

NORTH CAROLINA

REGISTER

IN THIS ISSUE



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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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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 2006 – December 2006

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

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.

From the Codifier

Notice of Text submitted by the Department of Labor/Boiler Safety Bureau and published by the Office of Administrative Hearings in the NC Register on March 15, 2006, Volume 20, Issue 18, contained a format typographical error in the text of Rule 13 NCAC 13 .0101.

The agency's submission proposed to delete the entire note as shown below. The strikeout format was inadvertently removed during the publication process from the words "boiler or pressure vessel without".

CHAPTER 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - DEFINITIONS

13 NCAC 13 .0101 DEFINITIONS

~~(9)(10)~~ "Boiler or pressure vessel proper" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:

- (a) the first circumferential joint for welded end connections;
- (b) the face of the first flange in bolted flange connections; or
- (c) the first threaded joint in threaded connections.

~~Note: Superheaters, economizers and other pressure parts connected directly to the boiler or pressure vessel without intervening valves are part of the boiler or pressure vessel proper.~~

Please contact the Office of Administrative Hearings, Rules Division, with any questions at 919-733-2678, or email to oah.rules@ncmail.net.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Costco Wholesale Corporation**

Pursuant to N.C.G.S. § 130A-310.34, Costco Wholesale Corporation has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Raleigh, Wake County, North Carolina. The Property, which contains a former Pepsi Bottling Plant, consists of 14.89 acres and is located at 2838 Wake Forest Road. Costco Wholesale Corporation has committed itself to limit redevelopment of the Property to commercial uses, initially in the form of a membership warehouse store with associated parking, a gasoline station and a tire installation facility. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR Costco Wholesale Corporation, 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 Wake County's North Regional Library, 200 Horizon Drive, Raleigh, North Carolina 27615-4922 by contacting Robin Hemrick, Manager of Adult Services, at rhembrick@co.wake.nc.us, at (919) 870-4013 or at (919) 870-4021 (voice mail); or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

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. Thus, if Costco Wholesale Corporation, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on April 18, 2006. 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

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

Pursuant to N.C.G.S. § 130A-310.34, RiverLink, Incorporated has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Asheville, Buncombe County, North Carolina. The Property, known as the Historic Cotton Mill site, consists of 2.8 acres and is located at 191 Riverside Drive. Environmental contamination exists on the Property in the soil and groundwater. RiverLink, Incorporated has committed itself to limit redevelopment of the Property to commercial and residential uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and RiverLink, Incorporated, 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.

During the 60-day public comment period, the full Notice of Intent to Redevelop a Brownfields Property may be reviewed at Pack Memorial Library, 67 Haywood Street, Asheville, NC 28801 by calling (828) 250-4740 Mondays through Thursdays from 10 a.m. to 8 p.m., Fridays from 10 a.m. to 6 p.m., Saturdays from 10 a.m. to 5 p.m., and Sundays from 2 p.m. to 5 p.m.; at the offices of RiverLink, Incorporated, 170 Lyman Street, Asheville, NC 28801 from 8 to 5 pm, Mondays through Fridays; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net, or at (919) 508-8411.

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. Thus, if RiverLink Incorporated, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on April 18, 2006. 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

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Vernon C. Carlton, Jr. and Keith R. Kooken**

Pursuant to N.C.G.S. 130A-310.34, Vernon C. Carlton, Jr. and Keith R. Kooken have filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Winston-Salem, Forsyth County, North Carolina. The Property, which is known as the Salem Uniform site, consists of 2.53 acres and is located at 4015 North Cherry Street. The Property is bounded to the north by Polo Street, across which lies land used for equipment storage by the North Carolina Department of Transportation; to the south by residential property; to the east by vacant land zoned for commercial use; and to the west by North Cherry Street, across which lie properties in commercial use.

Environmental contamination exists on the Property in soil and groundwater. Vernon C. Carlton, Jr. and Keith R. Kooken have committed themselves to allow no use of the Property other than for warehousing, retail, office or parking purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Vernon C. Carlton, Jr. and Keith R. Kooken 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 North Carolina Room of the Forsyth County Central Library, 660 West Fifth Street, Winston-Salem, NC 27101 by contacting Jerry Carroll at (336) 727-2264 ext. 9 or at carroljr@forsythlibrary.org; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, 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) 508-8411.

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. Thus, if Vernon C. Carlton, Jr. and Keith R. Kooken, as they plan, publish this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on April 18, 2006. 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

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

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt the rules cited as 10A NCAC 27I .0601 - .0609.

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

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

Proposed Effective Date: October 1, 2006

CHAPTER 27 – MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES

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 2, 2006.*

SUBCHAPTER 27I - AREA AUTHORITY OR COUNTY PROGRAM REQUIREMENTS

Reason for Proposed Action: *To provide non-Medicaid eligible consumers opportunities to appeal decisions by area/county programs to deny requests for services, suspend services, reduce services or terminate services to the Director of DMH/DD/SAS. The rule is required by G.S. 143B-147 (a)(9). The rule establishes filing requirements as well as procedures for a DMH/DD/SAS panel hearing decision and requires a final decision to be issued by the area/county program.*

SECTION .0600 - NON-MEDICAID APPEAL PROCESS

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.*

10A NCAC 27I .0601 SCOPE

(a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or county program affecting a non-Medicaid eligible client.

(b) A non-Medicaid eligible client may appeal to the Director the review decision of an area authority or county program to deny, reduce, suspend, or terminate a non-Medicaid state funded service.

(c) An appeal shall be filed with the Division only after a client has received a review decision from the area authority or county program.

(d) Nothing in these rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal decisions of third party payers to the Division.

(e) As set forth in G.S. 143B-147(a)(9), nothing in these rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings of the Division by requesting a contested case hearing pursuant to G.S. 150B.

(f) There shall be no reprisal or retaliation to anyone who is a party to an appeal.

(g) The area authority or county program may authorize interim services until the final written decision as set forth in Rule .0609 of this Section is reached.

Authority G.S. 143B-147.

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: June 16, 2006

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

10A NCAC 27I .0602 DEFINITIONS

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

- (1) "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.
- (2) "Division" means the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

Authority G.S. 143B-147.

10A NCAC 27I .0603 FILING REQUIREMENTS

- (a) An appeal shall be filed with the Division no later than 11 calendar days from the date of the area authority or county program written review decision.
- (b) The appeal shall include a copy of the area authority or county program review decision and a request for appeal on a form provided by the Division.
- (c) A verbal appeal shall not be accepted.

Authority G.S. 143B-147.

10A NCAC 27I .0604 CHANGE IN CLIENT CONDITION

If the client's medical condition changes relative to the service under appeal, the appeal shall be returned to the area authority or county program for review.

Authority G.S. 143B-147.

10A NCAC 27I .0605 INITIAL RESPONSE TO A DMH/DD/SAS APPEAL

- (a) The Director shall screen the request for appeal to the Division to determine:
 - (1) if the appeal was reviewed by the area authority or county program according to the area authority or county program policy and procedures; and
 - (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state funded service.
- (b) The Director shall send an acknowledgement letter to the client and the area authority or county program within 5 business days of receipt of the request for appeal to the Division.
- (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.
- (d) The Director shall notify the area authority or county program and the client whose appeal is accepted for review to forward all documentation considered during the area authority or county program review to the Division no later than 10 calendar days from the date of the acknowledgement letter. The acknowledgment letter shall advise the parties that a panel will be convened to conduct a hearing.
- (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as disqualified with an explanation of the basis for disqualification.
- (f) The area authority or county program shall review the appeal, if the appeal made to the Division is disqualified on the basis of not having been reviewed according to the area authority or county program's policy and procedures.

- (g) The client shall have 11 calendar days from the date of the area authority or county program review decision to resubmit the appeal to the Division.

Authority G.S. 143B-147.

10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL

- (a) The Director shall convene a five member panel to conduct a hearing for an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.
- (b) The panel members shall consist of the following:
 - (1) a provider agency representative who meets the following requirements:
 - (A) the representative shall be from a provider agency that is not be a party to the appeal; and
 - (B) the representative shall have clinical expertise in the disability area pertinent to the appeal;
 - (2) an employee of an area authority or county program who meets the following requirements:
 - (A) the employee shall be from an area authority or county program that is not a party to the appeal; and
 - (B) the employee shall have clinical expertise in the disability area pertinent to the appeal;
 - (3) two individuals who are members of a consumer and family advisory committee who is not a party to the appeal; and
 - (4) an employee of the Division.
- (c) The employee of the Division shall serve as the chairperson of the panel and shall be a voting member in the case of a tie.
- (d) The Director shall forward the record on appeal and all supplemental documentation to the chairperson of the panel within 5 days of receipt thereof.
- (e) The Director shall provide a copy of applicable law, policy, and procedures to the chairperson of the panel.
- (f) The chairperson shall schedule a panel hearing including designation of a time and place.
- (g) The chairperson shall notify the client, other panel members and the area authority or county program of the time and place no less than 15 calendar days prior to the date of the hearing.

Authority G.S. 143B-147.

10A NCAC 27I .0607 PANEL HEARING PROCEDURES

- (a) The chairperson of the panel:
 - (1) shall convene the hearing at the prearranged time and place;
 - (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties; and
 - (3) shall conduct proceedings in an orderly manner.
- (b) The panel:

- (1) may limit the total number of persons presenting for the client and area authority or county program; and
- (2) may impose time limits for presentations.
- (c) Either party may be represented by a person or attorney of their choice.
- (d) Prior to the hearing, the client and the area authority or county program shall:
 - (1) specify by name and position all individuals who will be present for the hearing;
 - (2) provide the panel with requested information; and
 - (3) when applicable, ensure that representatives of the parties shall be present at the hearing.
- (e) Any member of the panel may address questions to either party.
- (f) The panel may obtain any form of technical assistance or consultation relevant to the appeal.
- (g) No transcript shall be made and no party shall be allowed to record the proceeding. The panel may choose to record the proceeding for its own use. A tape so made shall be destroyed after the panel issues its decision.
- (h) Witnesses shall not be sworn before testifying.

Authority G.S. 143B-147.

10A NCAC 27I .0608 PANEL DECISION FINDINGS

- (a) The panel findings and decisions are based on the record and any new evidence that would be material to the issues on appeal.
- (b) The standard of review for the panel is whether the decision of the area authority or county program is supported by evidence presented.
- (c) The panel shall vote on each specific item being appealed.
- (d) Findings and decisions of the panel shall be by majority vote.
- (e) Any decision may be rescheduled for a subsequent meeting if the panel determines that it lacks sufficient information to render a decision at the initial hearing.
- (f) All panel findings and decisions shall be reached and sent in writing within 60 days of the written request for appeal to the client, the area authority or county program and the Director.

Authority G.S. 143B-147.

10A NCAC 27I .0609 FINAL WRITTEN DECISION

- (a) Upon receipt of the panel's findings and decisions, the area authority or county program shall issue a final decision based on those findings. The area authority or county program shall issue the decision in writing within 10 days of receipt of the panel's findings and decisions.
- (b) Neither the panel findings and decisions nor the area authority or county program final decision shall be interpreted as an agency decision granting a non-Medicaid eligible client the right to appeal by requesting a contested case hearing pursuant to G.S. 150B.

Authority G.S. 143B-147.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rules cited as 15A NCAC 01O .0101, .0105.

Proposed Effective Date: August 1, 2006

Public Hearing:

Date: May 18, 2006

Time: 3:00 p.m.

Location: Room 1A201, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action: *The proposed rule change will allow Registered environmental health specialist to be authorized to work for the North Carolina Alliance of Public Health Agencies (Alliance), providing solutions to staffing dilemmas in local environmental health programs. Ratified Senate Bill 622 of the 2005 Session enacted the new biennial State budget. The Joint Conference Committee Report on the Continuation, Expansion and Capital Budget – Reflecting all Legislation Enacted and Ratified in the 2005 Session, September 8, 2005, contains the following language in the DHHS Section 114 "Public Health Incubators" – Provides funding for public health incubators, \$1,000,000 Recurring. Of the \$1,000,000 for Public Health Incubators, \$90,000 is earmarked for FY 2005-2006 for The Alliance to establish a state-wide Environmental health temporary staffing agency. \$30,000 in recurring funds is budgeted for Fiscal year beginning 2006-2007. It is expected that the staffing agency will be self-supporting once it is operational. The Alliance currently provides temporary staffing to local health departments for clinical services provided.*

In order to utilize this money, the delegation of authority rules 15A NCAC 01O .0101 and .0105 must be amended. These amendments will allow employees hired by the Alliance to be authorized as agents of the state in enforcing the provisions of Chapter 120A and the rules of the Commission for Health Services. Current rules only allow an employee of a local health department to be delegated this authority. These rules are needed so that the Alliance can recruit and train employees, which will provide necessary environmental health services to local communities.

In the summer of 2005 an "On-site Wastewater Backlog" survey was conducted by the Division of Environmental Health. Responses from ninety-nine of 100 counties showed that it took fifty-one counties greater than 14 working days for their environmental health staff to make the initial site visit to conduct a site evaluation, once an application was received. Twenty counties indicated that it took greater than 28 days. On-site wastewater permits are required before building permits can be issued. These backlogs have generated a great deal of interest in trying to reduce the amount of time it takes for sites to be evaluated. The longer a developer or builder has to wait for sites to be evaluated, the more money is spent without return.

Temporary rules were initiated by the Department of Environment and Natural Resources, and approved by the Rules Review Commission on March 16, 2006. These permanent rules

are to replace the temporary rules. Amending the rules will allow individuals who are employees of a local health department or the North Carolina Alliance of Public Health Agencies to serve as an agent of the state. This will provide a solution to staffing dilemmas in local environment health programs.

Procedure by which a person can object to the agency on a proposed rule: Public comments will be accepted at the public hearing; or you may submit comments by email to: *Connie.Pixley@ncmail.net*, or in writing to: *Connie J. Pixley, OSWW Section 1642 Mail Service Center, Raleigh, NC 27699-1642.*

Comments may be submitted to: *Connie J. Pixley, DEH OSWW, 1642 Mail Service Center, Raleigh, NC 27699-1642, phone (919) 715-3273, fax (919) 715-3227, email *Connie.Pixley@ncmail.net**

Comment period ends: *June 16, 2006*

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 01 – DEPARTMENTAL RULES

SUBCHAPTER 010 - ENVIRONMENTAL HEALTH

SECTION .0100 - DELEGATION OF AUTHORITY TO ENFORCE THE COMMISSION FOR HEALTH SERVICES SANITATION RULES

15A NCAC 010 .0101 SCOPE OF DELEGATED AUTHORITY

No person shall act as an authorized agent of the state in enforcing the provisions of G.S. 130A and the rules of the Commission for Health Services who is not a current employee of a local health department, department or the North Carolina Alliance of Public Health Agencies, registered with the North Carolina State Board of Sanitarian Examiners as a Registered

Sanitarian or Sanitarian Intern and authorized pursuant to ~~these Rules, the rules in this Subchapter.~~ Except as provided in Rule .0105 of this Section, an authorization shall be valid only in the county or district served by the local health department which employs the agent. There shall be seven areas of authorization to enforce the provisions of G.S. 130A and the rules of the Commission for Health Services found in 15A NCAC 18A as follows:

- (1) Food, Lodging, and Institution Sanitation including the following:
 - (a) .1000 Sanitation of Summer Camps,
 - (b) .1300 Sanitation of Hospitals; Nursing and Rest Homes; Sanitariums, Sanitoriums; Educational and other Institutions,
 - (c) .1500 Sanitation of Local Confinement Facilities,
 - (d) .1600 Sanitation of Residential Care Facilities,
 - (e) .1800 Sanitation of Lodging Establishments,
 - (f) .2100 Rules Governing the Sanitation & Safety of Migrant Housing,
 - (g) .2200 Sanitation of Bed and Breakfast Homes,
 - (h) .2400 Sanitation of Public, Private, and Religious Schools,
 - (i) .2600 Sanitation of Restaurants and Other Foodhandling Establishments,
 - (j) .2700 Sanitation of Meat Markets, and
 - (k) .3000 Bed and Breakfast Inns.
- (2) On-Site Wastewater, including the following:
 - (a) .1900 Sewage Treatment and Disposal Systems,
 - (b) .1603 and .1606, 1611(a) and (b) and .1613 Sanitation of Residential Care Facilities (Family Foster Homes), and
 - (c) .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (3) .2800 Sanitation of Child Care Centers.
- (4) .3100 Lead Poisoning Prevention in Children Program.
- (5) .2500 Public Swimming Pools.
- (6) .3200 Tattooing.
- (7) .1603, .1606, .1611(a) and (b), .1613 Sanitation of Residential Care Facilities (Family Foster Homes) and .2100 Rules Governing the Sanitation and Safety of Migrant Housing.

Authority G.S. 130A-4.

15A NCAC 010 .0105 AGENTS SERVING AS CONTRACTORS

(a) An agent who is authorized in a specific local health department may contract with another local health department to provide services to the other local health department. The North Carolina Alliance of Public Health Agencies may also provide

authorized agents who may perform contract services for any local health department. When a local health department contracts for such services, the contracting department shall provide a statement to the Division on progress made to employ an individual who may be considered for authorization.

(b) A contract shall be created between the contracting local health department and the agent (contractor) or with the North Carolina Alliance of Public Health Agencies to include at least the following provisions:

- (1) Names and addresses of each party.
(2) Scope of work to be performed.
(3) A requirement that the original public records remain in the local health department in which the work is performed.
(4) Designation of the party responsible for maintaining public records created by the agent.
(5) A requirement that the contracting agent be available for consultation to the public being served during usual business hours.
(6) A requirement that the contracting agent be available for any hearing or other legal proceeding which may ensue from activities conducted by the agent.

(c) The contracting agent shall maintain a list of each activity and the date performed for review in accordance with Paragraph (d) of this Rule.

(d) Each public record created by the contracting agent shall be reviewed, dated, and initialed by an authorized agent of the contracting local health department. In addition, at least 10 percent of the activities performed by the agent shall be reviewed in the field by an authorized agent employed by the contracting local health department.

Authority G.S. 130A-4.

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 15A NCAC 18A .1809, .2201, .3501.

Proposed Effective Date: November 1, 2006

Public Hearing:
Date: May 05, 2006

Time: 2:00 p.m.

Location: Parker Lincoln Bldg, 2728 Capital Blvd, Raleigh, NC 27604

Reason for Proposed Action:

15A NCAC 18A .1809 - Updated to include Division of Water Quality's package treatment plant.

15A NCAC 18A .2201 - The definition conflicts with the statute.

15A NCAC 18A .3501 - To allow the inclusion of Day Camps in the rules (requested by a person who wishes to have a primitive experience day camp.)

Procedure by which a person can object to the agency on a proposed rule: Written comments may be submitted to Sue Grayson at 1632 Mail Service Center, Raleigh, NC 27699-1632 or fax to (919) 715-4739 or e-mail to sue.grayson@ncmail.net or phone Sue Grayson at (919) 715-0926.

Comments may be submitted to: Sue Grayson, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739, email sue.grayson@ncmail.net

Comment period ends: June 16, 2006

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.

Fiscal Impact:

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1800 - LOCAL PLAN APPROVAL

15A NCAC 18A .1809 LAVATORIES AND BATHS

- (a) Baths, lavatories, and toilets shall be provided for each room or unit in establishments constructed on or after December 1, 1988. Such fixtures shall be kept clean and in good repair.
(b) All lavatory and bathing facilities shall include hot and cold running water under pressure with a mixing faucet, a clean towel

in good repair and provided daily for each guest, and soap. The lavatory, its handles, faucet, and vanity shall be washed using an all purpose cleaner and rinsed daily if the room has been occupied. A sanitizer shall be applied to the lavatory and vanity using a method such as a wipe-on chemically-treated disposable sanitizing towel or equivalent. The sanitizer shall be left to air dry. Sanitizing solutions shall consist of iodophors, quaternary ammonium or other chemicals or methods that are equivalent to the action of 50 parts per million chlorine solution. A method or equipment for testing the sanitizer shall be available and used to insure minimum prescribed sanitizer strength.

(c) Floors, walls, and ceilings shall be cleanable, durable, and shall be kept clean and in good repair.

~~(d) All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by a sanitary system of sewage treatment and disposal constructed and operated in accordance with 15A NCAC 18A .1900.~~ All waste water shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

Authority G.S. 130A-248.

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

15A NCAC 18A .2201 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Bed and Breakfast Home" means a private home offering bed and breakfast accommodations to eight or less persons per night for a period of less than a week.
- (2) "Division" means the North Carolina Division of Environmental Health. The term also means the authorized representative of the Division.
- (3) "Director" means the Director of the Division of Environmental Health of the Department of Environment and Natural Resources.
- ~~(4) "Imminent Hazard" means a situation which is likely to cause an immediate threat to life or a serious risk of irreparable damage to the environment if no immediate action is taken.~~
- ~~(5)~~(4) "Permittee" means the person in charge who resides in and owns or rents the home.
- ~~(6)~~(5) "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.
- ~~(7)~~(6) "Sanitarian" means a person authorized to represent the Division in making inspections and evaluations pursuant to this Section.

Authority G.S. 130A-250.

SECTION .3500 – RULES GOVERNING THE SANITATION OF PRIMITIVE CAMPS

15A NCAC 18A .3501 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Approved" means food which complies with requirements of the NC Department of Agriculture or the US Department of Agriculture and the requirements of the Rules of this Section. "Approved" also means equipment determined by the Department to be in compliance with the Rules of this Section. Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved. These standards may be obtained from the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113—140 and are also available for inspection at the Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (2) Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources or its authorized representative. 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.
- (3) "Employee" means any camp personnel who handles food or drink during preparation or serving, or comes in contact with any eating or cooking utensils, or is employed by the camp at any time in which food or drink is prepared or served.
- (4) "Environmental Health Specialist" shall mean a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (5) "Equipment" shall mean refrigerators, insulated coolers, buckets, cooking appliances, serving utensils, or any other devices used to serve, hold or prepare food or drink.
- (6) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (7) "Good Repair" means capable of being cleaned, sanitized, and used for the intended purpose.
- (8) "Local Health Director" means the administrative head of a local health department or his authorized representative.
- (9) "Off-site" includes packouts, cookouts, or any activity where food is prepared outside the base camp.
- (10) "Permanent sleeping quarters" includes those buildings, cabins, platform tents, covered wagons and teepees that remain in a fixed

- location during the operating season and are used as primary residences for campers, staff, or user groups.
- (11) "Permit to Operate" means a permit issued by the Department upon review and approval of the operating primitive experience camp plan of operation.
- (12) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (13) "Plan of Operation" means the procedures, methodologies and measures specifically related to food preparation and protection, drinking water, waste disposal and other general sanitation issues the primitive experience camp will employ to protect the health of campers.
- (14) "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.
- (15) "Primitive Experience Base Camp" means that portion of the primitive experience camp at a fixed location which contains structures, water supplies, toilets and other facilities necessary for the operation of the camp under the control or ownership of the primitive experience camp permittee.
- (16) "Primitive Base Experience Camp Permit" means the permit is issued for the base camp facilities and appurtenances upon determination that the base camp is in compliance with the Rules of this Section.
- (17) "Primitive Experience Camp" means a camp not served by any public electrical service providers ~~and that provides overnight outdoor primitive camping activities and provides Primitive Experience Camps include those camp establishments that provide food and overnight only food or food and lodging accommodations for 72 consecutive hours five or more hours per day for a period of 3 or more days or more per week at or from a permanent base camp for groups of children or adults engaged in overnight organized recreational or educational programs. Programs are operated and staffed by the camp and supervision of individual campers is a camp responsibility. This definition does not include campgrounds or other facilities that only rent property or camp sites for camping.~~
- (18) "Responsible person" means the administrator, operator, owner, or other person in charge of

- the operation at the time of the inspection. If no individual is the apparent supervisor, then any employee may be the responsible person
- (19) Sanitize means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in accordance with Rule .3507 of this Section.
- (20) "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.
- (21) "Threat to the Public Health" means circumstances which create a significant risk of serious physical injury or serious adverse health effect.

Authority G.S. 130A-248.

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 15A NCAC 18C .1523.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: May 24, 2006

Time: 2:00 p.m.

Location: Parker-Lincoln Building, 2728 Capital Blvd., Raleigh, NC (Room 1A224)

Reason for Proposed Action: North Carolina's Rules Governing Public Water Systems (15A NCAC 18C) require a public water system to sample for certain contaminants that may occur in the drinking water distribution system. Distribution samples may be taken from taps located on private property which is not owned or controlled by the supplier of water. The Rules specify the number of water samples required, sample location criteria and sampling frequency. For many contaminants, multiple water samples must be collected from within the distribution system during a specified timeframe, and system compliance with water quality standards is based on the analytical results of these multiple samples. Therefore, a public water system may comply with standards even if an individual water sample exceeds an established action level, maximum contaminant level [MCL] or maximum residual disinfectant level [MRDL]. 15A NCAC 18C .1523 requires a public water system to provide public notice to its consumers if the system exceeds an established action level, MCL or MRDL, but a system is not required to notify a consumer if an individual water sample from the consumer's private property exceeds an action level, MCL or MRDL.

Procedure by which a person can object to the agency on a proposed rule: Objections on the proposed rule should be

submitted to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Linda.Raynor@ncmail.net.

Comments may be submitted to: Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh NC 27699-1634, phone (919) 715-3225, email Linda.Raynor@ncmail.net

Comment period ends: June 16, 2006

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1500 - WATER QUALITY STANDARDS

15A NCAC 18C .1523 PUBLIC NOTIFICATION REQUIREMENTS

(a) The provisions of 40 C.F.R. 141.32 are hereby incorporated by reference including any subsequent amendments and editions, except that multi-lingual notice shall be given if 30 percent or more of the consumers served by the system are non-English speaking. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at http://www.epa.gov/OGWDW/.

(b) The provisions of 40 C.F.R. 141, Subpart Q – Public Notification of Drinking Water Violations are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North

Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at http://www.epa.gov/OGWDW/.

(c) Special notification for distribution system samples. The requirements of this Paragraph shall be additional to the public notice requirements in Paragraphs (a) and (b) of this Rule and to the reporting requirements contained in Rule .1525 of this Subchapter. When a distribution sample is taken on property not owned or controlled by the supplier of water, the supplier of water shall notify the person authorizing the sample if any individual water sample exceeds an action level, MCL or MRDL established in this Subchapter, or if any individual sample is positive for coliform bacteria. The supplier of water shall give notice to the person authorizing the sample in a format provided by the Department, as follows:

- (1) For a contaminant listed as Tier 1 in Appendix A to 40 C.F.R. 141, Subpart Q, notice shall be provided by telephone within 24 hours of receipt of analytical results and shall be followed by written notice by mail or direct delivery within 48 hours of receipt. The written notice shall include the analytical results and appropriate health effects language.
(2) For a contaminant listed as Tier 2 or Tier 3 in Appendix A to 40 C.F.R. 141, Subpart Q, notice shall be provided within 48 hours of receipt of analytical results. Written notice shall be provided by mail or direct delivery to the person authorizing the sample and shall include the analytical results and appropriate health effects language.
(3) The supplier of water shall submit a copy of the written notice and certification of delivery to the Department within ten days of completing notification.

The person authorizing the sample may waive the notification required by this Paragraph. The waiver shall be documented in writing and signed by the authorizing person. The waiver is valid for five years and is renewable.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

TITLE 21 – LICENSING BOARDS AND COMMISSIONS

CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Physical Therapy Examiners intends to adopt the rule cited as 21 NCAC 48G .0306, and to amend the rules cited as 21 NCAC 48C .0101, .0102, .0103, .0201, .0402; 48D .0107; 48E .0110; 48F .0102, .0103; 48G .0601, .0602.

Proposed Effective Date: November 1, 2006

Public Hearing:
Date: June 6, 2006

Time: 11:00 a.m.

Location: Siena Hotel, Lombardi Room, 1505 East Franklin Street, Chapel Hill, NC 27514

Reason for Proposed Action: To update rules to be more consistent with national standards for the requirements of English language proficiency, provide the Board with more specific regulations regarding appropriate supervision and reasonable reimbursement, and to allow the Board a fee increase within statutory limits.

Procedure by which a person can object to the agency on a proposed rule: Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Mr. Ben Massey, Jr., PT, MA, Executive Director, NC Board of Therapy Examiners, 18 West Colony Place, Suite 140, Durham, NC 27705, at (919) 490-6393 or ncptboard@mindspring.com. Written comments will be accepted through June 16, 2006. Oral comments may be made during the public hearing. The Board Chairman may impose time limits for oral remarks.

Comments may be submitted to: Ben Massey, Jr., PT, MA, Executive Director, 18 West Colony Place, Suite 140, Durham, NC 27705, phone (919) 490-6393, fax (919) 490-5106, email ncptboard@mindspring.com

Comment period ends: June 16, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0100 - PHYSICAL THERAPISTS

21 NCAC 48C .0101 PERMITTED PRACTICE

(a) Physical therapy is presumed to include any acts, tests, procedures, treatments or modalities modalities, treatments, or interventions that are routinely taught in educational programs or

in continuing education programs for physical therapists and are routinely performed in practice settings.

(b) A physical therapist who employs acts, tests, procedures and procedures, modalities modalities, treatments, or interventions in which professional training has been received through education or experience is considered to be engaged in the practice of physical therapy.

(c) A physical therapist must supervise physical therapist assistants, physical therapy aides, PT students and PTA students to the extent required under the Physical Therapy Practice Act and these Rules. Physical therapy aides include all non-licensed individuals aiding in the provision of physical therapy services.

(d) The practice of physical therapy is the application of a broad range of evaluation and treatment procedures related to abnormality of human sensorimotor performance. It includes, but is not limited to, tests of joint motion, muscle length and strength, posture and gait, limb length and circumference, activities of daily living, pulmonary function, cardio-vascular function, nerve and muscle electrical properties, orthotic and prosthetic fit and function, sensation and sensory perception, reflexes and muscle tone, and sensorimotor and other skilled performances; treatment procedures such as hydrotherapy, shortwave or microwave diathermy, ultrasound, infra-red and ultraviolet radiation, cryotherapy, electrical stimulation including transcutaneous electrical neuromuscular stimulation, massage, debridement, intermittent vascular compression, iontophoresis, machine and manual traction of the cervical and lumbar spine, joint mobilization, machine and manual therapeutic exercise including isokinetics and biofeedback, and training in the use of orthotic, prosthetic and other assistive devices including crutches, canes and wheelchairs. Physical therapy further includes, but is not limited to:

- (1) examining (history, system review and tests and measures) individuals in order to determine a diagnosis, prognosis, and intervention [within the physical therapist's scope of practice]. Tests and measures may include, but are not limited to, the following:
(A) aerobic capacity and endurance;
(B) anthropometric characteristics;
(C) arousal, attention, and cognition;
(D) assistive and adaptive devices;
(E) community and work (job/school/play) integration or reintegration;
(F) cranial nerve integrity;
(G) environmental, home, and work (job/school/play) barriers;
(H) ergonomics and body mechanics;
(I) gait, locomotion, and balance;
(J) integumentary integrity;
(K) joint integrity and mobility;
(L) motor function;
(M) muscle performance;
(N) neuromotor development and sensory integration;
(O) orthotic, protective and supportive devices;
(P) pain;

- (Q) posture;
 - (R) prosthetic requirements;
 - (S) range of motion;
 - (T) reflex integrity;
 - (U) self-care and home management;
 - (V) sensory integrity; and
 - (W) ventilation, respiration, and circulation.
- (2) alleviating impairment and functional limitation by designing, implementing, and modifying therapeutic interventions that may include, but are not limited to the following:
- (A) coordination, communication and documentation;
 - (B) patient/client-related instruction;
 - (C) therapeutic exercise (including aerobic conditioning);
 - (D) functional training in self-care and home management (including activities of daily living and instrumental activities of daily living);
 - (E) functional training in community and work (jobs/school/play) integration or reintegration activities (including instrumental activities of daily living, work hardening, and work conditioning);
 - (F) manual therapy techniques (including mobilization and manipulation);
 - (G) prescription, application, and fabrication of assistive, adaptive, orthotic, protective, supportive, and prosthetic devices and equipment that is within the scope of practice of physical therapy;
 - (H) airway clearance techniques;
 - (I) wound management;
 - (J) electrotherapeutic modalities; and
 - (K) physical agents and mechanical modalities.
- (3) preventing injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations.

(d) The physical therapist must enter and review chart documentation, reexamine and reassess the patient and revise the patient care plan as warranted.

(e) The physical therapist must establish the discharge plan.

(f) For each date of service, a physical therapist shall provide all therapeutic interventions that require the expertise of a physical therapist and shall determine the use of assistive personnel that provides delivery of service that is safe and effective for each patient.

(g) A physical therapist's responsibility for patient care management shall include first-hand knowledge of the status of each patient and oversight of all documentation for services rendered to each patient, including awareness of fees and reimbursement structures.

(h) A physical therapist must be immediately available directly or by telecommunication to a physical therapist assistant supervising a physical therapy aide or student engaging in patient care.

(i) A physical therapist shall be limited to clinically supervising only that number of assistive personnel, including physical therapists assistants, physical therapy aides, and students completing clinical requirements, as is appropriate for providing safe and effective patient interventions at all times.

(j) If a physical therapist assistant or physical therapy aide is involved in the patient care plan, the patient must be reassessed by the supervising physical therapist no less frequently than every 30 days.

(k) A physical therapist who is supervising a physical therapy aide or student must be present in the same facility when patient care is provided.

(l) Documentation is required for every evaluation and intervention/treatment, which shall include the following elements:

- (1) Authentication (signature and designation) by the physical therapist who performed the service;
- (2) Date of the evaluation or treatment;
- (3) Length of time of total treatment session or evaluation;
- (4) Patient status report;
- (5) Significant, unusual or unexpected changes in clinical status;
- (6) Identification of specific elements of each intervention/modality provided. Frequency, intensity, or other details may be included in the plan of care and if so, do not need to be repeated in the daily note;
- (7) Equipment provided to the patient or client; and
- (8) Interpretation and analysis of clinical signs and symptoms and response to treatment based on subjective and objective findings, including any adverse reactions to an intervention.
- (9) At least every 30 days, the therapist must document:
 - (A) The patient's response to therapy intervention;
 - (B) Progress toward achieving goals; and
 - (C) Justifications for continued treatment.

Authority G.S. 90-270.24; 90-270.26.

21 NCAC 48C .0102 RESPONSIBILITIES

(a) The physical therapist must determine the patient care plan and the elements of that plan appropriate for delegation.

(b) The physical therapist must determine that those persons acting under his or her supervision possess the competence to perform the delegated activities.

(c) The physical therapist may delegate responsibilities to physical therapist assistants. The supervising physical therapist shall determine that the PT or PTA student is working under supervision at all times.

Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34.

21 NCAC 48C .0103 PROHIBITED PRACTICE

(a) A physical therapist is prohibited from employing acts, tests, procedures, modalities, treatments, or interventions ~~treatments and modalities~~ in the treatment of patients that are beyond the scope of the practice of physical therapy. Any patient whose condition requires medical diagnosis of disease or treatment beyond the scope of physical therapy must be referred to a licensed medical doctor or dentist.

(b) A physical therapist may not permit any person working under his or her supervision to engage in acts or practices beyond the scope allowed by the Physical Therapy Practice Act or these Rules.

(c) Physical therapy does not include the application of roentgen rays or radioactive materials, but consistent with the requirements of G.S. 90-270.35(4) a physical therapist may request a radiologic consultation and reviewing x-rays; however, a physical therapist shall not order radiological examinations.

Authority G.S. 90-270.24; 90-270.26; 90-270.35.

SECTION .0200 – PHYSICAL THERAPIST ASSISTANTS

21 NCAC 48C .0201 SUPERVISION BY PHYSICAL THERAPIST

(a) A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist.

(b) A physical therapist assistant may make modifications of treatment programs that are consistent with the established patient care plan.

(c) A physical therapist assistant may engage in off-site patient related activities that are appropriate for the physical therapist assistant's qualifications and the status of the patient.

(d) A physical therapist assistant may document care provided without the co-signature of the supervising physical therapist.

(e) A physical therapist assistant who is supervising a physical therapy aide or student must be present in the same facility when patient care is provided.

(f) Documentation is required for every intervention/treatment, which shall include the following elements:

- (1) Authentication (signature and designation) by the physical therapist assistant who performed the service;
- (2) Date of the intervention/treatment;
- (3) Length of time of total treatment session;
- (4) Patient status report;
- (5) Significant, unusual or unexpected changes in clinical status;
- (6) Identification of specific elements of each intervention/modality provided. Frequency, intensity, or other details may be included in the plan of care and if so, do not need to be repeated in the daily note;
- (7) Equipment provided to the patient or client; and

(8) Response to treatment based on subjective and objective findings, including any adverse reactions to an intervention.

Authority G.S. 90-270.24; 90-270.26; 90-270.35.

SECTION .0400 - PHYSICAL THERAPY AIDES

21 NCAC 48C .0402 FUNCTION

(a) A physical therapy aide may perform only those acts delegated by a licensed physical therapist or physical therapist assistant.

~~(b) A physical therapist or physical therapist assistant must be present in the same facility and supervising any physical therapy aide or student to whom acts are delegated.~~

~~(c)~~ (b) A physical therapy aide shall not engage in the performance of physical therapy activities without supervision by a licensee in accordance with this Subchapter.

~~(d)~~ (c) A physical therapy aide shall work under the supervision of a licensee who is present in the facility. This may extend to an off-site setting only when the physical therapy aide is accompanying and working directly with a licensee with a specific patient.

~~(e)~~ (d) A physical therapy aide shall not be independently responsible for a patient caseload.

Authority G.S. 90-270.24; 90-270.26.

SUBCHAPTER 48D - EXAMINATIONS

SECTION .0100 – GENERAL REQUIREMENTS

21 NCAC 48D .0107 PERSONS REFUSED EXAMINATION PERMISSION

(a) An applicant for licensure who does not meet the requirements as set forth in the Physical Therapy Practice Act shall be refused permission to take the examination.

(b) An applicant who furnishes false information to the Board on the application shall be refused permission to take the examination.

(c) An applicant who fails to furnish personal background information requested on the application shall be refused permission to take the examination.

~~(d)~~ (d) Any applicant who is refused permission to take the examination shall be entitled to petition the Board for a contested case hearing pursuant to Subchapter 48G, Section .0500 of this Chapter.

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.36.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

21 NCAC 48E .0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(a) A foreign-trained physical therapist is one who has graduated from a program located outside the United States

which has not been accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE).

(b) English Translations. All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant shall submit the following:

(1) If the applicant has graduated from a physical therapy educational program, a certification of physical therapy education shall be submitted directly to the Board.

(2) If the applicant does not meet the requirements of G.S. 90-270.29(2), the Board shall examine the applicant's educational background to determine if the general and professional education is substantially equivalent to that received by a graduate of a CAPTE approved program.

(A) For candidates graduating prior to December 31, 2002, a minimum of 120 semester hours of college education at the freshman through senior level is required, which includes a minimum of 60 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education, and a minimum of 42 semester hours of general education. Up to 21 hours may be substituted for actual course work by obtaining a passing score on College Level Examination Program (CLEP) examinations.

(B) For candidates graduating after December 31, 2002, the applicant's educational background must be substantially equivalent to a Post-Baccalaureate degree from a CAPTE approved physical therapy educational program. In order for a foreign-trained applicant's educational background to be determined substantially equivalent to a post-baccalaureate degree from a CAPTE approved program, the general and professional education must satisfy the requirements for the first professional degree as determined by the course work evaluation tool utilized by the FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or its successor organization. Up to one-half (1/2) of the general education credit hours may be substituted for actual course work by obtaining a passing score on CLEP examinations.

(3) The applicant shall make arrangements to have the credentials evaluated by a credentialing service which must have a physical therapist consultant on its staff. The credentialing service must be acceptable to the Board pursuant to these Rules. The Board recognizes the FCCPT, or a service determined by the Board to be equivalent. The Board shall make its own review of applicant's educational program and is not bound by the findings of the credentialing service.

(4) Proof acceptable to the Board shall be provided that:

(A) For examinations administered prior to August 1, 1998, the required minimum score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained;

(B) For examinations administered on or after August 1, 1998, and prior to January 1, 2007, the required minimum score of 50 on the TSE examination or the SPEAK examination was obtained, the required minimum score of the Test of Written English (TWE) of 4.5, and the Test of English as a Foreign Language (TOEFL) of 560; ~~or~~

~~(C) For examinations administered on or after September 25, 2005, the following minimum standard scale scores in each of the four scoring domains (Listening, Reading, Writing, and Speaking), and the total score of the iBT/Next Generation TOEFL shall apply: Writing: 24, Speaking: 26, Reading Comprehension: 18, Listening Comprehension: 21, Total Score: 89; or~~

~~(D)~~ English is the applicant's primary language.

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

**SUBCHAPTER 48F - CERTIFICATES: FEES:
INVESTIGATIONS: RECORD OF LICENSEES**

**SECTION .0100 - CERTIFICATES: FEES:
INVESTIGATIONS: RECORD OF LICENSEES**

21 NCAC 48F .0102 FEES

(a) The following fees are charged by the Board:

- (1) application for physical therapist licensure;
 - (A) by endorsement or examination taken in another state, one hundred ~~thirty~~

- ~~five~~ fifty dollars ~~(\$135.00);~~ (\$150.00);
- (B) by examination, one hundred ~~thirty-five~~ fifty dollars ~~(\$135.00);~~ (\$150.00);
- (2) application for physical therapist assistant licensure;
 - (A) by endorsement or examination taken in another state, one hundred ~~thirty-five~~ fifty dollars ~~(\$135.00);~~ (\$150.00);
 - (B) by examination, one hundred ~~thirty-five~~ fifty dollars ~~(\$135.00);~~ (\$150.00);
- (3) renewal for all persons, ~~eighty one hundred~~ dollars ~~(\$80.00);~~ (\$100.00);
- (4) penalty for late renewal, twenty dollars (\$20.00) plus renewal fee;
- (5) revival of license lapsed less than five years, thirty dollars (\$30.00) plus renewal fee;
- (6) transfer of licensure information fee, including either the examination scores or licensure verification or both, ~~twenty-five~~ thirty dollars ~~(\$25.00);~~ (\$30.00);
- (7) retake examination, sixty dollars (\$60.00);
- (8) certificate replacement or duplicate, ~~twenty-five~~ thirty dollars ~~(\$25.00);~~ (\$30.00);
- (9) directory of licensees, ten dollars (\$10.00);
- (10) licensee list or labels or any portion there-of for physical therapists, sixty dollars (\$60.00);
- (11) licensee list or labels or any portion there-of for physical therapist assistants, sixty dollars (\$60.00);
- (12) processing fee for returned checks, maximum allowed by law.

(b) The application fee is not refundable. The Board shall consider written requests for a refund of other fees based on personal or economic hardship.

(c) A certified check, money order or cash is required for payment of application fees listed in Parts (a)(1)(A) and (B), and (a)(2)(A) and (B) of this Rule.

Authority G.S. 25-3-512; 90-270.33.

21 NCAC 48F .0103 INVESTIGATIONS

Any complaint relevant to alleged violations of the North Carolina Physical Therapy Practice Act shall be made in writing, signed by the person submitting the complaint, and include ~~his~~ address, the complainant's address and telephone number. Complaints shall be sent to the executive director.

Authority G.S. 90-270.26; 90-270.35; 90-270.36.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0300 - REFUSAL TO RENEW OR GRANT LICENSE: SUSPENSION OR REVOCATION

21 NCAC 48G .0306 CONDITIONS ON RENEWAL

(a) The Board may refuse to renew the license of an individual who has been denied licensure in another jurisdiction for engaging in conduct that would also violate the North Carolina Physical Therapy Practice Act.

(b) The Board may impose restrictions as to scope of practice, place of practice, supervision of practice or type or condition of patient or client to whom the licensee may provide service when another jurisdiction has placed the same restrictions on an individual renewing a license.

Authority G.S. 90-270.26; 90-270.35; 90-270.36.

SECTION .0600 – DISCIPLINARY ACTION

21 NCAC 48G .0601 PROHIBITED ACTIONS

(a) Behaviors and activities which may result in disciplinary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8) and (9) and G.S. 90-270.35(4) include, but are not limited to, the following:

- (1) recording false or misleading data, measurements or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (6) harassing, abusing, or intimidating a patient either physically or verbally;
- (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (8) promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party;
- (9) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client;
- (10) failure to file a report, filing a false report or failure to respond to an inquiry within 30 days, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
- (11) revealing identifiable data, or information obtained in a professional capacity, without

- prior consent of the patient, except as authorized or required by law;
- (12) guaranteeing that a patient will benefit from the performance of professional services;
 - (13) altering a license or renewal card by changing any other information appearing thereon;
 - (14) using a license or renewal card which has been altered;
 - (15) permitting or allowing another person to use his or her license or renewal card for the practice of physical therapy;
 - (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure to perform such responsibilities;
 - (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
 - (18) kissing, fondling, touching or engaging in any activities, advances, or comments of a sexual nature with any person with whom the licensee interacts in practicing physical therapy;
 - (19) billing or charging for services or treatment not performed;
 - (20) making treatment recommendations or basing a patient's continued treatment on the extent of third party benefits instead of the patient's condition;
 - (21) willfully or intentionally communicating false or misleading information regarding a patient;
 - (22) harassing, abusing, or intimidating any person, either physically or verbally, in the presence of a patient;
 - (23) using a form of a license or renewal card that was not issued by the Board or is not current.
 - (24) failing to record patient data within a reasonable period of time following evaluation, assessment or intervention;
 - (25) failing to pay the costs of investigation or otherwise to comply with an order of discipline;
 - (26) failing to maintain legible patient records that contain an evaluation of objective findings, a diagnosis, a plan of care including desired outcomes, the treatment ~~record~~, record including all elements of 21 NCAC 48C .0102(l) or 21 NCAC 48C .0201(f) and a discharge plan including the results of the intervention, and sufficient information to identify the patient and the printed name and title of each person making an entry in the patient ~~record~~ record;
 - (27) charging clearly excessive fees not supported by treatment notes; and
 - (28) furnishing false or misleading information on an application for licensure renewal.

(b) When a person licensed to practice physical therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-270.26(8). Such a finding shall be incorporated with the order of the Board of Physical Therapy Examiners and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced promptly.

(d) When the Board receives a notice from a Clerk of Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall be required to surrender the license to the Board immediately and not to engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this section shall not limit in any way the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules.

Authority G.S. 15A-1331A; 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3.

21 NCAC 48G .0602 SANCTIONS; REAPPLICATION

(a) The Board may, upon proof of a violation of G.S. 90-270.36 or these Rules, impose any of the following sanctions in its discretion:

- (1) issue a reprimand;
- (2) issue a warning to a licensee;
- (3) place a licensee on probation;
- (4) suspend a license, the duration of which shall be determined by the Board;
- (5) revoke any license;
- (6) refuse to issue or renew a license;
- (7) accept a voluntary surrender of a license; and
- (8) charge the reasonable costs of investigation and hearing to a licensee who is disciplined.

(b) In addition to the sanctions specified in Subparagraphs (a)(2), (3) and (4) of this Rule, the Board may also impose restrictions and conditions on a license ~~as to~~ including, but not limited to, scope of practice, place of practice, supervision of

practice, duration of licensed status, or type or condition of patient or client served, including requiring a licensee to submit regular reports to the Board on matters related to the restricted license.

(c) A person whose license has been revoked or who surrenders a license:

- (1) shall not be permitted to reapply for a license for a period of two years from the date of revocation; revocation or surrender;
- (2) shall not be permitted to reapply for a license for a period determined by the Board from the date of surrender;
- ~~(2)~~(3) must submit as part of the reapplication process all materials requested by the Board related to the revocation or surrender and may be required to meet with the Board; and
- ~~(3)~~(4) may have the restrictions specified in Paragraph (b) of this Rule imposed in conjunction with the issuance of a license.

Authority G.S. 90-270.26.

TITLE 23 – COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Community College System intends to amend the rules cited as 23 NCAC 02C .0209; 02E .0204.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: May 16, 2006

Time: 9:00 a.m.

Location: N.C. Community College System Office, State Board Room, 200 West Jones Street, Raleigh, N.C.

Reason for Proposed Action: The State Board of Community Colleges seeks to rename the common course library as the Combined Course Library, permit diplomas to be offered under the Associate in Science and the Associate in Arts degrees, and to remove the Associate in Engineering Degree. In addition, the State Board seeks to clarify the requirements local boards must follow in evaluating the performance of presidents.

Procedure by which a person can object to the agency on a proposed rule: Persons wishing to submit written comments may do so until June 16, 2006 by sending comments to David Sullivan, Rule-making Coordinator, NCCCS, 5001 Mail Service Center, Raleigh, NC 27699 or e-mailing the comments to sullivan@ncccommunitycolleges.edu. Oral comments will be received at the public hearing to be held on May 16, 2006 at 9:00 a.m. The Rule-making Coordinator reserves the right to impose time limits on oral comments.

Comments may be submitted to: David J. Sullivan, 5001 Mail Service Center, 200 West Jones Street, Raleigh, North Carolina 27699, email sullivan@ncccommunitycolleges.edu

Comment period ends: June 16, 2006

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 .0200 – PERSONNEL

23 NCAC 02C .0209 EVALUATION OF PRESIDENTS

(a) Methodology and Instrumentality. Each local board of trustees shall evaluate the performance of its president ~~annually~~ and notify the State Board in writing that the evaluation has been completed by July 1 of each year. ~~annually.~~ The evaluation instrument and ~~method~~ methodology shall be selected by the local ~~board~~ board, but the evaluation shall, at a minimum, include the following categories:

- (1) General administration;
- (2) Relationships including:
 - (A) Internal relationships with faculty, staff, students, and trustees; and,
 - (B) External relationships with business and industry, the media, governmental bodies, and the general public;
- (3) Personal attributes;
- (4) Personnel administration;
- (5) Fiscal and facilities administration; and,
- (6) Academic administration.

(b) Reporting Requirements. Prior to June 30 of the year, each college board of trustees shall, in writing, notify the State Board of the following:

- (1) The time period for which its president was evaluated and the date the evaluation was completed;
- (2) Description of the methodology used for the evaluation;

- (3) Certification that the evaluation included a written assessment of the president's performance in each of the categories identified in (a) above;
- (4) Certification that the full board discussed the evaluation results and the results were discussed with the president; and,
- (5) Certification that appropriate action, as defined by the local board, has been taken if the president's performance is less than satisfactory in any of the categories identified in (a) above.

Authority G.S. 115D-5; 115D-20.

23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS

~~A common course library~~The Combined Course Library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) ~~Common~~Combined Course Library.
 - (a) The ~~Common~~Combined Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
 - (i) Course prefix;
 - (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; ~~and~~and.
 - (vii) Course description consisting of three sentences.
 - (b) A numbering system for the ~~Common~~Combined Course Library is as follows:
 - (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to courses approved only at the certificate and diploma level. These courses shall not be included in associate degree programs.
 - (iii) The numbers 110-199 and 210-299 shall be used for courses approved at the associate degree level. These courses may also be

- included in certificate and diploma programs.
- (c) The college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the ~~Common~~Combined Course Library.
 - (i) The college may add a fourth sentence to the course description to clarify content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. Each of the~~The~~ following criteria shall apply to courses divided into incremental units:
 - (A) A curriculum program course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number.
 - (B) The units shall equal the entire course of instruction, without omitting any competencies.
 - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (D) If the course is a prerequisite to another course, the student shall complete all component parts before enrolling in the next course.
 - (E) The components of a split curriculum program course

shall not be used to supplant training for occupational extension.

- (d) The Community College System Office shall revise and maintain courses in the ~~Common~~ Combined Course Library.
- (2) Development of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges. Changes in curriculum standards shall be approved by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:
 - (a) A request is made to the Community College System Office to change the standards for a curriculum program title; ~~and~~ and.
 - (b) A two-thirds majority of institutions approved to offer the curriculum program title concur with the request.
- (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
 - (a) Associate in Applied Science Degree. The ~~associate in applied science degree~~ Associate in Applied Science Degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and ~~the~~ basic use of computers.
 - (i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the ~~Common~~ Combined Course Library, including six hours in communications, three hours in humanities/fine arts, ~~humanities or fine arts~~,

three hours in social/behavioral sciences, ~~social or behavioral sciences~~, and three hours in either natural sciences or mathematics.

- (ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major courses selected from the ~~Common~~ Combined Course Library. Major courses are those which offer specific job knowledge or skills.
 - (A) The major hours category shall be comprised of identified core courses or subject areas or both which are required for each curriculum program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit.
 - (B) The major hours category may also include hours required for a concentration of study. A concentration of study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours

- (C) shall be unique to the concentration. Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (D) Work experience, including cooperative education, practicums, and internships, may be included in an associate in applied science degree curriculum program up to a maximum of eight semester hours of credit. Under a curriculum standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. The Community College System

Office shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.

- (iii) An associate in applied science degree curriculum program may include a maximum of seven other required hours to complete college graduation requirements. These courses shall be selected from the ~~Common~~ Combined Course Library.

- (iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses.

- (b) Associate in Arts Degree. The ~~Associate in Arts Degree~~ associate in arts degree shall be granted for a planned ~~program~~ programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the ~~institution~~ college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers. ~~Diplomas and certificates~~ Certificates are not allowed under this degree program.

- (i) The associate in arts degree ~~programs~~ program shall include a minimum of 44 semester hours of general education core courses selected from the

~~Common~~Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) ~~Six~~six semester hours of English ~~composition~~composition;
- (B) 12 semester hours of ~~humanities/fine arts; humanities or fine arts,~~ humanities or fine arts, with four courses to be selected from at least three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. ~~Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts, but may not substitute as the literature requirement.~~
- (C) 12 semester hours of ~~social/behavioral sciences; social or behavioral sciences,~~ social/behavioral sciences; with four courses to be selected from at least three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.
- (D) Six semester hours of mathematics;

~~and, 14 semester hours of natural sciences or mathematics; six hours shall be mathematics courses; eight hours shall be natural sciences courses, including accompanying laboratory work, selected from among the biological and physical science disciplines.~~

(E) Eight semester hours of natural sciences.

- (ii) The associate in arts degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the ~~Common~~Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in arts program. This course will receive transfer evaluation by the receiving institution.
- (iii) A college may award a diploma under an approved associate in arts degree program for a series of courses taken from the approved associate in arts degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) 12 semester hours of humanities/fine arts;
- (C) 12 semester hours of social/behavioral sciences;
- (D) Six semester hours of mathematics; and,
- (E) Eight semester hours natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit diploma program. This course will receive transfer evaluation by the receiving institution.

(c) ~~Associate in Science Degree.~~ Associate in Science Degree shall be granted for a planned ~~program~~ programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the ~~institution-college~~ shall include opportunities for the achievement of competence in reading, writing, oral communication, ~~fundamental mathematical skills, and the basic use of computers.~~ Diplomas and certificates are not allowed under this degree program.

(i) The associate in science degree program shall include a minimum of 44 semester hours of general education core courses selected from the ~~Common~~ Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) ~~six~~ Six semester hours of English composition;
- (B) ~~nine~~ Nine semester hours of humanities/fine arts; ~~humanities or fine arts, to be~~

~~selected from three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts, but may not substitute as the literature requirement.~~

(C) ~~nine~~ Nine semester hours of social/behavioral sciences; and, social or behavioral sciences to be selected from three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least ~~one course shall be a history course.~~

(D) 20 semester hours of mathematics and natural sciences; ~~or mathematics;~~ that shall include a minimum of six semester hours in mathematics and shall be mathematics courses; a minimum of eight semester hours in natural sciences; ~~shall be a two course sequence in general biology, general~~

~~chemistry or general physics.~~

(ii) The associate in science degree program shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the ~~Common~~Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. ~~A minimum of 14 semester hours of credit of these courses must be from mathematics, science or computer science courses which have been approved for transfer.~~ A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in science program. This course will receive transfer evaluation by the receiving institution.

(iii) A college may award a diploma under an approved associate in science degree program for a series of courses taken from the approved associate in science degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) Nine semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences; and,

(D) 20 semester hours of natural sciences and mathematics that shall include a minimum of six hours in mathematics and a minimum of eight hours in natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit program. This course will receive transfer evaluation by the receiving institution.

(d) ~~Associate in Fine Arts Degree~~associate in fine arts degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the ~~institution~~college shall include opportunities for ~~the~~ achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and ~~the~~ basic use of computers. Diplomas and certificates are not allowed under this degree program.

(i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education core courses selected from the ~~Common~~Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) ~~six~~Six semester hours of English ~~composition~~composition;
- (B) ~~six~~Six semester hours of ~~humanities or fine arts, with two courses to be selected from two of the following disciplines: music, art, drama, dance, foreign languages,~~

- interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts. humanities/fine arts;
- (C) ~~nine~~ Nine semester hours of ~~social or behavioral sciences;~~ with three courses to be selected from three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a ~~history course.~~ social/behavioral sciences;
- (D) Three semester hours of mathematics; ~~and three semester hours of introductory mathematics.~~
- (E) ~~four~~ Four semester hours from the natural sciences, including accompanying laboratory work. sciences.
- (ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from courses in the ~~Common~~ Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions.
- Courses in health, physical education, college orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in fine arts program. This course will receive transfer evaluation by the receiving college.
- (e) ~~Associate in Engineering Degree.~~ The associate in engineering degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Diplomas and certificates are not allowed under this degree program. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
- (i) ~~The associate in engineering degree program shall include a minimum of 45 semester hours of general education core courses selected from the Common Course Library and which have been approved for transfer to the University of North Carolina constituent institutions. The general education cores shall include:~~
- (A) ~~6 semester hours of English composition;~~
- (B) ~~6 semester hours of humanities or fine arts;~~
- (C) ~~6 semester hours of social or behavioral sciences; and~~

~~(D) — 27 semester hours of mathematics and natural sciences.~~

~~(ii) — The associate in engineering degree program shall include a minimum of 19 and a maximum of 20 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in college orientation, study skills, and work experience, may be included up to one semester hour credit, but may not transfer to the receiving institution.~~

~~(f)(e)~~ Associate in General Education. The Associate in General Education associate in general education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Combined Course Library, including six hours in communications, three hours in humanities or fine arts, humanities/fine arts, three hours in social or behavioral sciences, social/behavioral sciences, and three hours in natural sciences or mathematics.

(ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education courses selected from the

Common Combined Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.

~~(g)(f)~~ Diploma. The Diploma shall be granted for a planned program of study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level.

(i) Diploma curricula shall include a minimum of six semester hours of general education courses selected from the Common Combined Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities and fine arts, social and behavioral sciences, humanities/fine arts, social/behavioral sciences, or natural sciences and mathematics.

(ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from the Common Combined Course Library.

(A) A diploma curriculum program which is a stand-alone curriculum program title shall include identified core courses or subject areas or both within the major hours category.

(B) Courses for other major hours in a stand-alone diploma curriculum program title shall be selected from

- prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of eight semester hours of credit.
- (iii) A diploma curriculum program may include a maximum of four other required hours to complete college graduation requirements. These courses shall be selected from the ~~Common~~Combined Course Library.
- (iv) An institution may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved associate degree curriculum program of study.
- (A) A diploma curriculum program offered under an approved associate degree curriculum program shall meet the standard general education and major course requirements for the diploma credential.
- (B) A college may substitute general education courses at the 100-109 level for the associate-degree level general education courses in a diploma curriculum program offered under an approved degree program.
- (C) The diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses and subject areas of the respective associate in applied science degree curriculum program.
- (v) Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.
- (~~h~~)(g) Certificate Programs. The ~~Certificate~~certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level.
- (i) General education is optional in certificate curricula.
- (ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from the ~~Common~~Combined Course Library.
- (A) A certificate curriculum program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall

- include 12 semester hours of credit from core courses or subject areas or both within the major hours category.
 - (B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
 - (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
 - (iii) A certificate curriculum program may include a maximum of one other required hour of credit to complete college graduation requirements. This course shall be selected from the ~~Common~~Combined Course Library.
 - (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
 - (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each institution shall select curriculum program courses from the ~~Common~~Combined Course Library to comply with the standards for each curriculum program title the institution is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program.
- (a) Each institution shall maintain on file with the Community College System Office a copy of the official program of study approved by the institution's board of trustees.
 - (b) When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.
 - (c) A copy of each revised program of study shall be filed with and approved by the Community College System Office prior to implementation at the institution.

Authority G.S. 115D-5; S.L. 1995, c. 625.

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

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *N.C. Medical Care Commission*

Rule Citation: *10A NCAC 13J .0903; .1003; .1110*

Effective Date: *April 1, 2006*

Date Approved by the Rules Review Commission: *March 16, 2006*

Reason for Action: *This proposed home care rule is being amended as a result of recent legislation, Senate Bill 622 (S.L. 2005-276). Specifically the legislation amended [G.S. 131E-140(a)] provides the N.C. Medical Care Commission the authority to adopt rules governing a number of areas including (1) requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency; (2) prohibiting licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1); (3) ensuring effective supervision of in-home aide services and staffing qualifications for licensed home care agencies.*

SECTION .0900 – GENERAL

10A NCAC 13J .0903 APPLICATION FOR AND ISSUANCE OF LICENSE

(a) An application for the operation of an agency premises shall be submitted to the Department prior to the scheduling of an initial licensure survey or the issuance of a license. The agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, as noted in Rule .1002(b) of this Subchapter. If the applicant cannot demonstrate to the Division of Facility Services that he or she has ever owned or operated a home care agency prior to submission of the application, the Division shall not issue a license until the applicant has received training approved by the Division which shall include in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(b) The Department shall issue a license to each agency premises. ~~Whether initial—Initial~~ and ongoing licensure inspections may include all premises of an agency and whether they include on-site inspections shall be at the discretion of the Department. Initial licensure shall be for a period of not more than one year. Unless the Department takes adverse action on a

license as outlined in G.S. 131E-139, subsequent licensure shall extend for a minimum of one year and a maximum of three years, at the discretion of the Department. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises. The agency shall also post a sign at the public access door with the agency name.

(d) The license shall be issued for the premises and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. The license shall reflect the services provided by the agency.

(e) Prior to change of ownership or the establishment of a new agency, the agency must be in compliance with all the applicable statutes and rules. If the agency is authorized to provide Medicare certified Home Health Services, it shall also be in compliance with ~~statutes, statutes and rules and policies~~ established under G.S. 131E, Article 9.

(f) The licensee shall notify the Department in writing of any proposed change in ownership or name at least 30 days prior to the effective date of the change.

(g) Any agency adding a new service category as outlined in G.S. 131E-136(3)(a) through (f) shall notify the Department in writing at least 30 days prior to the provision of that service to any clients. The Department shall approve the added service prior to its implementation.

(h) An agency shall notify the Department in writing if it discontinues or is unable to provide for a period of six continuous months any service category as outlined in G.S. 131E-136(3)(a) through (f) that is listed on the agency's license.

History Note: Authority G.S. 131E-140; Eff. July 1, 1992; Amended Eff. February 1, 1996; May 1, 1993; Temporary Amendment Eff. April 1, 2006.

SECTION .1000 - ADMINISTRATION

10A NCAC 13J .1003 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with Subchapter 19A of Title 15A, North Carolina Administrative Code. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. ~~Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Airborne and Bloodborne Pathogens).~~ Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954,

Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty-one dollars (\$21.00) and may be purchased with a credit card. Hands-on care employees must have a baseline skin test for TB. Individuals who test positive must demonstrate non-infectious status prior to assignment in a client's home. Individuals who have previously tested positive to the TB skin test shall obtain a baseline and subsequent annual verification that they are free of TB symptoms. This verification shall be obtained from the local health department, a private physician or health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Health and Human Services, Division of Public Health, 1902 Mail Service Center, Raleigh, NC 27699-1902 shall provide, free of charge, guidelines for conducting verification and Form DHHS 3405 (Record of Tuberculosis Screening). Employees identified by agency risk assessment, to be at risk for exposure ~~are required to~~ shall be subsequently tested at intervals prescribed by OSHA standards.

(b) The agency shall not hire any individual either directly or by contract who has a substantiated finding on the North Carolina Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

~~(c)(b)~~ Written policies shall be established and implemented which include personnel record content, orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

~~(d)(e)~~ Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

~~(e)(d)~~ Personnel records shall be established and maintained for each home care employee. When requested, the records shall be available on the agency premises for inspection by the Department. These records shall be maintained for at least one year after termination from agency employment. The records shall include the following:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the employee;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis screening for employees for whom the test is necessary as described in Paragraph (a) of this Rule;
- (5) documentation of Hepatitis B immunization or declination for hands-on care employees in accordance with the agency's exposure control plan;
- (6) airborne and bloodborne pathogen training for hands on care employees, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually. These evaluations

may be confidential pursuant to Rule .0905 of this Subchapter;

- (8) verification of employees' credentials as applicable; and
- (9) records of the verification of competencies by agency supervisory personnel of all skills required of home care services personnel to carry out client care tasks to which the employee is assigned. The method of verification shall be defined in agency policy.

History Note: Authority G.S. 131E-140; Eff. July 1, 1992; Amended Eff. February 1, 1996; June 1, 1994; Temporary Amendment Eff. April 1, 2006.

SECTION .1100 - SCOPE OF SERVICES

10A NCAC 13J .1110 SUPERVISION AND COMPETENCY OF IN-HOME AIDES OR OTHER IN-HOME CARE PROVIDERS

(a) In-home aides or other allied health personnel subject to occupational licensing laws shall meet competency testing requirements consistent with the rules established by the ~~appropriate occupational licensing board to which they are subject.~~ Each agency ~~is responsible for documenting~~ shall document that its in-home aides and other in-home care providers are competent to perform client care tasks or activities to which they are assigned. Such individuals shall perform delegated activities under the supervision of persons authorized by state law to provide such supervision.

(b) Those in-home aides and other in-home care providers who are not subject to occupational licensing laws, shall only be assigned client care activities for which they have demonstrated competency, the documentation of which is maintained by the agency. Meeting competency includes a correct demonstration of tasks to an appropriate professional. Each agency ~~is responsible for documenting~~ shall document that its in-home aides and other in-home care providers demonstrate competence for all assigned client care tasks or activities. Such individuals shall be supervised by the appropriate professional who may further delegate specific supervisory activities to a ~~competent, appropriately trained~~ paraprofessional as designated by agency policy, provided that the following criteria are met:

- (1) there is continuous availability of the appropriate professional for supervision and consultation; and
- (2) accountability for supervisory activities delegated is maintained by the appropriate professional.

~~(c) Respiratory practitioners who are not subject to occupational licensing laws~~ Staff who are not licensed by the North Carolina Respiratory Care Board shall only be assigned duties for which they have demonstrated competency, competency and shall not engage in providing Respiratory Care as that term is defined in the Respiratory Care Practice Act, G.S. 90-648(11). Agencies that are providing clinical respiratory care services must provide supervision under the direction of a by a licensed respiratory care practitioner registered respiratory therapist, certified

respiratory therapy assistant, or a registered nurse with sufficient education and clinical experience in the scope of the services offered.

(d) The appropriate supervisor shall supervise an in-home care provider as specified in Paragraph (a) or (b) of this Rule by making a supervisory visit to each client's place of residence at least every three months, with or without the in-home care provider's presence, and at least annually, while the in-home care provider is providing care to each client.

(e) A quarterly supervisory visit to the home of each client, by the appropriate professional supervisor for each type of in-home care provider as specified in Paragraphs (a) and (b) of this Rule, shall meet the minimum requirement for supervision of any and all of the specified type of in-home care providers who have provided service to the client within the quarter. The supervisory visit shall include review of the client's general condition, progress and response to the services provided by the specified type of in-home care provider.

(f) Documentation of supervisory visits shall be maintained in the agency's records and shall contain, at a minimum:

- (1) date of visit;
- (2) findings of visit; and
- (3) signature of person performing the visit.

In order to assure effective supervision of services provided by in-home aides, geographic service areas for these services shall be limited to the area which includes the county where the agency is located, counties that are contiguous with the county where the agency is located or within 90 minutes driving time from the site where the agency is located, whichever is greater. Agencies providing services to any client prior to January 1, 2006 who resides in a geographic service areas which is beyond the counties that are contiguous with the county where the agency is located or greater than 90 minutes driving time from the site where the agency is located, may continue to provide services to the client until the client is discharged from the agency.

(g) When follow-up corrective action is needed for any or all of a specified type of in-home care provider based on findings of the supervisory visit, documentation of such corrective action by the appropriate supervisor shall be maintained in the employee(s) or other agency record.

(h) An appropriate professional conducting a supervisory visit for any and all of a specified type of in-home care provider may simultaneously conduct the quarterly case review as required in Rule .1202 of this Subchapter.

(i) The appropriate professional shall be continuously available for supervision, on-site where services are provided when necessary, during the hours that in-home care services are provided.

History Note: Authority G.S. 131E-140; Eff. July 1, 1992; Amended Eff. July 1, 1993; RRC Objection due to lack of statutory authority and ambiguity Eff. November 16, 1995; Amended Eff. February 1, 1996; Temporary Amendment Eff. April 1, 2006.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *10A NCAC 43G .0101 - .0105, .0107 - .0111, .0201 - .0206, .0301 - .0305, .0401 - .0410, .0502 - .0512*

Effective Date: *July 1, 2006*

Date Approved by the Rules Review Commission: *March 16, 2006*

Reason for Action: *Federal legislation resulted in an increased number of children eligible for early intervention services. Subsequently, additional funding was requested from and approved by the General Assembly on 8/13/05. Consequently, these changes are necessary in order to repeal obsolete rules and to adopt new rules that will enable the Division of Public Health to change eligibility requirements as required by Federal legislation and expand early intervention services funded by SB 622.*

CHAPTER 43 – PERSONAL HEALTH

SUBCHAPTER 43G – CHILDREN’S DEVELOPMENTAL SERVICES AGENCIES – EARLY INTERVENTION SERVICES

SECTION .0100 – EARLY INTERVENTION PROGRAM

10A NCAC 43G .0101 ADMINISTRATION

The Developmental Evaluation Center Program is administered by the Children and Youth Section, P.O. Box 27687, Raleigh, NC 27611-7687.

History Note: Authority G.S. 130A-5(3); 130A-124; Eff. January 1, 1984; Amended Eff. September 1, 1990; Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Developmental Disability" shall be defined as a severe, chronic condition which:
 - (a) is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (b) is manifested before the person attains age twenty two;
 - (c) is likely to continue indefinitely; and
 - (d) results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) self care;
 - (ii) receptive and expressive language;
 - (iii) learning;

- (iv) — mobility; and
- (v) — self direction;
- (2) — "~~Developmental Evaluation Center~~" or "~~Center~~" shall mean those administrative units, either direct or contractual, which operate primarily through the resources of, and are designated as centers by, the Division of Public Health. This term does not apply to programs which may deliver services similar to those described in this Subchapter but which receive primary support from agencies other than the Division of Public Health.
- (3) — "Client" shall mean any person who is or has been receiving direct services at or under the direction of personnel of a center.
- (4) — "Qualified Personnel" shall mean persons whose training and experience are appropriate to the nature of the work in which they are engaged. The term "Qualified Personnel" with reference to personnel conducting program evaluation means personnel employed or specifically approved by the Division of Public Health to conduct evaluations of programs.

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0103 LOCATION OF SERVICES

- (a) ~~Developmental Evaluation Center Program Services shall be provided through centers spaced geographically across the state so that these facilities are reasonably accessible to all persons in North Carolina wherever they live.~~
- (b) ~~Each center shall be free of architectural barriers which would deny access to disabled individuals. In centers where access is limited, a plan to provide alternative service delivery shall exist approved by regional and state management within the Specialized Services Branch.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0104 TYPES OF SERVICES PROVIDED

- (a) ~~To meet the comprehensive needs of developmentally disabled children, each center shall assure, either directly or through a contractual arrangement, the availability of interdisciplinary services that encompass the following areas of child development:~~
 - (1) — physical;
 - (2) — psychological;
 - (3) — educational;
 - (4) — communicative;
 - (5) — social; and
 - (6) — neuromotor.
- (b) ~~Each center shall offer the following services to eligible children, their families, or other providers with an emphasis on~~

~~the catchment area of the center. These services shall be based on the individual needs of the client and the availability of other resources in the community:~~

- (1) — ~~Clinical assessment as described in Rule .0301 of this Subchapter;~~
- (2) — ~~Treatment and client and family instruction as described in Rule .0302 of this Subchapter;~~
- (3) — ~~Case management as described in Rule .0303 of this Subchapter;~~
- (4) — ~~Screening as described in Rule .0304 of this Subchapter; and~~
- (5) — ~~Case specific technical assistance, as described in Rule .0305 of this Subchapter.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0105 ELIGIBILITY FOR DIRECT SERVICES

- (a) ~~Specific criteria to determine a child's eligibility for services are:~~
 - (1) — ~~The child shall be under 22 years of age;~~
 - (2) — ~~Reasonable evidence shall be present that a developmental disability, potential disability, or special need exists unless the child is being screened;~~
 - (3) — ~~Services have been requested by the child, parents, or guardians or with their knowledge and written consent; and~~
 - (4) — ~~The child shall be residing in North Carolina, but not necessarily the catchment area of the center.~~

- (b) ~~Of the children who meet these criteria, center directors shall place priority on allocating staff resources to serve young children in the catchment area of the center and other populations as defined and mandated by the Specialized Services Branch.~~
- (c) ~~Decisions about eligibility for services shall be made without regard to the client's ethnic origin, race, sex, or ability to pay for services.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0107 FEES

~~Fees for services provided in the operation of a Developmental Evaluation Center shall be determined on the basis of a schedule of co-payments related to income. Copies of this schedule of co-payments may be inspected at, or obtained from, any Developmental Evaluation Center or the program office. Centers shall also attempt to collect from other appropriate third-party funding sources. No one will be denied service based solely on an inability or failure to pay.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;

Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0108 ADMINISTRATION

The Department of Health and Human Services is responsible for administering the statewide early intervention program under Federal law, Part C of the Individuals with Disabilities Act (IDEA).

*History Note: Authority G.S. 130A-126;
Temporary Adoption Eff. July 1, 2006.*

10A NCAC 43G .0109 CHILDREN'S DEVELOPMENTAL SERVICES AGENCIES

The Children's Developmental Services Agencies within the Early Intervention Branch shall manage the Early Intervention Program at the local level. Each Children's Developmental Services Agency shall serve children birth to three (3) years of age who have been referred by parents, community agencies, physicians, or other interested parties for early intervention services. The Children's Developmental Services Agency shall determine the child's eligibility for the Early Intervention Program.

*History Note: Authority G.S. 130A-126;
Temporary Adoption Eff. July 1, 2006.*

10A NCAC 43G .0110 ELIGIBILITY

(a) Children from birth to age three (3) are eligible for early intervention services under the provisions of this subchapter and under Part C of the Individuals with Disabilities Education Act (IDEA) if they have been determined by the Children's Developmental Services Agency to meet the criteria of one of the two following categories:

- (1) developmental delay; or
- (2) established conditions.

(b) Developmental Delay.

- (1) A child is considered to have developmental delay if the child's development is delayed in one or more of the following areas:
 - (A) Cognitive Development;
 - (B) Physical Development, including fine and gross motor function;
 - (C) Communication Development;
 - (D) Social-Emotional Development; or
 - (E) Adaptive Development.
- (2) The specific level of delay shall be:
 - (A) documented by scores of 2.0 standard deviations below the mean of the composite score (total test score) on standardized tests in at least one of the above areas of development; or
 - (B) documented by a 30 percent (30%) delay on instruments which determine scores in months in at least one of the above areas of development, or
 - (C) documented by scores of 1.5 standard deviations below the mean of the composite score (total test score) on

standardized tests in at least two of the above areas of development, or
(D) documented by a 25 percent (25%) delay on instruments which determine scores in months in at least two of the above areas of development.

(c) Established Conditions. A child is considered to have an established condition if the child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. Specific conditions through which a child may be deemed eligible in the established conditions category are as follows:

- (1) Congenital Anomaly/Genetic Disorders/Inborn Errors of Metabolism. These are children diagnosed with one or more congenital abnormalities or genetic disorders with developmental implications. Some examples are Down Syndrome, Fragile X Syndrome, familial retardation syndromes, and fetal alcohol syndrome.
- (2) Congenital Infections. These are children diagnosed with congenital infections with developmental implications. Some examples are toxoplasmosis, rubella, cytomegalovirus, and HIV.
- (3) Autism. These are children diagnosed with autism or autism spectrum disorders.
- (4) Attachment disorder. These are children with a diagnosed attachment disorder.
- (5) Hearing Loss. These are children diagnosed with unilateral or bilateral permanent hearing loss.
- (6) Visual Impairment. These are children diagnosed with a visual impairment that is not correctable with treatment, surgery, glasses, or contact lenses.
- (7) Neurologic Disease/Central Nervous System Disorders. These are children diagnosed with a disease or disorder known to affect the nervous system with developmental implications, such as Cerebral Palsy, Spina Bifida, Epilepsy, and Microcephaly.
- (8) Neonatal Conditions and Associated Complications. These are children diagnosed with one or more of the following neonatal diseases or disorders known to have developmental implications:
 - (A) Gestational age less than 27 weeks or birth weight less than 1000 grams;
 - (B) Neonatal encephalopathy with neurological abnormality persisting at discharge from the neonatal intensive care unit;
 - (C) Moderate to Severe Ventricular Enlargement at discharge from the neonatal intensive care unit or a ventriculoperitoneal shunt;

- (D) Neonatal seizures, stroke, meningitis, encephalitis, porencephaly, or holoprosencephaly;
- (E) Bronco Pulmonary Dysplasia requiring supplemental oxygen at discharge from the neonatal intensive care unit;
- (F) Intrauterine Growth Retardation;
- (G) Necrotizing enterocolitis requiring surgery;
- (H) Abnormal neurological exam at discharge;
- (I) Intraventricular hemorrhage III or IV;
- or
- (J) Periventricular leukomalacia.

- (8) Operating procedures including center's hours of operation, application procedures, method for recruiting and responding to client grievances and fee schedule; and
- (9) Written procedures regarding entry of prospective clients to assure expedient response to requests for service.

History Note: Authority G.S. 130A-126;
Temporary Adoption Eff. July 1, 2006.

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0111 SERVICE PLAN – SERVICE DELIVERY

Once a child is determined eligible for the program, the Children's Developmental Services Agency shall develop a service plan based on the child's needs and the requirements of Part C of the Individuals with Disabilities Education Act (IDEA). Service provision shall be monitored by the Children's Developmental Services Agency. The services shall be provided by the following:

- (1) staff of the Children's Developmental Services Agency, or
- (2) agencies or individuals within the community who have executed a provider agreement with the Children's Developmental Services Agency.

History Note: Authority G.S. 130A-126;
Temporary Adoption Eff. July 1, 2006.

10A NCAC 43G .0202 PERSONNEL MANAGEMENT

- (a) Each center shall have written procedures which designate a specific professional staff person, by job title, to be in charge of the center when the director is not available. This responsibility shall be written into the designee's job description.
- (b) Each center shall maintain a personnel record of each employee, which includes a current job description that clearly identifies duties and responsibilities.
- (c) Each center operated directly by the Division of Public Health shall adhere to the State Personnel Act. Each center operated on a contractual basis by the Division of Public Health shall establish personnel policies and have the policies approved by the Division.
- (d) Each center shall provide an orientation program for all new employees.

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0203 SAFETY

Each center shall have a written plan to assure the safety of employees and others in the event of fire or other emergencies in the building or other facilities of the center.

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

SECTION .0200 - AGENCY MANAGEMENT PROCEDURES

10A NCAC 43G .0201 CENTER-PROGRAM OPERATIONS MANUAL

Each center shall prepare for public inspection an annually revised center program operations manual to include, at a minimum, the following information:

- (1) Center identification information;
- (2) Center organizational chart;
- (3) The names of current personnel and their professional qualifications;
- (4) A description of a specific services offered by the center;
- (5) Copies of the center's fiscal documents including total operating budget and source of operating funds;
- (6) The center's current "site review" report;
- (7) A complete set of the center's forms relating to client services;

10A NCAC 43G .0204 ANNUAL PROGRAM PLANNING AND PERFORMANCE EVALUATION

Each center director shall submit an annual plan of program objectives to the Division of Public Health. This plan shall include performance indicators as well as a narrative plan for services and shall conform to the planning format and process prescribed by the Division of Public Health.

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0205 INTEGRATION OF SERVICES WITH LOCAL COMMUNITIES

~~Each center shall obtain information from consumers and local human service agencies to assure integration of center services with those of other agencies in the counties of the catchment area.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0206 FORMS

~~Centers shall use official forms designated by the Specialized Services Branch for clinical and managerial purposes.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

SECTION .0300 - SERVICE PROVISIONS

10A NCAC 43G .0301 CLINICAL ASSESSMENT SERVICES

~~(a) Clinical Assessments provided by centers shall be comprehensive processes designed to identify the presence of developmental disabilities or special needs, and to determine the extent to which the disabilities or special needs are interfering with the acquisition of competencies commensurate with the client's age.~~

~~(b) A clinical assessment is interdisciplinary in nature and shall include, but is not limited to, the collection and review of pertinent historical information, evaluation of overall health status, developmental level, child family relations, and where possible, the etiology of the disabilities.~~

~~(c) The tests or procedures employed in clinical assessments shall be appropriate to the client's functional age and cultural experience.~~

~~(d) A clinical assessment shall include a written intervention plan for clients. Findings and recommendations of the clinical assessment shall be shared and interpreted with the client's family in order to plan jointly for intervention.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0302 TREATMENT AND CLIENT/FAMILY INSTRUCTION SERVICES

~~(a) Treatment provided by centers includes activities, exercises, counseling, or therapy to ameliorate the identified problem(s) and to facilitate the client's independent functioning. Treatment is based on individual objectives derived from clinical assessment and is appropriately updated according to change in the client's conditions.~~

~~(b) Client and family instruction provided by centers includes the provision and interpretation of information to clients and family members in order to increase their knowledge or skill relevant to identified needs.~~

History Note: Authority G.S. 130A-5(3); 130A-124;

Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0303 CASE MANAGEMENT SERVICES

~~Case Management provided by centers includes service planning and follow up to assist clients in receiving adequate services. Each client who receives direct services shall be assigned a case coordinator who is responsible for Case Management.~~

~~(1) Service planning includes activities such as response to requests for services, intake processing, scheduling assessment, and staff meetings to plan for a client's needs.~~

~~(2) Follow up includes the contact with the client and agencies to assure that changing needs are recognized and that services are appropriately provided.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0304 SCREENING SERVICES

~~Screening provided by centers is a brief assessment to determine if a client deviates from normal growth and development.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0305 CASE-SPECIFIC TECHNICAL ASSISTANCE SERVICES

~~Case specific technical assistance provided by centers includes information, demonstration, or instruction to another provider who has long term responsibility for the client.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

SECTION .0400 - RECORD-KEEPING: CONFIDENTIALITY OF CLIENT INFORMATION

10A NCAC 43G .0401 CONFIDENTIALITY

~~Except for purposes directly connected with the administration of the services provided by the centers or as otherwise provided by rule or statute, no person shall obtain, disclose, use, or authorize, permit or acquiesce in the use of, the medical records of any client applying for or receiving services.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0402 INFORMATION FROM OTHER AGENCIES

~~If the center receives information from another agency or individual, then such information shall be treated as any other~~

~~information generated by the Division of Public Health or the centers, and disclosure of such information shall also be governed by any condition imposed by the furnishing agency or individual.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0403 OWNERSHIP OF RECORDS

~~(a) Employees of each center shall protect and preserve all client information contained in records of each center operated by the Division of Public Health from dissemination, except as otherwise provided by rule or statute. Each center operated on a contractual basis shall furnish information to the Division pertaining to patient records to assure an efficient transition in services to patients in the event that the contract is terminated or not renewed.~~

~~(b) Original client records may not be removed from the premises by individuals other than authorized staff of the center.~~

~~(c) The center shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Department of Cultural Resources, Rules of the Department, and State and Federal statutes and regulations.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0404 SECURITY OF RECORDS

~~(a) The center shall provide a secure place with controlled access for the storage of records. Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the center shall be authorized access to the storage area.~~

~~(b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be responsible for the security of the record until it is returned to the storage area.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0405 RIGHT OF ACCESS

~~(a) The center director or a representative shall be present when the client reviews the record. The center director or a representative must document, in the client's record, the review of the record by the client.~~

~~(b) Upon written request from the client, a representative may have access to review or obtain, at reasonable charge, a copy of the information in the client's record. The client may permit the personal representative to have access to his entire record or may restrict access to certain portions of the record.~~

~~(c) Upon written or verbal request the client or the client's parents, the client or the client's parents shall have access to~~

~~review or obtain, at reasonable charge, a copy of the information in the client's record with the following exceptions:~~

- ~~(1) Confidential information originating from another agency as provided for in .0402 of this Subchapter;~~
- ~~(2) Information shall be deleted if it would breach the right to confidentiality of another individual but shall be released if it does not cause such a breach; and~~
- ~~(3) Information that is deemed by the center to be potentially harmful to the client.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0406 WITHHOLDING INFORMATION FROM THE CLIENT

~~(a) When the center director or a delegated representative determines, on the basis of the exceptions in .0705 of this Subchapter, to withhold information requested by the client from the record the reason(s) shall be documented in the client's record.~~

~~(b) The center director or a delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in .0405 of this Subchapter the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.~~

~~(c) When a delegated representative determines to withhold client information, the decision to withhold shall be reviewed by the supervisor of the person making the initial determination.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0407 CONTESTED INFORMATION

~~A client may contest the accuracy, completeness, or relevancy of the information in his record. Corrections shall be made by lining through the material and inserting the correct information when the center director or a representative concurs that a correction is justified. Both the material deleted and the material inserted shall be initialed and dated. When the center director or a representative does not concur, the center director or representative shall note the objection as a permanent part of the record and this information shall be disclosed to any recipient of the disputed information. If a representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.~~

History Note: Authority G.S. 130A-5(3); 130A-124;
 Eff. January 1, 1984;
Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0408 PROCEDURE OBTAINING

PERMISSION FOR RELEASE OF INFORMATION

(a) ~~As a part of the application process for services, the client, his parents or legal guardians, shall be informed of the need for permission for the release of information pertinent to the delivery of center services.~~

(b) ~~No center shall release any client information or request the release of information from other agencies or individuals without obtaining a signed permission for release of information except as otherwise provided by law or rule.~~

History Note: Authority G.S. 130A-5(3); 130A-124; Eff. January 1, 1984; Amended Eff. September 1, 1990; Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0409 DISCLOSURE FOR THE PURPOSE OF RESEARCH

Client information may be disclosed to individuals requesting approval to conduct studies of client records without the consent of the client if all information that identifies the client is deleted, if approval is requested in writing, and if the written request specifies and will be approved on the basis of:

- (1) ~~An explanation of how the findings of the study have potential for expanding knowledge and improving professional practices;~~
- (2) ~~A description of how the study will be conducted and how the findings will be used;~~
- (3) ~~A presentation of the individual's credentials in the area of investigation;~~
- (4) ~~A description of how the individual will safeguard information;~~
- (5) ~~An assurance that no report will contain the names of individuals or any other information that makes clients identifiable; and~~
- (6) ~~The request is reviewed by the center director and the director's immediate supervisor who is responsible for the client records to be included in this study.~~

History Note: Authority G.S. 130A-5(3); 130A-124; Eff. January 1, 1984; Amended Eff. September 1, 1990; Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0410 DISCLOSURE PURSUANT TO A COURT ORDER

Client information shall be disclosed without the consent of the client in response to a court order.

History Note: Authority G.S. 130A-5(3); 130A-124; Eff. January 1, 1984; Temporary Repeal Eff. July 1, 2006.

SECTION .0500 - DEC CONTRACT FUNDS

10A NCAC 43G .0502 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~"Division" means the Division of Public Health.~~

- (2) ~~"DEC" means Developmental Evaluation Center.~~
- (3) ~~"Program" refers to the Central Office staff responsible for statewide management of the DEC system.~~
- (4) ~~"Core team" means the range of clinical staff specialists required to assure the availability of basic multidisciplinary services in a DEC.~~
- (5) ~~"Clinical assessments", "evaluations", or "diagnostic" services refer to comprehensive processes designed to identify the presence of developmental disabilities or special needs, and to determine the extent to which the disabilities or special needs are interfering with the acquisition of competencies commensurate with the child's age.~~
- (6) ~~"Treatment" refers to activities, exercises, counseling or therapy to ameliorate any identified problem and to facilitate the child's independent functioning.~~
- (7) ~~"Client and family instruction" refers to the provision and interpretation of information to clients and family members in order to increase their knowledge or skill relevant to identified needs.~~
- (8) ~~"Case management" refers to service planning and follow up in order to assist clients in receiving adequate services appropriate for the identified needs and problems.~~
- (9) ~~"Case specific technical assistance" refers to information provision, demonstration or instruction to another agency provider who has long term responsibility for the client.~~
- (10) ~~"Screening" provided by centers is a brief assessment to determine if a client deviates from normal growth and development.~~

History Note: Authority G.S. 130A-124; Eff. April 1, 1985; Amended Eff. September 1, 1990; Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0503 PROVIDER ELIGIBILITY

(a) ~~Public or private non profit organizations are eligible to receive DEC Program funds. Organizations must demonstrate a capability for provision of DEC services as outlined in this Subchapter.~~

(b) ~~Existing DEC contractors are eligible to receive priority for receive priority for program funds based on their continued compliance with the rules, and on demonstration of acceptable service performance.~~

History Note: Authority G.S. 130A-124; Eff. April 1, 1985; Amended Eff. September 1, 1990; Temporary Repeal Eff. July 1, 2006.

10A NCAC 43G .0504 CLIENT ELIGIBILITY

Any child who meets the requirements in Rule .0105 of this Subchapter, or the child's family, may apply for appropriate services. Anyone can refer a client with the family's knowledge and consent. Priority for service provision is placed on younger children and other populations as defined and mandated by the Division.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0505 SCOPE OF SERVICES

(a) Each center shall offer services to eligible children, their families, or other providers with an emphasis on the catchment area of the center. These services shall be based on the individual needs of the client and the availability of other resources in the community. Services must include at least the following: clinical assessment, treatment and client and family instruction; case management, screening and case specific technical assistance.

(b) Within the service limitations of the section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and type of services offered will be negotiated annually with each provider, approved by the program, and detailed in the addendum of the contract.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0506 ALLOCATION OF FUNDS

(a) A set amount of resources shall be allocated by the program to support a core team staff for each DEC serving a specified catchment area.

(b) Additional funds and positions will be allocated to DEC's based on population, poverty, and the geographic area which must be traversed in order to assure outreach and service access to children and management criteria. Specific criteria utilized to distribute the funds remaining after base allocations to centers include:

- (1) The percentage of children, birth through five years of age, residing in each DEC catchment area as indicated by the most recent information available from the U.S. Census. Statistics on this population group are utilized to distribute 33 percent of the resources.
- (2) The percentage of children, six through twenty years of age, residing in each DEC catchment area as indicated by the most recent information available from the U.S. Census. Statistics on this population group are utilized to distribute 17 percent of the resources.
- (3) An adjusted percentage of children in poverty from birth through five years of age, residing in each DEC catchment area, computed from the most current U.S. Census data. Statistics

on this population group are utilized to distribute 25 percent of the resources.

(4) Cumulative miles of the distances from the area in which the DEC is located to the county seat of each county in the designated catchment area are utilized to allocate 12.5 percent of the resources.

(5) Square miles are computed for each DEC catchment area and 12.5 percent of the resources are allocated on this basis.

(c) If a contractor is expending funds at a rate which will, if continued, result in an underexpenditure of funds at the end of the contract period, the DEC Program may, after consulting with the contractor, reduce the amount of funds budgeted by an amount consistent with the projected level of underexpenditure. Funds projected to be unexpended may be reallocated to other centers in accordance with community needs and management prerogatives. The DEC Program shall notify the contractor in writing prior to the reduction of funds.

(d) A contract is signed annually with each DEC contractual provider of service. Contracts for DEC funds are subject to annual renewal and are subject to the availability of funds.

(e) A contract provider that consistently fails to meet acceptable levels of performance as determined through annual plan reviews, site reviews by the program or data reports from the DEC Data Information System and has been offered state consultation and technical assistance, may have DEC funding reduced or discontinued. Recommendations to reduce or discontinue funding provided to a DEC service provider must be reviewed and approved by the State Health Director.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0507 REPORTING REQUIREMENTS

Agencies receiving DEC Program funds must report client and service data through the DEC Data Information System. Data reports that reflect services other than those provided through DEC allocations must be updated quarterly to reflect an appropriate percentage of services that are attributable specifically to DEC funding. This may be accomplished by reporting the following:

- (1) The total operating budget for "DEC" type services.
- (2) The percentage of the entire budget that is allocated from the Division.
- (3) Compute the percentage of the DEC Program services delivered by using the percentage of program funding identified in Rule .0506(b) of this Section.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0508 CLIENT AND THIRD PARTY FEES

~~(a) DEC contractual agencies are required to bill all available and appropriate reimbursement sources including but not limited to insurance companies, Medicaid, other agency providers or parents/guardians. Outpatient services cannot be billed to the Children's Special Health Services Program by a DEC.~~

~~(b) These fees will be based on a public schedule of charges as determined by the DEC Program and on the Title XIX Memorandum of Understanding between the contractor and the division governing Medicaid reimbursement.~~

~~(c) All fee collections must be budgeted and expended during the fiscal year earned or within the subsequent fiscal year. Fees will be utilized, upon approval of the program, to either expand program services or to reduce the amount of state appropriations.~~

~~(d) All fees held in escrow and brought forward from the prior fiscal year shall be expended prior to the expenditure of state appropriations.~~

~~(e) All fees earned in excess of the original budgeted amount cannot be budgeted or expended without prior written approval of the program director and the division.~~

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0509 APPLICATION FOR FUNDS

~~(a) Grants for DEC funding shall be awarded through a request for proposal (RFP) process that includes notification of interested providers of the eligibility criteria and requirements for funding.~~

~~(b) Grant proposals for DEC funds shall be sent to the DEC Program. The grant proposal shall include the following information:~~

- ~~(1) A DEC Program annual plan which includes an assessment of the need for the clinic services, measurable project objectives, and strategies for meeting the project objectives.~~
- ~~(2) A proposed budget.~~
- ~~(3) The plan shall be in accordance with the rules of this Subchapter.~~

~~(c) Technical assistance in preparing a grant proposal shall be available from central and regional office branch staff.~~

~~(d) The DEC Program shall approve or deny a grant proposal for funds or request additional information within 60 days after receipt of a grant proposal. If additional information is requested, the local provider shall have 45 days to submit the information. Failure by the party to submit the additional information requested within the 45 days shall be grounds for denying the grant proposal. Upon receipt of the additional information, the Branch/Program shall approve or deny a grant proposal for funds within 45 days.~~

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0510 BUDGETING OF GRANT FUNDS

Upon approval of a new application or a renewal of a continuing grant, a budget will be negotiated and a contract signed between the grantee and the program.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0511 ANNUAL PLAN

The contractor will submit an updated annual plan each year according to the DEC Program specifications and within the time frame of the grant request.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Temporary Repeal Eff. July 1, 2006.*

10A NCAC 43G .0512 RENEWAL OF GRANT FUNDS

When considering renewal of funding the DEC Program shall consider the extent to which objectives and services are provided according to the approved annual plan of operation, progress reviews, site reviews by the program and the extent to which the contract requirements are met.

*History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Temporary Repeal Eff. July 1, 2006.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Department of Environment and Natural Resources*

Rule Citation: *15A NCAC 010 .0101; .0105*

Effective Date: *March 28, 2006*

Date Approved by the Rules Review Commission: *March 16, 2006*

Reason for Action:

15A NCAC 010 .0101 - *In order to implement Senate Bill 622 and funding in the area of environmental health staffing, temporary amendments to the authorization rules are required.*

15A NCAC 010 .0105 - *In order to implement S.L. 2005-276 and funding in the area of environmental health staffing, temporary amendments to the authorization rules are required.*

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 10 - ENVIRONMENTAL HEALTH

SECTION .0100 – DELEGATION OF AUTHORITY TO ENFORCE THE COMMISSION FOR HEALTH SERVICES SANITATION RULES

15A NCAC 010 .0101 SCOPE OF DELEGATED AUTHORITY

No person shall act as an authorized agent of the state in enforcing the provisions of G.S. 130A and the rules of the Commission for Health Services who is not a current employee of a local health department, department or the North Carolina Alliance of Public Health Agencies, registered with the North Carolina State Board of Sanitarian Examiners as a Registered Sanitarian or Sanitarian Intern and authorized pursuant to ~~these rules~~ the rules in this Subchapter. Except as provided in Rule .0105 of this Section, an authorization shall be valid only in the county or district served by the local health department which employs the agent. There shall be seven areas of authorization to enforce the provisions of G.S. 130A and the rules of the Commission for Health Services found in 15A NCAC 18A as follows:

- (1) Food, Lodging, and Institution Sanitation including the following:
 - (a) .1000 Sanitation of Summer Camps,
 - (b) .1300 Sanitation of Hospitals; Nursing and Rest Homes; Sanitariums, Sanitoriums; Educational and other Institutions,
 - (c) .1500 Sanitation of Local Confinement Facilities,
 - (d) .1600 Sanitation of Residential Care Facilities,
 - (e) .1800 Sanitation of Lodging Establishments,
 - (f) .2100 Rules Governing the Sanitation & Safety of Migrant Housing,
 - (g) .2200 Sanitation of Bed and Breakfast Homes,
 - (h) .2400 Sanitation of Public, Private, and Religious Schools,
 - (i) .2600 Sanitation of Restaurants and Other Foodhandling Establishments,
 - (j) .2700 Sanitation of Meat Markets, and
 - (k) .3000 Bed and Breakfast Inns.
- (2) On-Site Wastewater, including the following:
 - (a) .1900 Sewage Treatment and Disposal Systems,
 - (b) .1603 and .1606, 1611(a) and (b) and .1613 Sanitation of Residential Care Facilities (Family Foster Homes), and
 - (c) .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (3) .2800 Sanitation of Child Care Centers.
- (4) .3100 Lead Poisoning Prevention in Children Program.
- (5) .2500 Public Swimming Pools.
- (6) .3200 Tattooing.
- (7) .1603, .1606, .1611(a) and (b), .1613 Sanitation of Residential Care Facilities (Family Foster Homes) and .2100 Rules Governing the Sanitation and Safety of Migrant Housing.

History Note: Authority G.S. 130A-4; Temporary Adoption Eff. March 1, 1998; Eff. April 1, 1999; Temporary Amendment Eff. March 28, 2006.

15A NCAC 010 .0105 AGENTS SERVING AS CONTRACTORS

(a) An agent who is authorized in a specific local health department may contract with another local health department to provide services to the other local health department. The North Carolina Alliance of Public Health Agencies may also provide authorized agents who may perform contract services for any local health department. When a local health department contracts for such services, the contracting department shall provide a statement to the Division on progress made to employ an individual who may be considered for authorization.

(b) A contract shall be created between the contracting local health department and the agent (contractor) or with the North Carolina Alliance of Public Health Agencies to include at least the following provisions:

- (1) Names and addresses of each party.
- (2) Scope of work to be performed.
- (3) A requirement that the original public records remain in the local health department in which the work is performed. The public records shall be left at the local health department or with an individual employed by the local health department who shall be responsible for returning said records to the local health department within two business days of the service provided.
- (4) Designation of the party responsible for maintaining public records created by the agent.
- (5) A requirement that the contracting agent be available for consultation to the public being served during usual business hours.
- (6) A requirement that the contracting agent be available for any hearing or other legal proceeding which may ensue from activities conducted by the agent.

(c) The contracting agent shall maintain a list of each activity and the date performed for review in accordance with Paragraph (d) of this Rule.

(d) Each public record created by the contracting agent shall be reviewed, dated, and initialed by an authorized agent of the contracting local health department. In addition, at least 10 percent of the activities performed by the agent shall be reviewed in the field by an authorized agent employed by the contracting local health department. If the contracting local health department has no authorized agent, the Division shall conduct a review of each public record created by the contracting agent. In addition, at least 10 percent of the activities performed by the agent shall be reviewed on-site in the field by the Division. The review shall be conducted each month and shall cover the previous month's activities conducted by the agent.

History Note: Authority G.S. 130A-4;

Temporary Adoption Eff March 1, 1998;
Eff. April 1, 1999;
Temporary Amendment Eff. March 28, 2006.

TITLE 21 – DEPARTMENT OF OCCUPATIONAL LICENSING BOARDS

CHAPTER 46 - BOARD OF PHARMACY

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

Rule Citation: *21 NCAC 46 .3301*

Effective Date: *March 28, 2006*

Date Approved by the Rules Review Commission: *March 16, 2006*

Reason for Action: *During its 2005 Session, the North Carolina General Assembly enacted House Bill 1349, entitled An Act Authorizing The North Carolina Board Of Pharmacy To Raise Its Licensure And Registration Fees And Establish Certain New Fees And Making Certain Changes To The Conditions Of Licensure Renewal Under The Pharmacy Practice Act And Authorizing The North Carolina Medical Board To Increase Certain Fees. These provisions of House Bill 1349 became effective on October 1, 2005. The immediate amendment of this Rule is required to cover the increased cost to the Board in regulating pharmacy technicians and conducting thorough investigations of any alleged violations by pharmacy technicians.*

SECTION .3300 – REGISTRATION OF A PHARMACY TECHNICIAN

21 NCAC 46 .3301 REGISTRATION

(a) Following initial registration with the Board, registration of a pharmacy technician shall be renewed annually and shall expire on December 31. It shall be unlawful to work as a pharmacy technician more than 60 days after expiration of the registration without renewing the registration. A registration expired more than 60 days ~~may~~ shall be ~~renewed~~ reinstated pursuant to 21 NCAC 46 .1612 upon written request and upon payment of the registration fee and a data processing fee of eleven dollars (\$11.00).

(b) The current registration of a pharmacy technician shall be readily available for inspection by agents of the Board.

(c) The training program described in G.S. 90-85.15A(b) is not required for students enrolled in a community college pharmacy technician program.

(d) Volunteer pharmacy technicians providing services at a facility which has a pharmacy permit designated as a free clinic shall complete the training program described in G.S. 90-85.15A(b) but need not register with the Board.

(e) A pharmacist may not supervise more than two pharmacy technicians unless the additional pharmacy technicians have passed a national pharmacy technician certification examination administered by a provider whose examination assesses the ability of the technicians to function in accordance with G.S. 90-85.3(q2) and approved by the Board according to these standards.

History Note: Authority G.S. 90-85.6; 90-85.15A; Eff. April 1, 2003; Amended Eff. February 1, 2006; February 1, 2005; Temporary Amendment Eff. March 28, 2006.

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

Beryl E. Wade

Melissa Owens Lassiter

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05
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Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05
Tracy L. Phillips v. North Carolina A & T State University	05 OSP 0183	Mann	03/03/06
Percy L. Edwards v. Dept. of Juvenile Justice & Delinquency Prevention	05 OSP 0252	Lassiter	11/30/05
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05
Peggy Anderson v. Whitaker School, NC DHHS	05 OSP 0427	Gray	10/25/05
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05
Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05
James Albert Keyes v. DOT	05 OSP 0553	Gray	12/15/06
Mary K French Fornes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05
Gloria Woodard v. Lyndo Tippett, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05
William Rhodney Reep v. DOT, DMV	05 OSP 0717	Lassiter	11/08/05
Glendora Key v. UNC at Chapel Hill	05 OSP 0784	Gray	09/23/05
Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05
Joey Todd v. Bladen County Dept. of Social Services	05 OSP 0804	Conner	01/06/06
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05
Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05
Donna P. Minelli v. DOC, Div. of Community Corrections	05 OSP 0889	Conner	10/21/05
Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05
Destrik A. Burns v. Albemarle Correctional Institution	05 OSP 0924	Gray	03/13/06
Susan Hilbourn v. Cumberland County Department of Social Services	05 OSP 0970	Gray	12/07/05
Albert Ridley v. Odom Correctional Institution, Lawrence Solomon	05 OSP 0989	Gray	10/25/05
Tammy F. Brogdon v. Durham Co. Dept. of Social Services	05 OSP 1009	Elkins	03/07/06
Mark P. Gibbons v. Derrick Lee, DOT Plymouth, NC, Robby Taylor, DOT, Creswell, NC	05 OSP 1080	Elkins	10/12/05
Cindy Owens v Justice Academy	05 OSP 1038	Conner	09/19/05
Melanie Caudle Pitrolo v. Western NC Regional Air Quality Agency	05 OSP 1075	Conner	12/21/05
Elva Catalina Lay v. Durham Dept. of Social Services	05 OSP 1112	Chess	02/22/06
Thomas M. Chamberlin v. Vance-Granville Community College	05 OSP 1170	Chess	09/30/05
Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME	05 OSP 1221	Chess	10/11/05
Lolita B. Keel v. Dept. of Revenue	05 OSP 1228	Elkins	10/12/05
David N. Smith v. NC School of Science and Math	05 OSP 1236	Chess	10/04/05
Gerald R. Tripp v. NC School of Science and Math	05 OSP 1242	Chess	09/22/05
Teresa Johnson v. Fayetteville State University	05 OSP 1252	Gray	03/27/06
Tommy Frank Sykes v. Nash County Government	05 OSP 1334	Chess	12/15/05
Debra D Moore v. Irene Wortham Center	05 OSP 1445	Gray	11/02/05
Samuel Faminiba v. DOT	05 OSP 1468	Morrison	12/13/05
Natalynn P (Para) Tollison v. NCSU Human Resources, Diane Sortini, Director and Galen Jones, Assistant Director	05 OSP 1501	Morrison	12/14/05
Frank G. Bermel v. UNC	05 OSP 1563	Lassiter	12/05/05
Athena Prevatte v. UNC-Pembroke, Police Department	05 OSP 1604	Chess	02/28/06
William J. Pendleton v. Butner Public Safety MW Hobgood	05 OSP 1720	Lassiter	01/09/06
Michael D. Beal v. Butner Public Safety MW Hobgood	05 OSP 1722	Lassiter	01/09/06
Walter B. Williams v. Butner Public Safety MW Hobgood	05 OSP 1723	Lassiter	01/09/06
John S. Cmelo v. DOC	05 OSP 1900	Mann	03/24/06
Mary F. Parker v. Wilson Technical Community College	05 OSP 1905	Lassiter	01/04/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health And Human Services)	05 OSP 2044	Elkins	03/13/06
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Terry Michael Williams v. East Carolina University	05 OSP 2116	Lassiter	02/06/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health	06 OSP 0028	Elkins	03/13/06
Sergeant Brandon James Graham v. DOC	06 OSP 0109	Gray	03/21/06
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06
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Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
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Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05
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UNC HOSPITALS

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Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Lenora White v. UNC Hospitals	05 UNC 0574	Bryan	09/13/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
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Robert C. Green v. UNC Hospitals	05 UNC 0751	Wade	01/06/06
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
De'Juana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

WILDLIFE RESOURCES COMMISSION

Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05
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- 1 – Combined Cases
- 2 – Combined Cases
- 3 – Combined Cases
- 4 – Combined Cases
- 5 – Combined Cases