.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for a shop to fail to maintain facilities as required by G.S. 86A-15 and 21 NCAC 06L .0102 thru .0109, after two written warnings:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-5(a)(6); 86A-15; 86A-18(6); 86A-18(7); 86A-22(6); 86A-27; Eff. April 1, 2005.

CHAPTER 32 – NC MEDICAL BOARD

21 NCAC 32F .0103 FEE

Each physician shall pay an annual registration fee to the Board in accordance with G.S. 90-15.1; except that every physician who holds a limited volunteer license shall pay an annual registration fee of twenty five dollars (\$25.00).

History Note: Authority G.S. 90-12; 90-15.1; Eff. February 1, 1976; Amended Eff. December 1, 1995; October 1, 1994; November 1, 1991; May 1, 1989; Temporary Amendment Eff. November 25, 1996; Temporary Amendment Eff. November 25, 1996 expired on September 12, 1997; Temporary Amendment Eff. January 1, 1998; Amended Eff. April 1, 2005; May 1, 1999.

21 NCAC 32S .0105 ANNUAL REGISTRATION

(a) Each person who holds a license as a physician assistant in this state shall register his or her Physician Assistant license each year no later than 30 days after his or her birthday by:

- (1) completing the Board's registration form;
- (2) submitting the fee required in Rule .0117 of this Section.

(b) The license of any physician assistant who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive.

History Note: Authority G.S. 90-15; 90-18(c) (13); 90-18.1; Eff. May 1, 1999; Amended Eff. April 1, 2005.

21 NCAC 32S .0117 FEES

The Board requires the following fees:

- (1) Physician Assistant License Fee - two hundred dollars (\$200.00), except that an applicant for a physician assistant limited volunteer license need not submit an application fee.

- (2) Annual Registration Fee - one hundred and twenty dollars (\$120.00), except that a physician assistant who registers not later than 30 days after his or her birthday shall pay an annual registration fee of one hundred dollars (\$100.00). Any physician assistant who holds a limited volunteer license or who submits a statement to the Board confirming that the physician assistant is currently exclusively engaged in volunteer practice and has engaged exclusively in volunteer practice during the preceding year shall submit a reduced registration fee of twenty-five dollars (\$25.00).

History Note: Authority G.S. 90-12.1; 90-15; 90-18(c)(13); 90-18.1;
Eff. May 1, 1999;
Amended Eff. April 1, 2005.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

- (a) As a condition of license renewal, each pharmacist shall report on renewal forms the hours of continuing education obtained during the preceding year. Annual accumulation of ten hours is considered satisfactory to meet the quantitative requirement of this Rule.
- (b) All records, reports of accredited hours and certificates of credit shall be kept at the pharmacist's regular place of practice for verification by inspectors during regular or other visits. The Board may require submission of such documentation on a random basis. Pharmacists who do not practice regularly at one location shall produce such records within 24 hours of a request from Board authorized personnel. All records of hours and certificates of credit shall be preserved for at least three years.
- (c) All continuing education shall be obtained from a provider approved by the Board. In order to receive credit, continuing education courses shall have the purpose of increasing the participant's professional competence and proficiency as a pharmacist. At least five hours of the continuing education credits must be obtained through contact programs in any calendar year. Contact programs are those programs in which there is an opportunity for live two-way communication between the presenter and attendee.
- (d) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state.

History Note: Authority G.S. 90-85.6; 90-85.17; 90-85.18;
Eff. January 1, 1985;
Amended Eff. April 1, 2005; August 1, 2004; August 1, 1998;
September 1, 1993; May 1, 1989.

CHAPTER 52 – BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0201 APPLICATION

Anyone who meets the statutory requirements and wishes to apply for examination may do so by submitting a written application to the office of the executive secretary of the board at 1500 Sunday Drive, Raleigh, North Carolina 27607. Such application for Examination or Application of Reciprocity shall be made on a form provided by the Board. Applicants shall furnish the board with certification of graduation from a four year high school, completion of at least two years of undergraduate college education, graduation from an accredited college of podiatric medicine, and passing scores on all parts of the National Boards, including PM-Lexis, as provided in the statutes. The application will state the amount of the fee, which is non-refundable. The application must be accompanied by the application fee, which shall be the maximum amount provided by statute. Applications must also be notarized by a Notary Public in good standing.

History Note: Authority G.S. 90-202.5; 90-202.6; 90-202.7;
Eff. February 1, 1976;
Amended Eff. April 1, 2005; January 1, 2005;
December 1, 1988.

21 NCAC 52 .0210 FEE FOR VALIDATION OF LICENSEE LISTS; COMPUTER SERVICES

- (a) In order to validate a podiatrist's authority to receive drug samples pursuant to U.S. federal laws, the Board shall provide computerized lists of its licensees and their licensing status to companies engaged in the business of providing data information services to the pharmaceutical and healthcare industries for the purposes of validating the licensing status of health care professionals for a fee of three hundred dollars (\$300) per order, payable in advance. Orders for a list of licensees shall be placed at least four weeks in advance.
- (b) Other Data Processing Services. The Board may provide data processing services related to the Board's powers and duties upon request from research and educational organizations. No fees for such services shall be assessed if the use of the data is for nonprofit educational or research purposes.

History Note: Authority G.S. 90-202.3; 150B-19(5)e;
Eff. April 1, 2005.

21 NCAC 52 .0211 TEMPORARY LICENSE

The Board shall grant temporary license privileges to podiatrists practicing solely on federal military installations within North Carolina. Application for temporary license shall require the same education as for a permanent license, but there shall be no examination nor application fee assessed. Temporary licenses shall be granted for a maximum of one-year, renewable annually so long as the podiatrist continues to practice on the federal military installation.

History Note: Authority G.S. 90-202.6;
Eff. April 1, 2005.

21 NCAC 52 .0601 APPLICATION FOR EXAMINATION

The application for examination shall be used by all applicants who wish to take the examination for licensure. It shall require

the applicant to furnish the board with information required or permitted by these Rules. The form may be obtained in hard-copy or electronic format from the office of the executive secretary at 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.

*History Note: Authority G.S. 90-202.5;
Eff. February 1, 1976;
Amended Eff. April 1, 2005; January 1, 2005;
December 1, 1988.*

21 NCAC 52 .0804 NOTICE MAILING LIST

- (a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Board shall give notice to all interested parties of the proceedings in accordance with the requirements of G.S. 150B.
- (b) Mailing List. Any person desiring to be placed on the mailing list for the rule-making notices may file a request in writing, furnishing his name and mailing address to the Board. The request shall state the subject areas within the authority of the Board for which notice is requested.
- (c) Fee Charged. The cost to be on the mailing list for rule-making notices shall be fifteen dollars (\$15.00) per year. A notice and invoice shall be mailed no later than February 1 of each year to the last known address of persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year shall be deleted from the list.

*History Note: Authority G.S. 150B-19.5(e); 150B-21.2;
Eff. April 1, 2005.*

21 NCAC 52 .1302 PROCEDURES FOR CONDUCTING ELECTIONS

The procedures to be followed in the conducting of elections to fill podiatrists' positions on the Board of Podiatry Examiners are as set forth in this Rule:

- (1) At least 30 days prior to the expiration of the term of a board member, written notice of the holding of an election shall be sent to every podiatrist with a current North Carolina license residing in this state using a mailing or electronic address as contained in the board's official records.
- (2) The notice shall have with it a list of at least two, but no more than three nominees proposed by the Board of Podiatry Examiners for the board member position to be filled.
- (3) The election or voting for the board member position shall take place annually prior to July 1 of each year. Additional nominations may be received from the floor or as write-in nominations on a ballot and may be received from any licensed podiatrist residing in North Carolina.
- (4) Ballots shall be prepared by the Board of Podiatry Elections and distributed or mailed to all North Carolina licensed podiatrists who reside in North Carolina. Any podiatrist who

is eligible to vote and who wishes to vote and who will not be in attendance at the election meeting may request a written ballot from the executive secretary or secretary-treasurer and shall return the ballot prior to the election meeting. Each voting podiatrist shall mark his/her ballot and cast his/her ballot in the ballot box or other designated receptacle, or return the ballot to the board by the specified deadline for receipt of ballots. Late ballots shall not be counted.

- (5) The executive secretary, secretary-treasurer or such other member of the board as may be designated by the President of the Board of Podiatry Examiners shall conduct a tally of the ballots, record the two names receiving the highest number of votes and their respective percentages, and submit to the president of the board the names of the two nominees receiving the highest number of votes and their respective percentage of votes.
- (6) The president of the board shall in turn submit to the Governor the two names who received the highest number of votes and their respective percentage of votes with biographical data on the two podiatrists being submitted.
- (7) It shall not be necessary for an individual podiatrist to receive a majority of votes of those North Carolina licensed podiatrists participating in the election. All licensees shall be notified of the results of the election.
- (8) To be eligible for board membership, a podiatrist must be a licensed podiatrist in North Carolina at least for the period of time prescribed by statute. A vote for any licensed podiatrist not holding a North Carolina license for that minimum period shall not be counted.

*History Note: Authority G.S. 90-202.4;
Eff. September 1, 1982;
Amended Eff. May 1, 1983;
Legislative Objection Lodged Eff. May 11, 1983;
Curative Amended Eff. May 13, 1983;
Amended Eff. April 1, 2005; December 1, 1988.*

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01D .1924 STATE EMPLOYEES SUBJECT TO THE FAIR LABOR STANDARDS ACT

State government shall comply with the Fair Labor Standards Act, including paying at the Federal minimum wage.

*History Note: Authority G.S. 126-4;
Eff. January 1, 1989;
Amended Eff. April 1, 2005.*

25 NCAC 01J .0615 SPECIAL PROVISIONS

(a) PLACEMENT ON INVESTIGATION - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Personnel Director. The State Personnel Director shall approve an extension of the period of investigatory status with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) The matter is being investigated by law enforcement personnel, and the investigation is not complete; or
- (2) A management individual who is necessary for resolution of the matter is temporarily unavailable; or
- (3) A person or persons whose information is necessary for resolution of the matter is/are temporarily unavailable.

When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstance is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place and to protect the safety of persons or property.

(b) CREDENTIALS - Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.

- (1) Employees in such classifications shall obtain and maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or

maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:

- (A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 01J .0608.
- (B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
- (C) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

(c) OTHER SPECIAL PROVISIONS -

- (1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.
- (2) Warnings, extensions of disciplinary actions and periods of placement on investigation, and placement on investigation with pay shall not be grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings shall not be appealable to the State Personnel Commission.
- (3) An agency shall furnish to an employee as an attachment to the written documentation of any grievable disciplinary action, a copy of the agency grievance procedure.
- (4) Each state agency shall adopt and submit to the State Personnel Commission an internal grievance procedure that shall include as an attachment an agency employee relations policy which:
 - (A) Sets out the manner and mechanism with which employees are notified of changes in agency policy and State Personnel Commission rules;
 - (B) Sets out the policy on the use of disciplinary suspension and the

- procedure for the issuance of warnings.
- (C) Sets out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and
- (D) Sets out the policy on how an employee may access the employee's personnel file.
- (5) Each state agency shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter.
- (6) Each state agency shall insure that designated personnel are trained in the administration of this Section.

History Note: Authority G.S. 126-4; 126-25; 126-35; Eff. October 1, 1995. Amended Eff. April 1, 2005.

25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION

Each employee shall:

- (1) make a good faith effort to mediate disputes;
- (2) attend mediations as scheduled by the agency; and
- (3) notify agency personnel in advance when circumstances prevent the employee from attending a scheduled mediation. Failure to make such an advanced notification shall cause the grievance to be dismissed.

History Note: Authority G.S. 126-4(9); Eff. April 1, 2005.

25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION

(a) Each agency shall:

- (1) administer the mediation program within the agency;
- (2) appoint an agency intake coordinator who will be responsible for organizing the mediation process;
- (3) determine suitable locations for conducting mediations;
- (4) ensure confidentiality of the mediation to the extent provided by law;
- (5) schedule only mediators from the OSP Mediation Pool for each mediation session;
- (6) reimburse mediators for travel and other expenses at state approved rates and covering any administrative costs associated with mediation;
- (7) designate management personnel, such as human resources personnel and legal counsel, to be available to answer questions that may arise during the mediation process;

- (8) designate agency representatives who will mediate in good faith and who will have the authority to reach an agreement on behalf of the agency to resolve a grievance;
- (9) submit data to OSP for the purpose of evaluating the mediation process for cost containment and resolution of grievances efficiently and effectively; and
- (10) submit to OSP a copy of all Mediation Agreements executed by the agency.

(b) An agency employee designated to attend mediation on behalf of the agency shall notify agency personnel in advance when circumstances prevent the employee from attending a scheduled mediation. Failure to make such an advanced notification may subject the employee to disciplinary action.

History Note: Authority G.S. 126-4(6); 126-4(9); 126-4(10); Eff. April 1, 2005.

25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

The Office of State Personnel (OSP) shall:

- (1) appoint the OSP Mediation Administrator as program manager;
- (2) develop an OSP mediator pool;
- (3) identify mediator training programs and resources; and
- (4) conduct on-going studies/analysis to evaluate program effectiveness.

History Note: Authority G.S. 126-4(9); 126-4(10); Eff. April 1, 2005.

25 NCAC 01K .0104 STATE HUMAN RESOURCE DEVELOPMENT POLICY

It is the policy of the State of North Carolina to provide training and development for its employees designed to:

- (1) improve productivity, effectiveness, and efficiency of government service by enhancement of employee performance;
- (2) help employees develop competencies so that they might become better qualified to perform the duties of their present jobs and advance to more responsible positions; and
- (3) develop managers and supervisors capable of designing and implementing effective systems for the accomplishment of each state agency's goals.

History Note: Authority G.S. 126-4; Eff. January 1, 1979; Amended Eff. April 1, 2005.

25 NCAC 01K .0212 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT FACILITIES

The North Carolina State Personnel Development Center's facilities at 101 West Peace Street in Raleigh shall be provided for use on a reservation basis by all state agencies from 8:00

a.m. to 5:00 p.m. Monday through Friday, excluding holidays. Room fees, based upon maximum occupancy, shall be charged to defray facility operation costs, including parking and use of available and reserved audiovisual equipment. Daily room fees are as follows: Mountain Room – twenty dollars (\$20.00); Coastal Room – twenty dollars (\$20.00); Piedmont Room – thirty dollars (\$30.00); Commission Room – fifty dollars (\$50.00). Rooms may be rented for up to four hours or any fraction of four hours for one-half the daily fee.

*History Note: Authority G.S. 126-4;
Eff. January 1, 1979;
Amended Eff. April 1, 2005, January 1, 1989.*

25 NCAC 010 .0206 RESPONSIBILITIES OF AGENCIES

(a) Top management within each agency shall establish, monitor and evaluate their individually tailored performance management systems subject to approval by the State Personnel Director as being in full compliance with this Subchapter. The head of each agency shall bring all units within the agency's purview into full compliance with this Subchapter by January 1, 1990, except for those provisions otherwise stipulated. Failure

to adhere to this Subchapter may result in the loss or withholding of performance increase funds throughout an entire agency.

(b) Each agency head shall submit an annual report to the Office of State Personnel, which includes:

- (1) a complete description of the current performance management system,
- (2) performance increase distribution of each employing unit,
- (3) data on demographics of performance ratings,
- (4) frequency of evaluations performance pay increases awarded, and
- (5) the implementation schedule for performance pay increases.

(c) Within 60 calendar days after receipt of feedback on this annual report from the Office of State Personnel, the head of each agency shall prepare a written plan alleviating inequities and systematic deficiencies and submit it to the Office of State Personnel for concurrence. The head of same agency shall also take sanctions against the managers of those units in which inequities or systematic deficiencies exist.

*History Note: Authority G.S. 126-4; 126-7;
Eff. January 1, 1990;
Amended Eff. April 1, 2005.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday May 19, 2005, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Monday, May 16, 2005 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

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

RULES REVIEW COMMISSION MEETING DATES

May 19, 2005
June 16, 2005 July 21, 2005
August 18, 2005 September 15, 2005
October 20, 2005 November 17, 2005
December 15, 2005

RULES REVIEW COMMISSION APRIL 21 MINUTES

The Rules Review Commission met on Thursday, April 21, 2005, in the office of the Rules Review Commission, 1307 Glenwood Avenue, Suite 159, Raleigh, North Carolina. Commissioners present were: Jim Funderburk, Jennie Hayman, Thomas Hilliard, Jeffrey Gray, Robert Saunders, Lee Settle, Dana Simpson, John Tart and David Twiddy.

The meeting was called to order at 9:49 a.m. with Chairman Hayman presiding. A motion was made that the Commission go into executive session to discuss with the RRC Attorneys the pending lawsuits. The motion passed and commissioners went into executive session at 9:50 a.m.

The Commission came out of executive session at 10:35 a.m. and the meeting was reconvened at 10:43 a.m. in the Assembly Room of the Methodist Building, Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

| | |
|----------------|---------------------------------|
| Jean Stanley | Board of Nursing |
| Bill Hale | Board of Nursing |
| Susan Grayson | DENR |
| Thomas Allen | DENR/DAQ |
| Nancy Pate | DENR |
| Doug Barrick | DFS |
| Fran Pedrigi | DFS |
| Stefanie Shore | Board of Cosmetic Art Examiners |
| Avram Friedman | Canary Coalition |
| Debbie Young | Department of Transportation |
| David Cobb | Wildlife Resources Commission |
| Robert Curry | Wildlife Resources Commission |
| Joan Troy | Wildlife Resources Commission |
| Penny De Pas | Board of Podiatry Examiners |
| Allan Russ | Secretary of State |

RULES REVIEW COMMISSION

Molly Masich
Julian Mann

Office of Administrative Hearings
Office of Administrative Hearings

APPROVAL OF MINUTES

Chairman Hayman reminded the Commissioners of their obligations under the governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the March 17, 2005 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10A NCAC 13B .4511: Medical Care Commission – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 13F .1104: Medical Care Commission – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 13G .0303; .0309; .0601; .1103: Medical Care Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 18A .2609: Commission for Health Services – The Commission approved the rewritten rule submitted by the agency.

18 NCAC 06 .1313: Secretary of State – The Commission approved the rewritten rule submitted by the agency. Commissioner Twiddy did not participate nor vote on the rule from the Secretary of State.

21 NCAC 14A .0101: Board of Cosmetic Art Examiners – The Commission approved the rule submitted by the agency.

21 NCAC 36 .0702: Board of Nursing – The Commission approved the rule submitted by the agency after the Board submitted additional documentation supporting the authority for the rule.

21 NCAC 52 .0205: Board of Podiatry Examiners – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously.

15A NCAC 2D .0530: Environmental Management Commission – The Commission approved this rule. However, at least ten letters requesting legislative review have been received. In addition more letters were submitted by the Canary Coalition representative at the meeting.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The meeting adjourned at 11:14 p.m.

The next meeting of the Commission is Thursday, May 19, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

LIST OF APPROVED PERMANENT RULES
April 21, 2005 Meeting

MEDICAL CARE COMMISSION

Medication Administration

10A NCAC 13B .4511

| | |
|--|--------------------|
| Accounting for Residents | 10A NCAC 13F .1104 |
| Location | 10A NCAC 13G .0303 |
| Bathroom | 10A NCAC 13G .0309 |
| Management and Other Staff | 10A NCAC 13G .0601 |
| Accounting for Resident's Personal Funds | 10A NCAC 13G .1103 |

ENVIRONMENTAL MANAGEMENT COMMISSION

| | |
|---|--------------------|
| Prevention of Significant Deterioration | 15A NCAC 02D .0530 |
| Sources In Nonattainment Areas | 15A NCAC 02D .0531 |

WILDLIFE RESOURCES COMMISSION

| | |
|---|--------------------|
| Importation of Wild Animals and Birds | 15A NCAC 10B .0101 |
| Migratory Game Birds | 15A NCAC 10B .0105 |
| Black Bear (formerly Black Bear and Wild Boar) | 15A NCAC 10B .0107 |
| Taking Big Game with Handguns | 15A NCAC 10B .0120 |
| Bear | 15A NCAC 10B .0202 |
| Deer | 15A NCAC 10B .0203 |
| Turkey | 15A NCAC 10B .0209 |
| Crow | 15A NCAC 10B .0215 |
| Open Seasons | 15A NCAC 10B .0302 |
| Bag Limits | 15A NCAC 10B .0303 |
| Special Regulations Joint Waters | 15A NCAC 10C .0107 |
| Management Responsibility for Estuarine Striped Bass | 15A NCAC 10C .0110 |
| Implementation of Estuarine Striped Bass Management Plans | 15A NCAC 10C .0111 |
| Public Mountain Trout Waters | 15A NCAC 10C .0205 |
| Trotlines and Set-Hooks | 15A NCAC 10C .0206 |
| Transportation of Live Fish | 15A NCAC 10C .0209 |
| Possession of Certain Fishes | 15A NCAC 10C .0211 |
| Inland Game Fishes | 15A NCAC 10C .0301 |
| Open Seasons: Creel and Size Limits | 15A NCAC 10C .0305 |
| Manner of Taking Nongame Fishes | 15A NCAC 10C .0401 |
| Permitted Special Devices and Open Seasons | 15A NCAC 10C .0407 |
| Hunting on Gamelands | 15A NCAC 10D .0103 |
| Clay County | 15A NCAC 10F .0308 |
| Granville, Vance and Warren Counties | 15A NCAC 10F .0311 |
| Montgomery County | 15A NCAC 10F .0327 |
| Perquimans County | 15A NCAC 10F .0355 |
| Macon County | 15A NCAC 10F .0366 |
| Town of Swansboro | 15A NCAC 10F .0369 |
| Quality of Birds Released | 15A NCAC 10H .0104 |
| Game Bird Propagation | 15A NCAC 10H .0901 |
| Disposition of Birds or Eggs | 15A NCAC 10H .0904 |
| General Regulations Regarding use of Conservation Areas | 15A NCAC 10J .0102 |

HEALTH SERVICES, COMMISSION FOR

| | |
|---|--------------------|
| Refrigeration Thawing and Preparation of Food | 15A NCAC 18A .2609 |
|---|--------------------|

SECRETARY OF STATE, DEPARTMENT OF

Registration of Direct Participation Program Securities 18 NCAC 06 .1313

COSMETIC ART EXAMINERS, BOARD OF

Departmental Rules-Definitions 21 NCAC 14A .0101

NURSING, BOARD OF

Issuance of a License by a Compact Party State 21 NCAC 36 .0702

PODIATRY EXAMINERS, BOARD OF

Practice Orientation 21 NCAC 52 .0205

COMMUNITY COLLEGES, BOARD OF

Local College Personnel Policies 23 NCAC 02C .0210

Definitions and Application for Initial License 23 NCAC 03A .0101

Application for Renewal of License 23 NCAC 03A .0102

AGENDA
RULES REVIEW COMMISSION
May 19, 2005, 10:00 A.M.

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Review of Rules (Log Report #221)
- IV. Review of Temporary Rules (if any)
- V. Commission Business

Next meeting: June 16, 2005

Commission Review/Permanent Rules
Log of Filings
March 21, 2005 through April 20, 2005

BUILDING COMMISSION

Rules in Chapter 30 concern state construction.

The rules in Subchapter 30D cover the State Building Commission designer and consultant selection policy including general provisions (.0100); project information (.0200); and selection procedures (.0300).

Definitions 01 NCAC 30D .0103
Amend/*
Pre-Selection 01 NCAC 30D .0302

Amend/*

MEDICAL CARE COMMISSION

The rules in chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.500); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

| | | | | |
|--------------------------------------|-----|------|-----|-------|
| Classification of Medical Facilities | 10A | NCAC | 13B | .3103 |
| Amend/* | | | | |

The rules in subchapter 13F concern licensing of homes for the aged and infirm and include definitions (.0100); licensing (.0200); physical plant (.0300); staff qualification (.0400); staff orientation training, competency and continuing education (.0500); staffing (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medication (.1000); Resident's funds and refunds (.1100); policies; records and reports (.1200); special care units for alzheimer and related disorders (.1300); and special care units for mental health disorders (.1400).

| | | | | |
|--|-----|------|-----|-------|
| Application of Physical Plant Requirements | 10A | NCAC | 13F | .0301 |
| Adopt/* | | | | |
| Construction | 10A | NCAC | 13F | .0302 |
| Amend/* | | | | |
| Location | 10A | NCAC | 13F | .0303 |
| Amend/* | | | | |
| Plans and Specifications | 10A | NCAC | 13F | .0304 |
| Adopt/* | | | | |
| Physical Environment | 10A | NCAC | 13F | .0305 |
| Amend/* | | | | |
| Housekeeping and Furnishings | 10A | NCAC | 13F | .0306 |
| Amend/* | | | | |
| Fire Alarm System | 10A | NCAC | 13F | .0307 |
| Amend/* | | | | |
| Plan for Evacuation | 10A | NCAC | 13F | .0309 |
| Amend/* | | | | |
| Electrical Outlets | 10A | NCAC | 13F | .0310 |
| Amend/* | | | | |
| Other Requirements | 10A | NCAC | 13F | .0311 |
| Amend/* | | | | |
| Building Code and Sanitation | 10A | NCAC | 13F | .0312 |
| Repeal/* | | | | |
| Qualifications of Medication Staff | 10A | NCAC | 13F | .0403 |
| Amend/* | | | | |
| Qualifications of Activity | 10A | NCAC | 13F | .0404 |
| Amend/* | | | | |
| Food Service Orientation | 10A | NCAC | 13F | .0509 |
| Adopt/* | | | | |

| | | | | |
|--|-----|------|-----|-------|
| Resident Contract Information on Home and Resident Register Adopt/* | 10A | NCAC | 13F | .0704 |
| Activities Program Amend/* | 10A | NCAC | 13F | .0905 |
| Respite Care Amend/* | 10A | NCAC | 13F | .0907 |
| Resident Rights Adopt/* | 10A | NCAC | 13F | .0909 |
| Resident Records Amend/* | 10A | NCAC | 13F | .1201 |
| Record of Staff Qualifications Adopt/* | 10A | NCAC | 13F | .1210 |
| Written Policies and Procedures Adopt/* | 10A | NCAC | 13F | .1211 |
| Use of Physical Restraints and Alternatives Adopt/* | 10A | NCAC | 13F | .1501 |

The rules in subchapter 13G concern licensing of family care homes including definitions (.0100); licensing (.0200); the building (.0300); staff qualifications (.0400); staffing orientation, training, competency and continuing education (.0500); staffing of the home (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medications (.1000); management and resident's funds and refunds (.1100); and policies, records and reports (.1200).

| | | | | |
|--|-----|------|-----|-------|
| The License Amend/* | 10A | NCAC | 13G | .0202 |
| Qualifications of Medication Staff Amend/* | 10A | NCAC | 13G | .0403 |
| Qualifications of Activity Coordinator Amend/* | 10A | NCAC | 13G | .0404 |
| Food Service Orientation Adopt/* | 10A | NCAC | 13G | .0509 |
| Resident Register Amend/* | 10A | NCAC | 13G | .0703 |
| Resident Contract and Information on Home Amend/* | 10A | NCAC | 13G | .0704 |
| Activities Program Amend/* | 10A | NCAC | 13G | .0905 |
| Respite Care Amend/* | 10A | NCAC | 13G | .0907 |
| Resident Rights Adopt/* | 10A | NCAC | 13G | .0909 |
| Resident Records Amend/* | 10A | NCAC | 13G | .1201 |
| Written Policies and Procedures Adopt/* | 10A | NCAC | 13G | .1211 |
| Record of Staff Qualifications Adopt/* | 10A | NCAC | 13G | .1212 |
| Use of Physical Restraints and Alternatives Adopt/* | 10A | NCAC | 13G | .1301 |

MANUFACTURED HOUSING BOARD

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

| | | | | |
|--|----|------|----|-------|
| Address Amend/* | 11 | NCAC | 08 | .0902 |
| Rule-Making and Hearing Procedures Amend/* | 11 | NCAC | 08 | .0903 |
| Complaint Handling and Inspection Procedure Amend/* | 11 | NCAC | 08 | .0910 |

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

| | | | | |
|------------------------|----|------|-----|-------|
| Definitions Amend/* | 12 | NCAC | 09A | .0103 |
|------------------------|----|------|-----|-------|

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7A deal with the organization and duties of the Division of Coastal Management.

| | | | | |
|---|-----|------|-----|-------|
| Division of Coastal Management Amend/* | 15A | NCAC | 07A | .0101 |
|---|-----|------|-----|-------|

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters, (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); and general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400).

| | | | | |
|--|-----|------|-----|-------|
| Nomination and Designation Procedures Amend/* | 15A | NCAC | 07H | .0503 |
|--|-----|------|-----|-------|

The rules in Subchapter 7I contain the Secretary's grant criteria and procedures for local implementation and enforcement programs under the coastal area management act including the purposes (.0100); policy and standards (.0200); application

procedures (.0300); general applicable standards (.0400); local implementation and enforcement plans (.0500); amendment of local management plan (.0600); failure to enforce and administer plan (.0700).

| | |
|--------------------------------|--------------------|
| Application Process Amend/* | 15A NCAC 07I .0302 |
|--------------------------------|--------------------|

The rules in Subchapter 7J are the procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings including definitions (.0100), application process (.0200), hearings (.0300), final approval and enforcement (.0400), general permits (.0500), declaratory rulings and petitions for rulemaking (.0600), expedited procedures for considering variance procedures (.0700).

| | |
|--|--------------------|
| Who is Entitled to a Contested Case Amend/* | 15A NCAC 07J .0301 |
| Petition for Contested Case Amend/* | 15A NCAC 07J .0302 |
| Project Maintenance Major Development Dredge and Fill Amend/* | 15A NCAC 07J .0407 |
| Procedure for Requesting Declaratory Rulings Amend/* | 15A NCAC 07J .0602 |
| Variance Petitions Amend/* | 15A NCAC 07J .0701 |

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

| | |
|---|-------------------|
| Live Model/Mannequin Performance Requirement Amend/* | 21 NCAC 14J .0207 |
|---|-------------------|

REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission. The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate recovery fund (.1400); forms (.1500); discriminating practices prohibited (.1600); mandatory continuing education (.1700); and limited nonresident commercial licensing (.1800).

| | |
|---|-------------------|
| Proof of Licensure Amend/* | 21 NCAC 58A .0101 |
| Agency Agreements and Disclosure Amend/* | 21 NCAC 58A .0104 |
| Delivery of Instruments Amend/* | 21 NCAC 58A .0106 |
| Handling and Accounting of Funds Amend/* | 21 NCAC 58A .0107 |
| Brokerage Fees and Compensation Amend/* | 21 NCAC 58A .0109 |
| Broker-In-Charge | 21 NCAC 58A .0110 |

| | | | | |
|--|----|------|-----|-------|
| Amend/* | | | | |
| Business Entities | 21 | NCAC | 58A | .0502 |
| Amend/* | | | | |
| Active and Inactive License Status | 21 | NCAC | 58A | .0504 |
| Amend/* | | | | |
| Salesperson to be Supervised by Broker | 21 | NCAC | 58A | .0506 |
| Amend/* | | | | |
| Continuing Education Requirement | 21 | NCAC | 58A | .1702 |
| Amend/* | | | | |
| Affiliation with Resident Broker | 21 | NCAC | 58A | .1807 |
| Amend/* | | | | |

The rules in Subchapter 58C deal with real estate prelicensing education including rules dealing with schools (.0100), private real estate schools (.0200), prelicensing courses (.0300), appraisal trade organization courses (.0400), appraisal continuing education courses (.0500), and pre-licensing course instructors (.0600).

| | | | | |
|--|----|------|-----|-------|
| Additional Course Offerings | 21 | NCAC | 58C | .0205 |
| Amend/* | | | | |
| Facilities and Equipment | 21 | NCAC | 58C | .0207 |
| Amend/* | | | | |
| Application and Criteria for Original Approval | 21 | NCAC | 58C | .0603 |
| Amend/* | | | | |
| Instructor Performance | 21 | NCAC | 58C | .0604 |
| Amend/* | | | | |
| Expiration Renewal and Reinstatement of Approval | 21 | NCAC | 58C | .0607 |
| Amend/* | | | | |
| Denial or Withdrawal of Approval | 21 | NCAC | 58C | .0608 |
| Amend/* | | | | |

The rules in Subchapter 58E are the real estate continuing education rules including rules dealing with the update course (.0100), update course instructors (.0200), elective courses (.0300), general sponsor requirements (.0400), and course operational requirements (.0500).

| | | | | |
|-----------------------------|----|------|-----|-------|
| Elective Course Component | 21 | NCAC | 58E | .0302 |
| Amend/* | | | | |
| Distance Education Courses | 21 | NCAC | 58E | .0310 |
| Amend/* | | | | |
| Course Completion Reporting | 21 | NCAC | 58E | .0406 |
| Amend/* | | | | |
| Per Student Fee | 21 | NCAC | 58E | .0407 |
| Amend/* | | | | |

RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and general provisions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); general (.0500); rules (.0600); and administrative hearing procedures (.0700).

| | | | | |
|---------------------------|----|------|----|-------|
| Inactive Status | 21 | NCAC | 61 | .0305 |
| Amend/* | | | | |
| Continuing Duty to Report | 21 | NCAC | 61 | .0308 |
| Amend/* | | | | |

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> |
|--|--------------------|------------|-------------------------|---|
| <u>ABC COMMISSION</u> | | | | |
| 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. Fat Dragon, Inc. T/A Akumi | 04 ABC 0868 | Lassiter | 02/10/05 | |
| ABC Commission v. KOL, Inc, T/A Wards Grocery | 04 ABC 0872 | Wade | 09/21/04 | |
| ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club | 04 ABC 0938 | Chess | 10/19/04 | |
| Alcoholic Beverage Control v. Faal Group International, LLC T/A Crown Central | 04 ABC 1308 | Elkins | 03/24/05 | |
| Sports Dimensions, INC d/b/a Club Deep Oros v. ABC Commission | 04 ABC 2225 | Gray | 03/22/05 | |
| <u>VICTIMS COMPENSATION</u> | | | | |
| 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 | |
| Christopher C. Searcy v. Crime Victims Compensation Commission | 04 CPS 1305 | Gray | 01/21/05 | |
| Jason Israel Chandler v. Dept. Crime Control & Public Safety, Victim Compensation Services | 04 CPS 1368 | Lassiter | 01/10/05 | |
| Regina Rose Hargrave v. Dept. Crime Control & Public Safety, Victim Compensation Services | 04 CPS 1500 | Lassiter | 01/10/05 | |
| Isaac Cornell Mitchell v. Victim and Justice Services | 04 CPS 1529 | Gray | 01/13/05 | |
| Scott Harshfield v. Crime Victims Compensation Commission | 04 CPS 1559 | Gray | 03/14/05 | |
| Belinda D. Clegg v. Crime Victims Compensation Commission | 04 CPS 1637 | Mann | 02/07/05 | |
| John Selden Clem v. State Highway Patrol, Trooper C.J. Owens | 04 CPS 1705 | Chess | 11/17/04 | |
| Ricky Nelson Allen v. Dept. Crime Control & Public Safety | 04 CPS 1916 | Lassiter | 01/05/05 | |
| Bennett Lee Sullivan v. Johnston County Sheriff's Dept. | 04 CPS 2041 | Wade | 01/06/05 | |
| Harold E Shaw v. Office of Administrative Hearings | 04 CPS 2113 | Conner | 04/14/05 | |

CONTESTED CASE DECISIONS

| | | | |
|---|-------------|----------|----------|
| Delphine Holder v. Crime Control & Public Safety, Victim Compensation Services Division | 04 CPS 2135 | Chess | 01/05/05 |
| Daniel A. Young, Sr v. Crime Victims Compensation Commission | 05 CPS 0023 | Wade | 02/21/05 |
| William F. Crain v. Victims Compensation Commission | 05 CPS 0077 | Gray | 04/18/05 |
| Christine Watts v. OAH | 05 CPS 0128 | Chess | 03/17/05 |
| Richard H Jones v. OAH – Administrative Law Judge | 05 CPS 0225 | Lassiter | 04/13/05 |

DEPARTMENT OF AGRICULTURE

| | | | |
|--|-------------|------|----------|
| 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 |
|--|-------------|------|----------|

DEPARTMENT OF ADMINISTRATION

| | | | |
|----------------------------|-------------|----------|----------|
| Larry Yancey v. GACPD, DOA | 04 DOA 0896 | Morrison | 07/28/04 |
|----------------------------|-------------|----------|----------|

HEALTH AND HUMAN SERVICES

| | | | |
|---|-------------|----------|----------|
| 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 |
| 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 |
| Tomeeka K. Blount v. DHHS, Caswell Center | 03 DHR 1728 | Elkins | 10/15/04 |
| 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 |
| Willie S. Neely v. DHHS, Division of Facility Services | 03 DHR 2151 | Gray | 02/17/05 |
| Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA | 03 DHR 2377 | Conner | 07/19/04 |
| Tony Worley v. DHHS, Div of Facility Services | 03 DHR 2427 | Mann | 12/07/04 |
| 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 |
| Brenda Rena Hairston v. DHHS | 04 DHR 0183 | Wade | 02/04/05 |
| Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services | 04 DHR 0185 | Elkins | 11/23/04 |
| 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 |
| Evelyn Deloris Johnson v. DHHS | 04 DHR 0261 | Elkins | 02/10/05 |
| Terry T. Nixon v. DHHS, Division of Facility Services | 04 DHR 0287 | Lassiter | 01/05/05 |
| 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 |
| Beverly Manago v. DHHS, Division of Facility Services | 04 DHR 0473 | Chess | 11/30/04 |
| Bervin D. Pearson Sr. v. DHHS, Broughton Hospital | 04 DHR 0476 | Morrison | 09/09/04 |
| Ralm, Inc v. DHHS, DFS, Mental Health Licensure | 04 DHR 0482 | Lassiter | 02/15/05 |
| Tracy M. Anderson v. DHHS, Div. of Facility Services | 04 DHR 0501 | Conner | 09/14/04 |
| Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc, (Lessor) and Clayton Dialysis Center., Inc. (Lessee) | 04 DHR 0516 | Elkins | 12/17/04 |
| Ray J. Bobbitt v. Nash County Dept. of Social Services | 04 DHR 0529 | Elkins | 07/13/04 |
| Ralm, Inc v. DHHS, DFS, Mental Health Licensure and Certification | 04 DHR 0540 | Lassiter | 02/17/05 |
| 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 |

CONTESTED CASE DECISIONS

| | | | |
|---|-------------|----------|----------|
| Shirly Thaggard v. DHHS, Div. of Facility Services | 04 DHR 0588 | Morrison | 11/05/04 |
| Maggie E. Clinding v. DHHS, Div. of Facility Services | 04 DHR 0590 | Conner | 11/08/04 |
| Judith Marie Carson v. DHHS, Broughton Hospital | 04 DHR 0594 | Gray | 10/08/04 |
| Francho Peoples v. DHHS, Division of Medical Assistance | 04 DHR 0596 | Elkins | 11/23/04 |
| Emelie Kashangura v. DHHS, DFS | 04 DHR 0602 | Elkins | 07/14/04 |
| The Braxton Home, Alfred F. Braxton v. DHHS, Division of Facility Services | 04 DHR 0633 | Wade | 02/01/05 |
| 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 |
| Velma J. Thomas, Thomas Child Care v. Div of Child Development | 04 DHR 0645 | Conner | 12/03/04 |
| Amy Hensley v. DHHS | 04 DHR 0696 | Elkins | 09/01/04 |
| Christy Robinson v. DHHS | 04 DHR 0704 | Elkins | 02/14/05 |
| Tanisha Mitchell v. DHHS, Div. of Facility Services | 04 DHR 0787 | Mann | 06/23/04 |
| Rudolph Lofton v. Medicaid Program | 04 DHR 0788 | Wade | 11/23/04 |
| Stacey Curtis v. Dorothea Dix Hospital | 04 DHR 0791 | Lassiter | 09/01/04 |
| Michelle Cross v. DHHS | 04 DHR 0811 | Morrison | 11/24/04 |
| Tracy B Lovett, Lovett House Inc. v. DMH/DD/SAS Accountability Team Marvin Sanders/Jim Jarrard | 04 DHR 0812 | Wade | 04/07/05 |
| 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 |
| Tanya H. Dey v. Medicaid | 04 DHR 0864 | Elkins | 11/10/04 |
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| Fox's Tot, Inc., Connie Fox v. DHHS | 04 DHR 0881 | Elkins | 07/20/04 |
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| Ralph Robinson, Jr., Neuse Center for MH/DD/SAS | 04 DHR 0897 | Gray | 01/31/05 |
| Lisa Robinson v. Neuse Center for MH/DD/SAS | 04 DHR 0898 | Gray | 01/31/05 |
| Triad Imaging, Inc v. DHHS, DFS, CON Section and Diagnostic Radiology & Imaging, LLC | 04 DHR 0908 | Gray | 02/17/05 |
| Linda Brown v. DHHS, Div. of Medical Assistance | 04 DHR 0919 | Gray | 01/19/05 |
| K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services | 04 DHR 0967 | Mann | 12/10/04 |
| 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 |
| Susan L Morris d/b/a Magnolia Place v. OAH | 04 DHR 1059 | Conner | 04/14/05 |
| James Phillip Chavis, Jr., DHHS, Div. of Medical Assistance | 04 DHR 1071 | Wade | 02/04/05 |
| Sandra Elaine Patrick v. DHHS, Div of Facility Services | 04 DHR 1073 | Conner | 10/01/04 |
| Roger Penland, Jr v. DHHS, Division of Facility Services | 04 DHR 1096 | Gray | 11/29/04 |
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| Roberta Bell v. DHHS, Div of Medical Assistance | 04 DHR 1134 | Wade | 09/15/04 |
| Phyllis Bryant Duren v. DHHS, DFS | 04 DHR 1135 | Conner | 03/04/05 |
| 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 |
| Sandy Reichard v. Satana T. Deberry, DHHS | 04 DHR 1162 | Wade | 02/17/05 |
| Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance | 04 DHR 1166 | Gray | 09/03/04 |
| Charleese K. Garrison, as Mother of Jasmine C. Garrison v. DHHS, Div of Medical Assistance | 04 DHR 1168 | Gray | 02/15/05 |
| Wade Assisted Living, Inc., T/A Laurie Edwards | 04 DHR 1174 | Wade | 11/08/04 |
| Janet K. Faison v. DHHS, Div. of Facility Services | 04 DHR 1181 | Wade | 02/01/05 |
| Cynthia R. Hill, DHHS, Division of Facility Services | 04 DHR 1183 | Wade | 02/01/05 |
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| Alicia Colon v. DHHS, Division of Facility Services | 04 DHR 1280 | Mann | 11/16/04 |
| Monica Dockery v. DHHS | 04 DHR 1281 | Wade | 12/02/04 |
| Julia Matheson v. DHHS, Div. of Facility Services | 04 DHR 1301 | Wade | 10/19/04 |
| Faye Rice, CEO Rice & Rice Co., Inc v. Marvin Sanders DHHS, Div of MH Dev. Disabilities | 04 DHR 1303 | Wade | 01/24/05 |
| Renee Farrow v. OAH | 04 DHR 1307 | Gray | 03/14/05 |
| Martha Abare v. DHHS, Div. of Facility Services | 04 DHR 1310 | Wade | 11/01/04 |
| Lakresha McIver v. Health Care Registry | 04 DHR 1330 | Elkins | 11/10/04 |
| Vonzella Malone v. DHHS, Division of Facility Services | 04 DHR 1331 | Gray | 11/23/04 |
| Renita M. Walton v. DHHS, Div of Facility Services | 04 DHR 1359 | Wade | 10/14/04 |
| Elizabeth D. Hedgepeth v. Dept. of Health Services | 04 DHR 1364 | Elkins | 11/10/04 |
| Cydra Pajiete Seegers v. DHHS, Div. of Facility Services | 04 DHR 1366 | Mann | 11/09/04 |
| Ghazaelleh Abdel-Kader v. DHHS, WIC, Division of Public Health | 04 DHR 1373 | Gray | 12/15/04 |
| 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 |
| Bio-Medical Applications of NC, Inc., DHHS, Div. of Facility Services, Div. of Medical Facilities Planning Section, Total Renal Care of NC, LLC and Renal Systems Management, LLC and Garner Dialysis Center, Inc | 04 DHR 1384 | Elkins | 02/04/05 |
| Craven Regional Medical Authority d/b/a Craven Regional Medical Center | 04 DHR 1428 | Chess | 01/21/05 |
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| Timothy and Karen Matchunis v. DHHS, Division of Medial Assistance | 04 DHR 1434 | Gray | 04/15/05 |
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| Kim Haley, Cap/C, v. DHHS Carolina Imaging | | | |
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| Charlenia Ferguson v. Child Care Division | 04 DHR 1489 | Mann | 01/07/05 |
| Tammy S. Edge v. NC Tax Administrator, Dept. of Revenue | 04 DHR 1565 | Lassiter | 01/26/05 |
| Jannaj J. Peters v. NC Nurse Aide I Program | 04 DHR 1566 | Gray | 02/15/05 |
| Kathleen Barker v. DHHS | 04 DHR 1584 | Gray | 01/04/05 |
| Anita Whitehurst v. MRNC | 04 DHR 1620 | Chess | 12/08/04 |
| Joyce Miller Moore v. DHHS | 04 DHR 1621 | Lassiter | 01/26/05 |
| Maude Gibbs v. Dare County Department of Social Services | 04 DHR 1652 | Gray | 04/14/05 |
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| Ivola Banks, Executrix of the Estate of Laura B. Mercer v. DHHS, Div of Medical Assistance | 04 DHR 1800 | Gray | 03/03/05 |
| Olivera Leross Langston v. Cherry Hospital | 04 DHR 1802 | Chess | 12/09/04 |
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| Virginia L Richmond v. John Umstead Hospital | 04 DHR 1979 | Elkins | 03/30/05 |
| Angela Maria Dozier v. Franklin County Dept. of Social Services | 04 DHR 2050 | Chess | 02/16/05 |
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| Richard D. Bullock v. DHHS, Div of Medical Assistance | 04 DHR 2148 | Elkins | 02/10/05 |
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| Lawrence Wilson Brathwaite v. OAH | 04 DHR 2188 | Elkins | 03/17/05 |
| Quashemia Leary v. DHHS, Division of Facility Services | 04 DHR 2239 | Chess | 03/29/05 |
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| Kevin L. Peppers, PB Interventions, Inc v. DHHS, DFS | 04 DHR 2311 | Lassiter | 02/24/05 |
| Donnell B. Buckner, PB Interventions, Inc v. DHHS, DFS | 04 DHR 2312 | Lassiter | 02/24/05 |
| Kaitlyn Ashley Davis, Shawn Aileen Davis v DHHS, Women and Children's Health Section | 04 DHR 2328 | Gray | 04/18/05 |
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| Belinda A. Genwright & Jason W. Genwright v. Harnett County Dept. of Social Services | 05 DHR 0177 | Chess | 03/09/05 |
| Restoration Church of God in Christ International, D/B/A Joys of the Heart Child Care Center v. Bladen County Dept. of Social Services as local Purchasing agent and the DHHS, Div. of Child Development | 05 DHR 0182 | Elkins | 03/30/05 |
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A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

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| Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm | 03 DOJ 1702 | Conner | 05/10/04 |
| Cindy L. Schumacher v. Sheriff's Educ. & Traning Stds. Comm | 03 DOJ 2341 | Chess | 12/29/04 |
| Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission | 03 DOJ 2354 | Mann | 07/19/04 |
| Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission | 03 DOJ 2355 | Mann | 07/19/04 |
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| Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm. | 03 DOJ 2431 | Conner | 06/22/04 |
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| Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Standards Comm | 04 DOJ 0259 ² | Wade | 01/10/05 |
| Linnell Davis, Jr. v. Private Protective Services Board | 04 DOJ 0299 | Elkins | 08/26/04 |
| Jason Oneil Rice v. Sheriffs' Education & Training Standards Comm. | 04 DOJ 0318 | Mann | 06/24/04 |
| Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm. | 04 DOJ 0490 | Wade | 11/01/04 |
| 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 Mciver, II v. Criminal Justice Educ. & Training Stds. Comm | 04 DOJ 0567 | Gray | 10/15/04 |
| Roger Wayne Alvarico v. Sheriffs' Education & Training Standards Comm | 04 DOJ 0636 | Gray | 11/29/04 |
| Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm | 04 DOJ 0658 | Gray | 09/20/04 |
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| Jerry Adrian Crawley v. Sheriffs' Education & Training Standards Comm | 04 DOJ 0828 | Gray | 09/16/04 |
| Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm | 04 DOJ 0829 | Mann | 07/28/04 |

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| Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm | 04 DOJ 0830 | Elkins | 08/24/04 | |
| Michael Lee Millner v. Sheriffs' Educ & Training Stds. Comm | 04 DOJ 0831 | Gray | 12/16/04 | |
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| Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency | 04 DOJ 0889 ⁴ | Gray | 03/07/05 | |
| David R. Pacheco v. Criminal Justice Educ. & Training Standards Comm | 04 DOJ 0966 | Gray | 11/16/04 | |
| Murphy D. Riggan v. Criminal Justice Educ & Training Standards Comm | 04 DOJ 0985 | Gray | 11/19/04 | |
| Lance Tyree Rice v. Criminal Justice Educ. & Training Standards Comm | 04 DOJ 1013 | Morrison | 10/29/04 | |
| Randall Douglas Hughes v. Criminal Justice Education & Training Standards Comm | 04 DOJ 1078 | Elkins | 09/30/04 | |
| Melanie Bounds Allen v. Sheriffs' Education and Training Standards Comm | 04 DOJ 1154 | Mann | 02/18/05 | |
| Ernest Alvin Gaddy v. Sheriffs' Education and Training Standards Comm | 04 DOJ 1153 | Wade | 12/02/04 | |
| Kenneth R. Moore v. Dept of Justice, Company Police Program Comm | 04 DOJ 1180 | Gray | 09/29/04 | |
| Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency | 04 DOJ 1203 ⁴ | Gray | 03/07/05 | |
| Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency | 04 DOJ 1204 ⁴ | Gray | 03/07/05 | |
| Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency | 04 DOJ 1205 ⁴ | Gray | 03/07/05 | |
| Robert Wrenn Spencer, Jr., v. Sheriffs' Educ & Training Standards Comm | 04 DOJ 1209 | Mann | 11/09/04 | |
| Kenneth James McClure v. Sheriffs' Educ. & Training Standards Comm | 04 DOJ 1210 | Morrison | 12/30/04 | |
| Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Stds Comm | 04 DOJ 1215 ² | Wade | 01/10/05 | |
| Gordon Shane Smith v. Criminal Justice Education & Training Standards Comm | 04 DOJ 1241 | Gray | 09/29/04 | |
| Lance Harviell Patterson v. Private Protective Services Board | 04 DOJ 1242 | Morrison | 10/29/04 | |
| Marcus Fuller v. Private Protective Services Board | 04 DOJ 1244 | Morrison | 11/12/04 | |
| Reginald Mungo v. Private Protective Services Board | 04 DOJ 1268 | Morrison | 11/04/04 | |
| Umba M Bushiri v. Private Protective Services Board | 04 DOJ 1269 | Morrison | 11/12/04 | |
| Alarm Licensing Board v. Brian Douglas Davis | 04 DOJ 1296 | Morrison | 12/24/04 | |
| Jacquelyn M. McClaud v. DOJ, Company Police Program | 04 DOJ 1398 | Lassiter | 10/18/04 | |
| Anthony Antwon Rouse v. Criminal Justice Educ. & Training Stds Comm | 04 DOJ 1540 | Morrison | 03/15/05 | |
| Adam C. Lentz v. Sheriffs' Educ & Training Standards Comm | 04 DOJ 1551 | Morrison | 11/19/04 | |
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| Mark James Tucker v. Alarm Systems Licensing Board | 04 DOJ 1594 | Mann | 11/09/04 | |
| Gerlie Poston, Jr., v. Sheriffs' Educ & Training Standards Comm | 04 DOJ 1631 | Elkins | 03/24/05 | |
| Sadie Mae Billie v Criminal Justice Educ. & Training Standards Comm. | 04 DOJ 1815 | Wade | 04/12/05 | |
| Idris Q. Strange v. Dept. of Justice, Company Police Program | 04 DOJ 1978 | Gray | 03/28/05 | |
| Jerome F. Russo, II v. Alarm Systems Licensing Board | 04 DOJ 1980 | Gray | 01/14/05 | |
| Corporate Carolina Special Police Dept., Jeremiah Gaither v. DOJ, Co. Police Program Commission | 04 DOJ 2015 | Wade | 01/06/05 | |
| Nicholas Allen Epley v. Private Protective Services Board | 04 DOJ 2017 | Gray | 01/14/05 | |
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| Violet Burch Coleman v. Sheriffs' Educ. & Training Standards Comm | 04 DOJ 2160 | Chess | 02/07/05 | |
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| Bryant Lee Deaton v. DOT, Retirement Service Division | 02 DST 1029 | Gray | 09/03/04 | 19:11 NCR 983 |
| Claudia L. Rapier, Gregory S. Rapier v. DOT, Retirement Systems Division | 03 DST 2375 | Wade | 10/14/04 | |
| Mary Pender v. DOT, Retirement Systems Division | 04 DST 0027 | Conner | 07/23/04 | |
| Helen F. Harris v. NC Retirement System | 04 DST 1229 | Mann | 01/19/05 | |
| Estate of Charles Michael Epley, by Joshua G Epley, Administrator v. The Board of Trustees of the Teachers' & State Employees Retirement System | 04 DST 1396 | Wade | 02/17/05 | 19:19 NCR 1609 |
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| 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 | |
| Felder Wayne Poplin v. Dept. of Public Instruction | 04 EDC 0824 | Mann | 10/28/04 | |
| Jeffrey C. Smith v. Henderson County Public Schools, State Board of Ed | 04 EDC 1229 | Mann | 12/09/04 | |
| Knowledge Network Solutions v. Dept. of Public Instruction, Office of Information Technology Services | 04 EDC 1634 | Elkins | 11/23/04 | |
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| 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 | |

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| Norman R. Pippin v. DHHS, Div. of Air Quality | 03 EHR 0703 | Wade | 01/06/05 | |
| Ralph C. Luna v. DENR | 03 EHR 0796 | Wade | 01/06/05 | |
| 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 | |
| Wayne Sharpe v. DENR, Environmental Management Commission | 03 EHR 1776 | Lassiter | 02/17/05 | |
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| 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 | |
| Nadine K. Cubakovic and Tom Cubakovic v. DENR | 03 EHR 2385 | Conner | 03/07/05 | |
| 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 ¹ | Wade | 08/13/04 | |
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| Tad Dexter v. DENR, Div. of Water Quality | 04 EHR 0363 | Morrison | 12/29/04 | |
| Dennis Graham v. DENR, Division of Water Quality | 04 EHR 0402 | Conner | 12/14/04 | |
| Joseph Glenn Henson v. DENR, Div. of Air Quality | 04 EHR 0566 | Conner | 10/04/04 | |
| Raymond Earl Dail, Sr., and wife, Linda M. Dail, v. DENR, Pamlico Co. Health Dept. | 04 EHR 0508 | Wade | 12/02/04 | |
| Sneads Ferry Marina, Jerry L. Hinnant & Jill L. Hinnant v. DENR, Coastal Resources Commission | 04 EHR 0531 | Wade | 04/12/05 | |
| Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision | 04 EHR 0612 | Wade | 05/25/04 | |
| Wellington by the Sea Homeowner's Association v. DENR, Div of Coastal Management | 04 EHR 0674 | Wade | 12/02/04 | |
| Doug's Auto Service v. DENR, Division of Air Quality | 04 EHR 0775 | Wade | 01/06/05 | |
| Samuel T. Wallace v. Brunswick County Health Dept | 04 EHR 1072 | Elkins | 01/10/05 | |
| Alma F Deason & Alma F Deason Family Ltd Partnership v. DENR, Div of Waste Mgmt, UST Section, Trust Fund Branch | 04 EHR 1106 | Lassiter | 04/11/05 | 19:21 NCR 1749 |
| Jeffrey D. Cline v. DENR, Division of Waste Management | 04 EHR 1148 | Morrison | 10/29/04 | |
| Durleen Odom & Bill Odom v. Brunswick Co. Health Department | 04 EHR 1167 | Morrison | 04/13/05 | |
| Brookside Montessori School, Inc v. DENR, Div. of Environmental Health | 04 EHR 1219 | Gray | 08/27/04 | |
| Joe Sugg v. DENR, Div. of Waste Management | 04 EHR 1311 | Gray | 02/25/05 | |
| R&K of Dare Co., Timothy Mike Morrison v. DENR | 04 EHR 1385 | Mann | 04/15/05 | |
| Brandywine Real Estate Management, Services Corporation & Northridge Partners v. DENR, Div. of Waste Management | 04 EHR 1439 | Gray | 02/15/05 | |
| Margaret D. Ryan Execatrix of the Estate of O.F. Dumas v. DENR, Div. Of Waste Management, UST Section Trust Fund | 04 EHR 1475 | Gray | 12/22/04 | |
| Joy Murray v. DENR, Division of Waste Management | 04 EHR 1478 | Gray | 11/24/04 | |
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| D&M Emeralds, Inc v. DENR | 04 EHR 2217 | Gray | 02/24/05 | |
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| Benjamin Cornwell Jr. v. Caldwell Co. Health Department | 05 EHR 0113 | Gray | 04/18/05 | |
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| David Marshall, C.W. Sullivan III v. Teachers & State Employees' Comprehensive Major Medical Plan | 03 INS 1389 ⁵ | Bryan | 04/07/05 | |
| Speros J. Fleggas vs. DOI | 04 INS 0251 | Elkins | 06/10/04 | |
| Jessica Lunde v. NC State Health Plan | 04 INS 1849 | Elkins | 02/22/05 | |
| Carole Williamson v. Teachers' and State Employees' Comprehensive Major Medical Plan | 04 INS 2067 | Chess | 02/15/05 | |
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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 EHR 1106

Alma F Deason and Alma F Deason)
Family Limited Partnership)
Petitioner)
vs.)
N. C. Department of Environment and)
Natural Resources, Division of Waste)
Management, UST Section, Trust)
Fund Branch)
Respondent)

**DECISION GRANTING
SUMMARY JUDGMENT FOR RESPONDENT**

Upon consideration of Petitioner’s Motion for Summary Judgment, Respondent’s Responses and its Motion for Summary Judgment, and both parties’ additional responses thereto, the undersigned hereby determines as follows:

FINDINGS OF FACT

1. On June 30, 1988, the General Assembly enacted the Leaking Petroleum Underground Storage Tank Cleanup Act (“Trust Fund”). The legislature initially created the Trust Fund to assist owners and operators for costs associated with discharges from petroleum underground storage tanks (“USTs”). In 1992 and 1996, the legislature amended the Commercial Fund and Noncommercial Fund respectively to allow assistance to landowners in addition to tank owners and operators in limited circumstances.

Because of the amended Trust Fund Act, owners of USTs, operators of USTs, and landowners of property containing tanks, may seek reimbursement from the Trust Fund for costs incurred in the cleanup of discharges from USTs. The funding for this nonreverting, revolving fund consists of the annual tank operating fees required of owners and operators of tanks, money paid by taxpayers through the gas tax, and appropriations from the General Assembly.

2. On May 17, 1954, Petitioner Alma Deason purchased property located at 12500 East Independence Boulevard, Matthews, in Mecklenburg, North Carolina.

3. During the late 1950’s or early 1960’s, Mr. Felix Helms began operating a gas station on the Petitioners’ property under an oral lease that he had negotiated with Petitioner Deason’s husband. As part of the gas station’s operations, Mr. Helms installed four USTs on the property. Two of the tanks held gasoline, one tank held diesel fuel, and one tank held heating oil.

4. Mr. Helms operated the gas station at the site until the late 1960s. When Mr. Helms vacated the property, he had the gas pumps removed. The service station building and USTs remained undisturbed and in place.

5. Since Mr. Helms vacated the property, no one else has operated the USTs. Mr. Helms is deceased.

6. On December 31, 1997, Ms. Deason transferred the property to the Deason Family Limited Partnership in 1997 (“Family Partnership”).

7. On July 24, 2003, the Family Partnership removed the USTs from the property.

8. On August 7, 2003, a release of petroleum products from the USTs was discovered at the property. On August 12, 2003, Petitioners provided information to Respondent that there were two separate releases on the site; one incident in the gasoline and diesel USTs area, and one incident in the heating oil UST area.

9. In August 2003, Petitioners submitted an application to the Trust Fund for reimbursement of costs associated with the assessment and remediation of UST contamination.

10. By letter dated February 12, 2004, Respondent's Trust Fund Branch determined that Petitioners were conditionally eligible for the Commercial Trust Fund.

11. On March 4, 2004, Petitioners' attorney requested that incident #27539 be deemed eligible for access to the Noncommercial Trust Fund pursuant to N.C. Gen. Stat. § 143-215.94D(b)(2) & (3).

12. By Final Agency Decision dated June 9, 2004, Respondent's Trust Fund notified Petitioners that the subject property was not eligible for reimbursement from the Noncommercial Trust Fund for two reasons. First, Respondent advised Petitioners that they were not eligible for reimbursement from the Noncommercial Trust fund pursuant to N.C. Gen. Stat. § 143-215.94D(b)(2) because that section:

[R]efers specifically to the States [sic] ability to access Non-commercial funds for commercial USTs where no responsible party is identified or fails to proceed with assessing or remediating the site. While this may be the case on this site, this portion of the statutes [sic] does not apply to STF eligibility, but merely describes use of Non-commercial fund money for the State lead program. . . .

Second, Respondent advised Petitioners that "[t]o access the Non-commercial STF under N.C.G.S. § 143-215.94D (b) (3), the applicant must be the statutory tank owner." It informed Petitioners that "[s]ince neither Petitioner is the statutory tank owner, the site is not eligible for reimbursement from the Noncommercial Tank Trust Fund under N.C. Gen. Stat. § 143-215-94D(b)(3)." (See Exhibit B to Respondent's Response to Petitioner's Summary Judgment Motion).

13. On July 2, 2004, Petitioners filed a contested case petition. They asserted that the Respondent's Trust Fund Branch erred in interpreting the Trust Fund statute, and they are entitled to seek reimbursement of remediation costs associated with their commercial USTs from the Noncommercial Trust Fund, instead of the Commercial Trust Fund.

14. On November 9, 2004, Petitioners filed a Motion for Summary Judgment. On November 29, 2004, Respondent filed a Response to such Motion. On December 30, 2004, Petitioners filed a Reply to Respondent's Response. In such Reply, Petitioners conceded that they were not eligible for reimbursement from the Noncommercial Trust fund pursuant to N.C. Gen. Stat. § 143-215.94D(b)(2).

15. On March 7, 2005, the undersigned conducted a telephone conference on such Motion. On March 11, 2005, Respondent filed a Response to Petitioner's Reply.

16. In their Motion for Summary Judgment, Petitioners contended that they were eligible for reimbursement from the Noncommercial Trust Fund under the clear and unambiguous language of N.C. Gen. Stat. § 143-215.94D(b)(3). They argued that the language in N.C. Gen. Stat. § 143-215.94D did not limit who may apply for reimbursement under that statute. They also asserted that the General Assembly only authorized a landowner's ability to access the Noncommercial Trust Fund for commercial USTs in one specific situation. That allowed access is listed in N.C. Gen. Stat. § 143-215.94E(b1). Petitioners claimed that since exception does not apply to them, they are entitled to reimbursement from the Noncommercial Trust Fund.

17. In responding to Petitioner's Summary Judgment Motion, Respondent argued that N.C. Gen. Stat. §§ 143-215.94E(b1), (c), and (c1) allowed landowners access to reimbursement from the Trust Fund in only certain situations. In that statute, the legislature did not explicitly grant landowners, the right to elect reimbursement from the Noncommercial Trust Fund for remediation costs associated with removing discharge from commercial USTs. Respondent argued that if the North Carolina legislature had intended landowners of commercial USTs be able to access the Noncommercial Fund under N.C. Gen. Stat. § 143-215.94D(b)(3) for reimbursement costs, then it would have inserted such access into the language of N.C. Gen. Stat. § 143-215.94E(c1).

18. Both parties acknowledge that there is no genuine issue as to any material fact in this contested case. Specifically, the parties do not dispute that the USTs on Petitioners' property were "commercial" tanks pursuant to N.C. Gen. Stat. § 143-215.94A(2), that Mr. Helms was the "owner or operator" of such tanks pursuant to N.C. Gen. Stat. § 143-215.94A(8) & (9)(b), and that Petitioners were simply the landowners of the property where the USTs were located.

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. § 1A-1, Rules 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. §§ 150B-33(b)(3a) and -36(d); and 26 NCAC 3 .0105 and .0114.

2. On a motion for summary judgment, the question before this Court is whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and

that a party is entitled to judgment as a matter of law. Meadows v. Cigar Supply Co., 91 N.C. App. 404, 371 S.E.2d 765 (1988) A party who relies on “mere belief or conjecture, or the allegations and denials contained in his pleadings,” cannot avoid summary judgment.” Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553 (1986)

3. Since both parties acknowledge there is no genuine issue as to any material fact in this contested case, the only question is which party is entitled to judgment as a matter of law.

4. Since Petitioners concede they are not eligible for reimbursement from the Noncommercial Trust Fund under N.C. Gen. Stat. § 143-215.94D(b)(2), the specific issue is whether Petitioners are eligible for reimbursement by the Noncommercial Trust Fund under N.C. Gen. Stat. § 143-215.94D(b)(3).

5. N.C. Gen. Stat. § 143-215.94D establishes the general statutory framework governing eligibility of reimbursement costs from the Noncommercial Trust Fund. Specifically, N.C. Gen. Stat. § 143-215.94D(b) states that the Noncommercial Trust Fund “**shall be used** for the payment of the costs . . . resulting from a discharge or release of petroleum product from[:]” . . .

(3) Commercial underground storage tanks that were taken out of operation prior to 1 January 1974 if, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is located.

(Emphasis added)

6. Merriam-Webster's Collegiate Dictionary defines the term “shall” as:

[W]ill have to[,], must[;] used to express a command or exhortation; used in laws, regulations, or directives to express what is mandatory.

(Merriam-Webster's Collegiate Dictionary, (Tenth Edition 2002))

7. In State ex. rel. Utilities Commission v. Edminsten, 291 N.C. 451, 465, 232 S.E.2d 184, 192 (1977), our N.C. Supreme Court held that:

When the language of a statute is clear and unambiguous, it must be given effect and its clear meaning may not be evaded by an administrative body or a court under the guise of construction.

8. The plain and ordinary language of N.C. Gen. Stat. § 143-215.94D(b) appears to require the Noncommercial Trust Fund to pay landowners of commercial USTs, remediation costs for a petroleum UST discharge. The language of this statute itself does not state that reimbursement of such costs under this section may be acquired only by a “statutory tank owner.” Therefore, applying N.C. Gen. Stat. § 143-215.94D(b)(3) strictly to the disputed facts of this case, Petitioners appear eligible for reimbursement from the Noncommercial Trust Fund under this statute.

9. However, “[t]he [Court] does not read segments of a statute in isolation; rather, it construes statutes *in pari materia*, giving effect, if possible, to every provision.” Rhyne v. K-Mart Corp., 358 N.C. 160, 189, 594 S.E.2d 1, 20 (2004). “Where there are different statutes *in pari materia*, though made at different times, . . . they shall be taken and considered together as one system, and as explanatory of each other.” State ex. Rel. Wilson v. Jordan, 124 N.C. 683, 33 S.E.139 (1899)

10. In Kendall v. Stafford, 178 N.C. 461, 101 S.E. 15 (1919), the N.C. Supreme Court held that:

To discover the true meaning of a statute, consideration should be given the law as it existed at the time of its enactment, the public policy declared in judicial opinions and legislative acts, the public interest, and the purpose of the act in question.

11. On June 30, 1988, the General Assembly enacted the Trust Fund Act to assist owners and operators with costs associated with discharges from petroleum USTs. At that time, both N.C. Gen. Stat. § 143-215.94D(b)(1)-(4) and N.C. Gen. Stat. § 143-215.94E were codified as part of the Trust Fund Act. However, N.C. Gen. Stat. § 143-215.94E only allowed UST owners and operators the option to elect reimbursement from the Commercial and Noncommercial Funds. (See Session Laws of 1995, c. 377, § 7, effective July 5, 1995; Session Laws of 1991, c. 583, § 6).

12. In 1992 and 1996, the legislature amended the Commercial Fund and Noncommercial Fund respectively to allow limited assistance to landowners in two instances. First, landowners of commercial USTs were allowed to elect reimbursement from the

Commercial Fund if the owner/operator could not be identified or located, or failed to proceed with cleanup of an UST discharge. N.C. Gen. Stat. § 143-215.94E(b1). Under that scenario, landowners of commercial USTs were still required to pay the appropriate deductible amount that a tank owner or operator would have to pay, if the owner or operator had proceeded with cleanup.

Second, under N.C. Gen. Stat. § 143-215.94E(c1), landowners of noncommercial USTs were allowed to elect reimbursement from the Noncommercial Fund where the owner or operator could not be identified or located, or failed to proceed with cleanup of an UST discharge.

13. Neither N.C. Gen. Stat. § 143-215.94E(b1) nor N.C. Gen. Stat. § 143-215.94E(c1) allowed landowners of commercial USTs access to the Noncommercial Fund for reimbursement associated with UST discharge cleanup. Yet, N.C. Gen. Stat. § 143-215.94E(c) explicitly gave tank owners and operators the option to elect coverage from the Noncommercial Fund, if commercial USTs were “eligible for the Noncommercial Fund in accordance with G.S. 143-215.94B(b).” That language was, and is, absent from the landowner provision in N.C. Gen. Stat. § 143-215.94E(c1).

14. Reading N.C. Gen. Stat. § 143-215.94D and -215.94E *in pari materia*, and with the entire Trust Fund Act, it is evident that the legislature intended that: (1) N.C. Gen. Stat. § 143-215.94D(b)(1)-(4) apply only to tank owners and operators, and (2) N.C. Gen. Stat. § 143-215.94E restrict the eligibility of UST landowners for reimbursement from the Trust Fund, to the two situations stated in N.C. Gen. Stat. §§ 143-215.94E(b1), and (c1). When the legislature enacted N.C. Gen. Stat. § 143-215.94D(b)(1)-(4), N.C. Gen. Stat. § 143-215.94E only allowed owners or operators, not landowners, access to the Noncommercial Fund for reimbursement costs. When the legislature amended N.C. Gen. Stat. § 143-215.94E, it did not explicitly authorize landowners of commercial USTs the option to receive reimbursement costs from the Noncommercial Fund. If the legislature intended for landowners of commercial USTs to be able to access the Noncommercial Fund, they would have inserted language granting such eligibility into N.C. Gen. Stat. § 143-215.94E(c1) (See *Alford v. Shaw*, 327 N.C. 526, 398 S.E.2d 445 (1990), citing *Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 303, 354 S.E.2d 495, 498 (1987) (the statutory inclusion of certain things implies the exclusion of others))

15. The legislature’s intent to limit a landowner’s access to the Noncommercial Fund can also be seen in N.C. Gen. Stat. § 143-215.94E(e). N.C. Gen. Stat. § 143-215.94E(e) states that when an owner, operator, or landowner pays remediation costs to clean up an UST discharge, that owner, operator or landowner:

may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay **in accordance with subsections (b), (b1), (c), and (c1) of this section.**

(Emphasis added)

16. Finally, our Supreme Court has ruled that:

The legislative will is controlling. A construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without violence to the legislative language. Where possible, the language of the statute will be interpreted so as to avoid an absurd consequence.

(Citations omitted) *State v. Hart*, 287 N.C. 76, 80, 213 S.E.2d 291, 295 (1975)

17. N.C. Gen. Stat. § 143-215.94V specifically lists the legislative intent of the Trust Fund as:

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. **Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals. . . .**

(Emphasis added)

18. In this case, Petitioners’ interpretation of N.C. Gen. Stat. § 143-215.94D(b)(1)-(4) and N.C. Gen. Stat. § 143-215.94E is contrary to the legislature’s intent and goal “to maintain solvency of the Commercial and Noncommercial Funds.” Practically speaking, if landowners of commercial USTs were allowed to elect reimbursement from the Noncommercial Fund with a \$5000.00 deductible, then what landowner of a commercial UST would elect to seek reimbursement from the Commercial Fund where the lowest deductible possible would be \$20,000? Such a interpretation not only is contrary to the legislature’s intent for the Trust Fund, but does violence to the legislative language, and practically, would lead to absurd results.

19. Respondent's interpretation of N.C. Gen. Stat. § 143-215.94D and -215.94E is reasonable and consistent with the legislative intent of the Trust Fund Act.

20. Pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, and based upon the foregoing Findings and Conclusions, there is no genuine issue as to any material fact, and Respondent is entitled to judgment as a matter of law.

SUMMARY JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby GRANTS Summary Judgment in favor of the Respondent.

NOTICE AND ORDER

The North Carolina Department of Environment and Natural Resources will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 11th day of April, 2005.

Melissa Owens Lassiter
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

04 OSP 1397

Chris Taylor)
 Petitioner)
 vs.)
 The Robeson County)
 Department of Social Services)
 Respondent)

DECISION

The appeal of Chris Taylor, a former employee of the Robeson County Department of Social Services, was heard on March 7, 2005, in Lumberton, North Carolina, before Fred G. Morrison Jr., Senior Administrative Law Judge.

APPEARANCES

For Petitioner: Chris Taylor, *Pro se*
10565 South Chicken Road
Fairmont, NC 28340

For Respondent: J. Hal Kinlaw, Jr., Esq.
Robeson County Attorney
P.O. Box 1371
Lumberton, NC 28359

ISSUE

Whether Respondent had just cause to terminate Petitioner from employment as a Work First Employment Services Social Worker II for unacceptable personal conduct?

FINDINGS OF FACT

1. Petitioner, Chris Taylor, was employed by the Robeson County Department of Social Services as a Work First Employment Services Social Worker II from October 16, 2001, until he was dismissed effective July 15, 2004.

2. On May 18, 2004, Becky Morrow, Director of the Robeson County Department of Social Services (hereinafter referred to as "Director"), met with the Petitioner, along with his immediate supervisor and all of the members of management in the chain of command between Petitioner and Director. Also present at the meeting was a Medicaid worker and the Department's Transportation Coordinator.

3. The Director informed all parties present at the May 18, 2004 meeting that she was concerned about several incidents that had been reported regarding behavior by the Petitioner. The Director had received reports of an incident between Petitioner and the Medicaid Worker, and reports of conflict between Petitioner, the Medicaid worker and the Transportation Coordinator. The Director wanted to make certain that those present were aware that she was not going to allow conduct that caused disruption in the workplace. Since the alleged conduct occurred outside the Petitioner's assigned work area, and during times when it appeared he did not need to be present in the Medicaid department, the Director told the Petitioner, Medicaid Worker and Transportation Coordinator to refrain from going to any other department without letting their supervisor know where they were going, and why. The Medicaid Worker and Transportation Coordinator have so far adhered to the order.

4. The May 18, 2004 meeting came about in part due to the Director having received reports of Petitioner sticking his tongue out in a sexual manner at the Medicaid worker. Petitioner denied this allegation. In ordering Petitioner and the other workers to stay in their assigned work areas, the Director was attempting to avoid possible future confrontations.

5. Petitioner was specifically ordered not to go to the Medicaid Department without first notifying his supervisor.

6. On May 20, 2004, Petitioner was observed in the Medicaid Department on two separate occasions without his supervisor's knowledge and for no apparent work-related reason.

7. The Director met with Petitioner on May 20, 2004 and again gave him a direct order that until further notice he should refrain from going to any other department within the agency, especially the Medicaid Department, without someone in his chain of management having prior knowledge. The Director also told Petitioner not to linger in the break room and gave him a direct order to take his breaks in his work area until further notice. The Director told Petitioner that if he failed to follow her order on this matter, he would be subject to dismissal.

8. Petitioner was also ordered to enter the building through the back door and park in the lot behind the building, so that he could avoid going through or near the Medicaid Department which was located by the front door of the building.

9. On May 24, 2004, the Director provided Petitioner with a letter outlining the directive given to him at the May 20, 2004 meeting, and setting forth the consequences if he failed to follow the order.

10. On May 26, 2004, Petitioner was seen in the Medicaid Department without his supervisor's permission or knowledge, and without a work-related reason.

11. On July 7, 2004, Petitioner was again discovered in the Medicaid Department without his supervisor's permission or knowledge and without a work-related reason. When confronted by his supervisor, Petitioner stated, "I thought it was over." The Petitioner was again ordered to follow the procedure outlined at the May 20, 2004 meeting, and to keep his supervisor or another person in the chain of management informed when he went to any other department in the agency. Petitioner became argumentative with his supervisor.

12. On July 9, 2004, Petitioner was observed in the break room without permission, in violation of specific orders.

13. On July 13, 2004, Petitioner received a letter informing him of the specific instances of conduct in which he had disobeyed direct orders from his supervisor and the Director, regarding where he took his breaks, the procedures he was to follow when leaving his work area, and where he was to park and enter the building. The letter included information notifying Petitioner that his actions constituted insubordination as defined by the Robeson County Work Rules Group A #2. He was notified that his conduct was considered to be unacceptable personal conduct, which was grounds for dismissal.

14. On July 14, 2004, Petitioner was called to a pre-dismissal conference, at which time he was informed of the instances of conduct the Director considered to be unacceptable personal conduct constituting insubordination, and he was given an opportunity to explain and respond to the instances. At the conference, Petitioner did not give suitable explanations for disobeying the Director's orders, and stated that he was not even sure of where the Medicaid department was located.

15. On July 15, 2004, Petitioner was sent a letter outlining the instances in which he disobeyed orders from his Director and informing him that he was being fired for unacceptable personal conduct deemed to be insubordination. A copy of Petitioner's right to appeal his termination was attached to the letter.

16. On August 25, 2004, Petitioner appealed alleging that Respondent did not have just cause to terminate his employment.

CONCLUSIONS OF LAW

1. All parties to this contested case are correctly designated and were properly before the undersigned at the hearing.

2. Because of Petitioner's alleged lack of just cause for termination, the Office of Administrative Hearings had jurisdiction to hear this matter, and following this Decision, the State Personnel Commission shall issue an Advisory Opinion to the Respondent in accordance with N.C.G.S. 126-5(a)(2)(b), 126-35, 126-37, and 150B-23, et seq.

3. Petitioner was a career employee subject to the State Personnel Act at the time of his dismissal. N.C. Gen. Stat. § 126-35(a) (2004) provides that "[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." As defined by State Personnel Commission rules, "either unacceptable job performance or unacceptable personal conduct constitutes just cause for discipline or dismissal." 26 NCAC 1J .0604(e).

4. Employees subject to the State Personnel Act may be dismissed on the basis of unacceptable personal conduct without prior warning to the employee. 25 NCAC 1J .0608. Actions by State employees which have been found by the courts to constitute unacceptable personal conduct have included insubordination and willful violation of known or written work rules. Petitioner was duly warned that failure to obey orders could result in his being dismissed.

5. The State Personnel Manual includes in the definition of “unacceptable personal conduct”
- (8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning . . .

25 NCAC 11 .2304(a), (b).

6. 25 NCAC 1J .0608 provides that an employee may be dismissed for an incident of “unacceptable personal conduct, without any prior disciplinary action,” following a pre-dismissal conference, which was done in this case.

7. The reasonableness of a supervisor’s orders will be based on the specific facts and circumstances of each case. *See, Employment Sec. Comm’n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982).

8. Respondent’s orders to the Petitioner were reasonable in light of the circumstances of this particular case.

9. Petitioner willfully failed to follow the direct orders given to him by his supervisor and the Director, which constituted insubordination.

10. Respondent met its burden of showing by the greater weight of the evidence presented that it had just cause to discipline Petitioner up to and including dismissal.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the decision by the Respondent to terminate Petitioner’s employment should be affirmed as being for just cause.

ORDER AND NOTICE

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party’s attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

In so far as this matter involves a local government employee subject to Chapter 126 pursuant to North Carolina General Statute § 126-5(a)(2), the decision of the State Personnel Commission, absent a finding of discrimination, shall be advisory to the local appointing authority which shall render a Final Agency Decision. Further requirements of rights, notices and timelines to the Parties shall be forthcoming from the State Personnel Commission and/or the local appointing authority as the circumstances and stage of the process may dictate.

This the 14th day of April, 2005.

Fred G. Morrison Jr.
Senior Administrative Law Judge