

# NORTH CAROLINA REGISTER

VOLUME 38 • ISSUE 12 • Pages 805 – 830

December 15, 2023

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**PUBLISHED BY**

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## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

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### **Rule Review and Legal Issues**

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984-236-1947 FAX

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alexander.burgos@oah.nc.gov

984-236-1940

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Julie Ventaloro, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0694

NC Association of County Commissioners

919-715-2893

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

919-715-2925

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

mjackson@nclm.org

### **Legislative Process Concerning Rulemaking**

545 Legislative Office Building

300 North Salisbury Street

919-733-2578

Raleigh, North Carolina 27611

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2023 – December 2023

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
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38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## 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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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 but not later than 60 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.

**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.





# State of North Carolina

**ROY COOPER**

GOVERNOR

November 8, 2023

EXECUTIVE ORDER NO. 293

## DECLARATION OF STATE OF EMERGENCY DUE TO EXISTING AND POTENTIAL WILDFIRES

**WHEREAS**, since 25 October 2023 there have been multiple active wildfires in western North Carolina in addition to active wildfires in the Commonwealth of Virginia near the North Carolina border; and

**WHEREAS**, the North Carolina Drought Management Advisory Council in its 2 November 2023 assessment observed severe drought in the southern mountains and moderate drought in the Piedmont regions of North Carolina with potential worsening conditions; and

**WHEREAS**, due to the hazardous wildfire conditions, the North Carolina Forest Service has cancelled all burning permits and implemented an open burning ban in thirty (30) counties, and several counties have issued local burning bans or a local state of emergency; and

**WHEREAS**, the wildfires combined with the severe and moderate drought conditions could have a significant impact on public health, public safety and to public and private property in the State of North Carolina; and

**WHEREAS**, the current and anticipated impacts from the multiple wildfires combined with the severe and moderate drought conditions constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and to coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(3) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for the rapid and orderly rehabilitation of persons and restoration of property”; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states and with other private and quasi-official organizations”; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(3) authorizes the undersigned to delegate any gubernatorial authority vested in him under the Emergency Management Act, and to provide for the subdelegation of that authority.

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

**Section 1.**

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6), exists in the counties and tribal lands listed below listed below, due to the current and anticipated impacts from multiple wildfires in addition to the severe and moderate drought conditions which has increased the risk of hazardous wildfires.

For purposes of this Executive Order, the emergency area is the following counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rowan, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, Yancey, as well as tribal lands in the State of North Carolina held by the Eastern Band of Cherokee Indians. ("the Emergency Area").

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

I delegate to Eddie M. Buffalo, Jr., the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Secretary Buffalo, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 3.**

I further direct Secretary Buffalo, or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and to seek reimbursement for costs incurred by the state in responding to this emergency.

**Section 4.**

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages.

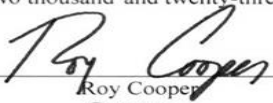
**Section 5.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

**Section 6.**

This Executive Order is effective immediately and shall remain in effect for at least thirty (30) days, unless earlier terminated or extended.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 8<sup>th</sup> day of November in the year of our Lord two thousand and twenty-three.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

November 20, 2023

**EXECUTIVE ORDER NO. 294**

**AMENDMENT TO EXECUTIVE ORDER NO. 293**

**EXPANDING THE EMERGENCY AREA TO ADDITIONAL COUNTIES**

**WHEREAS**, since 1 November 2023 there have been 828 wildfires on state and private lands according to the North Carolina Forest Service (“NCFS”); and

**WHEREAS**, the North Carolina Drought Management Advisory Council in its 14 November 2023 assessment observed that extreme drought conditions have emerged in the State for the first time since March 2017, and severe drought has expanded into the northern mountains; and

**WHEREAS**, wildfires have expanded to other counties outside the Emergency Area that was initially declared in Executive Order 293 (the “Order”); and

**WHEREAS**, expanding the state of emergency to the additional counties named in this Executive Order, will assist federal, state and local efforts in combating these wildfires.

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

**Section 1.**

The emergency area in Section 1 of Executive Order No. 293 is amended by adding the following counties: Anson, Caswell, Davidson, Davie, Forsyth, Guilford, Montgomery, Moore, Randolph, Richmond, Rockingham, Scotland, Stanly, Stokes, Surry, and Yadkin.

**Section 2.**

This amendment is effective immediately and Executive Order No. 293 shall remain in effect for thirty (30) days from the date of this amendment, unless earlier terminated or extended.



IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 20<sup>th</sup> day of November in the year of our Lord two thousand and twenty-three.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State



**NOTICE OF FILING OF AN APPLICATION FOR PERMANENT VARIANCE  
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The Commissioner of Labor of North Carolina (“Commissioner”) hereby gives notice that, in accordance with N.C. Gen. Stat. § 95-132(b), McGee Brothers Company, Inc. has filed, and the Commissioner has received, an application for a permanent variance from certain Occupational Safety and Health (“OSH”) Standards. Pursuant to N.C. Gen. Stat. § 95-132(b)(1), affected employees shall be given notice of any application and be given the opportunity to participate in a hearing regarding the application for a variance.

**Summary of the application:** On August 2, 2023, McGee Brothers Company, Inc. applied to the Occupational Safety and Health Division (OSH) of the N.C. Department of Labor (NCDOL) for a variance from 29 CFR 1926.451(g)(4)(ii), Scaffolds, which is a part of the Occupational Safety and Health Standards for Construction (Title 29 of the Code of Federal Regulations Part 1926), and which have been incorporated by reference in 13 NCAC 07A.0301(e) and 13 NCAC 07F .0201. On August 18, 2023, the OSH Division of NCDOL denied the application for being incomplete. On August 21, 2023, McGee Brothers Company, Inc., submitted a revised application for a permanent variance from 29 CFR 1926.452(g)(4)(ii) to the OSH Division of NCDOL.

If granted, the variance will allow McGee Brothers Company, Inc. to use an engineered scaffolding system (masonry pump jack scaffold) without an additional top rail placed between 36” and 45” above the work bench. If the variance is not granted, McGee Brothers Company, Inc., will be prohibited by the Construction Standard for Scaffold Fall Protection, 29 CFR 1926.451(g)(4)(ii), which requires that “the top edge height of top rails or equivalent member on supported scaffolds manufactured or placed in service after January 1, 2000 shall be installed between 38 inches (0.97 m) and 45 inches (1.2 m) above the platform surface. The top edge height on supported scaffolds manufactured and placed in service before January 1, 2000, and on all suspended scaffolds where both a guardrail and a personal fall arrest system are required shall be between 36 inches (0.9 m) and 45 inches (1.2 m). When conditions warrant, the height of the top edge may exceed the 45-inch height, provided the guardrail system meets all other criteria of paragraph (g)(4).”

**Section of the Act under which application was filed:** N.C. Gen. Stat. § 95-132(b) for a Permanent Variance.

**Interested Persons:** All interested persons are invited to submit written data, views, or arguments regarding the application to via United States mail at the following address:

Jill F. Cramer, Rulemaking Coordinator  
NC Department of Labor, Legal Affairs Division  
1101 Mail Service Center, Raleigh, North Carolina 27699-1101

or via electronic mail at [jill.cramer@labor.nc.gov](mailto:jill.cramer@labor.nc.gov). Written data, views, or arguments submitted by interested persons shall include a reference to the specific variance request, the complete name(s) and contact information for the individual(s) submitting the information and must be received by **5:00 p.m. on January 30, 2024.**

**Affected Employers and Employees:** An affected employee means any employee who would be affected by the granting or the denial of a variance request or any one of their authorized representatives, such as a collective bargaining agent. Employers and employees affected by the application may request a hearing on the application by submitting a written request for hearing to Jill F. Cramer, Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101 or via electronic mail at [jill.cramer@labor.nc.gov](mailto:jill.cramer@labor.nc.gov). In accordance with 13 NCAC 07A .0711, requests for hearing shall include: a concise statement of facts showing how the employer or employee would be affected by the relief applied for; a specification of any statement or representation in the application which is denied; a concise summary of the evidence that would be adduced in support of each denial; and any views or arguments on any issue of fact or law presented. See: <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2007%20-%20office%20of%20occupational%20safety%20and%20health/subchapter%20a/13%20ncac%2007a%20.0711.pdf>. Complete requests for a hearing must be received by **5:00 p.m. on January 30, 2024.**

Jill F. Cramer  
General Counsel/Agency Rulemaking Coordinator

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

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the HHS - Division of Mental Health/DD/SAS and Commission for Mental Health/DD/SAS intends to amend the rule cited as 10A NCAC 27G .7004.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-use-services/north-carolina-commission-mental-health-developmental-disabilities-and-substance-use-services/proposed-rules>

**Proposed Effective Date:** May 1, 2024

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To request a public hearing, submit your written request for a public hearing on to dmhddsasrules@dhhs.nc.gov within 15 days after the notice of text is published.*

**Reason for Proposed Action:** *These rules are proposed for amendment to eliminate the requirement of a Panel and permit a Hearing Officer to conduct the appeals instead, to eliminate redundant language, and to provide further clarity regarding the Non-Medicaid Appeal Process.*

**Comments may be submitted to:** Denise Baker, 3001 MSC, Raleigh, NC, NC 27699-3001; email dmhddsasrules@dhhs.nc.gov

**Comment period ends:** February 13, 2024

**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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

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

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

**SECTION .7000 – LOCAL MANAGEMENT ENTITY RESPONSE TO COMPLAINTS**

**10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-MEDICAID SERVICES**

(a) This Rule governs appeals by a client, or the client's legally responsible person, made to the Local Management Entity (LME) Entity-Managed Care Organization (LME-MCO) Director of utilization review (UR) decisions made by the LME to deny, reduce, suspend or terminate a client's non-Medicaid funded services.

~~(b) A client may appeal to the LME Director the utilization review decision of a LME to deny, reduce suspend, or terminate a non-Medicaid state funded service.~~

~~(c)~~ (b) The LME LME-MCO shall send to the client or client's legally responsible person legal representative(s) notification letters regarding utilization review decisions for non-Medicaid funded services. The letter shall be dated and mailed no later than the next work business day following the review UR decision to deny, reduce, suspend, or terminate a non-Medicaid state funded service. The LME LME-MCO shall separately notify the provider regarding the service authorization.

~~(d)~~ (c) The letter shall include information regarding the reason for the UR decision and any available service options or considerations while the appeal is under review.

~~(e)~~ (d) An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal representative. Only the client, or the client's legally responsible person, may file an appeal of the non-Medicaid UR decision. The appeal must be in writing and received in writing by the LME LME-MCO within 15 working business days of the date of the notification letter. The LME LME-MCO shall provide help to an appellant a client who requests assistance in filing the appeal.

~~(f)~~ (e) The LME LME-MCO shall acknowledge receipt of the appeal in writing in a letter to the appellant client, or the client's

legally responsible person, dated the next working business day after receipt of the appeal.

(f) The LME may authorize interim services until the final review decision, as set forth in 10A NCAC 27I .0609, is reached.

(g) The LME-MCO Director shall assign staff to conduct a clinical review of the UR decision.

(h) The clinical review shall be conducted by an employee(s) or contractor(s) of the LME not involved in the utilization review UR decision that is the subject of the appeal. The clinical reviewer(s) clinical credentials shall be at least comparable to those of the person who rendered the initial utilization review UR decision.

(i) The clinical reviewer(s) shall complete a clinical review of the appeal and shall issue a written decision to uphold or overturn the original UR decision.

(j) The LME shall notify the appellant client, or the client's legally responsible person, in writing of the clinical review decision in a letter dated and mailed within seven working business days from receipt of the appeal request and shall separately notify the provider regarding the service authorization.

(k) If the clinical review overturns the initial utilization review UR decision, the decision letter shall state the date on which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall be reinstated.

(l) In cases in which the decision clinical review decision upholds the previous original UR decision, the LME shall inform appellants the client, or the client's legally responsible person, in writing of the opportunity to appeal a decision regarding a non-Medicaid service the clinical review decision to the State Division of Mental Health, Developmental Disabilities and Substance Abuse Services Non-Medicaid Appeals Panel according pursuant to 10A NCAC 27I .0600 and G.S. 143B-147(a)(9). .0600.

Authority G.S. 122C-112.1(a)(29); 143B-147.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health/DD/SAS intends to amend the rules cited as 10A NCAC 27I .0601, .0602, and .0605-.0609.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-use-services/north-carolina-commission-mental-health-developmental-disabilities-and-substance-use-services/proposed-rules

Proposed Effective Date: May 1, 2024

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To request a public hearing, submit your written request for a public hearing on to dmhddsarules@dhhs.nc.gov within 15 days after the notice of text is published.

Reason for Proposed Action: These rules are proposed for amendment to eliminate the requirement of a Panel and permit a Hearing Officer to conduct the appeals instead, to eliminate

redundant language, and to provide further clarity regarding the Non-Medicaid Appeal Process.

Comments may be submitted to: Denise Baker, 3001 MSC, Raleigh, NC, NC 27699-3001; email dmhddsarules@dhhs.nc.gov

Comment period ends: February 13, 2024

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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 27 - MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27I - AREA AUTHORITY OR COUNTY PROGRAM REQUIREMENTS

SECTION .0600 - NON-MEDICAID APPEAL PROCESS

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, or the client's legally responsible person, may appeal to the Division Director the clinical 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)~~(d) Non-Medicaid services shall be provided in accordance with G.S. 122C-2. 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)~~(e) There shall be no reprisal or retaliation to anyone who is a party to an appeal.

~~(g)~~(f) 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.*

**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.
- (3) "Legally Responsible Person" means the same as defined in G.S. 122C-3.
- (4) "Within Available Resources" means the same as defined in G.S. 122C-2.

*Authority G.S. 143B-147.*

**10A NCAC 27I .0605 DIVISION'S INITIAL RESPONSE TO A ~~DMH/DD/SAS~~ NON-MEDICAID 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~~; service;
- (3) if the appeal falls within the scope of Rule .0601 of this Section; and
- (4) if the appeal was filed in accordance with the requirements of Rule .0603 of this Section.

(b) The Director shall send an acknowledgement letter to the ~~client~~ client, or the client's legally responsible person, 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~~ client, or the client's legally responsible person, 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~~ Hearing Officer will 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~~ denied with an explanation of the basis for ~~disqualification~~; denial.

(f) If the appeal is denied on the basis of Subparagraph (a)(1) of this Rule, the ~~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.~~ appeal in accordance with the requirements of Rule 10A NCAC 27G .7004.

(g) The client shall have 11 calendar days from the date of the area authority or county program clinical 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~~ ensure the Hearing Officer conducts 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.~~

~~(e)~~(b) The Hearing Officer shall be an employee of the Division. Division shall serve as the chairperson of the panel and shall be a voting member in the case of a tie.

~~(d)~~(c) The Director shall forward the record on appeal and all supplemental documentation to the Hearing Officer chairperson of the panel within five days of receipt thereof.

~~(e)~~(d) The Director shall provide a copy of applicable law and rules to the Hearing Officer chairperson of the panel.

~~(f)~~(e) The Hearing Officer chairperson shall schedule a panel hearing including designation of a time and place.

~~(g)~~(f) The Hearing Officer chairperson shall notify the client, or the client's legally responsible person, ~~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.

(g) The hearing may be conducted in person or virtually taking into account reasonable accommodations, including but not limited to, the following:

- (1) compliance with HIPAA requirements;
- (2) accommodation needs of the client;
- (3) State mandated travel restrictions.

Authority G.S. 143B-147.

**10A NCAC 27I .0607 PANEL HEARING PROCEDURES**

- (a) ~~The chairperson of the panel:~~ Hearing Officer:
  - (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:~~ Hearing Officer:
  - (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~~ Hearing Officer 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~~ The Hearing Officer may address questions to either party.
- (f) The ~~panel~~ Hearing Officer 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~~ Hearing Officer may choose to record the proceeding for ~~his~~ his or her own use. A tape so made shall be destroyed after the ~~panel~~ Hearing Officer issues ~~its~~ the Hearing decision.
- (h) Witnesses shall not be sworn before testifying.

Authority G.S. 143B-147.

**10A NCAC 27I .0608 PANEL HEARING OFFICER DECISION FINDINGS AND DECISION**

- (a) The ~~panel~~ Hearing Officer's 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~~ Hearing Officer is whether the decision of the LME-MCO, area authority or county program is supported by evidence presented.
- (c) ~~The panel shall vote on each specific item being appealed.~~ The Hearing Officer shall consider all issues under appeal.
- (d) ~~Findings and decisions of the panel shall be by majority vote.~~

~~(e)~~(d) Any decision may be rescheduled for a subsequent meeting if the ~~panel~~ Hearing Officer determines that ~~it~~ he or she lacks sufficient information to render a decision at the initial hearing.

~~(f)~~(e) ~~All panel~~ The Hearing Officer's findings and decisions shall be reached and sent in writing to the client or the client's legally responsible person, and to the LME-MCO, area authority or county program Director within 60 calendar days of the written request for ~~appeal to the client, the area authority or county program and the Director.~~ an appeal.

Authority G.S. 143B-147.

**10A NCAC 27I .0609 FINAL WRITTEN DECISION**

- (a) Upon receipt of the ~~panel's~~ Hearing Officer's findings and decisions, the LME-MCO, area authority or county program shall issue a final decision based on those findings. ~~The LME area authority or county program shall issue the decision in writing findings within 10 business days of receipt of the panel's~~ Hearing Officer's findings and decisions.
- (b) Neither the ~~panel~~ Hearing Officer's findings and decisions nor the LME-MCO, 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.
- (c) The Division shall report annually to the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services the number of appeals filed and conducted.

Authority G.S. 143B-147.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health/DD/SAS intends to amend the rule cited as 10A NCAC 28F .0101.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-use-services/north-carolina-commission-mental-health-developmental-disabilities-and-substance-use-services/proposed-rules>

**Proposed Effective Date:** *May 1, 2024*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To request a public hearing, submit your written request for a public hearing to dmhddsarules@dhhs.nc.gov within 15 days after the notice of text is published.*

**Reason for Proposed Action:** *S.L. 2023-3 repealed G.S. 122C-181(a)(3)d., thereby eliminating R.J. Blackley Alcohol and Drug Treatment Center as a State facility; the session law indicated that R.J. Blackley was to cease State-operation effective March 1, 2023. The proposed amendment of Rule 10A NCAC 28F .0101 effectuates realignment of the counties previously served by the R.J. Blackley Center.*

Comments may be submitted to: Denise Baker, 3001 MSC, Raleigh, NC 27699-3001; email dmhddsarules@dhhs.nc.gov

Comment period ends: February 13, 2024

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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 28 - MENTAL HEALTH, STATE OPERATED FACILITIES AND SERVICES

SUBCHAPTER 28F - ADMISSION AND DISCHARGE

SECTION .0100 - ADMISSIONS

10A NCAC 28F .0101 REGIONS FOR DIVISION INSTITUTIONAL ADMISSIONS

(a) Except as otherwise provided in rules codified in this Chapter and Chapters 26 through 29 of this Title and except for State-wide programs and cross-regional admissions approved by the Division Director based upon the clinical need of the individual or for the purpose of accessing available beds or services, a person seeking admission to a regional institution of the Division shall be admitted only to the institution which serves the region of the state which includes the person's "county of residence" as defined in G.S. 122C-3.

(b) For state operated facilities, hospitals and developmental centers, the regions of the state and the counties which constitute the regions are as follows:

- (1) Western Region: Broughton Hospital, Julian F. Keith Alcohol and Drug Abuse Treatment Center (ADATC), and J. Iverson Riddle Developmental Center shall serve Alleghany, Alexander, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Gaston, Graham,

Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey County;

- (2) Central Region: Central Regional Hospital, Murdoch Developmental Center, R. J. Blackley ADATC, Whitaker School, Psychiatric Residential Treatment Program (PRTF), and Wright School shall serve Alamance, Anson, Caswell, Chatham, Davie, Durham, Forsyth, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Stokes, Vance, Wake, and Warren County; and
(3) Eastern Region: Cherry Hospital, Caswell Developmental Center, and Walter B. Jones ADATC shall serve Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson County.

(c) For state-operated Alcohol and Drug Abuse Treatment Centers (ADATCs) the regions of the state and the counties which constitute the regions are as follows:

- (1) Western Region: Julian F. Keith ADATC shall serve Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Polk, Randolph, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey County;
(2) Eastern Region: Walter B. Jones ADATC shall serve Alamance, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Rockingham, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson County.

Authority G.S. 122C-3; 143B-147; S.L. 2023-3.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 09C .0104 and amend the rule cited as 12 NCAC 09C .0307.

Link to agency website pursuant to G.S. 150B-19.1(c): https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/

Proposed Effective Date: May 1, 2024

Public Hearing:

Date: February 13, 2024

Time: 1:00 p.m.

Location: Meeting to be held on Microsoft Teams. Microsoft Teams meeting information is listed on the agency's website.

Reason for Proposed Action: To provide information for agency heads regarding the annual reporting for Critical Incidents, and to include the requirements to maintain a copy of the AOC response for a request for search of expunged criminal records.

Comments may be submitted to: Michelle Schilling, NC Department of Justice, Criminal Justice Standards Division, PO Box 149, Raleigh, NC 27602-0149

Comment period ends: February 13, 2024

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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0100 - RESPONSIBILITIES OF CRIMINAL JUSTICE STANDARDS DIVISION

12 NCAC 09C .0104 DEPARTMENT HEAD RESPONSIBILITIES: CRITICAL INCIDENT REPORTING

(a) For all law enforcement agencies in the State that employ personnel certified by the North Criminal Justice Education and Training Standards Commission, the Department head shall submit the Annual Critical Incident Report, (F-27), to the Criminal Justice Standards Division no later than the following January 15th of each year listing all incidents involving any use of force by a law enforcement officer or justice officer that results in death or serious bodily injury to a person. The Annual Critical Incident Report (F-27) shall contain the following:

- (1) date of incident
(2) location of incident
(3) person(s) involved and their participation
(4) whether the incident involved serious bodily injury or death

(b) Information contained in the submitted Annual Critical Incident Report, (F-27), that is confidential under State or federal law shall remain confidential.

Authority G.S. 17C-15; 17E-15.

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

12 NCAC 09C .0307 AGENCY RETENTION OF RECORDS OF CERTIFICATION

(a) Each criminal justice agency shall place information with respect to employment, education, retention, and training of its criminal justice officers in the criminal justice officer's personnel file as listed in Subparagraphs (a)(1) and (a)(2) of this Rule. The files shall be available for examination in five days by representatives of the Commission for verifying compliance with these Rules.

- (1) Criminal Justice Officer with probationary certification:
(A) the officer's Personal History Statement;
(B) the officer's Medical History Statement and Medical Examination Report;
(C) documentation of the officer's drug screening results;
(D) the Commission's Mandated Background Investigation Form as completed by the agency's investigator;
(E) a written summary of the officer's Qualifications Appraisal Interview;
(F) documentation of the officer's degrees obtained;



- (G) documentation of all criminal justice training completed by the officer;
- (H) the results of the officer's fingerprint record check;
- (I) a written summary of the officer's psychological examination results;
- (J) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) that the officer has completed the minimum in-service training as required;
- (K) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;
- (L) copy of Report of Appointment/Application for Certification Form F-5A;
- (M) oath of office;
- (N) copy of firearms qualification; ~~and~~
- (O) once separated, a copy of the Affidavit of ~~Separation~~ Separation; and
- (P) a copy of the electronic response for the AOC-CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A or 15A-146.

(2) Criminal Justice Officer with general certification:

- (A) the officer's Medical History Statement and Medical Examination Report;
- (B) documentation of the officer's drug screening results;
- (C) documentation of the officer's degrees obtained;
- (D) documentation of all criminal justice training completed by the officer;
- (E) the results of the officer's fingerprint record check;
- (F) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) that the officer has completed the minimum in-service training as required;
- (G) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;
- (H) a copy of the Report of Appointment/Application for Certification Form F-5A;
- (I) oath of office;
- (J) copy of firearms qualification; and

- (K) once separated, a copy of the Affidavit of ~~Separation~~ Separation; and
- (L) a copy of the electronic response for the AOC-CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A or 15A-146.

(b) These records shall be maintained in compliance with the North Carolina Department of Natural and Cultural Retention and Disposition Schedule established pursuant to G.S. 121 and G.S. 132.

Authority G.S. 17C-2; 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10H .0101.

Link to agency website pursuant to G.S. 150B-19.1(c): [ncwildlife.org/Proposed-Regulations](http://ncwildlife.org/Proposed-Regulations)

Proposed Effective Date: August 1, 2024

Public Hearing:

Date: January 9, 2024

Time: 7:00 p.m.

Location: Southwest Randolph High School (Auditorium), 1641 Hopewell Friends Rd, Asheboro, NC 27205

Date: January 11, 2024

Time: 7:00 p.m.

Location: Haywood Community College (Auditorium), 185 Freedlander Drive, Clyde, NC 28721

Date: January 17, 2024

Time: 7:00 p.m.

Location: Craven County Courthouse, 302 Broad Street, New Bern, NC 28560

Date: January 18, 2024

Time: 7:00 p.m.

Location: Zoom meeting, registration required: [https://ncwildlifeorg.zoomgov.com/webinar/register/WN\\_JQp6XDn8QSCXBrvDJJf3Bg](https://ncwildlifeorg.zoomgov.com/webinar/register/WN_JQp6XDn8QSCXBrvDJJf3Bg), or join by phone: 877-853-5247 Webinar ID: 161 386 3150

Reason for Proposed Action: Each year, the N.C. Wildlife Resources Commission reviews and adjusts seasons, bag limits, and the land management regulations, as needed, to achieve conservation management goals, comply with statutory changes, and respond to constituent requests.

Comments may be submitted to: *Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org*

Comment period ends: *February 13, 2024*

**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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10H – REGULATED ACTIVITIES**

**SECTION .0100 - CONTROLLED HUNTING PRESERVES FOR DOMESTICALLY RAISED WATERFOWL AND GAME BIRDS**

**15A NCAC 10H .0101 GENERAL REQUIREMENTS**

(a) It shall be unlawful to operate a controlled hunting preserve without first obtaining a controlled hunting operator's license from the ~~North Carolina Wildlife Resources Commission~~ Commission.

~~(b) A licensed controlled hunting preserve operator may purchase, possess, propagate, sell, transport, and release domestically raised waterfowl and game birds, as defined in G.S. 113-139(5b), and their eggs, subject to limitations in Section .0900 of this Subchapter.~~

~~(b) A controlled hunting preserve operator's license shall authorize an operator, guest, or customer to take the following:~~

- ~~(1) Mallard Ducks (in accordance with 50 CFR 21.45);~~
- ~~(2) Chukar Partridges;~~
- ~~(3) Hungarian Partridges; and~~
- ~~(4) Other domestically raised game birds, except Wild Turkey.~~

(c) The following conditions shall apply to the take of domestically raised waterfowl and game birds on a controlled hunting preserve:

- ~~(1) take shall be by shooting, which may include the use of dogs;~~
- ~~(2) there shall be no bag limits or sex restrictions; and~~
- ~~(3) take shall be authorized from October 1 to through March 31, except that no domestically raised mallard ducks shall be taken on Sundays; and~~
- ~~(4) domestically raised migratory gamebirds mallard ducks shall be marked by one of the methods provided in 50 CFR 21.45, 21.45, all other domestically raised game birds, except Chukar Partridges and Hungarian Partridges, shall be individually marked on one leg with a band imprinted with the propagator's license number.~~

~~(d) Application for a controlled hunting preserve operator's operator license shall be made on a form available from the Commission online at www.newwildlife.org www.gooutdoorsnorthcarolina.com or at the Commission headquarters located at 1751 Varsity Drive, Raleigh, NC 27606-2576. The application shall include the following information:~~

- ~~(1) The applicant's name, mailing address, residence address, telephone number, and date of birth;~~
- ~~(2)(1) The the preserve name and address;~~
- ~~(3)(2) GPS coordinates of preserve entrance;~~
- ~~(3) a property map;~~
- ~~(4) The the total preserve acres owned or leased;~~
- ~~(5) The name, address, and telephone number of the landowner, if applicable;~~
- ~~(6)(5) The type of preserve; and~~
- ~~(7)(6) The species of domestically raised waterfowl and game birds to be offered for hunting; hunting; and~~
- ~~(e)(7) Applicants shall certify and demonstrate ownership or proof of ownership or lease of the land for the license period, period and for the operation of a controlled hunting preserve.~~

~~(f) A licensed controlled hunting preserve operator shall be authorized to purchase, possess, propagate, sell, transport, and release waterfowl and propagated migratory game birds, their eggs, and propagated upland game birds, except for wild turkey, subject to limitations in Section .0900 of this Subchapter.~~

~~(g)(e) Representatives of the Commission shall be permitted to enter the premises upon request or during business hours for inspection, enforcement, or scientific purposes.~~

*Authority G.S. 113-134; 113-273.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 34 – BOARD OF FUNERAL SERVICE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to amend the rules cited as 21 NCAC 34B .0208, .0211, and repeal the rule cited as 21 NCAC 34B .0213.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncbfs.org/>

Proposed Effective Date: April 1, 2024

Public Hearing:

Date: January 10, 2024

Time: 10:00 a.m.

Location: 1033 Wade Ave, Ste 108, Raleigh, NC 27605

Reason for Proposed Action:

21 NCAC 34B .0208 – Update the rules surrounding examination administration and recognize alternative pathology examination for licensure

21 NCAC 34B .0211 – Clarify and update the recognition of National Board Certificates for licensure eligibility

21 NCAC 34B .0213 – Repeal rule as duplicative of statutory provisions regarding expiration of valid examination scores

Comments may be submitted to: Amy Acord, 1033 Wade Ave, Ste 108, Raleigh, NC 27605; phone (919) 733-9380; email [aacord@ncbfs.org](mailto:aacord@ncbfs.org)

Comment period ends: February 13, 2024

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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM

No fiscal note required

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0200 – EXAMINATIONS

21 NCAC 34B .0208 PASSING SCORE

(a) The passing score on all examinations administered by the Board International Conference of Funeral Service Examining Boards, Inc. shall be such passing score that is established by the International Conference of Funeral Service Examining Boards, Inc. and in effect at the time such examinations are administered by the Board. administered.

(b) A score of at least 75 percent on a final examination taken in a pathology course offered through a school that has a mortuary science program accredited by the American Board of Funeral Service Education shall be deemed equivalent to a passing score on the examination of pathology required for licensure as a funeral director, pursuant to G.S. 90-210.25(a)(1)(e)(4).

Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3); 90-210.25(a)(5).

21 NCAC 34B .0211 NATIONAL BOARD CERTIFICATE

The Board shall accept a "National Board Certificate," National Board Certificate for Arts, certifying the successful completion of the National Board Examination for Arts of the International Conference of Funeral Service Examining Boards Inc., as the equivalent of that portion of the Board's entry-level examination which deals with basic health sciences, funeral service sciences, and funeral service administration in funeral directing. The Board shall accept a National Board Certificate for Sciences, certifying the successful completion of the National Board Examination for Sciences of the International Conference of Funeral Service Examining Boards Inc., as the equivalent of that portion of the Board's examination on the topics of embalming, restorative arts, chemistry, pathology, microbiology, and anatomy. National Board Certificates shall be accepted for five three years from the date of issue for eligibility toward licenses issued under G.S. 90-210.25(a)(1), (2), or (3).

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

21 NCAC 34B .0213 EXPIRATION OF TEST SCORES

Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3).

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CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .1613.

Link to agency website pursuant to G.S. 150B-19.1(c): [www.ncbop.org/rulemakings.htm](http://www.ncbop.org/rulemakings.htm)

Proposed Effective Date: May 1, 2024

Public Hearing:

Date: January 8, 2024

Time: 10:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517

Reason for Proposed Action: S.L. 2023-129 gave optometrists the authority to dispense certain drugs to their patients, and required any dispensing optometrists to register with the Board of Pharmacy. In order to satisfy NCGS 93B-15, the Board has proposed adding dispensing optometrists to the list of registrants who are entitled to an extension of time to renew their registrations in the event of military deployment.

Comments may be submitted to: Jay Campbell, 6015 Farrington Rd Ste 201, Chapel Hill, NC 27517; email ncboprulemaking@ncbop.org

Comment period ends: February 13, 2024

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 a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

SECTION .1600 - LICENSES AND PERMITS

21 NCAC 46 .1613 EXTENSION PERIOD FOR CERTAIN MEMBERS OF THE ARMED FORCES

(a) Definitions:

- (1) "Eligible licensee" means a pharmacist who holds a license in good standing from the Board of Pharmacy, who serves the armed forces of the United States, and who is eligible for an extension of time in which to file a tax return

pursuant to G.S. 105-249.2. "Eligible licensee" includes a pharmacist who holds a Clinical Pharmacist Practitioner credential or who is an immunizing pharmacist.

- (2) "Eligible registrant" means a pharmacy intern, pharmacy technician, dispensing physician, dispensing optometrist, dispensing nurse practitioner or dispensing physician assistant who holds a registration in good standing from the Board of Pharmacy, who serves the armed forces of the United States, and who is eligible for an extension of time in which to file a tax return pursuant to G.S. 105-249.2.
(3) "Extension period" means the time period specified in 26 U.S.C. 7508.
(4) "Good standing" means a license or registration that is not suspended, revoked, or subject to a current disciplinary order.

(b) Extension of time to pay license or registration renewal fees and waiver of continuing education requirements:

- (1) An eligible licensee or registrant shall notify the Board of eligibility for the extension period before his or her current license or registration expires. Upon such notification, the Board shall maintain the license or registration in active status through the extension period.
(2) If an eligible licensee or registrant fails to notify the Board of eligibility for the extension period before his or her current license or registration expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee or registrant was an eligible licensee or registrant on the date that is the deadline for renewal, the expired license or registration shall be deemed retroactively to have not expired.
(3) Notwithstanding 21 NCAC 46 .1612(a) and .3301(a), an eligible licensee or registrant who submits a renewal application and pays the renewal fee required by the Board within the extension period shall not be deemed to hold a lapsed license or registration subject to reinstatement fees.
(4) Notwithstanding 21 NCAC 46 .2201, .3101(d) and .2507(d), an eligible licensee may renew his or her license within the extension period despite failing to complete the specified continuing education requirements.
(5) A licensee or registrant shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.

Authority G.S. 90-18.1; 90-18.2; 90-85.6; 90-85.15A; 90-85.15B; 90-85.17; 90-85.21(b); 90-85.24; 90-85.26A; 90-85.26B; 93B-15.

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission November 16, 2023 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeanette Doran (Chair)  
Jay R. Hemphill  
Jeff Hyde  
Brandon Leebrick  
Bill Nelson

**Appointed by House**

Barbara A. Jackson (1<sup>st</sup> Vice-Chair)  
Randy Overton (2<sup>nd</sup> Vice-Chair)  
Wayne R. Boyles, III  
Jake Parker  
Paul Powell

**COMMISSION COUNSEL**

Brian Liebman	984-236-1948
William W. Peaslee	984-236-1939
Seth M. Ascher	984-236-1934

**RULES REVIEW COMMISSION MEETING DATES**

2024 Meeting Dates to be Determined at December 2023 Meeting

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**RULES REVIEW COMMISSION MEETING  
MINUTES**

**November 16, 2023**

The Rules Review Commission met on Thursday, November 16, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker were present in the Commission Room. Commissioners Jay Hemphill and Paul Powell were present via WebEx.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:03 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow-up matters Tab G and H for the Department of Revenue, Tab I for the Board of Examiners in Optometry, and permanent rules for the Building Code Council.

**APPROVAL OF MINUTES**

The Chair asked for any discussion, comments, or corrections concerning the minutes of the October 19, 2023, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The Chair asked for any discussion, comments, or corrections concerning the minutes of the November 6, 2023, emergency meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Commissioner Hyde joined the meeting in the Commission room.

### **FOLLOW UP MATTERS**

#### **Board of Agriculture**

Upon the call of the Chair, 02 NCAC 52B .0214; 52J .0901, .0902, and .0903 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

02 NCAC 52J .0904 was withdrawn at the request of the agency. No action was required by the Commission.

#### **Medical Care Commission**

Upon the call of the Chair, 10A NCAC 13F .0702, .1307; 13G .0705, and .1301 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

#### **DHHS - Division of Health Service Regulation**

The Commission objected to 10A NCAC 14E .0104, .0106, .0107, .0109, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331 at the October meeting. No action was required by the Commission.

#### **Department of Justice**

12 NCAC 02J .0201 was withdrawn at the request of the agency. No action was required by the Commission.

#### **Criminal Justice Education and Training Standards Commission**

Upon the call of the Chair, 12 NCAC 09B .0209, .0403, .0501, .0502; 09G .0405, and .0406 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

12 NCAC 09C .0306 was withdrawn at the request of the agency. No action was required by the Commission.

#### **Coastal Resources Commission**

Prior to the review of the rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning the rules because of a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 -The Commission objected to these Rules at the October meeting. No action was required by the Commission.

#### **Department of Revenue**

Upon the call of the Chair, 17 NCAC 07B .0901, .0902, .0904, .1101, .1123, .1301, .1302, .1305, .1602, .1701, .1702, .1704, .1801, .1905, .1907, .2101, .2102, .2105, .2201, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3106, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, and .4106 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .0115 and .3107 – The Commission determined that the agency had fully resolved the September objections to these Rules and approved the rules by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .3101 – The Commission determined that the agency had not fully resolved the prior objection to this Rule and continued its objection to this Rule from the September meeting by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, and .4109 - The Commission objected to these Rules at the October meeting. No action was required by the Commission.

Andrew Furuseth, with the agency, addressed the Commission.

**Department of Revenue**

Upon the call of the Chair, 17 NCAC 07B .4205, .4302, .4401, .4403, .4406, .4411, and .4413 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .4301 – The Commission approved the rule contingent on a technical change by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff’s recommendation to object to these Rules incorporated in the staff opinion for 17 NCAC 07B .4203 for lack of statutory authority, clarity or ambiguity and necessity, 17 NCAC 07B .4210, .4404, and .4701 for being unclear or ambiguous, 17 NCAC 07B .4503, .4609 for being unnecessary, and 17 NCAC 07B .4614 for lack of statutory authority and unclear or ambiguous by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to continue its objections from the September and October meetings for 17 NCAC 07B .4201, .4202, .4206, .4415, .4510, .4707, .4708, .4801, .5001, .5002, and .5004 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Andrew Furuseth, with the agency, addressed the Commission.

**Board of Examiners in Optometry**

Upon the call of the Chair, the Commission voted to adopt staff’s recommendation to object to the rule and incorporated the staff opinion for 21 NCAC 42D .0102 for lack of statutory authority, clarity or ambiguity, and failure to comply with the APA by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Johnny Loper, the rulemaking coordinator with the agency, addressed the Commission.

Ashley Snyder, the Codifier of Rules, addressed the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**Child Care Commission**

Upon the call of the Chair, the Commission voted to extend the period of review for 10A NCAC 09 .0102, .0601, .1707, .1725, .2204, .2206, .2209, .2611, .2612, .2613, .2614, .2615, and .2616 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

**Sheriffs' Education and Training Standards Commission**

Upon the call of the Chair, 12 NCAC 10B .0603 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

**Licensing Board for General Contractors**

Upon the call of the Chair, 21 NCAC 12A .0202, .0308, and .0828 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

**Board of Cosmetic Art Examiners**

Upon the call of the Chair, 21 NCAC 14T .0501 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to the rules incorporated in the staff opinion for 21 NCAC 14T .0402 and .0404 for lack of statutory authority and clarity or ambiguity by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Lynda Elliot, the Executive Director with the Board, addressed the Commission.

#### **Board of Dental Examiners**

Upon the call of the Chair, 21 NCAC 16B .0101, .0501, and .0502 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

#### **Board of Nursing**

Upon the call of the Chair, 21 NCAC 36 .0228 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

The Chair called the meeting into a brief recess at 10:17 a.m.

The meeting resumed at 10:20 a.m.

#### **Building Code Council**

Upon the call of the Chair, the Commission voted to extend the period of review for Section 101.2 of the 2024 North Carolina Building Code, Section 101.2 of the 2024 North Carolina Existing Building Code, Section 803.2.1.2 of the 2024 North Carolina Existing Building Code, Section 102.13 of the 2024 North Carolina Fire Code, and Section 5706.5.4.5 of the 2024 North Carolina Fire Code, and the Commission voted to adopt the staff's recommendation to object to the rules incorporated in the staff opinion for the 2024 North Carolina Building Code, 2024 North Carolina Fire Code, and the 2024 North Carolina Existing Building Code for lack of statutory authority and failure to comply with the APA by roll-call vote, ayes 7, noes 1 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 7. Voting in the negative: Barbara Jackson -1.

During the discussion of the rules and before the vote from the Commission on the rules from the Building Code Council, Commissioner Powell left the meeting via WebEx.

Nathan Childs, with the Department of Justice and representing the agency, addressed the Commission.

Terrance Friedman, Special Counsel with the Department of Insurance, addressed the Commission.

#### **Existing Rule Review**

Upon the call of the Chair, the Commission voted to add the report for 07 NCAC 11 to January 2027 in the 2024-2027 Existing Rules Review Schedule by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

#### **COMMISSION BUSINESS**

Ashley Snyder, the Codifier of Rules, presented an overview of the RRC staff attorney workflow with the Commission.

At 11:42 a.m., upon a motion by Chair Doran and a second by Commissioner Jackson, the Commission voted to call the public meeting of the Rules Review Commission into recess and enter into a closed session pursuant to G.S. 143-318.11(a)(1) to review and approve the general account of the November 6, 2023 closed session which may be withheld from public inspection pursuant to G.S. 143-318.10(e) and to consult with counsel regarding CRC v. RRC and EMC v. RRC and other potential litigation pursuant to G.S. 143.11(a)(3), by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

At 12:48 p.m., upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to come out of closed session and reconvene the public meeting of the Rules Review Commission by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.



Upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to authorize the Chair to direct litigation for the RRC in the matter of CRC v. RRC and EMC v. RRC without further consultation with the RRC in her sole discretion as she deems it necessary by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

Upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to authorize the Chair to retain private counsel to represent the RRC in the matter of EMC v. RRC by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

The meeting was adjourned at 12:51 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 14, 2023, at 9:00 a.m.

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Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Jeanette Doran, Chair

DRAFT

**RULES REVIEW COMMISSION**

**November 16, 2023**

Rules Review Commission  
Meeting  
Please **Print** Legibly

Name	Agency
BARRY GURTON	NCDOI/BCC
RAT PREMAKUMAR	NC DHHS
NATHAN CUKOS	NCDEJ/BCC
David Bruce Rittlinger	NCDOI/OSFM/NCBCC
Laura Hansford	NC DOR
Sirena Jones	NC DOJ
Ann Wall	Sec of State
Anna Hayworth	NC DACS
Andar Frazier	
Taylor Corpening	NC DHHS
Chris Mills	NCHBA
Helen Lande	HWB
Bob Hunt	NC RRC

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**RULES REVIEW COMMISSION**

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**Rules Review Commission Meeting November 16, 2023**  
**Via WebEx**

<b>Name</b>	<b>Agency</b>
Jessica Winebrenner	nc.gov
Anne Evangelista	nc.gov
Ann Elmore	SOSNC
Dana Lee	ncauditor.net
Julie Peck	DHHS
Jennifer Everett	DEQ
Emily Jones	DOT
Dennis Seavers	Barbers
Karen Holder	DOI
Julie Eddins	OAH
Dana McGhee	OAH
Ashley Snyder	OAH
Cameron Ervin	cshlaw.com
Ann Elmore	SOSNC
Helen Landi	hntb.com
Phillip Reynolds	DOJ
K. Lovelace	durhamsheriff.org
Anna Baird Choi	BON
Richard Squires - Sheriffs' Standards Division	DOJ
Susanna Birdsong	ppsat.org
Johnson, Daniel H	DOT
Lisa Martin	cap-ad.com
Julie Youngman	selcnc.org
Sheriff C. F. Birkhead	durhamsheriff.org
Hope Ascher	
Makeda Harris	NCHA
Libby Kinsey	DHHS
Ross Smith	myncma.org
E Stephens	cshlaw.com
Lisa Corbett	DHHS
Shalisa Jones	DHHS
Janice Peterson	ncoptometry.org
Hannah Jernigan	DOT
Ross Smith	myncma.org
Megan Lamphere	DHHS
Amber Davis	DOJ
Dauna Bartley	brockerlawfirm.com
Anne Coan	ncfb.org
William Rafferty	ncoptometry.org
Nadine Pfeiffer	
Marielena Salazar	shelltapup.com

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***RULES REVIEW COMMISSION***

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Kimberly Luisana	BON
Melissa Bowman	DOJ
Johnny Loper	Optometry
Robert B Roegner	DOI
Russell Henderson	DOJ
Lynda Elliott	nccosmeticarts.com

**MEMORANDUM OF ABSTENTION FROM  
PARTICIPATION IN OFFICIAL ACTION  
RULES REVIEW COMMISSION**

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding Agenda Item F.

I have abstained because the potential of a conflict of interest.

This the 16 day of November, 2023.

  
\_\_\_\_\_  
Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.

**LIST OF APPROVED PERMANENT RULES**

November 16, 2023 Meeting

**AGRICULTURE, BOARD OF**

<u>Importation Requirements: Rabbits, or Any Species in the ...</u>	02 NCAC 52B .0214
<u>Eligible Expenses</u>	02 NCAC 52J .0901
<u>Application Guidelines</u>	02 NCAC 52J .0902
<u>Evaluation of Applications</u>	02 NCAC 52J .0903

**MEDICAL CARE COMMISSION**

<u>Discharge of Residents</u>	10A NCAC 13F .0702
<u>Special Care Unit Resident Profile and Care Plan</u>	10A NCAC 13F .1307
<u>Discharge of Residents</u>	10A NCAC 13G .0705
<u>Use of Physical Restraints and Alternatives</u>	10A NCAC 13G .1301

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Criminal Justice Instructor Training</u>	12 NCAC 09B .0209
<u>Evaluation for Training Waiver</u>	12 NCAC 09B .0403
<u>Certification of School Directors</u>	12 NCAC 09B .0501
<u>Terms and Conditions of School Director Certification</u>	12 NCAC 09B .0502
<u>Certification of School Directors</u>	12 NCAC 09G .0405
<u>Terms and Conditions of School Director Certification</u>	12 NCAC 09G .0406

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Evaluation for Training Waiver</u>	12 NCAC 10B .0603
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**REVENUE, DEPARTMENT OF**

<u>Research Services</u>	17 NCAC 07B .0115
<u>Advertising and Advertising Agencies</u>	17 NCAC 07B .0901
<u>Advertising Artists</u>	17 NCAC 07B .0902
<u>Public Relations Firms</u>	17 NCAC 07B .0904
<u>Farm Machinery: Equipment Services</u>	17 NCAC 07B .1101
<u>Certain Sales to Commercial Animal Farmers</u>	17 NCAC 07B .1123
<u>Out-of-State Deliveries</u>	17 NCAC 07B .1301
<u>In-State Deliveries</u>	17 NCAC 07B .1302
<u>Foreign Commerce: Purchases for Export</u>	17 NCAC 07B .1305
<u>Refunds to Nonprofit Entities</u>	17 NCAC 07B .1602
<u>Governmental Sales and Purchases</u>	17 NCAC 07B .1701
<u>Refunds to Counties, Cities, and other Governmental Entities</u>	17 NCAC 07B .1702
<u>Governmental Entities not Eligible for Refunds</u>	17 NCAC 07B .1704
<u>Sales to and Purchases by Hospitals and Similar Institutions</u>	17 NCAC 07B .1801
<u>Sales to Tire Retreaders</u>	17 NCAC 07B .1905
<u>Scrap Tire Disposal Tax</u>	17 NCAC 07B .1907
<u>Electricity, Piped Natural Gas, and Other Fuel</u>	17 NCAC 07B .2101
<u>Sawdust Used as Fuel</u>	17 NCAC 07B .2102
<u>Aviation Fuel</u>	17 NCAC 07B .2105
<u>Food and Food Products</u>	17 NCAC 07B .2201
<u>Catering</u>	17 NCAC 07B .2205

<u>School Stores' Sales</u>	17 NCAC 07B .2209
<u>Summer Camps and Similar Camps</u>	17 NCAC 07B .2210
<u>Sales of Fish and Other Seafoods</u>	17 NCAC 07B .2212
<u>Service Charges Imposed on Food, Beverages, or Prepared Food</u>	17 NCAC 07B .2213
<u>In General</u>	17 NCAC 07B .2301
<u>Sales of Medical Supplies and Equipment to Veterinarians</u>	17 NCAC 07B .2401
<u>Asphalt Plants: Concrete Plants: Weigh Hoppers</u>	17 NCAC 07B .2603
<u>Sand: Dirt: Stone</u>	17 NCAC 07B .2604
<u>Sandblast Sand</u>	17 NCAC 07B .2605
<u>Sales to Dentists and Orthodontists</u>	17 NCAC 07B .2701
<u>Sales to Dental Laboratories</u>	17 NCAC 07B .2702
<u>Florists: Nursery and Greenhouse Operators</u>	17 NCAC 07B .2801
<u>Florists Wire Sales</u>	17 NCAC 07B .2802
<u>Sales Through Vending Machines</u>	17 NCAC 07B .2901
<u>Use Property</u>	17 NCAC 07B .3004
<u>Transfer of Inventory Held for Resale to New Business</u>	17 NCAC 07B .3009
<u>Cable Service Providers</u>	17 NCAC 07B .3106
<u>Production Companies</u>	17 NCAC 07B .3107
<u>Exempt Prosthetic Devices</u>	17 NCAC 07B .3301
<u>Exempt Durable Medical Equipment and Durable Medical Supp...</u>	17 NCAC 07B .3302
<u>Professional Items and Gifts</u>	17 NCAC 07B .3801
<u>Gift Certificates and Gift Cards</u>	17 NCAC 07B .3804
<u>Deposits for Reusable Containers</u>	17 NCAC 07B .3907
<u>Returnable Containers</u>	17 NCAC 07B .3910
<u>Sales of Photographs and Videos</u>	17 NCAC 07B .4102
<u>Photo Supplies and Materials</u>	17 NCAC 07B .4105
<u>Photoengravings: Electrotypes: Etc.</u>	17 NCAC 07B .4106
<u>Federal Credit Unions and the Farm Credit System</u>	17 NCAC 07B .4205
<u>Refunds to Interstate Carriers</u>	17 NCAC 07B .4301
<u>Refunds to Railroad Companies</u>	17 NCAC 07B .4302
<u>Lease Receipts</u>	17 NCAC 07B .4401
<u>Maintenance of Leased Property</u>	17 NCAC 07B .4403
<u>Insurance on Leased Property</u>	17 NCAC 07B .4406
<u>Extension of Leases Subject to a Maximum Tax</u>	17 NCAC 07B .4411
<u>Conditional Sales Contract</u>	17 NCAC 07B .4413

**GENERAL CONTRACTORS, LICENSING BOARD FOR**

<u>Classification</u>	21 NCAC 12A .0202
<u>Character References</u>	21 NCAC 12A .0308
<u>Witnesses</u>	21 NCAC 12A .0828

**COSMETIC ART EXAMINERS, BOARD OF**

<u>Submission of Records</u>	21 NCAC 14T .0501
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**DENTAL EXAMINERS, BOARD OF**

<u>Examination Required; Exemptions</u>	21 NCAC 16B .0101
<u>Dental Licensure by Credentials</u>	21 NCAC 16B .0501

Dental Licensure Via Instructor's License

21 NCAC 16B .0502

**NURSING, BOARD OF**

Clinical Nurse Specialist Practice

21 NCAC 36 .0228