

NORTH CAROLINA REGISTER

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September 15, 2016

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
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30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
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31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
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31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

This publication is printed on permanent, acid-free paper in compliance with G.S. 125-11.13

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 after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules

Note from the Codifier: 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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Agriculture intends to readopt without substantive changes the rule cited as 02 NCAC 09G .2008.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

Proposed Effective Date: January 1, 2017

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than September 30, 2016 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

Reason for Proposed Action: *This rule is being adopted, without substantive changes, as part of the Periodic Review and Expiration of Existing Rules process. This rule is classified as necessary with substantive public interest and is now being readopted.*

Comments may be submitted to: *Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, email tina.hlabse@ncagr.gov*

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any

further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 09 – FOOD AND DRUG PROTECTION

SUBCHAPTER 09G – MILK AND MILK PRODUCTS

SECTION .2000 – GRADE A MILK SANITATION

02 NCAC 09G .2008 SEVERABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13E .0101, .0201-.0208, .0301-.0318, .0401-.0404, .0501, .0601, .0602, .0701-.0703, .0801-.0807 and .0901.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: November 2, 2016

Time: 9:00 a.m.

Location: *Dorothea Dix Campus, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603*

Reason for Proposed Action: *The Department of Health and Human Services was authorized to pilot an overnight respite program in facilities that offer Adult Day Care with Session Law 2011-104. Subsequently, rules for this pilot program were established and Session Law 2015-52 extended the sunset date for the rules to June 1, 2017. Session Law 2015-241 provided for the establishment of licensure to adult day care and adult day health facilities to offer overnight respite. This law also directed the N.C.*

Medical Care Commission to adopt rules governing the program and oversight of the program that will be accomplished through inspections by the Division of Health Service Regulation. The law authorizes Division of Health Service Regulation to have the authority to enforce the rules adopted by the N.C. Medical Care Commission. A non-refundable initial and nonrefundable annual renewal licensure fee is charged as specified in the law in the proposed rules for these licensed facilities. The proposed rule adoptions include the specified minimum requirements a facility must meet to receive licensure, the Division of Health Service Regulation's authority for inspection and enforcement action, and a facility's fee for licensure. The proposed rules are being adopted to ensure the health and safety of overnight respite participants.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected**
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13E – LICENSING OF OVERNIGHT RESPITE SERVICES

SECTION .0100 - DEFINITIONS

10A NCAC 13E .0101 DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "Program" means a facility certified by the Department of Health and Human Services, Division of Aging and Adult Services to provide adult day care services pursuant to G.S.

131D-6, and 10A NCAC 06R, or adult day health services pursuant to 10A NCAC 06S, or both.

- (2) "Overnight respite services" means the provision of 24-hour supervision and personal care services to persons on a temporary basis for caregiver relief, not to exceed 14 consecutive days, or more than 60 total calendar days per individual participant in a 365-day period, and is provided by a program.
- (3) "Personal care" means tasks such as assistance with bathing, dressing, grooming, toileting, eating, ambulation, transferring, and other personal care needs.
- (4) "Participant" means the recipient of the overnight respite services.
- (5) "Responsible party" means the caretaker with primary day-to-day responsibility for a participant.
- (5) "Supervision" means to oversee, manage, and direct for the determination and provision of assistance to a participant.
- (6) "Accident" means an unexpected, unintentional, or irregular event that results in injury or illness to a participant or suspected injury or illness to a participant.

Authority G.S. 131D-6.1.

SECTION .0200 – LICENSING

10A NCAC 13E .0201 APPLYING FOR A LICENSE TO PROVIDE OVERNIGHT RESPITE SERVICES

(a) Except as otherwise provided in Rule .0202 of this Section, the Division of Health Service Regulation (DHSR) shall issue an overnight respite services license to any program that meets the following requirements:

- (1) submission of an initial license application, incorporated herein by reference including subsequent amendments and editions, and may be obtained online at <https://www.ncdhhs.gov/dhsr/acls/acforms.html> at no cost that includes the following:
 - (A) applicant information;
 - (B) ownership information;
 - (C) operation information; and
 - (D) capacity and scope of services;
- (2) payment of a non-refundable license fee as required by G.S. 131D-6.1; and
- (3) compliance with the provisions of G.S. 131D-6.1 and the Rules of this Subchapter.

(b) An application for a license to provide overnight respite services shall not be reviewed or approved unless the applicant is certified by the Division of Aging and Adult Services as an adult day care program pursuant to G.S. 131D-6.

(c) Following review of the initial license application, program policies in accordance with Rule .0501 of this Subchapter, and the Construction Section's recommendation for use, a pre-approval

visit shall be made by a consultant of the DHSR Adult Care Licensure Section. The consultant shall report findings and recommendations to the Adult Care Licensure Section following the pre-approval visit. The Adult Care Licensure Section shall notify, in writing, the Division of Aging and Adult Services and the applicant of the decision to approve or deny a license to provide overnight respite services as a part of the adult day care program.

Authority G.S. 131D-6.1.

10A NCAC 13E .0202 PERSONS NOT ELIGIBLE FOR OVERNIGHT RESPITE SERVICES LICENSES

A new license shall not be issued for an overnight respite services program to an applicant who was the owner of an overnight respite services program in the following circumstances until:

- (1) for an applicant whose license was revoked, one year after the date of revocation; or
- (2) for an applicant whose admissions were suspended, six months after the suspension is lifted.

Authority G.S. 131D-6.1.

10A NCAC 13E .0203 THE LICENSE

- (a) The license shall be posted in a prominent location, accessible to public view, within the overnight respite portion of the facility.
- (b) The license shall be in effect for 12 months from the date of issuance unless revoked for cause or voluntarily or involuntarily terminated.
- (c) The license is not transferable or assignable.
- (d) The license shall be terminated when the program is terminated.

Authority G.S. 131D-2.4; 131D-6.1.

10A NCAC 13E .0204 RENEWAL OF LICENSE

- (a) The license shall be renewed annually, except as otherwise provided in Rule .0205 of this Section, if the licensee submits an application for renewal and the Department determines that the licensee complies with the provisions of G.S. 131D-6.1 and the Rules of this Subchapter. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of the license, the Department may approve an extension of a plan of correction or may revoke the license for cause.
- (b) The license renewal application shall be sent to the applicant by the Department at least 60 days prior to expiration of the license.
- (c) The license renewal application shall include the following:
 - (1) applicant information;
 - (2) ownership information;
 - (3) operation information;
 - (4) capacity and scope of services; and
 - (5) invoice for the annual nonrefundable renewal licensure fee in accordance with G.S. 131D-6.1(i).

Authority G.S. 131D-6.1.

10A NCAC 13E .0205 CLOSING OF OVERNIGHT RESPITE SERVICES

If a licensee plans to close its overnight respite services, the licensee shall provide written notification of the planned closing to the Division of Health Service Regulation, Adult Care Licensure Section, at 2708 Mail Service Center, Raleigh, NC 27699-2708; the Division of Aging and Adult Services at 2101 Mail Service Center, Raleigh, NC 27699-2101; the participants; and their responsible party at least 30 days prior to the planned closing. Written notification shall include date of closing.

Authority G.S. 131D-6.1.

10A NCAC 13E .0206 DENIAL AND REVOCATION OF LICENSE

- (a) The Division of Health Service Regulation shall deny any licensure application upon the applicant's failure to comply with G.S. 131D-6.1 and the Rules of this Subchapter.
- (b) Denial by the Division shall be effected by mailing to the applicant, by certified mail, a notice setting forth the particular reasons for such denial.
- (c) A license may be revoked by the Division in accordance with G.S. 131D-2.7 and G.S. 131D-6.1.
- (d) When an overnight respite service provider receives a notice of revocation, the administrator shall inform each participant and his or her responsible party of the notice and the basis on which the revocation was issued.

Authority G.S. 131D-2.7; 131D-6.1.

10A NCAC 13E .0207 SUSPENSION OF ADMISSIONS

- (a) The Division of Health Service Regulation may suspend the admission of participants to overnight respite services when warranted under the provisions of G.S. 131D-6.1 and G.S. 131D-2.7.
- (b) The Division shall notify the overnight respite service licensee by certified mail of the decision to suspend admissions. Such notice will include:
 - (1) the period of the suspension;
 - (2) factual allegations;
 - (3) citation of statutes and rules alleged to be violated; and
 - (4) notice of the licensee's right to a contested case hearing regarding the suspension.
- (c) The suspension is effective on the date specified in the notice of suspension. The suspension shall remain effective for the period specified in the notice, or until the overnight respite service demonstrates to the Division that conditions are no longer detrimental to the health and safety of the participants.
- (d) The overnight respite service shall not admit any participants during the effective period of the suspension.
- (e) Any action taken by the Division to revoke a license for overnight respite services shall be accompanied by a suspension of admissions. A suspension may be ordered without the license being affected.

Authority G.S. 131D-2.7; 131D-6.1.

10A NCAC 13E .0208 APPEAL OF LICENSURE ACTION

The licensee may appeal any decision of the Division to deny or revoke a license or any decision to suspend admissions by making such an appeal in accordance with G.S. 150B.

Authority G.S. 131D-6.1.

SECTION .0300 - PHYSICAL PLANT RULES

10A NCAC 13E .0301 SUBMISSION OF INFORMATION TO THE DIVISION OF HEALTH SERVICE REGULATION CONSTRUCTION SECTION

(a) Prior to operation, an applicant for a license to provide overnight respite services shall submit the following documents to the Division of Health Service Regulation (DHSR) Construction Section:

- (1) an approval letter from the local zoning jurisdiction for the proposed location;
- (2) if an existing structure, a photograph of each side of the existing structure and at least one of each of the interior spaces; and
- (3) a set of building plans of each floor level indicating:
 - (A) the layout of all rooms;
 - (B) room dimensions (including closets);
 - (C) door widths (exterior, bedroom, bathroom, and kitchen doors);
 - (D) window sizes and window sill heights;
 - (E) type of construction; and
 - (F) the proposed participant bedroom locations including the number of occupants in each bedroom.

(b) The Construction Section shall review the documents and notify the applicant by letter of changes that must be made to the building to meet the standards established in this Section. The letter shall also contain a list of final documentation required from the local fire marshal, local building code official and county health department that shall be submitted upon completion of any required changes to the building or completion of construction.

(c) In order to maintain compliance with the standards established in this Section, any changes made during construction that were not proposed during the document review required by Paragraph (b) of this Rule shall require the approval of the Construction Section.

(d) Upon receipt of the final documentation required by Paragraph (b) of this Rule, the Construction Section shall review the information and may either approve the overnight respite services program for construction based on documentation or make an on-site visit. If an on-site visit is made, the Construction Section shall inspect the construction and shall notify the applicant by letter of any changes that must be made to the construction. When the Construction Section determines that the completed construction is in compliance with the standards established in this Section, it shall notify the Division of Health Service Regulation Adult Care Licensure Section of its recommendation for use.

Authority G.S. 131D-6.1.

10A NCAC 13E .0302 CAPACITY

(a) Pursuant to G.S. 131D-6.1(c)(8), the Division of Health Service Regulation shall not approve a capacity for an overnight respite services program of greater than six participants. For the purposes of this Rule, "capacity" means the maximum number of participants that the overnight respite services program is licensed to maintain at any given time.

(b) An overnight respite services program shall not exceed the capacity shown on its license.

(c) Prior to an increase in capacity by adding rooms, altering rooms, or changing use of space, the overnight respite services program shall submit a request for capacity increase and two building plans of each floor to the Construction Section. One plan shall indicate the current use of rooms in the existing building. The other plan shall indicate the proposed use of rooms in the existing building and its addition, alteration, or change in use of space. For an addition to an existing building, the building plans shall also indicate how the addition will be tied into the existing building and any proposed changes to the building structure.

(d) When the overnight respite services program increases its capacity by the addition to or alteration of an existing building, the entire overnight respite services program shall comply with the North Carolina Fire Prevention Code, which is incorporated herein by reference, including all subsequent amendments and editions. Copies of this code may be purchased from the International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of eighty-five dollars (\$85.00) or accessed electronically free of charge at http://codes.iccsafe.org/app/book/toc/2012/North_Carolina/Fire/index.html.

Authority G.S. 131D-6.1.

10A NCAC 13E .0303 DESIGN AND CONSTRUCTION

(a) For the purposes of this Rule the following definitions apply:

- (1) "facility" means a building or portion of a building housing an overnight respite services program as defined in G.S. 131D-6.1(a);
- (2) "proposed facility" means the new construction of a building for a facility, an addition or alteration to an existing building for a facility, or the change in use of a building for a facility.
- (3) "existing facility" means a currently licensed facility and a proposed facility that will be built according to building plans approved by the Construction Section for compliance with the standards established in this Section, prior to the effective date of this Rule; and
- (4) "new facility" means a proposed facility that will be built according to building plans approved by the Construction Section for compliance with the standards established in this Section, on or after the effective date of this Rule.

(b) The physical plant requirements for each facility shall be applied as follows:

- (1) A new facility shall meet the standards established in this Section.
- (2) An existing facility shall meet the standards established in this Section that were in existence at the time of change in use of space, construction, addition, alteration, or repair.
- (3) An existing building converted from another use that a program intends to use for an overnight respite services program shall meet all the requirements of a new facility as indicated in Subparagraph (1) of this Paragraph.

(c) For a new facility, new construction or an addition or alteration to an existing building shall meet the requirements of the North Carolina State Building Codes, which are incorporated herein by reference, including all subsequent amendments and editions. Copies of these codes may be purchased from the International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of five hundred twenty-seven dollars (\$527.00) or accessed electronically free of charge at <http://codes.iccsafe.org/North%20Carolina.html>. For an existing facility, construction, addition, alteration, or repair shall meet the requirements of the North Carolina State Building Codes in effect at the time of construction, addition, alteration, or repair.

(d) A facility shall be constructed, equipped, and maintained to comply with the standards established in this Section for the total number of participants indicated on its license.

(e) Rules contained in this Section are minimum requirements and are not intended to prohibit buildings, systems, or operational conditions that exceed these minimum requirements.

(f) The Construction Section may grant an equivalency to allow an alternate design or functional variation from the requirements of the Rules contained in this Section. For the purposes of this Rule, an "equivalency" is a Construction Section approved alternate design and functional variation to a Rule requirement that meets the intent of the Rule requirement, but does not reduce the safety and operational effectiveness of the facility design and layout. If granted, the equivalency shall apply to a specific facility. If the following occurs, a program shall be granted an equivalency:

- (1) the overnight respite services program submits a written equivalency request to the Construction Section indicating:
 - (A) the Rule requirement, which will not be met;
 - (B) the justification for the equivalency;
 - (C) how the proposed equivalency meets the intent of the corresponding Rule requirement;
- (2) the Construction Section reviews the equivalency request; and
- (3) the program receives a written approval of the equivalency from the Construction Section.

(g) If any of the rules, codes, or standards contained in this Section conflict, the most stringent requirement shall apply.

(h) For an existing facility that has its license revoked or suspended by the Division of Health Service Regulation pursuant to G.S. 131D-6.1(g)(2) for at least 60 days, the existing facility

shall meet the requirements of a new facility as indicated in Subparagraph (b)(1) of this Rule prior to being relicensed.

(i) Prior to commencement of construction or change in use of space, any program intending to offer overnight respite care services that is planning new construction, an addition or alteration to an existing building, or a change in use of space shall submit building plans and other documents to the Construction Section as specified in Rule .0301 of this Section.

(j) If the building to be used for a facility is two or more stories in height, it shall meet the following additional requirements:

- (1) construction shall not exceed the allowable area for occupancy in the North Carolina State Building Code;
- (2) participants shall be housed on the level of the principal exterior door as defined in Rule .0312(c) of this Section; and
- (3) participant-use areas shall be located on the level of the principal exterior door.

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

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

(m) Elevation changes in the level of the floor are not permitted in participant-use areas.

(n) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living room, bedrooms, and bathrooms.

(o) Windows shall be operable and shall be maintained operable. For the purposes of this Rule, "operable" means a window that may be opened and shut to allow outdoor-air ventilation. To inhibit participant elopement from any window, the window opening may be restricted to a six-inch opening.

(p) Before starting any construction or alterations, the overnight respite services program shall consult with the local building code official for information on required permits and construction requirements.

(q) The facility shall comply with the sanitation rules of the North Carolina Division of Public Health, Environmental Health Services Section, which are incorporated herein by reference, including subsequent amendments and editions. The "Rules Governing the Sanitation of Residential Care Facilities," 15A NCAC 18A .1600 are available for inspection at the North Carolina Department of Health and Human Services, Division of Public Health, Environmental Health Services Section, 5605 Six Forks Road, Raleigh, North Carolina 27509. Copies may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost or can be accessed electronically free of charge at <http://ehs.ncpublichealth.com/docs/rules/294306-4-1600.pdf>.

(r) The facility shall have the following inspection reports available for review upon request by the Construction Section:

- (1) a current sanitation inspection report from the county health department; and
- (2) a fire safety inspection report from the local fire marshal.

(s) A fire alarm system with pull stations on each floor and sounding devices that are audible throughout the building shall be installed. The fire alarm system shall be equipped to transmit an automatic signal to the local emergency fire department dispatch

center, either directly or through a central station monitoring company connection. The fire alarm system shall be installed in accordance with National Fire Protection Association (NFPA) 72, which is incorporated herein by reference including subsequent amendments and editions and may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of ninety six dollars and 50 cents (\$96.50). Underwriters Laboratory (U.L.) listed heat detectors are required in attics and basements and shall be connected to the fire alarm system. These heat detectors shall be interconnected and be provided with battery backup. Corridors shall be equipped with smoke detectors that are connected to the fire alarm system.

(t) The building housing the overnight respite services program and the adult day care or adult health care programs shall be equipped with a wet pipe sprinkler system in accordance with NFPA 13, which is incorporated herein by reference including subsequent amendments and editions and may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of one hundred and three dollars (\$103.00).

Authority G.S. 131D-6.1.

10A NCAC 13E .0304 LOCATION

(a) A program offering overnight respite care services shall be in a location approved by local zoning boards.

(b) The site of a proposed facility where overnight respite care services are to be provided shall:

- (1) be accessible by public roads that shall be maintained for motor vehicles access;
- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system, and trash disposal system approved by the local health department having jurisdiction;
- (4) meet local ordinances; and
- (5) be free from exposure to waste material that contaminates the air, soil, or water.

Authority G.S. 131D-6.1.

10A NCAC 13E .0305 LIVING ROOM

(a) Each overnight respite care program shall have a living area with not less than 40 square feet of floor area per participant.

(b) Once the requirements of 10A NCAC 06R .0401(d) for an adult day care program and 10A NCAC 06S .0301 for an adult day health program are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the living area for the overnight respite care program required by Paragraph (a) of this Rule may be combined with the adult day care program or adult day health program activities and craft areas.

(c) The living room shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the floor area required by Paragraph (a) of this Rule.

Authority G.S. 131D-6.1.

10A NCAC 13E .0306 DINING ROOM

(a) Each overnight respite services program shall have a dining area with not less than 20 square feet of floor area per participant. The dining area may be used for other activities during the day.

(b) Once the requirements of 10A NCAC 06R .0401(d) for an adult day care program and 10A NCAC 06S .0301 for an adult day health program are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the dining area for the overnight respite care program required by Paragraph (a) of this Rule may be combined with the adult day care program or adult day health program activities and craft areas.

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

(d) The dining room shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the floor area required by Paragraph (a) of this Rule.

Authority G.S. 131D-6.1.

10A NCAC 13E .0307 KITCHEN

(a) The kitchen shall be sized by the overnight respite services program to provide for the preparation and preservation of food and the washing of dishes. The kitchen may be shared with the program.

(b) The cooking unit shall be mechanically ventilated to the exterior or be equipped with an unvented recirculation fan provided with a filter as required by the manufacturer's instructions for vent-less use.

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

Authority G.S. 131D-6.1.

10A NCAC 13E .0308 BEDROOMS

(a) There shall be bedrooms sufficient in number and size to meet the individual needs of the participant according to their age and gender.

(b) Only rooms authorized by the Construction Section for use as bedrooms shall be used as bedrooms.

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

(d) Bedrooms occupied by one participant shall be provided with not less than 100 square feet of floor area, including vestibule, closet, or wardrobe space. Bedrooms occupied by two participants shall be provided with not less than 100 square feet of floor area, including vestibule, closet, or wardrobe space.

(e) The total number of participants assigned to a bedroom shall not exceed the number authorized by the Construction Section for that particular bedroom.

(f) A bedroom shall not be occupied by more than two participants.

(g) Each participant bedroom shall have one or more windows with views to the outdoors. The gross window area shall be equal to at least eight percent of the floor space required by Paragraph

(d) of this Rule. The windows shall have a maximum sill height of 44 inches.

(h) Bedroom closets or wardrobes shall be large enough to provide each participant with a minimum of 22 cubic feet of clothing storage, one-half of which shall be for hanging clothes with an adjustable-height hanging bar.

Authority G.S. 131D-6.1.

10A NCAC 13E .0309 BATHROOM

(a) The overnight respite services program shall have one bathroom for each six or fewer respite participants. A bathroom shall contain a water closet, a lavatory, and one of the following:

- (1) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use;
- (2) a bathtub accessible on three sides; or
- (3) a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of participants into the bathtub that is accessible on one short side and one long side of the bathtub.

(b) Once the requirements of 10A NCAC 06R .0401(g) for an adult day care facility and 10A NCAC 06S .0301 for an adult day health facility are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the bathroom required by Paragraph (a) of this Rule may be shared with the adult day care program or adult day health program.

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

(d) The entrance to the bathroom shall not be through a kitchen, another participant's bedroom, or another bathroom.

(e) The bathroom shall be located so that there is no more than 40 feet from any participant's bedroom door to a participant-use bathroom door.

(f) Hand grips shall be installed at all water closets, bathtubs, and showers used by participants.

(g) Nonskid surfacing or strips shall be installed to the floor or bottom of showers and bathtubs.

(h) A bathroom shall have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. The mechanical ducted vent shall be vented directly to the outdoors.

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

Authority G.S. 131D-6.1.

10A NCAC 13E .0310 STORAGE AREAS

(a) Storage areas shall be provided for the separate storage of clean linens, soiled linens, food and food service supplies, and household supplies and equipment.

(b) Cleaning agents, bleaches, pesticides, and other substances that may be hazardous if ingested, inhaled, or handled shall be stored in locked areas separate from other materials.

Authority G.S. 131D-6.1.

10A NCAC 13E .0311 CORRIDOR

(a) Corridors shall be lighted as required by Rule .0317(e)(3) of this Section.

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

Authority G.S. 131D-6.1.

10A NCAC 13E .0312 OUTSIDE ENTRANCE AND EXITS

(a) Each overnight respite services program shall have at least two exit doors on all floor levels. If there are only two exit doors, the exit or exit access door shall be located and constructed to minimize the possibility that both may be blocked by a fire or other emergency condition.

(b) One exterior door shall have a minimum width of three feet. Another exterior door shall have a minimum width of two feet and eight inches. For the purposes of this Rule, an "exterior door" means a door used by a participant to enter the building from the outdoors and to exit the building to the outdoors.

(c) At least one principal exterior door for the participants' use shall be at grade level or accessible by a ramp with a one inch rise for each 12 inches of ramp length. For the purposes of this Rule, a "principal exterior door" means a door that is used by participants to access the vehicular pick-up and drop-off area. If the overnight respite services program serves any participant who must have physical assistance with evacuation, the building shall have two exterior doors at grade level or accessible by a ramp.

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

(e) Exit doors shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops, and ramps shall be provided with handrails or guardrails.

(g) In each overnight respite services program with at least one participant who is determined by a physician or is otherwise known to be disoriented or who wanders, each exit door for participant-use shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office area or in a location accessible only to staff authorized by the administrator to operate the control panel.

Authority G.S. 131D-6.1.

10A NCAC 13E .0313 LAUNDRY ROOM

If the facility uses laundry equipment, the equipment shall not be located in the living, dining, or bedroom areas.

Authority G.S. 131D-6.1.

10A NCAC 13E .0314 FLOORS

(a) All floors shall be of smooth, non-skid material and shall be cleanable.

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

(c) All floors shall be kept free of damage.

Authority G.S. 131D-6.1.

10A NCAC 13E .0315 HOUSEKEEPING AND FURNISHINGS

(a) Each overnight respite services program shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean, well maintained, and free of damage;
(2) have no lingering odors;
(3) have furniture clean and free of damage;
(4) have a North Carolina Environmental Health Services Section approved sanitation classification at all times;
(5) be maintained in an uncluttered, clean, and orderly condition, free of all obstructions and hazards;
(6) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings adequate for participant use on hand at all times;
(7) make available the following items as needed but shall not charge the participant's personal funds for the cost of these items:
(A) protective sheets; and clean, absorbent, soft, and smooth pads;
(B) bedpans, urinals, hot water bottles, and ice bags; and
(C) bedside commodes, walkers, and wheelchairs;
(8) have a television and radio, each in good working order;
(9) have curtains, draperies, shades, or blinds at all windows in participant-use areas to provide for participant privacy;
(10) have recreational equipment, supplies for games, books, magazines, and a current newspaper available for participants;
(11) have a clock that has numbers at least 1 1/2 inches tall in an area commonly used by the participants; and
(12) have at least one working telephone that does not depend on electricity or cellular service to operate.

(b) Each bedroom shall have the following furnishings for each participant:

- (1) beds equipped with box springs and mattress, solid link springs and no-sag innerspring, or a foam mattress. A hospital bed shall be provided as needed. A water bed may be allowed if requested by a participant and permitted by the overnight respite services program. Each bed shall have the following:
(A) at least one pillow with clean pillow case;
(B) clean top and bottom sheets on the bed, changed at least once a week; and
(C) clean bedspread and other clean coverings as needed;
(2) a bedside-type table;

- (3) a chest of drawers or bureau for a single participant or a double chest of drawers or double dresser for two participants when not provided as built-ins;
(4) a wall or dresser mirror;
(5) a minimum of one comfortable chair per participant, high enough from the floor for easy rising;
(6) additional chairs available, as needed, for use by visitors;
(7) individual clean towel, wash cloth, and towel bar within the bedroom or adjoining bathroom; and
(8) a wall-mounted light overhead of the bed or a lamp with a switch within reach of a person lying on the bed. The light shall provide a minimum of 30 foot-candle power of illumination for reading.

(c) The living room shall have functional living room furnishings for the comfort of participants with coverings that are easily cleanable.

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

- (1) tables and chairs to seat all participants eating in the dining room; and
(2) chairs that are sturdy, non-folding, without rollers unless retractable or on front legs only, and designed to minimize tilting.

Authority G.S. 131D-6.1.

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

(a) Fire extinguishers shall be provided that meet these requirements:

- (1) one five-pound or larger (net charge) "A-B-C" type centrally located;
(2) one five-pound or larger "A-B-C" or CO/2 type located in the kitchen; and
(3) at any other location as required by the North Carolina Fire Prevention Code, which is incorporated herein by reference including subsequent amendments and editions.

(b) Any fire safety requirements required by city or county ordinances shall be met.

(c) A written fire evacuation plan that includes a diagrammed drawing and that has the approval of the local fire marshal shall be prepared and posted in a central location on each floor. The plan shall be reviewed with each participant on enrollment and shall be a part of the orientation for new staff.

(d) There shall be at least four rehearsals of the fire evacuation plan each year on each shift. Records of rehearsals shall be maintained. The records shall include the date and time of the rehearsals, staff members present, and a description of what the rehearsal involved.

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

the program offering overnight respite care services. This Paragraph applies to new and existing overnight respite services programs, adult day care programs, and adult day health programs.

Authority G.S. 131D-6.1.

10A NCAC 13E .0317 BUILDING SERVICE EQUIPMENT

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

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

(c) Air conditioning shall provide conditions not to exceed 81 degrees F (27 degrees C) under summer design conditions.

(d) The hot water tank shall be of such size to provide as much hot water as is needed by the kitchen, bathrooms, and laundry. The hot water temperature at all fixtures used by participants shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All participant-use areas shall be lighted for the safety and comfort of the participants. The minimum lighting required is:

- (1) 30 foot-candle of light at floor level in living rooms, dining rooms, bedrooms, and bathrooms;
- (2) 10 foot-candle of light for general lighting; and
- (3) one foot-candle of light at the floor for corridors at night.

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

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved by the local building code official, and protected by a guard or screen to prevent participants and furnishings from burns.

Authority G.S. 131D-6.1.

10A NCAC 13E .0318 OUTSIDE PREMISES

(a) The outside grounds of the program shall be maintained in a clean and safe condition.

(b) If the facility has a fence around the premises, the fence shall not prevent participants from exiting or entering freely and shall not be hazardous.

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

Authority G.S. 131D-6.1.

SECTION .0400 – STAFF QUALIFICATIONS AND STAFFING

10A NCAC 13E .0401 ADMINISTRATOR

(a) An administrator shall be responsible for the operations of the program offering overnight respite care services.

(b) At all times, there shall be one administrator or supervisor-in-charge who is responsible for assuring that all required duties are carried out and for assuring that a staff member is present on-site and available to the program participants.

(c) The administrator shall:

- (1) be at least 21 years old;
- (2) be at least a high school graduate or certified under the General Educational Development (GED) Program;
- (3) cooperate with inspectors and DHSR employees in assuring compliance with G.S. 131D-6.1 and the Rules of this Subchapter;
- (4) have a tuberculin skin test within 12 months prior to hire date and annually thereafter;
- (5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256;
- (6) have documented evidence of managing or supervising personal care to others for at least six months from a current or previous employer; and
- (7) be able to implement all accident, fire safety, and emergency procedures for the protection of the participants of the overnight respite services program.

Authority G.S. 131D-6.1.

10A NCAC 13E .0402 SUPERVISOR-IN-CHARGE

(a) The supervisor-in-charge is responsible to the administrator for the operation of the overnight respite services program in the absence of the administrator.

(b) The supervisor-in-charge shall meet the same requirements as the administrator as set forth in Rule .0401(c) of this Section.

Authority G.S. 131D-6.1.

10A NCAC 13E .0403 STAFF AND STAFFING

(a) Each staff person shall:

- (1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
- (2) have a tuberculin skin test within 12 months prior to hire and annually thereafter;
- (3) be able to implement all of the program's policies and procedures as defined in Rule .0501 of this Subchapter and accident, fire safety, and emergency procedures for the protection of the participants;
- (4) be informed of the confidential nature of participant information and protect and preserve the information from unauthorized use and disclosure;
- (5) not hinder or interfere with the exercise of the rights as defined by program policy;

- (6) have no substantiated findings listed on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256;
- (7) have a statewide criminal background check, upon hire, of the past five years in accordance with G.S. 143B-932; and
- (8) cooperate with inspectors and the monitoring and licensing agencies in complying with the rules of this Subchapter.

(b) Any staff member left in charge of the care of participants shall be 18 years or older.

(c) The staffing pattern shall be adequate to meet the needs of each participant, with at least one staff present at all times qualified to administer medications as defined under Rule .0702 of this Subchapter and trained to provide personal care and supervision to current participants.

(d) Services required beyond personal care and supervision shall not be provided unless staff satisfies the license requirements required by law.

Authority G.S. 131D-6.1.

10A NCAC 13E .0404 TRAINING ON CARDIO-PULMONARY RESUSCITATION

At least one staff person shall be on the premises at all times, when participants are present, who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations.

Authority G.S. 131D-6.1.

SECTION .0500 – PROGRAM POLICIES

10A NCAC 13E .0501 PROGRAM POLICIES

(a) Each program shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies shall serve as the basis for determining who will be accepted into the program and for planning activities appropriate for the participants. The policies shall prevent enrolling people whose needs cannot be met by the planned activities and services offered and shall provide for discharge of participants whose needs can no longer be met or who can no longer be cared for safely. If the program serves semi-ambulatory or non-ambulatory persons as defined under 10A NCAC 06R .0201, incorporated herein by reference including subsequent amendments and editions, it shall be stated in the enrollment criteria.

(b) The program policies shall also contain:

- (1) a discharge policy outlining:
 - (A) the criteria for discharge;
 - (B) notification procedures for discharge;
 - (C) the timeframe and procedures for notifying the applicant, family member, or other caregiver of discharge; and

(D) referral or follow-up procedures;

- (2) medication policies and procedures as specified in Section .0700 of this Subchapter;
- (3) a description of participant's rights;
- (4) grievance policies and procedures for families;
- (5) the advance directives policy;
- (6) non-discrimination policies;
- (7) a procedure to maintain confidentiality;
- (8) a policy on reporting suspected abuse or neglect;
- (9) a policy on reporting of participant accidents or incidents to family members or medical providers;
- (10) a policy on infection control and universal precautions;
- (11) a policy on missing participants;
- (12) a policy on identification and supervision of participants who wander; and
- (13) inclement weather policies.

(c) At enrollment or in the initial interview, the program policies shall be discussed with the applicant, responsible party or other caregiver and a copy of the program policies shall be provided.

(d) Documentation of receipt of and agreement to abide by the program policies by the applicant, responsible party, or other caregiver shall be obtained by the program and kept in the participant's file.

(e) All program polices shall be maintained on site and available for inspection by Division of Health Service Regulation employees.

(f) The program shall implement all program policies.

Authority G.S. 131D-6.1.

SECTION .0600 - ENROLLMENT AND SERVICE PLANNING

10A NCAC 13E .0601 ENROLLMENT OF PARTICIPANTS

(a) Prior to enrollment, the applicant, responsible party, or other caregiver shall have a personal interview with a program staff member. During the interview, the staff shall complete initial documentation identifying the following:

- (1) social and medical care needs;
- (2) spiritual, religious, or cultural needs; and
- (3) whether the program can meet the applicant's expressed needs.

The staff person doing the interviewing shall sign the assessment of needs and the applicant, responsible party, or other caregiver shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a participant in the program and maintained in the participant's record.

(b) Any adult (18 years of age or over) who, because of a physical condition or mental disability, needs a substitute home for purpose of respite for the caregiver may be enrolled for overnight respite services when, in the opinion of the caregiver, family, participant, physician, or social worker and the administrator, the services and accommodations of the facility will meet the respite needs of the participant.

(c) Individuals shall not be admitted:

- (1) for treatment of mental illness, alcohol or drug abuse;
- (2) for maternity care;
- (3) for professional nursing care under continuous medical supervision;
- (4) for lodging, when the personal assistance and supervision offered for the participant are not needed; or
- (5) who pose a threat to the health or safety of others.

(d) A medical examination report signed by a physician, nurse practitioner, or physician's assistant, completed within the prior three months, shall be obtained by the program at the time of enrollment. The report must be updated annually no later than the anniversary date of the initial report.

(e) The program shall assure that the participant's physician or prescribing practitioner is contacted for orders for medications, treatments, and special diets if current physician orders are not part of the medical examination report required in Paragraph (d) of this Rule for inclusion in the participant's record. Prior to the day of admission, the participant's physician or prescribing practitioner shall be contacted for clarification of orders, if orders are not clear or complete.

(f) The program shall assure that the participant has been tested for tuberculosis disease within the past 12 months of each admission for overnight respite services in accordance with the NC Division of Public Health's Tuberculosis Policy Manual, incorporated herein by reference including any subsequent amendments and editions, and shall be free of active tuberculosis. This manual may be accessed free of charge at <http://epi.publichealth.nc.gov/cd/lhds/manuals/tb/toc.html>.

Authority G.S. 131D-6.1.

10A NCAC 13E .0602 PLANNING SERVICES FOR INDIVIDUAL PARTICIPANTS

(a) At enrollment of a new participant, the program shall perform an assessment and written service plan for the individual. The assessment shall address the individual's ability to perform activities of daily living and need for supervision while in the program. The mental and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the administrator or designee. The health component of the service plan shall be written and signed by a registered nurse.

(b) In developing the written service plan, the program shall include input from the participant, responsible party, other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs, and abilities identified in the assessment. The assessment and service plan shall be reviewed to assure continued accuracy at each admission for overnight respite services. The service plan shall include:

- (1) the needs and strengths of the participant;
- (2) the interests of the participant;
- (3) the service goals and objectives of care for the participant while in the overnight respite program;

- (4) the type of interventions to be provided by the program in order to reach desired outcomes;
- (5) the services to be provided by the program to achieve the goals and objectives;
- (6) the roles of the participant, responsible party, other caregiver, volunteers and program staff; and
- (7) the time limit for the plan, with provision for review and renewal.

(c) The participant, responsible party, other caregiver and other service providers may contribute to the development, implementation, and evaluation of the service plan.

(d) The participant's record shall include:

- (1) a copy of the medical examination report;
- (2) the written service plan;
- (3) documentation of a tuberculosis test according to Rule .0601(f) of this Section;
- (4) documentation of any contacts (office, home or telephone) with the participant's physician or other licensed health professionals from outside the facility;
- (5) physician orders;
- (6) medication administration records;
- (7) a written description of any acute changes including any unusual behavior, change in condition, need for help or services, or any incidents or accidents resulting in injury to the participant, and any action taken by the facility in response to the changes, incidents or accidents; and
- (8) how the responsible party or his designated representative can be contacted in case of an emergency.

(e) The program shall refer a participant to the participant's physician or other appropriate licensed health professional immediately if the participant's behavior, change in condition, any incidents or accidents resulting in injury to the participant or need for help or services poses an immediate risk to the health and safety of the participant, other participants, or staff in the program.

(f) Any unusual behavior, change in condition, incident, or accident resulting in injury to the participant, or need for help or services shall be reported by the program staff to the responsible party.

(g) Progress notes in the participant's record shall be updated every 24 hours while in the program.

(h) The participant or the responsible party may choose the days and number of days the participant will participate in the program with the administrator's approval and documented in the participant's record.

(i) The reason for any unscheduled participant absence shall be documented by the program staff on the day it occurs. Program staff shall contact or attempt to contact the absent participant or the responsible party and document this contact in the participant's record.

(j) The program is responsible for the participant while the participant is enrolled. A participant leaving the program for part of a day shall sign out, relieving the staff of further responsibility. If a participant has an emotional or mental impairment that requires supervision or is adjudicated incompetent, and that

person needs or wants to leave the program during the day, the responsible party or individuals designated by the responsible party shall sign the participant out.

(k) The participant's responsible party or his designated representative shall be contacted and informed of the need to remove the participant from the program if one or more of the following conditions exists:

- (1) the participant's condition is such that he is a danger to himself, or poses a direct threat to the health of others, as documented by a physician;
- or
- (2) the safety of individuals in the facility is threatened by the behavior of the participant, as documented by the facility.

Documentation of the emergency discharge shall be retained on file in the facility.

(l) After the participant has left the program or died, the program shall maintain the participant's record in the facility for at least one year, and then stored for at least two more years.

Authority G.S. 131D-6.1.

SECTION .0700 – MEDICATION ADMINISTRATION

10A NCAC 13E .0701 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES

There shall be written policies and procedures developed and implemented regarding:

- (1) medication administration;
- (2) documentation of medication administration;
- (3) maintenance of documentation;
- (4) documentation and reporting of medication errors; and
- (5) medication storage and disposition.

Authority G.S. 131D-6.1.

10A NCAC 13E .0702 MEDICATION ADMINISTRATION COMPETENCY EVALUATION

(a) Validation of each staff person's competency to administer medications shall be completed prior to administering medications and shall include:

- (1) documentation by a registered nurse pursuant to G.S. 90 Article 9A or a licensed pharmacist pursuant to G.S. 90 Article 4A, of a clinical skills validation on the Medication Administration Skills Validation Form, which is incorporated herein by reference, including all subsequent amendments and editions. Copies of this form may be accessed electronically free of charge at <https://www.ncdhhs.gov/dhsr/acls/acforms.html#medtest>;
- (2) successful completion of a standardized written exam established by the Division of Health Service Regulation; or
- (3) listed as a medication aide on the NC Medication Aide Registry pursuant to G.S. 131E-270 and 10A NCAC 130 .0201

incorporated herein by reference including subsequent amendments and editions.

(b) The program shall ensure a licensed health professional who is authorized to dispense, prescribe, or administer medications is available for consultation with staff if needed and any contact shall be documented in the participant's record.

Authority G.S. 131D-6.1.

10A NCAC 13E .0703 MEDICATION ADMINISTRATION

(a) Medications shall be administered according to current physician's orders and the participant's medication schedule. The medication schedule shall list all medications with dosages and times medications are to be administered.

(b) A record of all medications given to each participant shall be updated as needed and shall document the following:

- (1) the participant's name;
- (2) the name, dosage, quantity, and route of the medication;
- (3) instructions for giving medication;
- (4) the date and time medication is administered; and
- (5) the name or initials of person giving the medication. If initials are used, a signature for those initials shall be documented and maintained on this record.

(c) Medications shall be kept in the original pharmacy containers in which they were dispensed. The containers shall be labeled with the participant's full name, the name and strength of the medicine, and dosage and instructions for administration. Medicines shall be kept in a locked location.

Authority G.S. 131D-6.1.

SECTION .0800 - NUTRITION AND FOOD SERVICE

10A NCAC 13E .0801 FOOD PROCUREMENT AND SAFETY

(a) The kitchen, dining, and food storage areas shall be clean and protected from contamination.

(b) All food and beverage shall be procured, stored, prepared, or served by the facility under sanitary conditions in accordance with Rules Governing the Sanitation of Residential Care Facilities (15A NCAC 18A .1600) as promulgated by the North Carolina Division of Public Health, Environmental Health Services Section, which are incorporated herein by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost or can be accessed electronically free of charge at <http://ehs.ncpublichealth.com/rules.htm>.

(c) All meat served to participants shall have been processed at a United States Department of Agriculture (USDA) approved processing plant.

(d) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food on site, as indicated on the menus prepared as set forth in Rule .0802 of this Section, for both regular and therapeutic diets.

Authority G.S. 131D-6.1.

10A NCAC 13E .0802 FOOD PREPARATION AND SERVICE

- (a) Staff, space, and equipment shall be provided for safe and sanitary food storage, preparation, and service.
- (b) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate, and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the participant.
- (c) If participants require assistance with eating, food shall be maintained at serving temperature until assistance is provided.

Authority G.S. 131D-6.1.

10A NCAC 13E .0803 MENUS

- (a) Menus shall be prepared according to the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) Dietary Guidelines for Americans which is incorporated by reference with all subsequent amendments and editions and is available at no cost at <http://www.health.gov/dietaryguidelines>.
- (b) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
- (c) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to participants.
- (d) Menus shall be planned to take into account the food preferences and customs of the participants.
- (e) A licensed dietitian/nutritionist pursuant to G.S. 90, Article 25 shall plan or review all menus, including all therapeutic diets. The facility shall maintain verification of the licensed dietitian/nutritionist's approval of the therapeutic diets including an original signature by the licensed dietitian/nutritionist and the licensure number of the licensed dietitian/nutritionist.
- (f) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets, for guidance of food service staff.

Authority G.S. 131D-6.1.

10A NCAC 13E .0804 FOOD REQUIREMENTS

- (a) A minimum of three meals a day shall be served.
- (b) Foods and beverages that are appropriate to overnight respite participants' diets shall be offered or made available to overnight respite participants as snacks between each meal for a total of three snacks per day and shall be shown on the menu as snacks.

Authority G.S. 131D-6.1.

10A NCAC 13E .0805 THERAPEUTIC DIETS

- (a) All therapeutic diet orders, including thickened liquids, shall be in writing from the participant's physician.
- (b) Where applicable, the therapeutic diet order shall be specific to calorie, gram, or consistency, such as for calorie-controlled American Diabetic Association diets, low sodium diets, or

thickened liquids, unless there are written orders that include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a licensed dietitian or nutritionist.
(c) The facility shall maintain an accurate and current listing of overnight respite participants with physician-ordered therapeutic diets for guidance of food service staff.

Authority G.S. 131D-6.1.

10A NCAC 13E .0806 ASSISTANCE WITH EATING

- (a) Staff shall provide assistance with eating as needed.
- (b) Food shall be maintained at serving temperature until assistance with eating is provided.
- (c) Participants needing assistance with eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each participant's dignity.

Authority G.S. 131D-6.1.

10A NCAC 13E .0807 ACCOMMODATION OF PARTICIPANT NEEDS AND PREFERENCES

Variations from the required three meals to meet individualized needs or preferences of participants shall be documented in the participant's record.

Authority G.S. 131D-6.1.

SECTION .0900 - PROGRAM ACTIVITIES

10A NCAC 13E .0901 ACTIVITIES PROGRAM

- (a) There shall be a program of activities designed to promote the participants' active involvement with each other, their families, and the community.
- (b) If there is a question about a participant's ability to participate in an activity, the participant, the participant's physician, family, or responsible party shall be consulted to obtain a statement regarding the participant's capabilities.

Authority G.S. 131D-6.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .1702, .1703; 13G .1501-.1503 and repeal the rule cited as 10A NCAC 13G .0401.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: November 2, 2017

Time: 2:00 p.m.

Location: Dorothea Dix Campus, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Currently there are minimal or no rules governing the administrator certification and approval process carried out by the Division of Health Service Regulation's Adult Care Licensure Section for Adult Care Homes and Family Care Homes. The Division of Health Service Regulation is seeking to define its processes to ensure consistency throughout the state and across Administrator In-Training programs, clarify the requirements for applicants, improve the readiness of administrators to serve in such capacity, and to protect the safety and welfare of residents. The language and requirements set forth in the proposed rules are consistent with current rules and regulations governing similar type of healthcare professionals who are licensed, certified, or credentialed in North Carolina. The proposed rules identify the process for certifying and approving administrators, and specify the criteria for suspension and revocation of administrator certification or approval.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- [X] State funds affected
[] Environmental permitting of DOT affected
[] Analysis submitted to Board of Transportation
[] Local funds affected
[] Substantial economic impact (≥\$1,000,000)
[X] Approved by OSBM
[] No fiscal note required by G.S. 150B-21.4

CHAPTER 13 - NC MEDICAL CARE COMMISSION
SUBCHAPTER 13F - LICENSING OF HOMES FOR THE AGED AND INFIR
SECTION .1700 - ADMINISTRATOR CERTIFICATION AND RENEWAL

10A NCAC 13F .1702 ADVERSE ACTION ON CERTIFICATION

(a) The Department shall deny, suspend, or revoke the certification of an administrator when the administrator or applicant administrator:

- (1) has not completed 30 hours biennially of continuing education credits as required by Rule .1703 of this Section;
(2) has been convicted by any jurisdiction of a felony unless rights of citizenship have been restored and all of the following have been considered and determined by the Department to allow certification:
(A) date of conviction;
(B) circumstances surrounding the committing of the crime, if known;
(C) nexus between the criminal conduct of the person and job duties; and
(D) prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed;
(3) has been convicted by any jurisdiction of a misdemeanor unless all terms of the judgment imposed for said misdemeanor have been met and the following have been considered and determined by the Department to allow certification:
(A) date of conviction;
(B) circumstances surrounding the committing of the crime, if known;
(C) nexus between the criminal conduct of the person and job duties; and
(D) prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed;
(4) was the administrator of an adult care home or family care home whose license was summarily suspended pursuant to G.S. 131D-2.7(c), or a notice of revocation of the facility's license was issued pursuant to G.S. 131D-2.7(b). In these circumstances, the Department shall take into consideration the length of time the administrator was serving in that capacity at the facility and the nexus between the reason for the summary suspension or revocation of the facility's license and the job duties of the administrator;
(5) is unable to perform as administrator with reasonable skill and safety to residents by reason of any observable or documented condition that impairs the individual in such a way that it endangers the health, safety, or welfare of residents.
(6) tested positive for a controlled substance or refused to consent to drug testing according to G.S. 131D-45;

- ~~(7) prior or subsequent to applying for administrator certification, has a finding on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256; or~~
- ~~(8) fails to report to the Department within ten days any arrest or conviction for a felony or misdemeanor.~~

~~(b) The Department shall suspend the certification of an administrator due to any arrest with a relationship between the alleged criminal conduct and job duties that has been determined by the Department to indicate a need to seek action in order to further protect facility residents pending adjudication by a court. Serving as an administrator while the administrator's certification is suspended shall be grounds for revocation of certification. Examples of criminal conduct the Department may consider in relation to job duties are fraud, physical assault, theft, abuse, neglect, exploitation, and drug diversion.~~

Authority G.S. 90-288.18; 131D-2.16; 131D-2.18; 131D-4.3; 143B-165.

10A NCAC 13F. 1703 RENEWAL OF ADMINISTRATOR CERTIFICATION

~~Administrator certification shall be renewed by the Department pursuant to G.S. 90-288.15 based on the administrator's biennial submission of course completion certificates issued by the course provider, dated from last certification, initial or renewal, and totaling 30 hours of coursework related to long term care management or the care of aged and disabled persons, and a renewal fee of thirty dollars (\$30.00) pursuant to G.S. 90-288.15A. Examples of coursework related to long term care management or the care of aged and disabled persons are financial management, human resource management, medication administration, dementia care, diabetic care, managing aggressive behaviors and infection control.~~

Authority G.S. 90-288.15; 90-288.15A; 131D-2.16; 131D-4.3; 143B-165.

SUBCHAPTER 13G - LICENSING OF FAMILY CARE HOMES

SECTION .0400 – STAFF QUALIFICATIONS

10A NCAC 13G .0401 QUALIFICATIONS OF ADMINISTRATOR

~~The administrator must meet certain requirements before and after being approved to manage a licensed home. The administrator is responsible for the home, including the development and management of services and accommodations and the hiring and training of qualified staff so that the home meets the rules of this Subchapter even in his absence. All of the following requirements must be met:~~

- ~~(1) The potential administrator must apply on the License Application (DSS 1860). The Recommendation for a License (DSS 1861) is to be completed by the county department of social services and forwarded along with references and other appropriate forms to the~~

~~Division of Health Service Regulation for approval or disapproval;~~

- ~~(2) The administrator must be 18 years of age or older;~~
- ~~(3) The administrator must be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements, including those of the Civil Rights Act of 1964 when the administrator has signed Form DSS 1464;~~
- ~~(4) The administrator, or a person designated in writing by the administrator to act as his agent and make decisions on his behalf, must meet with the Adult Homes Specialist at the Specialist's request at an agreed time in the home as often as necessary to insure compliance with the standards;~~
- ~~(5) The administrator must meet the general health requirements specified in Rule .0405 of this Subchapter;~~
- ~~(6) The administrator must provide at least three current reference letters or the names of individuals with whom a reference interview can be conducted. The individuals providing reference information must be knowledgeable of the applicant administrator's background and qualifications and must include at least one former employer.~~
- ~~(7) The administrator must provide written documentation about convictions of criminal offenses from the clerk of court in the county in which the conviction was made, and about any driving offenses other than minor traffic violations from the motor vehicles office;~~
- ~~(8) The administrator must meet the requirements of either (a) or (b) of this Paragraph in accordance with procedures established by the Department of Health and Human Services:

 - ~~(a) The administrator must verify that he has worked in a licensed domiciliary facility for at least 30 days in an on-the-job training program approved by the Department of Health and Human Services; or~~
 - ~~(b) The administrator must verify that he has past education, training and experience related to the management and operation of adult residential care facilities;~~~~
- ~~(9) The administrator must verify that he earns 15 hours a year of continuing education credits related to the management of domiciliary homes and care of aged and disabled persons in accordance with procedures established by the Department of Health and Human Services. The requirement for earning continuing education credits does not apply in those~~

- ~~(10) Persons applying for approval to be an administrator must demonstrate an adequate working knowledge of the rules of this Subchapter by passing a written examination in accordance with procedures established by the Department of Health and Human Services;~~
- ~~(11) The administrator (approved on or after August 1, 1991) must be at least a high school graduate or certified under the GED Program.~~

- ~~(C) nexus between the criminal conduct of the person and job duties; and~~
- ~~(D) prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed;~~
- ~~(2) no conviction by any jurisdiction of a misdemeanor unless all terms of the judgment imposed for said misdemeanor have been met and the following have been considered and determined by the Department to allow approval:~~
 - ~~(A) date of conviction;~~
 - ~~(B) circumstances surrounding the committing of the crime, if known;~~
 - ~~(C) nexus between the criminal conduct of the person and job duties; and~~
 - ~~(D) prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed.~~

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

SECTION .1500 – ADMINISTRATOR APPROVAL AND RENEWAL

10A NCAC 13G .1501 ADMINISTRATOR APPROVAL

- (a) Each family care home shall have an administrator that has been approved by the Department pursuant to this Rule.
- (b) Applicant administrators shall meet the following qualifications:

- (1) be 21 years of age or older;
- (2) provide a satisfactory criminal background report from the State Repository of Criminal Histories, that shall be provided by the State Bureau of Investigation upon its receiving fingerprints of the applicant from the Division of Health Service Regulation, unless the applicant has been a resident of this State for less than five years, requiring the applicant to provide a satisfactory criminal background report from both the State and National Repositories of Criminal Histories;
- (3) complete an approved administrator-in-training program listed on the website at <http://ncdhhs.gov/dhsr/acls/adminguidelines.html> and consisting of a minimum of 20 hours of instruction in N.C. Assisted Living laws and statutes, human resources and business management, and a minimum of 100 hours of on-the-job training in an assisted living facility;
- (4) complete with 75 percent accuracy a written examination administered by the Department within 12 months of completing the administrator-in-training program; and
- (5) be at least a high school graduate or certified under the GED Program.

(c) For the purpose of this Rule, a satisfactory criminal background report means:

- (1) no conviction by any jurisdiction of a felony for which prison time was served unless rights of citizenship have been restored and all of the following have been considered and determined by the Department to allow approval:
 - (A) date of conviction;
 - (B) circumstances surrounding the committing of the crime, if known;

Authority G.S. 131D-2.16; 131D-4.3; 143B-165.

10A NCAC 13G .1502 ADVERSE ACTION ON ADMINISTRATOR APPROVAL

(a) The Department shall deny, suspend, or revoke the approval of an administrator when the administrator or applicant administrator:

- (1) has not completed 30 hours biennially of continuing education credits required by Rule .1503 of this Section;
- (2) is convicted by any jurisdiction of a felony unless rights of citizenship have been restored and all of the following have been considered and determined by the Department to allow approval:
 - (A) date of conviction;
 - (B) circumstances surrounding the committing of the crime, if known;
 - (C) nexus between the criminal conduct of the person and job duties; and
 - (D) prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed;
- (3) is convicted by any jurisdiction of a misdemeanor unless all terms of the judgment imposed for said misdemeanor have been met and the following have been considered and determined by the Department to allow approval:
 - (A) date of conviction;
 - (B) circumstances surrounding the committing of the crime, if known;
 - (C) nexus between the criminal conduct of the person and job duties; and
 - (D) prison, jail, probation, parole, rehabilitation and employment records

of the person since the date the crime was committed;

- (4) was the administrator of an adult care home or family care home whose license was summarily suspended pursuant to G.S. 131D-2.7(c), or a notice of revocation of the facility's license was issued pursuant to G.S. 131D-2.7(b). In these circumstances, the Department shall take into consideration the length of time the administrator was serving in that capacity at the facility and the nexus between the reason for the summary suspension or revocation of the facility's license and the job duties of the administrator;
- (5) is unable to perform as administrator with reasonable skill and safety to residents by reason of any observable or documented condition that impairs the individual in such a way that it endangers the health, safety, or welfare of residents.
- (6) tested positive for a controlled substance or refused to consent to drug testing according to G.S. 131D-45;
- (7) prior or subsequent to applying to be an administrator, has a finding on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256; or
- (8) fails to report to the Department within 10 days any arrest or conviction for a felony or misdemeanor.

(b) The Department shall suspend the approval of an administrator due to any arrest with a relationship between the alleged criminal conduct and job duties that has been determined by the Department to indicate a need to seek action in order to further protect facility residents pending adjudication by a court. Serving as an administrator while the administrator's approval is suspended shall be grounds for revocation of approval. Examples of criminal conduct the Department may consider in relation to job duties are fraud, physical assault, theft, abuse, neglect, exploitation, and drug diversion.

Authority G.S. 131D-2.16; 131D-2.18; 131D-4.3; 143B-165.

10A NCAC 13G .1503 RENEWAL OF ADMINISTRATOR APPROVAL

Beginning January 1, 2017, administrator approvals shall be renewed by the Department on a biennial basis with an expiration date of June 30 of the second year following issuance based on the administrator's submission of course completion certificates issued by the course provider, dated from last approval, initial or renewal, and totaling 30 hours of coursework related to long term care management or the care of aged and disabled persons. Examples of coursework related to long term care management or the care of aged and disabled persons are financial management, human resource management, medication administration, dementia care, diabetic care, managing aggressive behaviors and infection control.

Authority G.S. 131D-2.16; 131D-4.3; 143B-165.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to readopt with substantive changes the rule cited as 10A NCAC 13P .0204.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www2ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: November 1, 2016

Time: 10:00 a.m.

Location: Dorothea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13P, Emergency Medical Services and Trauma Rules, 29 rules were determined as "Necessary With Substantive Public Interest," thus necessitating re-adoption. This one proposed rule is the result of the re-adoption process. Substantial changes are proposed for this rule that include the requirement to obtain an EMS provider license for EMS providers that utilize non-transport vehicles providing advanced EMT and/or paramedic level services without ambulance transport vehicles. In addition, air medical programs will not be required to identify their service area and obtain EMS System affiliation. Incorporating these changes will benefit the quality of care provided to the citizens of North Carolina and provide additional opportunities for entities regulated by these rules to provide services otherwise prohibited under the current standards. This proposed re-adoption will strengthen the rules by keeping the citizens and visitors of North Carolina safe and provided with the best possible health treatment and care.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any

further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4
No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13P - EMERGENCY MEDICAL SERVICES AND TRAUMA RULE

SECTION .0200 - EMS SYSTEMS

10A NCAC 13P .0204 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides non-transportation emergency medical services at the AEMT or Paramedic level shall be licensed by the Department as an EMS Provider by meeting and maintaining the criteria defined in Paragraph (b) of this Rule.

(b) Any firm, corporation, agency, organization or association that provides emergency medical transportation services shall be licensed as an EMS Provider by meeting and continuously-maintaining the following criteria:

- (1) Be affiliated as defined in Rule .0102(4) .0102(3) of this Subchapter with each EMS System where there is to be a physical base of operation or where the EMS Provider will provide point-to-point patient transport within the system;
(2) Present an application for a permit for any ambulance and EMS non-transporting vehicle that will be in service as required by G.S. 131E-156; G.S. 131E-156, and meet the requirements of Rule .0207, and .0213 of this Subchapter;
(3) Submit a written plan detailing how the EMS Provider will furnish credentialed personnel; personnel pursuant to G.S. 131E-158;
(4) Where there are franchise ordinances pursuant to G.S. 153A-250 in effect that cover the proposed service areas of each EMS system of operation, provide written documentation reflecting show the affiliation as defined in Rule .0102(4) of this Subchapter with each EMS System, as required by Subparagraph (a)(1) of this Rule, by being granted a current franchise to operate, or present written documentation of impending receipt of a franchise, from each county. In

counties where there is no franchise ordinance in effect, present a signature from each EMS System representative authorizing the EMS Provider to affiliate as defined in Rule .0102(4) .0102(3) of this Subchapter and as required by Paragraph (a)(1)-Subparagraph (b)(1) of this Rule;

(5) Provide systematic, periodic provide inspection, repair, cleaning, and routine maintenance of all EMS responding ground vehicles and maintain records for a period of time determined by the EMS System, and made available for inspection by the OEMS which verify verifying compliance with this Subparagraph;

(6) Collect collect and within 24 hours electronically submit to the OEMS EMS Care data that uses the EMS data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. Collection;"

(7) Develop develop and implement written operational protocols for the management of equipment, supplies-supplies, and medications and maintain records for a period of time determined by the EMS System, and made available for inspection by the OEMS which verify verifying compliance with this Subparagraph. These protocols shall include a methodology:

- (A) to assure that each vehicle contains the required equipment and supplies on each response;
(B) for cleaning and maintaining the equipment and vehicles; and
(C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications.

(b) In addition to the general requirements detailed in Paragraph (a) of this Rule, if providing fixed wing air medical services, affiliation as defined in Rule .0102(4) of this Subchapter with a hospital as defined in Rule .0102(30) of this Subchapter is required to ensure the provision of peer review, medical director oversight and treatment protocol maintenance.

(c) In addition to the general requirements detailed in Paragraph (a) of this Rule, if providing rotary wing air medical services, affiliation as defined in Rule .0102(4) of this Subchapter with a Level I or Level II Trauma Center as defined in Rules .0102(35) and (36) of this Subchapter designated by the OEMS is required to ensure the provision of peer review, medical director oversight and treatment protocol maintenance. Due to the geographical

barriers unique to the County of Dare, the Medical Care Commission exempts the Dare County EMS System from this Paragraph.

~~(d)(c)~~ An EMS Provider may renew its license by presenting documentation to the OEMS that the Provider meets the criteria found in Paragraphs (a) through (e) Paragraph (b) of this Rule.

(d) Air Medical Programs are exempt from the requirements detailed in Subparagraphs (b)(1) and (b)(4) of this Rule.

Authority G.S. 131E-155.1(c); 143-508(d)(1); 143-508(d)(5); 143-508 (d)(13).

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 amend the rules cited as 12 NCAC 09B .0204; 09G .0206; 09H .0102 and .0105.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncdoj.gov/getdoc/37cb0124-db30-418e-8435-a87dc27ccd7/Proposed-Rule-Revisions_2-15-17.aspx

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: February 15, 2017

Time: 10:30 a.m.

Location: Wake Technical Community College – Public Safety Training Center, 321 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action: At the August 12, 2016 quarterly meeting, the Criminal Justice Education and Training Standards Commission voted to amend the following four (4) rules:

12 NCAC 09B .0204: Revisions will provide a waiver process for the minimum number of students to be enrolled in a Basic Law Enforcement Training Course.

12 NCAC 09G .0206: Revisions will expand the conditions that evidence good moral character for prospective Probation/Parole and Corrections Officers.

12 NCAC 09H .0102 and .0105: Revisions will clarify the process for obtaining certification as a Retired Law Enforcement Officer Firearm. The revision stipulates a one-year certification period.

Comments may be submitted to: Trevor Allen, PO Drawer 149, Raleigh, NC 27602, phone (919) 779-8205, fax (919) 779-8210, email tjallen@ncdoj.gov

Comment period ends: February 15, 2017

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARD

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0204 TRAINING COURSE ENROLLMENT

(a) Any school offering a Basic Law Enforcement Training Course shall have enrolled 10 trainees in the offering.

(b) Any school may make written request to the Director of the Standards Division to deliver the Basic Law Enforcement Training Course with no fewer than 8 enrolled trainees. The written request shall include a summary of the efforts the school has made to notify its respective community of the availability of the course, and the reasons supporting the school's need to enroll fewer than 10 trainees.

~~(b)(c)~~ The school may not enroll any trainee later than the initial day of delivery of a certified training course unless the trainee's enrollment is pursuant to an authorization of limited enrollment in a subsequent course pursuant to Rule .0405 of this Subchapter or pursuant to prescribed supplementary or remedial training required pursuant to Rule .0402 of this Subchapter.

~~(e)(d)~~ The school may not enroll more than 16 trainees in a presentation of the "Criminal Justice Instructor Training Course" as constituted under Rule .0209 of this Section.

Authority G.S. 17C-6.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

**SECTION .0200 - MINIMUM STANDARDS FOR
CERTIFICATION OF CORRECTIONAL OFFICERS,
PROBATION/PAROLE OFFICERS, AND
PROBATION/PAROLE OFFICERS-SURVEILLANCE**

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer or probation/parole officer by the Department of Public Safety, Division of Adult Correction and Juvenile Justice shall demonstrate good moral character as evidenced by the following:

- (1) not having been convicted of a felony;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(9) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) not having been convicted of an offense that, under 18 U.S.C. 922 (1996), which is hereby incorporated by reference and all subsequent amendments (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
- (4) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html.
- (5) submitting to a background investigation consisting of the following:
 - (a) verification of age;
 - (b) verification of education; and
 - (c) criminal history check of local, state, and national files; ~~and~~
- (6) being truthful in providing information to the Department of Public Safety, Division of Adult Correction and Juvenile Justice and to the Standards Division for the purpose of obtaining probationary or general certification.
- (7) not having pending or outstanding criminal charges which, if convicted of, would disqualify the applicant from holding such certification, pursuant to this Subchapter; and
- (8) Any conduct that brings into question the truthfulness or credibility of the officer, reflects poorly on the officer's profession, or conduct that involved "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality. This conduct could include but is not limited to conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal

dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny.

Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 09H - QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS

SECTION .0100 - FIREARMS QUALIFICATION CERTIFICATION PROGRAM

12 NCAC 09H .0102 MINIMUM TRAINING SPECIFICATIONS

(a) Each qualified retired law enforcement officer must qualify with each handgun he/she will carry in accordance with the standards outlined in 12 NCAC 09E ~~.0105(4)~~ .0105(a)(1) and 12 NCAC 09E .0106(a), (c), (e), (f) and (g), which shall be incorporated in classroom instruction and firearms qualification on the firing range utilizing the course of fire from the "Specialized Firearms Instructor Training Manual."

(b) In addition to the standards set out in Rules 09E .0105 and ~~.0106~~, .0106 of this Chapter, each qualified retired law enforcement officer shall also receive a minimum of two hours of instruction on the North Carolina laws of self defense and the use of force by private citizens, detention of persons by private persons, and assistance to law enforcement officers by private persons.

(c) Individuals meeting the requirements pursuant to Paragraphs (a) and (b) of this Rule, and who have submitted an application to the Commission and have met the requirements of Rule .0105 of this Subchapter, shall be certified for a period of 12 months from the date the application is approved by the Commission. Upon application for renewal the certification may be renewed by the Commission for 12 month periods, provided the qualified retired law enforcement officer meets the requirements specified in this Subchapter.

~~(e)(d)~~ Qualified retired law enforcement officers shall qualify with each handgun that will be carried concealed at least once ~~every 12 months during each certification period. For the purpose of this Rule, handgun shall include semi-automatic pistols or revolvers.~~

Authority G.S. 17C-6; 14-415.10; 14-415.2; 14-415.25.

12 NCAC 09H .0105 FILING AND FEES

Each applicant for firearms qualification certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program shall submit the following to the Commission:

- (1) ~~An original Commission approved~~ A Commission application form (Form F-9R) containing the applicant's notarized signature which attests that the applicant meets the

definition of qualified retired law enforcement officer set forth in G.S. 14-415.10 and is eligible to receive or possess firearms under federal and state law. The application form Form F-9R, available on the agency's website at <http://www.ncdoj.gov/getdoc/23af3614-2aa2-4416-bbae-25cbe9441e06/1F-9R-8-09.aspx>, must also shall include the signature of a Commission certified Specialized Firearms Instructor attesting that the applicant has met the training and qualification standards as specified in Rule 09H .0102 and lists the handguns with which the qualified retired officer qualified;

- (2) A copy of the qualified retired officer's photographic identification indicating retirement status issued by the law enforcement agency from which the applicant retired; and
- (3) A fee of fifty dollars (\$50.00) for the initial one-year qualification and a fee of twenty-five dollars (\$25.00) for the annual renewal thereafter. Applications and fees shall be submitted to:

Criminal Justice Standards Division
North Carolina Department of Justice
Post Office Drawer 149
Raleigh, NC 27602.

All fees shall be paid by certified check or money order made payable to the North Carolina Department of Justice.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend rule cited as 12 NCAC 10B .2005.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards>

Proposed Effective Date: January 1, 2017

Public Hearing:

Date: September 30, 2016

Time: 10:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action: To set out the in-service training requirements for 2017.

Comments may be submitted to: Diane Konopka, NC Department of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, NC 27602, email dkonopka@ncdoj.gov

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

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

SECTION .2000 – ENFORCEMENT RULES

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student

shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

~~(b) The 2015 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: What does it have to do with me?;~~
- ~~(3) Domestic Violence: Teen Dating Violence;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(5) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2015 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Documenting the Incident;~~
- ~~(3) Emotional Survival for Detention Officers; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2015 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) Crisis Negotiation;~~
- ~~(2) Interpersonal Communications: Team Building;~~
- ~~(3) Emotional Survival;~~
- ~~(4) Tactical Dispatch; and~~
- ~~(5) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e)(b) The 2016 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: The Color of Justice;~~
- ~~(3) Human Trafficking Awareness;~~
- ~~(4) NC Firearms Laws: Citizens with Guns;~~
- ~~(5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(6) Any topic areas of the Sheriff's choosing.~~

~~(f)(c) The 2016 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~Career Survival: Stop! Think About What You Are Doing;~~
- ~~Communicable Diseases;~~
- ~~Detention Intelligence Update;~~
- ~~Understanding PREA; and~~
- ~~Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(g)(d) The 2016 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) Communicating Effectively with Crisis Callers;~~

- (2) Becoming a Leader in the Communications Center;
- (3) Handling Suicidal Callers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2017 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Positively Impacting Today's Youth;
- (3) Domestic Violence: Protecting Victims of Domestic Violence;
- (4) Improving Decision Making Skills;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2017 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Detention Legal Update;
- (2) Detention Intelligence Update;
- (3) Recognizing Substance Abuse and Withdrawal;
- (4) Improving Decision-Making Skills; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2017 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Post Critical Incident Stress Management;
- (2) Protecting Victims of Domestic Violence;
- (3) Improving Decision Making Skills;
- (4) Law Enforcement Intelligence Update
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to adopt rule cited as 21 NCAC 06F .0127, and amend the rules cited as 21 NCAC 06L .0115; 06N .0105, .0109.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncbarbers.com/news.html>

Proposed Effective Date: January 1, 2017

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Individuals who wish to request a public hearing may submit a request to Dennis Seavers, Executive Director, by email at*

dseavers@ncbarbers.com or by mail at: North Carolina Board of Barber Examiners, 5809 Departure Dr Ste 102, Raleigh, NC 27616

Reason for Proposed Action:

The rule proposed for adoption, 21 NCAC 06F .0127, would allow the Board to designate qualifying barber schools as postsecondary institutions under 34 C.F.R. 600.9.

The proposed amendments to 21 NCAC 06L .0115 would shift responsibility for making inspection reports from barber shops to the board office and would eliminate the requirement for the inspector to leave a copy of the report at the shop. Reports would be available on request free of charge from the board office.

The proposed amendments to 21 NCAC 06N .0105 would eliminate the requirement for applicants for a registered apprentice certificate to submit a certified copy of the Federal Bureau of Investigation criminal record report.

The proposed amendments to 21 NCAC 06N .0109 would eliminate the requirement for out-of-state applicants (license by endorsement) to submit a certified copy of the Federal Bureau of Investigation criminal record report.

Comments may be submitted to: Dennis Seavers, North Carolina Board of Barber Examiners, 5809 Departure Dr Ste 102, Raleigh, NC 27616, phone (919) 981-5210 x22, fax (919) 981-5068, email dseavers@ncbarbers.com

Comment period ends: November 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 06F – BARBER SCHOOL

SECTION .0100 – BARBER SCHOOL

21 NCAC 06F .0127 STATE AUTHORIZATION AS A POSTSECONDARY INSTITUTION

(a) If a barber school seeks to be authorized by the Board as a postsecondary educational institution as set forth in 34 C.F.R. 600.9:

- (1) the school shall have been in existence for two years;
(2) the school handbooks and enrollment agreements required by Rule .0125 of this Section shall require prospective students to have a high school diploma or equivalent; and
(3) the school shall submit a copy of the student's high school diploma or equivalency documentation with each Form BAR-3 required by 21 NCAC 06N .0104 within the time frame set forth in Rule .0113(a) of this Section

(b) If a barber school meets the requirements set forth in Paragraph (a) of this Rule, the Board shall include the phrase "Postsecondary Institution" on the barber school permit issued under G.S. 86A-13. If the school already holds a school permit issued by the Board, the Board shall issue the permit with the phrase "Postsecondary Institution" at no additional cost, and the school shall relinquish the permit without the phrase to the Board.

(c) The Board shall determine that a school no longer complies with Paragraph (a) of this Rule based on an inspection or investigation, notification to the Board by the school, or a failure by the school to comply with Subparagraph (a)(3) of this Rule. If the Board makes this determination:

- (1) the Board shall issue at no charge a duplicate copy of the permit without the phrase "Postsecondary Institution";
(2) the school shall relinquish to the Board the permit with the phrase "Postsecondary Institution"; and
(3) the Board shall notify the federal Department of Education of the school's change in postsecondary status.

(d) This Rule shall not be construed to authorize the Board to delay issuing a permit without the phrase "Postsecondary Institution" to a school that otherwise meets the requirements of the North Carolina General Statutes and the rules of the Board.

Authority G.S. 86A-13; 86A-22; 20 U.S.C. 1001; 20 U.S.C. 1002; 34 C.F.R. 600.9.

SUBCHAPTER 06L - BARBER SHOPS

21 NCAC 06L .0115 INSPECTIONS OF SHOPS

(a) The Board's Executive Director and its inspectors may enter and make inspections of any shop during its business hours for the purpose of determining whether or not G.S. 86A and the Board's administrative rules are being followed. Persons authorized to make an inspection of shops shall prepare a report according to Rule .0119 of this Section. The report shall be signed by the inspector. The report shall be available free of charge upon request by the owner or manager or any member of the public. The inspector shall leave a copy of the inspection report with the owner or manager, or at the shop if the owner or manager are unavailable. The manager shall retain the inspection report within

the barber shop until the next inspection and make it available for review by the public upon request. The copy of any violation notice shall be left with the owner or manager, and retained within the barbering area until the violation is resolved with the Board.

(b) The Board's Executive Director and its inspectors may inspect all areas of the shop, including the backstand and its drawers and cabinets, and any other drawers, closets or other enclosures within the permitted shop.

(c) The Board's Executive Director and its inspectors may determine and assign numerical and letter sanitary grades to a shop following inspections as set forth in Rules .0118 and ~~24 NCAC 06L-0119~~ .0119 of this Section. The grade shall be displayed in a place visible to the public at the front of the shop.

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

SUBCHAPTER 06N – FEES AND FORMS

21 NCAC 06N .0105 FORM BAR-4

(a) The Form BAR-4 shall be filed by one applying to take the examination to receive a registered apprentice certificate. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant;
(2) the name of any barber school attended and the date of enrollment and graduation; and
(3) the place of proposed employment as an apprentice barber; and barber.
(4) a certified copy of his or her Federal Bureau of Investigation criminal record report.

(b) The course training certification shall be filled in by the manager of the barber school the applicant last attended.

(c) The fee in Rule .0101(a)(5) of this Section shall be submitted with the application.

(d) The Form BAR-4 shall be notarized.

Authority G.S. 86A-1; 86A-10; 86A-24; 86A-25; 93B-14.

21 NCAC 06N .0109 FORM BAR-8

(a) The Form BAR-8 shall be filed by one who has practiced as a barber in a state other than North Carolina for three years or more and is applying to obtain a certificate as a registered barber in North Carolina. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant;
(2) the name and address of any barber school attended in another state; and
(3) barbering experience and the status of each barber license in another state; and state.
(4) a certified copy of his or her Federal Bureau of Investigation criminal record report.

(b) The fee in Rule .0101(a)(21) of this Section shall accompany this form.

(c) The Form BAR-8 shall be notarized.

(d) The Form BAR-8 shall be accompanied by verification from the applicant's out-of-state Board/agency of the applicant's licensure in that state.

Authority G.S. 86A-1; 86A-12; 86A-25

CHAPTER 66 – VETERINARY MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Veterinary Medical Board intends to amend the rule cited as 21 NCAC 66 .0106.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncvmb.org

Proposed Effective Date: March 1, 2017

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Written request to the office of the Board mailed to NCVMB, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606.

Reason for Proposed Action: Require registrants to keep the Board informed of their current mailing address to require the submission of legal documents necessary to show a name change.

Comments may be submitted to: Thomas M. Mickey, Executive Director, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606, phone (919) 854-5601, fax (919) 854-5606

Comment period ends: November 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. 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 those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

**21 NCAC 66 .0106 CURRENT INFORMATION
REQUIRED BY THE BOARD**

Each licensee and registrant shall keep the Board currently advised as to his or her proper and current mailing address and the name, address, and phone number of the current place of employment within 60 days of any change. All changes of professional association, or dissolution of a professional relationship, shall be reported within 60 days to the Executive Director together with the new status and addresses of the

individuals or firm. All changes in legal name must be reported within 60 days, in writing, to the Board office accompanied by photo copies of the licensee's or registrant's legal documentation creating the change and a social security card showing the new legal name.

Authority G.S. 90-185(6).

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: NC Social Services Commission

Rule Citation: 10A NCAC 10 .0602 and .0702

Effective Date: August 22, 2016

Findings Reviewed and Approved by the Codifier: August 12, 2016

Reason for Action: *The Child Care and Development Block Grant Act (CCDBG), 42 U.S.C. 9858, Section 658E(c)(2)(G) requires all child care providers "that provide services for which assistance is provided in accordance" with the Act to comply with training requirements under the Act. Presently, facilities operating under G.S. 110-106, centers operating in other states, and centers certified by the United States Department of Defense are not required to comply with current regulatory requirements under the North Carolina Child Care Act and Rules governing training.*

The federal government is still in the process of promulgating rules pursuant to the CCDBG, however, it notified all states in December of 2015 that all requirements related to certification by the states under the law must be in place by September 30, 2016. If states fail to comply with the CCDBG requirements for certification, they risk losing federal funds. At this time, federal funds make up approximately 80% of payments made by the State of North Carolina to assist needy children in attending quality child care facilities. Loss of these federal funds would be disastrous for the State of North Carolina and the children and families it serves.

This emergency rule would require facilities not currently subject to the training requirements to comply in order to be eligible to participate in the state's subsidized child care program. Participation in the subsidy program is voluntary for all child care providers, so those facilities now only subject to basic health and safety standards under North Carolina law and rules would only be required to meet these training requirements if they choose to participate and receive subsidy funds.

CHAPTER 10 – SUBSIDIZED CHILD CARE RULES

SECTION .0600 - REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 10 .0602 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) Application for approval to participate in the state's Subsidized Child Care Assistance Program shall be made to the local purchasing agency.

(b) Any center approved for participation in the Subsidized Child Care Assistance Program shall continue to be eligible for as long as the center maintains compliance with all of the requirements set forth in this ~~Subchapter~~-Chapter.

(c) To be eligible to participate in the Subsidized Child Care Assistance Program, centers that are exempt from licensure pursuant to G.S. 110-106, centers operating in other states, and centers certified by the United States Department of Defense must comply with all staff orientation and training requirements of the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq. as set forth in 10A NCAC 09 .0705, .0706, and .0707.

~~(e)(d)~~ When a center is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the center to comply with the requirement. If the center fails to comply within the set time limit, approval may be terminated.

~~(e)(e)~~ Upon request for review by a local, state, or federal agency representative, the operator of a center shall provide records pertaining to his or her participation in the state's Subsidized Child Care Assistance Program.

History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1986; Amended Eff. April 1, 2001; February 1, 1996; Emergency Amendment Eff. August 22, 2016.

SECTION .0700 - REQUIREMENTS FOR FAMILY CHILD CARE HOMES

10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) Any family child care home approved for participation in the ~~subsidized child care program~~-Subsidized Child Care Assistance Program shall continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this ~~Subchapter~~-Chapter.

(b) To be eligible to participate in the Subsidized Child Care Assistance Program, family child care homes that are exempt from licensure pursuant to G.S. 110-106 and family child care homes operating in other states, and family child care homes certified by the United States Department of Defense must comply with all staff orientation and training requirements of the

EMERGENCY RULES

Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq. as set forth in 10A NCAC 09 .1701, .1705 and .1731.

~~(b)~~(c) When a home is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the home to comply with the requirement. If the home fails to comply within the set time limit, approval shall be terminated.

~~(e)~~(d) Upon request for review by a local, state or federal agency representative, the operator of a family child care home shall

provide records pertaining to his or her participation in the state's ~~subsidized child care program.~~ Subsidized Child Care Assistance Program.

*History Note: Authority G.S. 143B-153(2a);
Eff. January 1, 1988;
Amended Eff. April 1, 2001; February 1, 1996;
Emergency Amendment Eff. August 22, 2016.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 18, 2016 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

September 15, 2016	October 19, 2016
November 17, 2016	December 15, 2016

**RULES REVIEW COMMISSION MEETING
MINUTES
August 18, 2016**

The Rules Review Commission met on Thursday, August 18, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, Paul Powell, and Stephanie Simpson.

Staff members present were Commission Counsels Amber Cronk May, Abigail Hammond, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.
The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin 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 appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the July 21, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS
Property Tax Commission

17 NCAC 11 .0216 and .0217 – The rewritten rules were unanimously approved.

Board of Barber Examiners

21 NCAC 06F .0110 was unanimously approved.

21 NCAC 06B .0105, .0503, .0505; 06C .0202, .0203; 06F .0116; 06G .0106; 06I .0101, .0105; 06J .0101; 06K .0104; 06L .0118, .0119; 06N .0103, .0104, .0106, .0108; 06O .0120; 06Q .0101, .0103, and .0104 will be reviewed at a later meeting pursuant to G.S. 150B-21.12(b), following the Board's next regularly scheduled meeting.

LOG OF FILINGS (PERMANENT RULES)

Environmental Management Commission

15A NCAC 02H .0126, .0150, .0151, .0152, .0153, .0154, .1001, .1002, .1003, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015, .1018, .1020, .1021, .1040, .1041, .1057, .1058, .1061, and .1062 were unanimously approved.

15A NCAC 02H .1019, .1042, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, and .1060 – The Commission objected to these rules in accordance with G.S. 150B-21.9. The Commission objected to these rules for the use of an ambiguous and unclear term. Specifically, the Commission found that the term “licensed professional” as defined in 15A NCAC 02H .1050(14) is unclear as to what licensed individuals within North Carolina could participate in the design of a stormwater system. The term “licensed professional” is repeated in Rules 15A NCAC 02H .1019, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, and .1060. Further, several rules reference the requirement for “sealed” documents. Related to the use of the unclear term of “licensed professional,” it is unclear if the person “sealing” documents has statutory authority to “seal” the required documents. The term “seal” is used in Rules .1042, .1043, .1044, and .1045.

Jennifer Everett, the rulemaking coordinator for the agency, addressed the Commission.

Coastal Resources Commission

All rules were unanimously approved.

Environmental Management Commission

All rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 15A NCAC 13B .0207.

Hearing Aid Dealers and Fitters Board

All rules were unanimously approved.

Landscape Contractors' Licensing Board

All rules were unanimously approved.

Medical Board

All rules were unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because of firm conflicts.

Board of Examiners in Optometry

21 NCAC 42J .0101 was unanimously approved.

Board of Pharmacy

All rules were unanimously approved.

Board of Podiatry Examiners

All rules were unanimously approved.

Building Code Council

All rules were unanimously approved.

EXISTING RULES REVIEW

Credit Union Division

04 NCAC 06 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Social Services Commission

10A NCAC 06 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Social Services Commission

10A NCAC 67 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Social Services Commission

10A NCAC 68 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Social Services Commission

10A NCAC 69 – The Commission unanimously approved the report as submitted by the agency.

DHHS/Social Services Commission

10A NCAC 72 - The Commission unanimously approved the report as submitted by the agency.

Hearing Aid Dealers and Fitters Board

21 NCAC 22 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Medical Care Commission

10A NCAC 13J - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than January 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed scheduled readoption date for the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the proposed readoption date because of firm conflicts.

DHHS/Services for the Blind Commission

10A NCAC 63 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than July 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

DHHS/Social Services Commission

10A NCAC 70 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than June 30, 2017 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The Chair discussed the proposed e-filing rules by the OAH, which will come before the Commission at the September meeting. Commissioners Bryan and Currin will be reviewing the proposed rules.

The meeting adjourned at 10:33 a.m.

The next regularly scheduled meeting of the Commission is Thursday, September 15th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

August 18, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Rose Lerner BARRY GURTON	Credit Union Division NCDOI/NCBCC
Judith Estevez TONY KNOX	Department of Justice NC Credit Union Division
John Scott	NCCGLB
Jennifer Everett	DEQ
Angela Jantmore	CCUL
Janet L. Shris CALVIN KIRVEN	Property Tax Commission NCCLETS
Nadine Pfeiffer	NC DHHS/DHSC
Dennis Seavers	BBE
Bradley Bennett	NC DEMLR
Julie Ventaloro	NC DEMLR
Craig Bromby	NC DEQ
Charminique Branson	at CSIS
Penney DePas	NC Bd of Podiatry Examiners
ANNACHOI	Nichols Choi Lee
TRACY DAVIS	NCDER - DEMLR
Jessica Montie	NC DEQ DWM
Carrie Hollis	CSISM
Lynne Berry	DAAS

August 18, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Katy Kingsbury	Brooks Pierce
Annette Lucas	DWR
Carletta Dixon	DSS
Catherine Jorgensen	HADF



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 18, 2016

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 13J

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 18, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than January 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
April 21, 2016
APO Review: June 25, 2016
Medical Care Commission
Total: 8**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 13J .0901</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1004</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1007</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1107</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1110</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1202</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1402</u>	Necessary with substantive public interest
<u>10A NCAC 13J .1502</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 18, 2016

Cynthia Speight, Rulemaking Coordinator
Department of Health and Human Services
Services for the Blind
2601 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 63

Dear Ms. Speight:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 18, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than July 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919-431-3000 fax: 919-431-3100	Rules Division 919-431-3000 fax: 919-431-3104	Judges and Assistants 919-431-3000 fax: 919-431-3100	Clerk's Office 919-431-3000 fax: 919-431-3100	Rules Review Commission 919-431-3000 fax: 919-431-3104	Civil Rights Division 919-431-3036 fax: 919-431-3103
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An Equal Employment Opportunity Employer

RRC DETERMINATION
PERIODIC RULE REVIEW
September 17, 2015
APO Review: November 23, 2015
DHHS - Services for the Blind
Total: 23

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 63A .0101</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0102</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0202</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0203</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0205</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0206</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0401</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0402</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0403</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0501</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0506</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0508</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0509</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0511</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0512</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0601</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0603</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0604</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0702</u>	Necessary with substantive public interest
<u>10A NCAC 63C .0704</u>	Necessary with substantive public interest
<u>10A NCAC 63F .0101</u>	Necessary with substantive public interest
<u>10A NCAC 63F .0102</u>	Necessary with substantive public interest
<u>10A NCAC 63F .0402</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
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Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 18, 2016

Carlotta Dixon, Rulemaking Coordinator
Department of Health and Human Services
Social Services Commission
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 70

Dear Ms. Dixon:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 18, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than June 30, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

RRC DETERMINATION
PERIODIC RULE REVIEW
March 17, 2016
APO Review: April 05, 2016
Social Services Commission
Total: 5

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 70J 0101</u>	Necessary with substantive public interest
<u>10A NCAC 70J 0201</u>	Necessary with substantive public interest
<u>10A NCAC 70J 0405</u>	Necessary with substantive public interest
<u>10A NCAC 70K 0101</u>	Necessary with substantive public interest
<u>10A NCAC 70K 0201</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES
August 18, 2016 Meeting**

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Stormwater Discharges</u>	15A NCAC 02H .0126
<u>Definitions: NPDES MS4 Stormwaters</u>	15A NCAC 02H .0150
<u>NPDES MS4 Stormwater: Designation of Petition Process</u>	15A NCAC 02H .0151
<u>Development in Urbanizing Areas</u>	15A NCAC 02H .0152
<u>NPDES MS4 Stormwater: Program Implementation</u>	15A NCAC 02H .0153
<u>Post Construction Practices</u>	15A NCAC 02H .0154
<u>Post-Construction Stormwater Management: Purpose and Scope</u>	15A NCAC 02H .1001
<u>Definitions</u>	15A NCAC 02H .1002
<u>Requirements that Apply to All Subject Projects</u>	15A NCAC 02H .1003
<u>Stormwater Requirements: Coastal Counties</u>	15A NCAC 02H .1005
<u>Stormwater Requirements: High Quality Waters</u>	15A NCAC 02H .1006
<u>Stormwater Requirements: Outstanding Resource Waters</u>	15A NCAC 02H .1007
<u>Design of Stormwater Management Measures</u>	15A NCAC 02H .1008
<u>Staff Review and Permit Preparation</u>	15A NCAC 02H .1009
<u>Final Action on Permit Applications to the Division</u>	15A NCAC 02H .1010
<u>Modification and Revocation of Permits</u>	15A NCAC 02H .1011
<u>Delegation of Authority</u>	15A NCAC 02H .1012
<u>General Permits</u>	15A NCAC 02H .1013
<u>Stormwater Management for Urbanizing Areas</u>	15A NCAC 02H .1014
<u>Urbanizing Area Definitions</u>	15A NCAC 02H .1015
<u>Development in Urbanizing Areas: Applicability and Deline...</u>	15A NCAC 02H .1016
<u>NPDES MS4 and Urbanizing Areas: Post-Construction Practices</u>	15A NCAC 02H .1017
<u>Urbanizing Areas: Delegation</u>	15A NCAC 02H .1018
<u>Universal Stormwater Management Program</u>	15A NCAC 02H .1020
<u>Non-Coastal County High Quality Waters (HQW) and Outstand...</u>	15A NCAC 02H .1021
<u>Permit Administration</u>	15A NCAC 02H .1040
<u>General Permits</u>	15A NCAC 02H .1041
<u>MDC for Rainwater Harvesting</u>	15A NCAC 02H .1057
<u>MDC for Green Roofs</u>	15A NCAC 02H .1058
<u>MDC for Treatment Swales</u>	15A NCAC 02H .1061
<u>MDC for Dry Ponds</u>	15A NCAC 02H .1062

COASTAL RESOURCES COMMISSION

<u>Coastal Wetlands</u>	15A NCAC 07H .0205
<u>Purpose</u>	15A NCAC 07H .1801
<u>Approval Procedures</u>	15A NCAC 07H .1802
<u>General Conditions</u>	15A NCAC 07H .1804
<u>Specific Conditions</u>	15A NCAC 07H .1805
<u>Specific Conditions</u>	15A NCAC 07H .2505

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Permit Required</u>	15A NCAC 13B .0201
<u>Option to Apply for Issuance of 10-Year Permit for Sanita...</u>	15A NCAC 13B .0206
<u>Life-of-Site Permit Issued for a Sanitary Landfill or Tra...</u>	15A NCAC 13B .0207

PROPERTY TAX COMMISSION

<u>Legal Representation Before the Commission</u>	17 NCAC 11 .0216
<u>Appearance at Hearing Required</u>	17 NCAC 11 .0217

BARBER EXAMINERS, BOARD OF

<u>Roster and Student Records</u>	21 NCAC 06F .0110
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HEARING AID DEALERS AND FITTERS BOARD

<u>Annual Continuing Education Requirements</u>	21 NCAC 22F .0202
<u>Self-Study</u>	21 NCAC 22F .0208
<u>Committee on Investigations</u>	21 NCAC 22L .0101

LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Name and Location of Board</u>	21 NCAC 28B .0101
<u>Meetings</u>	21 NCAC 28B .0102
<u>Practice of Landscape Contracting</u>	21 NCAC 28B .0103
<u>Applications for Licensure</u>	21 NCAC 28B .0201
<u>Reciprocity</u>	21 NCAC 28B .0202
<u>Military-Trained Applicant; Military Spouse</u>	21 NCAC 28B .0203
<u>Maintain Current Information</u>	21 NCAC 28B .0204
<u>License Renewal; Waiver</u>	21 NCAC 28B .0301
<u>Reinstatement</u>	21 NCAC 28B .0302
<u>General</u>	21 NCAC 28B .0401
<u>Continuing Education Units</u>	21 NCAC 28B .0402
<u>Continuing Education Records; Audit</u>	21 NCAC 28B .0403
<u>Extension of Time</u>	21 NCAC 28B .0404
<u>Requests for Approval</u>	21 NCAC 28B .0405
<u>General</u>	21 NCAC 28B .0501
<u>Planting</u>	21 NCAC 28B .0502
<u>Turf</u>	21 NCAC 28B .0503
<u>Finish Grade</u>	21 NCAC 28B .0504
<u>Design and Consultation</u>	21 NCAC 28B .0505
<u>Drainage Systems and Cisterns</u>	21 NCAC 28B .0506
<u>Low-Voltage Lighting; Pools</u>	21 NCAC 28B .0507
<u>Walls</u>	21 NCAC 28B .0508
<u>Paving</u>	21 NCAC 28B .0509
<u>Pruning</u>	21 NCAC 28B .0510
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<u>Registration</u>	21	NCAC 52 .0301
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RULES REVIEW COMMISSION

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**RRC DETERMINATION
PERIODIC RULE REVIEW
August 18, 2016
Necessary with Substantive Public Interest**

**Commerce, Department of -
Credit Union Division**

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04 NCAC 06C .0101		10A NCAC 06S .0402
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04 NCAC 06C .0202	10A NCAC 06Q .0101	10A NCAC 06S .0404
04 NCAC 06C .0203	10A NCAC 06Q .0201	10A NCAC 06S .0405
04 NCAC 06C .0209	10A NCAC 06R .0101	10A NCAC 06S .0501
04 NCAC 06C .0301	10A NCAC 06R .0102	10A NCAC 06S .0508
04 NCAC 06C .0302	10A NCAC 06R .0201	10A NCAC 06T .0201
04 NCAC 06C .0304	10A NCAC 06R .0302	10A NCAC 67A .0101
04 NCAC 06C .0306	10A NCAC 06R .0304	10A NCAC 67A .0103
04 NCAC 06C .0307	10A NCAC 06R .0305	10A NCAC 67A .0105
04 NCAC 06C .0311	10A NCAC 06R .0401	10A NCAC 67A .0106
04 NCAC 06C .0312	10A NCAC 06R .0403	10A NCAC 67A .0107
04 NCAC 06C .0313	10A NCAC 06R .0501	10A NCAC 67A .0108
04 NCAC 06C .0401	10A NCAC 06R .0502	10A NCAC 67A .0201
04 NCAC 06C .0402	10A NCAC 06R .0503	10A NCAC 67A .0202
04 NCAC 06C .0404	10A NCAC 06R .0504	10A NCAC 67A .0203
04 NCAC 06C .0407	10A NCAC 06R .0506	10A NCAC 67A .0205
04 NCAC 06C .0409	10A NCAC 06R .0508	10A NCAC 68 .0101
04 NCAC 06C .0501	10A NCAC 06R .0509	10A NCAC 68 .0102
04 NCAC 06C .0502	10A NCAC 06R .0601	10A NCAC 68 .0103
04 NCAC 06C .0601	10A NCAC 06R .0801	10A NCAC 68 .0104
04 NCAC 06C .0707	10A NCAC 06R .0802	10A NCAC 68 .0105
04 NCAC 06C .0801	10A NCAC 06R .0804	10A NCAC 68 .0106
04 NCAC 06C .0901	10A NCAC 06R .0806	10A NCAC 68 .0107
04 NCAC 06C .1001	10A NCAC 06R .0902	10A NCAC 68 .0108
04 NCAC 06C .1002	10A NCAC 06R .0904	10A NCAC 68 .0202
04 NCAC 06C .1201	10A NCAC 06S .0101	10A NCAC 68 .0203
04 NCAC 06C .1204	10A NCAC 06S .0102	10A NCAC 68 .0204
04 NCAC 06C .1301	10A NCAC 06S .0203	10A NCAC 68 .0205
	10A NCAC 06S .0204	10A NCAC 68 .0206
	10A NCAC 06S .0301	10A NCAC 68 .0208

10A NCAC 68 .0301
10A NCAC 68 .0302
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10A NCAC 72 .0101
10A NCAC 72 .0102
10A NCAC 72 .0201
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10A NCAC 72 .0301

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 18, 2016
Necessary without Substantive Public Interest**

**Commerce, Department of -
Credit Union Division**

04 NCAC 06A .0101
04 NCAC 06B .0301
04 NCAC 06B .0302
04 NCAC 06B .0303
04 NCAC 06B .0401
04 NCAC 06B .0501
04 NCAC 06B .0502
04 NCAC 06B .0503
04 NCAC 06B .0504
04 NCAC 06B .0505
04 NCAC 06B .0506
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04 NCAC 06B .0508
04 NCAC 06B .0509
04 NCAC 06C .0204
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04 NCAC 06C .0410
04 NCAC 06C .0603
04 NCAC 06C .0706
04 NCAC 06C .0802
04 NCAC 06C .0902
04 NCAC 06C .1202
04 NCAC 06C .1203
04 NCAC 06C .1205
04 NCAC 06C .1303
04 NCAC 06C .1401

HHS - Aging and Adult Services

10A NCAC 06A .0101
10A NCAC 06A .0102
10A NCAC 06A .0103
10A NCAC 06A .0104
10A NCAC 06A .0201
10A NCAC 06A .0301
10A NCAC 06A .0302
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10A NCAC 06H .0203
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10A NCAC 06I .0102
10A NCAC 06I .0201
10A NCAC 06I .0202
10A NCAC 06I .0203
10A NCAC 06J .0101
10A NCAC 06K .0101
10A NCAC 06K .0201
10A NCAC 06K .0202
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10A NCAC 06K .0204
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10A NCAC 06K .0206

Social Services Commission

10A NCAC 06P .0101
10A NCAC 06P .0201
10A NCAC 06P .0301

10A NCAC 06P .0401
10A NCAC 06P .0402
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10A NCAC 06X .0210
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10A NCAC 06X .0212
10A NCAC 06X .0213
10A NCAC 06X .0214
10A NCAC 67A .0204
10A NCAC 67A .0206
10A NCAC 67B .0101
10A NCAC 67B .0102
10A NCAC 69 .0304

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Board**

21 NCAC 22A .0401
21 NCAC 22A .0501
21 NCAC 22A .0502
21 NCAC 22A .0503
21 NCAC 22B .0101
21 NCAC 22B .0302
21 NCAC 22B .0307
21 NCAC 22B .0501
21 NCAC 22B .0503
21 NCAC 22F .0101
21 NCAC 22F .0104
21 NCAC 22F .0105
21 NCAC 22F .0107
21 NCAC 22F .0108
21 NCAC 22F .0121
21 NCAC 22F .0122

21 NCAC 22F .0201
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21 NCAC 22I .0114
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21 NCAC 22J .0103
21 NCAC 22J .0105
21 NCAC 22J .0107
21 NCAC 22J .0108
21 NCAC 22J .0109
21 NCAC 22J .0110
21 NCAC 22J .0114
21 NCAC 22J .0115
21 NCAC 22J .0116
21 NCAC 22L .0101
21 NCAC 22L .0102
21 NCAC 22L .0103
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21 NCAC 22L .0112
21 NCAC 22L .0113
21 NCAC 22L .0115
21 NCAC 22L .0116

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 18, 2016
Unnecessary**

Social Services Commission

10A NCAC 67A .0102

10A NCAC 67A .0104

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton
Stacey Bawtinheimer	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
NC Alcoholic Beverage Control Commission v. Brewers LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Aaway Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
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Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
Otero Lee Ingram v. NC Crime Victims Comp Commission	16 CPS 01656	06/09/16	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	
WP-Beulaville Health Holdings LLC v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	15 DHR 02422	06/29/16	31:05 NCR 440
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
Ashley Cartwright Sr. v. Department of Health and Human Services	15 DHR 08222	06/15/16	
New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16	
Susan H. Logan v. DHHS, Division of Medical Assistance	16 DHR 03011	06/02/16	

CONTESTED CASE DECISIONS

Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16	
Kaitlin Marie Skiba v. DHHS, Division of Health Service Regulation	16 DHR 03101	06/02/16	
Monique Brown Miller v. DHHS, Division of Health Service Regulation	16 DHR 03131	06/22/16	
Robin Braswell Ingram v. Nurse Aide Registry	16 DHR 03214	06/10/16	
Trina C. Sherrill v. DHHS, Division of Health Service Regulation	16 DHR 03315	06/02/16	
Joanne Marie Cain v. Health Care Personnel Registry	16 DHR 03404	06/02/16	
Joan Rennea Thomas v. DHHS, Division of Health Service Regulation	16 DHR 03502	06/10/16	
Nathasia Yvonne Lofton v. DHHS, Division of Health Service Regulation	16 DHR 03503	06/10/16	
Patricia Glover v. Department of Health and Human Services	16 DHR 03895	06/29/16	
Quashawn A. Washington v. NCDHHS, Division of Medical Assistance	16 DHR 03899	06/28/16	
Easter Seals United Cerebral Palsy Group Home Park NC 28711 Frank Dinkoski v. Laurel Park Group Home Division of Health Service Regulation	16 DHR 04522	06/29/16	
Valarie Neely v. Department of Health and Human Services	16 DHR 04533	06/21/16	

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Robert Lee Benton v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07342	04/22/16	
James Philip Davenport v. Sheriffs' Education and Training Standards Commission	15 DOJ 07442	04/19/16	31:01 NCR 67
John James Klaver Jr. v. Criminal Justice Education and Training Standards Commission	15 DOJ 07775	04/06/16	
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Kevin Michael Weber v. Sheriffs' Education and Training Standards Commission	15 DOJ 08610	04/22/16	31:01 NCR 71
Carson Dean Berry v. Sheriffs' Education and Training Standards Commission	15 DOJ 09661	05/16/16	
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DEPARTMENT OF TRANSPORTATION

Thomas R. Baggett v. Department of Transportation	15 DOT 09852	05/20/16	
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DEPARTMENT OF STATE TREASURER

In the Matter of the Board of Trustees of Craven Community College v. Department of the State Treasurer and The Board of Trustees of the Teachers and State Employees Retirement System	16 DST 00053	05/11/16	
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Laura Kerrigan v. Department of Public Instruction	15 EDC 03061	09/21/15	31:01 NCR 76
Charlotte Classical School Inc v. NC State Board of Education	15 EDC 05755	05/24/16	31:03 NCR 215
TPS Publishing Inc. v. State Board of Education	15 EDC 06344	04/29/16	31:01 NCR 89

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Environmentalee, Chatham Citizens Against Coal Ash Dump, and Blue Ridge Environmental Defense League Inc v. Department of Environment and Natural Resources, Division of Waste Management, and Division of Energy, Mineral, and Land Resources and Green Meadow LLC and Charah Inc.	15 EHR 04772	05/05/16	31:03 NCR 223
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BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

Raymond Clifton Parker v. NC Board of Examiners for Engineers and Surveyors	15 ELS 04349	06/27/16	
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DEPARTMENT OF INSURANCE

Angela B. O'Connell v. NC Teachers' and State Employees' Comprehensive Major Medical Plan AKA The State Health Plan	14 INS 08876	06/22/16	31:05 NCR 415
Department of Insurance v. Andre Day	15 INS 07291	04/26/16	31:01 NCR 104
Lynda F. Hodge v. NC State Health Plan	16 INS 03204	05/20/16	

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MISCELLANEOUS

Daryl Zenon Bodan v. Judge David W. Aycock et al Catawba County-District 25B 16 MIS 04110 06/06/16

OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)

Brandon Lee Faison Sr. v. Eastern Correctional/NCDPS 15 OSP 07975 06/28/16 31:05 NCR 454

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Tracy Jones 15 OSP 08687 05/16/16 31:03 NCR 256

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Janna Marie Stanley v. Department of Revenue 16 REV 03318 05/27/16

Silas Edward Gray and Dino Laurie Gray v. NC Department of Revenue 16 REV 03410 06/10/16

Willie A. Westbrook-Bey v. Department of Revenue 16 REV 04104 06/10/16

OFFICE OF THE SECRETARY OF STATE

Angel L. Simpson v. Department of the Secretary of State 15 SOS 07239 04/21/16

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Marc Alperin v. University of North Carolina Hospitals 15 UNC 08353 06/28/16

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
06/14/2016 12:57 PM

STATE OF NORTH CAROLINA
COUNTY OF LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 08233

<p>Timothy Todd Stroupe Petitioner,</p> <p>v.</p> <p>N C Criminal Justice Education And Training Standards Commission Respondent.</p>	<p><u>PROPOSAL FOR DECISION</u></p>
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THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals.

APPEARANCES

Petitioner: Timothy Todd Stroupe
361 Steel Bridge Road
Sanford, North Carolina 27699

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice, Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for the commission of the felony offense of Obtain Controlled Substance by Fraud/Forgery?

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for the commission of the felony offense of Attempt to Obtain Controlled Substance by Forgery/Fraud?

EXHIBITS

Respondent's Exhibits 1-2 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**. In making the **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission").
2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.
3. Petitioner testified at the hearing. Petitioner is an applicant for certification through the town of Lillington, North Carolina. Petitioner graduated from Basic Law Enforcement Training in May 2014 and was at the top of his class.
4. In the summer of 2006, Petitioner was injured when an automobile fell on top of him. Petitioner was under the care of a physician who prescribed him the controlled substance Oxycodone. In the fall of 2006, Petitioner was charged with the felony offenses of attempt to obtain controlled substances by fraud/forgery and obtain controlled substance by fraud/forgery. The first offense was in September 2006, when Petitioner's girlfriend changed the number on the prescription to increase the quantity of pills Petitioner would receive. Petitioner explained that once the pills were at his house they were stolen. Petitioner started getting sick because he did not have the medication he needed so he called his physician and explained that the pills were stolen and his physician wrote him another prescription. When Petitioner received the second prescription he changed the number on that prescription. When Petitioner went to the pharmacy

to get that second prescription filled the pharmacy contacted law enforcement and Petitioner was arrested for attempting to obtain controlled substance by fraud.

5. Petitioner was asked by the responding deputy if he had ever done this prior to this occasion and Petitioner explained that he had previously presented a prescription with a changed quantity and obtained more oxycodone than prescribed by the doctor. Based on Petitioner's explanation of the previous prescription, the responding deputy charged Petitioner with both attempting to obtain controlled substance by fraud and obtaining controlled substance by fraud.

6. The felony charges were dismissed from court and have since been expunged from Petitioner's record. As a condition of the dismissal, Petitioner consented to attending drug courses and drug screens for several months.

7. Judy Kelley testified at the hearing. Ms. Kelley is employed as an investigator with Criminal Justice Standards Division. Ms. Kelley was assigned to investigate this matter. At the time Petitioner submitted the Form F-5A he also provided a copy of a Petition and Order of Expunction which was signed by Judge Scott Etheridge, District Court Judge for the Judicial District presiding over Montgomery, Moore and Randolph counties of North Carolina.,

8. On June 27, 2008, Petitioner's Petition for Expunction under N.C.G.S. § 15A-146 was granted. The title of the expunction document is "Petition and Order of Expunction Under G.S. 15A-145 and G.S. 15A-146. Judge Etheridge checked G.S. 15A-146 in his Order. As ordered by the Court, "all entries relating to the defendant/petitioner's apprehension, charge or trial shall be expunged from the records of the court, and all law-enforcement agencies bearing record of the same." (Respondent's Exhibit 1)

9. In accordance with N.C.G.S. § 15A-151(a)(5), the confidential file maintained by the Administrative Office of the Courts may be disclosed only "if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or [15A-]145.6, to the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only." Petitioner's expunction was granted under N.C.G.S. § 15A-146 and therefore may not be disclosed to Respondent.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. In accordance with the granting of the Petition and subsequent Order of Expunction signed by Judge Scott Etheridge, any and all entries relating to the Petitioner's apprehension, charge or trial resulting from the criminal offenses of "Obtaining CS by Fraud/Forgery" and "Att Obtain CS Forgery/Fraud" has been expunged from the records of the court.

2. In accordance with the granting of the Petition and subsequent Order of Expunction by Judge Scott Etheridge, any and all entries relating to the Petitioner's apprehension, charge or trial resulting from the criminal offenses of "Obtaining CS by Fraud/Forgery" and "Att Obtain CS Forgery/Fraud" has been expunged from the records of all law enforcement agencies bearing any record of the offenses.

3. Respondent does not fall under any exception set forth in N.C.G.S. § 15A-151 to the Order of Expunction signed by Judge Scott Etheridge. No Evidence exists in any law enforcement department, district attorney's office or the General Court of Justice that Petitioner in this matter committed or was convicted of the offense of Obtain Controlled Substance by Fraud/Forgery or of the offense of Attempt to Obtain Controlled Substance by Forgery/Fraud.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

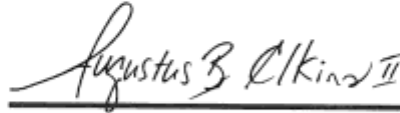
Based on those conclusions and the totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned holds that there is no legally held evidence to support a probable cause that Petitioner committed the felony offense of Obtain Controlled Substance by Fraud/Forgery or the offense of Attempt to Obtain Controlled Substance by Forgery/Fraud. The Undersigned holds that the Petitioner's request for law enforcement certification should be allowed.

NOTICE

The agency making the Final Decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

This the 14th day of June, 2016.



Augustus B Elkins II

Augustus B Elkins II
Administrative Law Judge