

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13A .0201

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout the Rule, please delete instances of "(s)" and just use the plural or use both the plural and singular ("rule or rules", for instance).

In (a), line 7, add a colon or the word "the" between "addressed to" and "Office of the Director".

In (b)(1), what should someone submit if they're requesting repeal of a rule?

In (b)(2), line 13, what "orders" are you referring to?

In (c)(4), line 24, what qualifies as a "description"? I'm assuming this means, for instance, if someone wants to repeal a rule for long term care homes, that the petitioner should say "residents of long term care homes"?

In (d)(2), line 31, add a comma after "programs".

In (d)(5), line 34, how is the "public interest" determined?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: August 22, 2023

1 10A NCAC 13A .0201 is amended as published in 37:18 NCR 1873-1874 as follows:

2
3 **SECTION .0200 - RULEMAKING**

4
5 **10A NCAC 13A .0201 PETITIONS**

6 (a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by
7 the North Carolina Medical Care Commission shall ~~address~~ submit the petition addressed to Office of the Director,
8 Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

9 (b) The petition shall contain the following information:

- 10 (1) ~~either a draft of the text of the proposed rule or a summary of its contents~~ rule(s) for adoption or
11 amendment and the statutory authority for the agency to promulgate the ~~rule~~; rule(s);
- 12 (2) ~~reason for proposal;~~
- 13 (3)(2) a statement of the effect on existing rules or orders;
- 14 (4) ~~any data supporting the proposal;~~
- 15 (5)(3) a statement of the effect of the proposed rule rule(s) on existing practices in the area involved,
16 including cost factors, if known; and
- 17 (6) ~~names of those most likely to be affected by the proposed rule, with addresses, if known;~~
- 18 (7)(4) the name(s) and address(es) of petitioner(s).

19 (c) The petitioner may include the following information within the request:

- 20 (1) documents and any data supporting the petition;
- 21 (2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an
22 existing rule(s);
- 23 (3) a statement explaining the costs and computation of the cost factors, if known; and
- 24 (4) a description, including the names and addresses, if known, of those most likely to be affected by
25 the proposed rule(s).

26 ~~(e)(d)~~ The Chairman of the North Carolina Medical Care Commission will determine, Commission, based on a study
27 review of the facts stated in the petition, whether the public interest will be served by granting the petition. He will
28 consider all the contents of the submitted petition, plus any additional information he deems relevant. shall consider
29 the following in the determination to grant the petition:

- 30 (1) whether the North Carolina Medical Care Commission has authority to adopt the rule(s);
- 31 (2) the effect of the proposed rule(s) on existing rules, programs and practices;
- 32 (3) probable costs and cost factors of the proposed rule(s);
- 33 (4) the impact of the rule on the public and the regulated entities; and
- 34 (5) whether the public interest will be served by granting the petition.

35 ~~(d)~~ Within 30 days of submission of the petition, the Chairman will render a final decision. If the decision is to deny
36 the petition, the Chairman will notify the petitioner in writing, stating the reasons for the denial. If the decision is to

1 ~~approve the petition, the Chairman will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided~~
2 ~~in these rules.~~

3 (e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the
4 petitioner by the Chairman of the North Carolina Medical Care Commission.

5

6 *History Note: Authority G.S. 143B-165; 150B-20;*

7 *Eff. February 1, 1976;*

8 *Readopted Eff. December 19, 1977;*

9 *Amended Eff. November 1, 1989;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22,*

11 *~~2015- 2015~~;*

12 *Amended Eff. October 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13F .0702

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), p.3, the list is, except for (6), verbatim from the statute. As repeating statutory language is generally unnecessary under G.S. 150B-19(4), please consider deleting this and just referring to G.S. 131D-4.8(a).

Throughout (b), when referring to “documented” or “documentation” does this mean in the resident’s medical record? In other words, where is this information to be documented, and how?

In (b)(1) and (2), what if there is a conflict as to the resident’s needs between the physician, the physician’s assistant, or the nurse practitioner? For instance, what if the NP says that the facility can no longer meet the resident’s needs, but the physician disagrees?

In (b)(3), line 30, who determines whether the resident’s or other individual’s safety is endangered? According to what standards?

In (b)(6), line 36, the Rule seems to narrow the grounds for discharge specified in the statute. In 131D-4.8(a)(6), the discharge may be mandated “under [Article 1], Article 3 of this Chapter, or rules adopted by the Medical Care Commission.” In the Rule, the discharge may only be mandated under G.S. 131D-2.2(a). While this statute is indeed in Article 1 of 131D, it appears the Rule eliminates any discharges under Article 3 or other MCC rules. I am not sure that MCC has the authority to narrow the statutorily described criteria for discharge. Please address.

In (c)(1), p.4, line 1, the rule references a “Notice of Discharge” and a “Hearing Request Form”. Is the Notice of Discharge a form? If so, are its contents or substantive requirements described in a statute or another rule? Same question for the Hearing Request Form – are its contents or substantive requirements described in a statute or another rule?

In (c)(2), line 8, please define “responsible person”.

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

In (c)(3), line 12, was “responsible person” omitted intentionally, given its use elsewhere?

In (c)(3)(A), line 13, what is a FL-2?

In (c)(4), lines 16-17, the Rule states that failure to use the latest version of the forms described in (c)(1) and (2) shall not invalidate the discharge. If the facility fails to use the latest version of the form, then must it make any attempt to update the resident/responsible person/legal representative with any information that would be on the latest form, but not in the form used?

In (c)(5), to be clear, is the Hearing Request Form completed by the facility?

Where is your statutory authority for (d)? G.S. 131D-4.8(b) states:

An adult care home shall notify a resident, the resident’s legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at least 30 days before the resident is discharged.

I don’t see any statutory exemptions to this language, and Subparagraph (b) of this Rule, which is referenced in (d)(1) and (2), uses the language of the relevant portions of subsection (a) of 131D-4.8 verbatim.

With respect to (d)(2), line 26, to the extent that there is a statutory exemption to the 30 day notice provision in 131D-4.8(b), can you use the improvement of the health of the resident (Subparagraph (b)(2) of the Rule, 131D-4.8(a)(2) in the statute) as a grounds for waiving the notice? G.S. 131D-21(17) states:

The resident shall be given at least 30 days’ advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home.

It doesn’t seem to me that the improving health of the resident poses “jeopardy to the health and safety of the resident or others in the home.” In fact, it would seem to me that 131D-21(17) is directly aimed at forbidding a home from declaring the resident medically improved and then suddenly leaving him or her without a place to go.

In (d), line 23, who makes the determination that it is now “practicable” to make the notice?

In (d)(1), line 24, to the extent the 30 day notice provision may be waived, wouldn’t it be clearer just to say that the home does not need to comply with the 30 day requirement if the discharge is pursuant to Subparagraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule?

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

Or, to directly reference the equivalent statutory language? Here, in (d)(1), you say “the resident’s health or safety is endangered and the resident’s urgent medical needs cannot be met in the facility under subparagraph (b)(1)”. Subparagraph (b)(1) and the statute use slightly different language (“protect the welfare” as opposed to “health or safety is endangered”). I think this introduces some ambiguity as to whether these are different standards.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident’s “record” and provided to discharge locations “upon request.” However, 131D-21(6) states that information in the resident’s “personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law.” Is there an applicable State or federal law? It’s not cited in the Rule or the History Note.

In (e)(1)(d), p.5, line 3, I’m unsure what the language “and as disclosed in the resident contract signed upon the resident’s admission to the facility” means in this context. Please explain and clarify the language of the Rule.

In (e)(2), line 4, what is an “intervention”?

In (g), line 12, is “sufficient preparation and orientation” defined by (1)-(5)?

In (g)(2), line 19, please define “appropriate”.

In (g)(2)(A), line 20-21, please define “not appropriate”.

In (g)(2)(A), line 21, what is the “local adult care home resident discharge team”?

In (g)(2)(B), line 23, was “responsible person” and “individual identified upon admission to receive a copy of the discharge notice on behalf of the resident” omitted intentionally?

In (g)(3), line 26, would the resident/legal representative/responsible person need to sign a release for this information to be provided to the caregiver? This seems to include medical and personal records covered by 131D-21(6) which must be kept confidential.

In (g)(3)(F), line 33, is the facility required to provide the actual medications themselves?

In (g)(4)(B), p.6, line 1, what “agency” are you referring to?

In (g)(5), line 3, add a comma following “representative”.

In (g)(5), line 3, is “responsible party” different than “responsible person” used elsewhere?

In (i), line 13, was “legal representative” intentionally omitted?

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

In (i), lines 16-17, to be clear, this exception refers to discharges or transfers for health or safety reasons that are initiated by the resident, rather than the facility, correct?

In (j), line 21, what is a “bed hold policy”? Is there a rule or statute that requires one?

In (j), lines 22-24, is a discharge where there is no physician documented level of care change possible? It doesn't seem to fit under any of the circumstances in (b).

In your History Note, is the duplicate reference to G.S. 131D-4.5 supposed to be a reference to G.S. 131D-4.8?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 13F .0702 is readopted as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .0702 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

9 ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

11 ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

13 ~~(3) the safety of other individuals in the facility is endangered;~~

14 ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~

16 ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~

18 ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

21 ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~

23 ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

26 ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~

28 ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~

31 ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~

33 ~~(4) the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications;~~

32 ~~(F) a record of the resident's vaccinations and TB screening;~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period.. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S.~~
 24 ~~131D-4.8:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;~~

27 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 28 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 29 ~~nurse practitioner;~~

30 ~~(3) the safety of the resident or other individuals in the facility is endangered;~~

31 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 32 ~~physician, physician assistant, or nurse practitioner;~~

33 ~~(5) the resident has failed to pay the costs of services and accommodations by the payment due date~~
 34 ~~according to the resident's contract after receiving written notice of warning of discharge for failure~~
 35 ~~to pay; or~~

36 ~~(6) the discharge is mandated under G.S. 131D-2.2(a).~~

37 ~~(c) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 2 be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home
 3 Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health
 4 Benefits, on the internet website [6 \(2\) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing
 7 Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the
 8 resident's responsible person or legal representative and the individual identified upon admission to
 9 receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of
 10 Discharge is dated.](https://policies.ncdhhs.gov/divisional/health-benefits-nc-</u>

 5 <u>medicaid/forms.</u></p>
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11 (3) Provide the following material in accordance with the Health Insurance Portability and
 12 Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:

13 (A) a copy of the resident's most current FL-2;

14 (B) a copy of the resident's current physician's orders, including medication order;

15 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 16 (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms
 17 shall not invalidate the discharge.

18 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 19 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
 20 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
 21 record.

22 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 23 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

24 (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 25 in the facility under Subparagraph (b)(1) of this Rule; or

26 (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

27 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 28 discharge locations:

29 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 30 Paragraph (b) of this Rule:

31 (A) documentation by physician, physician assistant or nurse practitioner as required in
 32 Paragraph (b) of this Rule;

33 (B) the condition or circumstance that endangers the health or safety of the resident being
 34 discharged or endangers the health or safety of individuals in the facility, and the facility's
 35 action taken to address the problem prior to pursuing discharge of the resident;

36 (C) written notices of warning of discharge for failure to pay the costs of services and
 37 accommodations; or

1 (D) the specific health need or condition of the resident that the facility determined could not
 2 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 3 contract signed upon the resident's admission to the facility; and

4 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
 5 toward self or others.

6 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 7 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 8 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
 9 purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident"
 10 may be the same person as the resident's legal representative or responsible person as identified in the resident's
 11 record.

12 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
 13 from the facility as evidenced by:

14 (1) explaining to the resident and responsible person or legal representative and the individual identified
 15 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 16 is necessary;

17 (2) informing the resident and responsible person or legal representative and the individual identified
 18 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 19 appropriate discharge destination; and

20 (A) If at the time of the discharge notice the discharge destination is unknown or is not
 21 appropriate for the resident, the facility shall contact the local adult care home resident
 22 discharge team to assist with placement; and

23 (B) The facility shall inform the resident and the resident's legal representative of their right to
 24 request the Regional Long-Term Care Ombudsman to serve as a member of the adult care
 25 home resident discharge team; and

26 (3) offering the following material to the caregiver with whom the resident is to be placed and providing
 27 this material as requested prior to or upon discharge of the resident:

28 (A) a copy of the resident's most current FL-2;

29 (B) a copy of the resident's most current assessment and care plan;

30 (C) a list of referrals to licensed health professionals, including mental health;

31 (D) a copy of the resident's current physician orders;

32 (E) a list of the resident's current medications;

33 (F) the resident's current medications; and

34 (G) a record of the resident's vaccinations and TB screening;

35 (4) providing written notice of the name, address and telephone number of the following, if not provided
 36 on the discharge notice required in Paragraph (c) of this Rule:

37 (A) the regional long-term care ombudsman; and

1 (B) the protection and advocacy agency established under federal law for persons with
 2 disabilities;

3 (5) providing the resident, responsible party or legal representative and the individual identified upon
 4 admission who received a copy of the discharge notice on behalf of the resident with the discharge
 5 location as determined by the adult care home resident discharge team, if convened, at or before the
 6 discharge hearing, if the location is known to the facility.

7 (h) If an appeal hearing is requested:

8 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
 9 person, and the Hearing Unit copies of all documents and records that the facility intends to use at
 10 the hearing at least five working days prior to the scheduled hearing; and

11 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
 12 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

13 (i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written
 14 notice from the resident or responsible person which means the resident or responsible person may be charged for the
 15 days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the
 16 required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would
 17 jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the
 18 resident or responsible person shall be established in the resident contract or the house rules provided to the resident
 19 or responsible person upon admission.

20 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 21 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 22 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
 23 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
 24 requirements in this Rule apply.

25
 26 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; ~~131D-4.5~~; 131D-21; 143B-165;*

27 *Eff. January 1, 1977;*

28 *Readopted Eff. October 31, 1977;*

29 *Temporary Amendment Eff. July 1, 2003;*

30 *Amended Eff. July 1, ~~2004~~. 2004;*

31 *Readopted Eff. January 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13F .1307

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, what are you requiring with the word "assure"?

Why is G.S. 131D-8 cited here? I don't see a connection between the rule language and the statute.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

1 10A NCAC 13F .1307 is readopted as published in 37:18 NCR 1874-1882 as follows:

2

3 **10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN**

4 In addition to the requirements in Rules ~~13F~~ .0801 and ~~13F~~ .0802 of this Subchapter, the facility shall assure the
5 following:

6 (1) Within 30 days of admission to the special care unit and quarterly thereafter, the facility shall
7 develop a written resident profile containing assessment data that describes the resident's behavioral
8 patterns, self-help abilities, level of daily living skills, special management needs, physical abilities
9 and disabilities, and degree of cognitive impairment.

10 (2) The resident care plan as required in Rule ~~13F~~ .0802 of this Subchapter shall be developed or revised
11 based on the resident profile and specify programming that involves environmental, social and
12 health care strategies to help the resident attain or maintain the maximum level of functioning
13 possible and compensate for lost abilities.

14

15 *History Note: Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; 131D-8; 143B-165;*

16 *Temporary Adoption Eff. December 1, 1999;*

17 *Eff. July 1, ~~2000~~ 2000;*

18 *Readopted Eff. October 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13G .0705

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

NOTE: As this Rule is—to my reading—identical to 13F .0702, the change requests herein are also identical to those for that Rule.

In (b), p.3, the list is, except for (6), verbatim from the statute. As repeating statutory language is generally unnecessary under G.S. 150B-19(4), please consider deleting this and just referring to G.S. 131D-4.8(a).

Throughout (b), when referring to “documented” or “documentation” does this mean in the resident’s medical record? In other words, where is this information to be documented, and how?

In (b)(1) and (2), what if there is a conflict as to the resident’s needs between the physician, the physician’s assistant, or the nurse practitioner? For instance, what if the NP says that the facility can no longer meet the resident’s needs, but the physician disagrees?

In (b)(3), line 30, who determines whether the resident’s or other individual’s safety is endangered? According to what standards?

In (b)(6), line 36, the Rule seems to narrow the grounds for discharge specified in the statute. In 131D-4.8(a)(6), the discharge may be mandated “under [Article 1], Article 3 of this Chapter, or rules adopted by the Medical Care Commission.” In the Rule, the discharge may only be mandated under G.S. 131D-2.2(a). While this statute is indeed in Article 1 of 131D, it appears the Rule eliminates any discharges under Article 3 or other MCC rules. I am not sure that MCC has the authority to narrow the statutorily described criteria for discharge. Please address.

In (c)(1), p.4, line 1, the rule references a “Notice of Discharge” and a “Hearing Request Form”. Is the Notice of Discharge a form? If so, are its contents or substantive requirements described in a statute or another rule? Same question for the Hearing

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

Request Form – are its contents or substantive requirements described in a statute or another rule?

In (c)(2), line 8, please define “responsible person”.

In (c)(3), line 12, was “responsible person” omitted intentionally, given its use elsewhere?

In (c)(3)(A), line 13, what is a FL-2?

In (c)(4), lines 16-17, the Rule states that failure to use the latest version of the forms described in (c)(1) and (2) shall not invalidate the discharge. If the facility fails to use the latest version of the form, then must it make any attempt to update the resident/responsible person/legal representative with any information that would be on the latest form, but not in the form used?

In (c)(5), to be clear, is the Hearing Request Form completed by the facility?

Where is your statutory authority for (d)? G.S. 131D-4.8(b) states:

An adult care home shall notify a resident, the resident’s legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at least 30 days before the resident is discharged.

I don’t see any statutory exemptions to this language, and Subparagraph (b) of this Rule, which is referenced in (d)(1) and (2), uses the language of the relevant portions of subsection (a) of 131D-4.8 verbatim.

With respect to (d)(2), line 26, to the extent that there is a statutory exemption to the 30 day notice provision in 131D-4.8(b), can you use the improvement of the health of the resident (Subparagraph (b)(2) of the Rule, 131D-4.8(a)(2) in the statute) as a grounds for waiving the notice? G.S. 131D-21(17) states:

The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home.

It doesn’t seem to me that the improving health of the resident poses “jeopardy to the health and safety of the resident or others in the home.” In fact, it would seem to me that 131D-21(17) is directly aimed at forbidding a home from declaring the resident medically improved and then suddenly leaving him or her without a place to go.

In (d), line 23, who makes the determination that it is now “practicable” to make the notice?

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

In (d)(1), line 24, to the extent the 30 day notice provision may be waived, wouldn't it be clearer just to say that the home does not need to comply with the 30 day requirement if the discharge is pursuant to Subparagraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule? Or, to directly reference the equivalent statutory language? Here, in (d)(1), you say "the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under subparagraph (b)(1)". Subparagraph (b)(1) and the statute use slightly different language ("protect the welfare" as opposed to "health or safety is endangered"). I think this introduces some ambiguity as to whether these are different standards.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident's "record" and provided to discharge locations "upon request." However, 131D-21(6) states that information in the resident's "personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law." Is there an applicable State or federal law? It's not cited in the Rule or the History Note.

In (e)(1)(d), p.5, line 3, I'm unsure what the language "and as disclosed in the resident contract signed upon the resident's admission to the facility" means in this context. Please explain and clarify the language of the Rule.

In (e)(2), line 4, what is an "intervention"?

In (g), line 12, is "sufficient preparation and orientation" defined by (1)-(5)?

In (g)(2), line 19, please define "appropriate".

In (g)(2)(A), line 20-21, please define "not appropriate".

In (g)(2)(A), line 21, what is the "local adult care home resident discharge team"?

In (g)(2)(B), line 23, was "responsible person" and "individual identified upon admission to receive a copy of the discharge notice on behalf of the resident" omitted intentionally?

In (g)(3), line 26, would the resident/legal representative/responsible person need to sign a release for this information to be provided to the caregiver? This seems to include medical and personal records covered by 131D-21(6) which must be kept confidential.

In (g)(3)(F), line 33, is the facility required to provide the actual medications themselves?

In (g)(4)(B), p.6, line 1, what "agency" are you referring to?

In (g)(5), line 3, add a comma following "representative".

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

In (g)(5), line 3, is “responsible party” different than “responsible person” used elsewhere?

In (i), line 13, was “legal representative” intentionally omitted?

In (i), lines 16-17, to be clear, this exception refers to discharges or transfers for health or safety reasons that are initiated by the resident, rather than the facility, correct?

In (j), line 21, what is a “bed hold policy”? Is there a rule or statute that requires one?

In (j), lines 22-24, is a discharge where there is no physician documented level of care change possible? It doesn't seem to fit under any of the circumstances in (b).

In your History Note, is the duplicate reference to G.S. 131D-4.5 supposed to be a reference to G.S. 131D-4.8?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 13G .0705 is readopted as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13G .0705 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

9 ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

11 ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

13 ~~(3) the safety of other individuals in the facility is endangered;~~

14 ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~

16 ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~

18 ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

21 ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~

23 ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

26 ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~

28 ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~

31 ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~

33 ~~(4) the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications; and~~

32 ~~(F) a record of the resident's vaccinations and TB screening.~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S.~~
 24 ~~131D-4.8:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;~~

27 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 28 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 29 ~~nurse practitioner;~~

30 ~~(3) the safety of the resident or other individuals in the facility is endangered;~~

31 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 32 ~~physician, physician assistant, or nurse practitioner;~~

33 ~~(5) the resident has failed to pay the costs of services and accommodations by the payment due date~~
 34 ~~according to the resident's contract after receiving written notice of warning of discharge for failure~~
 35 ~~to pay; or~~

36 ~~(6) the discharge is mandated under G.S. 131D-2.2(a).~~

37 ~~(c) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
2 be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home
3 Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health
4 Benefits, on the internet website [6 \(2\) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing
7 Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the
8 resident's responsible person or legal representative and the individual identified upon admission to
9 receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of
10 Discharge is dated.](https://policies.ncdhhs.gov/divisional/health-benefits-nc-</u>
5 <u>medicaid/forms.</u></p></div><div data-bbox=)

11 (3) Provide the following material in accordance with the Health Insurance Portability and
12 Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:

13 (A) a copy of the resident's most current FL-2;

14 (B) a copy of the resident's current physician's orders, including medication order;

15 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
16 (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall
17 not invalidate the discharge.

18 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
19 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
20 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
21 record.

22 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
23 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

24 (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met
25 in the facility under Subparagraph (b)(1) of this Rule; or

26 (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

27 (e) The following shall be documented in the resident record and shall be made available upon request to potential
28 discharge locations:

29 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
30 Paragraph (b) of this Rule:

31 (A) documentation by physician, physician assistant or nurse practitioner as required in
32 Paragraph (b) of this Rule;

33 (B) the condition or circumstance that endangers the health or safety of the resident being
34 discharged or endangers the health or safety of individuals in the facility, and the facility's
35 action taken to address the problem prior to pursuing discharge of the resident;

36 (C) written notices of warning of discharge for failure to pay the costs of services and
37 accommodations; or

1 (D) the specific health need or condition of the resident that the facility determined could not
 2 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 3 contract signed upon the resident's admission to the facility; and

4 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
 5 toward self or others.

6 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 7 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 8 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
 9 purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident"
 10 may be the same person as the resident's legal representative or responsible person as identified in the resident's
 11 record.

12 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
 13 from the facility as evidenced by:

14 (1) explaining to the resident and responsible person or legal representative and the individual identified
 15 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 16 is necessary;

17 (2) informing the resident and responsible person or legal representative and the individual identified
 18 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 19 appropriate discharge destination; and

20 (A) If at the time of the discharge notice the discharge destination is unknown or is not
 21 appropriate for the resident, the facility shall contact the local adult care home resident
 22 discharge team to assist with placement; and

23 (B) The facility shall inform the resident and the resident's legal representative of their right to
 24 request the Regional Long-Term Care Ombudsman to serve as a member of the adult care
 25 home resident discharge team; and

26 (3) offering the following material to the caregiver with whom the resident is to be placed and providing
 27 this material as requested prior to or upon discharge of the resident:

28 (A) a copy of the resident's most current FL-2;

29 (B) a copy of the resident's most current assessment and care plan;

30 (C) a list of referrals to licensed health professionals, including mental health;

31 (D) a copy of the resident's current physician orders;

32 (E) a list of the resident's current medications;

33 (F) the resident's current medications; and

34 (G) a record of the resident's vaccinations and TB screening;

35 (4) providing written notice of the name, address and telephone number of the following, if not provided
 36 on the discharge notice required in Paragraph (c) of this Rule:

37 (A) the regional long-term care ombudsman; and

1 (B) the protection and advocacy agency established under federal law for persons with
 2 disabilities.

3 (5) providing the resident, responsible party or legal representative and the individual identified upon
 4 admission who received a copy of the discharge notice on behalf of the resident with the discharge
 5 location as determined by the adult care home resident discharge team, if convened, at or before the
 6 discharge hearing, if the location is known to the facility.

7 (h) If an appeal hearing is requested:

8 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
 9 person, and the Hearing Unit copies of all documents and records that the facility intends to use at
 10 the hearing at least five working days prior to the scheduled hearing; and

11 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
 12 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

13 (i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written
 14 notice from the resident or responsible person which means the resident or responsible person may be charged for the
 15 days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the
 16 required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would
 17 jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the
 18 resident or responsible person shall be established in the resident contract or the house rules provided to the resident
 19 or responsible person upon admission.

20 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 21 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 22 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
 23 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
 24 requirements in this Rule apply.

25
 26 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
 27 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
 28 *Eff. April 1, 2001;*
 29 *Temporary Amendment Eff. July 1, 2003;*
 30 *Amended Eff. July 1, 2004. 2004;*
 31 *Readopted Eff. January 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13G .1301

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(1), line 9, who determines that the resident has medical symptoms warranting the use of restraints? The physician who has to write the order? Please clarify in the Rule.

In (a)(2), line 11 and (a)(5), line 16, please define what constitutes an “emergency”. See also (d)(5).

In (a)(2), line 11, I think the reference to paragraph (e) should be to paragraph (d).

In (a)(3), line 13, who determines what constitutes “safety”? What standards are used to determine that a restraint provides “safety”?

In (a)(4) and in (a)(7), are the “alternatives” referenced here the ones discussed in the Note at the end of (a)?

In (a)(4), lines 14-15, who determines what prevents a potential decline in the resident’s functioning, and what standards are used to make that determination?

In (a)(5), line 17, I think the reference to paragraph (d) should be to paragraph (c).

In the Notes at the end of (a) and (b), is this language provided only for illustrative purposes?

In the Note after (a), line 21, there is an extra space following the colon.

In (b), line 26, was the “responsible person” intentionally omitted?

In (b), line 26, just to be clear, before putting a resident in restraints, the facility has to ask the resident for consent?

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

In (b), line 28, delete the “and” following “request” and add a comma. Also add a comma following “use”.

In the note following (b), line 34, add a comma following “depression”.

In (c)(1), p.2, to be clear, the physician who issues the order under (a) is not part of the team?

It appears that some of the language and requirements in (c) are the same as those in (a). Are the requirements of (a) met through complying with the assessment requirements in (c)?

In (d)(1)(D), line 24, to be clear, the resident may only be released from restraints for two hours at a time?

In (d)(5), line 31, define an “emergency situation”. See also (a)(2) and (a)(5).

In (f), p.3, line 7, the Rule states that the staff applying restraints must be validated under Rule .504. Rule .0504 refers to the tasks in Rule .0903. Rule .0903(a)(17) is the only mention of restraints, and it says “the care of residents who are physically restrained and the use of care practices as alternatives to restraints.” Would applying restraints fall within “the care of residents who are restrained”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 13G .1301 is readopted as published in 37:18 NCR 1874-1882 as follows:

2
3 **SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

4
5 **10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which~~ that restricts freedom of movement or normal
8 access to one's body, shall be:

- 9 (1) used only in those circumstances in which the resident has medical symptoms that warrant the use
10 of restraints and not for discipline or convenience purposes;
- 11 (2) used only with a written order from a physician except in emergencies, according to Paragraph (e)
12 of this Rule;
- 13 (3) the least restrictive restraint that would provide safety;
- 14 (4) used only after alternatives that would provide safety to the resident and prevent a potential decline
15 in the resident's functioning have been tried and documented in the resident's record.
- 16 (5) used only after an assessment and care planning process has been completed, except in emergencies,
17 according to Paragraph (d) of this Rule;
- 18 (6) applied correctly according to the manufacturer's instructions and the physician's order; and
- 19 (7) used in conjunction with alternatives in an effort to reduce restraint use.

20 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
21 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
22 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
23 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
24 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
25 providing supportive devices such as wedge cushions.

26 (b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an
27 order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the
28 request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or
29 the resident's legal representative may accept or refuse restraints based on the information provided. Documentation
30 shall consist of a statement signed by the resident or the resident's legal representative indicating the signer has been
31 informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the
32 medical indicators for restraint use.

33 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
34 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

35 (c) In addition to the requirements in Rule ~~43F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
36 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
37 (a)(5) of this Rule shall meet the following requirements:

- 1 (1) The assessment and care planning shall be implemented through a team process with the team
2 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
3 resident's responsible person or legal representative. If the resident or resident's responsible person
4 or legal representative is unable to participate, there shall be documentation in the resident's record
5 that they were notified and declined the invitation or were unable to attend.
- 6 (2) The assessment shall include consideration of the following:
7 (A) medical symptoms that warrant the use of a restraint;
8 (B) how the medical symptoms affect the resident;
9 (C) when the medical symptoms were first observed;
10 (D) how often the symptoms occur;
11 (E) alternatives that have been provided and the resident's response; and
12 (F) the least restrictive type of physical restraint that would provide safety.
- 13 (3) The care plan shall include the following:
14 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
15 reduce restraint time once the resident is restrained;
16 (B) the type of restraint to be used; and
17 (C) care to be provided to the resident during the time the resident is restrained.
- 18 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:
19 (1) The order shall indicate:
20 (A) the medical need for the restraint;
21 (B) the type of restraint to be used;
22 (C) the period of time the restraint is to be used; and
23 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
24 minutes for checks and two hours for releases.
- 25 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
26 the resident's physician of the order within seven days.
- 27 (3) The restraint order shall be updated by the resident's physician at least every three months following
28 the initial order.
- 29 (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign
30 the existing order.
- 31 (5) In emergency situations, the administrator or administrator-in-charge shall make the determination
32 relative to the need for a restraint and its type and duration of use until a physician is contacted.
33 Contact with a physician shall be made within 24 hours and documented in the resident's record.
- 34 (6) The restraint order shall be kept in the resident's record.
- 35 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
36 record and include the following:
37 (1) restraint alternatives that were provided and the resident's response;

- 1 (2) type of restraint that was used;
- 2 (3) medical symptoms warranting restraint use;
- 3 (4) the time the restraint was applied and the duration of restraint use;
- 4 (5) care that was provided to the resident during restraint use; and
- 5 (6) behavior of the resident during restraint use.

6 (f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this
7 Subchapter and been validated on restraint use according to Rule .0504 of this Subchapter.

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9 *History Note: Authority G.S. 131D-2.16; 143B-165;*

10 *Temporary Adoption Eff. July 1, 2004;*

11 *Temporary Adoption Expired March 12, 2005;*

12 *Eff. June 1, ~~2005~~ 2005;*

13 *Readopted Eff. October 1, 2023.*