

## RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: N.C. Department of Health and Human Services/DHSR

RULE CITATION: 10A NCAC 14E .0106, .0107, and .0109.

DATE ISSUED: October 18, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority (all rules)
  - X Unclear or ambiguous (.0106 and .0109)
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff hereby incorporates by reference the staff opinion issued October 18, 2023 recommending objection to Rules 10A NCAC 14E .0104, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331.

### Statutory Authority

Under Rule .0106, the Department sets out the contents of an application for licensure for new freestanding abortion clinics. Rule .0109 sets out the contents for an application to renew this license. In both Rules, the Department requires that the application set forth details related to the building's management, sanitation services, the clinic's medical director and medical staff, the director of nursing and nursing staff, and the consulting pathologist. Additionally, in Rule .0109(b), the Department requires that an agency seeking renewal of a license specify "the number of procedures performed during the reporting period" and "the number of patients that were transferred to a hospital during a reporting period."

Brian Liebman  
Commission Counsel

As explained in the opinion incorporated by reference, it is staff's opinion that the Department of Health and Human Services lacks statutory authority to impose requirements on freestanding abortion clinics which are outside the explicit scope of the Abortion Clinic Licensure Act ("the Act"). While the Department is authorized by G.S. 131E-153.2 to specify the "necessary and reasonable information" to be contained in the application for licensure, it is staff's opinion that it would be neither necessary nor reasonable to require an agency to submit information to the Department for approval as part of the licensure process when the Department has no authority to otherwise regulate in those areas.

Thus, to the extent that the Department seeks to regulate topics such as the clinic's management, sanitation, recordkeeping, and staffing through the licensure process, when it is unable to do so directly through other rules, it is staff's opinion that the Department lacks statutory authority for Rules .0106 and .0109.

Similarly, in Rule .0107, the Department conditions licensure on a finding that the facility has a board-certified or board-eligible OB-GYN available in the event of complications from an abortion procedure. While other parts of Session Law 2023-14 appear to contain requirements that a physician perform any surgical abortion and address any complications arising from the procedure, those requirements do not appear in Part II of the Session Law generally or G.S. 131E-153.2 specifically. The Department cites no other authority for Rule .0107. Consequently, to the extent that the Department conditions licensure on a requirement that has no basis within the Act, it is staff's opinion that the Department lacks statutory authority for Rule .0107.

#### Lack of Clarity

Notwithstanding the Department's lack of statutory authority for these Rules, the language of both Rules fails to clearly state what information the Department would require as part of the licensure application and renewal application. In paragraph (c) of Rule .0106 and paragraph (b) of Rule .0109, the Department states that the application form shall set forth "ownership disclosure", "building owner", "building management", "sanitation services", "medical director", "other medical staff", "Director of nursing", "other nursing staff", and "Consulting pathologist."

Neither rule states what information a clinic must provide about each topic. For instance, it is entirely unclear what details an applicant must provide about "sanitation services," or what "other medical staff" might mean. While the Rule specifies that the "name" of the applicant must be provided, it makes no such requirement for "medical director" or "Director of nursing." Ostensibly a clinic could comply by providing the directors' names and addresses, or by simply certifying that they employ individuals in each role. Further, "building owner" is repeated twice, for reasons unclear to staff, and it is unclear what difference, if any, there is between the "ownership disclosure" and "building owner".

Additionally, in Rule .0109(b), the Department further requires that an agency seeking renewal of a license specify "the number of procedures performed during the reporting period" and "the number of patients that were transferred to a hospital during a reporting period." The Department does not define the term "procedure" nor the term "reporting period." As such, it is unclear what information the clinic is required to preserve and report to the Department.

Thus, it is staff's opinion that both Rules .0106 and .0109 lack clarity to the extent that they fail to specify what information must be provided on the application for licensure and renewal of licensure, respectively.

Based on the foregoing, staff recommends objection to the above-captioned rules for lack of statutory authority pursuant to G.S. 150B-21.9(a)(1) and for lack of clarity pursuant to G.S. 150B-21.9(a)(2).

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

SESSION LAW 2023-14  
SENATE BILL 20

AN ACT TO MAKE VARIOUS CHANGES TO HEALTH CARE LAWS AND TO APPROPRIATE FUNDS FOR HEALTH CARE PROGRAMS.

The General Assembly of North Carolina enacts:

**PART I. ABORTION LAW REVISIONS**

**SECTION 1.1.** G.S. 14-45.1 is repealed.

**SECTION 1.2.** Article 1I of Chapter 90 of the General Statutes reads as rewritten:  
"Article 1I.

~~"Woman's Right to Know Act.~~Abortion Laws.

**"§ 90-21.80. Short title.**

This act may be cited as ~~the "Woman's Right to Know Act."~~"Abortion Laws."

**"§ 90-21.81. Definitions.**

The following definitions apply in this Article:

- (1) Abortion. – A surgical abortion or a medical abortion, as those terms are defined in this section, respectively.
- (1a) Abortion-inducing drug. – A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will, with reasonable likelihood, cause the death of the unborn child. This includes the off-label use of drugs such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate, approved by the United States Food and Drug Administration to induce abortions or known to have abortion-inducing properties, prescribed specifically with the intent of causing an abortion, whether or not there exists a diagnosed pregnancy at the time of prescription or dispensing, for the purposes of the woman taking the drugs at a later date to cause an abortion rather than contemporaneously with a clinically diagnosed pregnancy. This definition shall not include drugs that may be known to cause an abortion but are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.
- (1b) Adverse event. – Any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related.
- (1c) ~~Abortion.~~Surgical abortion. – The use or prescription of any instrument, medicine, drug, or other substance instrument or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:
  - a. Increase the probability of a live birth.
  - b. Preserve the life or health of the child.
  - c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.



- (3) The presence or presumed presence of Down syndrome.

...."

**SECTION 1.4.(c)** G.S. 90-21.6 reads as rewritten:

**"§ 90-21.6. Definitions.**

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (1a) "Unemancipated minor" or "minor" means any Unemancipated minor or minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
- (2) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child."

**SECTION 1.5.(a)** Section 1.3 of this Part becomes effective July 1, 2023, and applies to offenses committed on or after that date. The remainder of this Part becomes effective on July 1, 2023.

**SECTION 1.5.(b)** Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

## **PART II. SUITABLE FACILITIES FOR THE PERFORMANCE OF SURGICAL ABORTIONS**

**SECTION 2.1.** Article 1I of Chapter 90 of the General Statutes is amended by adding a new section to read:

**"§ 90-21.82A. Suitable facilities for the performance of surgical abortions.**

- (a) The following definitions apply in this section:
  - (1) Abortion clinic. – As defined in G.S. 131E-153.1.
  - (2) Ambulatory surgical facility. – As defined in G.S. 131E-176.
  - (3) Hospital. – As defined in G.S. 131E-176.
- (b) During the first 12 weeks of pregnancy, a physician licensed to practice medicine under this Chapter may perform a surgical abortion in a hospital, an ambulatory surgical facility, or an abortion clinic; provided, however, that (i) the clinic has been licensed by the Department of Health and Human Services to be a suitable facility for the performance of abortions and (ii) the licensed physician performs the abortion in accordance with this Article and Article 1K of this Chapter.
- (c) After the twelfth week of pregnancy, a physician licensed to practice medicine under this Chapter may not perform a surgical abortion as permitted under North Carolina law in any facility other than a hospital."

**SECTION 2.2.** Article 6 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 4A. Abortion Clinic Licensure.

**"§ 131E-153. Title; purpose.**

- (a) This Part shall be known as the "Abortion Clinic Licensure Act."
- (b) The purpose of this Part is to provide for the development, establishment, and enforcement of basic standards:
  - (1) For the care and treatment of individuals in abortion clinics; and
  - (2) For the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics.

**"§ 131E-153.1. Definitions.**

The following definitions apply in this Part, unless otherwise specified:

- (1) Abortion clinic. – A freestanding facility, that is neither physically attached nor operated by a hospital, for the performance of abortions during the first 12 weeks of pregnancy.
- (2) Commission. – The North Carolina Medical Care Commission.
- (3) Operating room. – A room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.

**"§ 131E-153.2. Licensure requirement.**

(a) No person shall operate an abortion clinic without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules adopted by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an abortion clinic shall be annually renewed upon the filing and the Department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises.

**"§ 131E-153.3. Fair billing and collections practices for abortion clinics.**

All abortion clinics licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91.

**"§ 131E-153.4. Adverse action on a license.**

(a) Subject to subsection (b) of this section, the Department is authorized to deny a new or renewal application for a license and to amend, recall, suspend, or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules adopted under this Part.

(b) Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a) of this section.

**"§ 131E-153.5. Rules and enforcement.**

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Ambulatory Surgical Facility Licensure Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to abortion clinics.

**"§ 131E-153.6. Inspections.**

(a) The Department shall make or cause to be made inspections of abortion clinics as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau, or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the

Department who make these inspections may review any writing or other record in any recording medium that pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects, in writing, to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided, however, that the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information is not disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object, in writing, to this release of information or review of the records and that by objecting, in writing, the patient may prohibit the inspection or release of the records.

**"§ 131E-153.7. Penalties.**

A person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense.

**"§ 131E-153.8. Injunction.**

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an abortion clinic without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure."

**SECTION 2.3.** G.S. 131E-272 reads as rewritten:

**"§ 131E-272. Initial licensure fees for new facilities.**

The following fees are initial licensure fees for new facilities and are applicable as follows:

<b>Facility Type</b>	<b>Number of Beds</b>	<b>Initial License Fee</b>	<b>Initial Bed Fee</b>
Adult Care Licensure	More than 6	\$400.00	\$19.00
	6 or Fewer	\$350.00	\$ -
Acute and Home Care General Acute Hospitals	1-49	\$550.00	\$19.00
	50-99	\$750.00	\$19.00
	100-199	\$950.00	\$19.00



	200-399	\$1150.00	\$19.00
	400-699	\$1550.00	\$19.00
	700+	\$1950.00	\$19.00
Other Hospitals		\$1050.00	\$19.00
Home Care	-	\$560.00	\$ -
Ambulatory Surgical Ctrs.	-	\$900.00	\$85.00
Hospice (Free Standing)	-	\$450.00	\$ -
Abortion Clinics	-	<del>\$750.00</del> \$850.00	\$ -
Cardiac Rehab. Centers	-	\$425.00	\$ -
Nursing Home & L&C			
Nursing Homes		\$470.00	\$19.00
All Others		\$ -	\$19.00
Mental Health Facilities			
Nonresidential		\$265.00	\$ -
Non ICF/IID	6 or fewer	\$350.00	\$ -
ICF/IID only	6 or fewer	\$900.00	\$ -
Non ICF/IID	More than 6	\$525.00	\$19.00
ICF/IID only	More than 6	\$850.00	\$19.00."

**SECTION 2.4.** No later than October 1, 2023, the Department of Health and Human Services shall adopt the rules necessary to administer this Part.

**SECTION 2.5.** Section 2.4 of this Part becomes effective July 1, 2023. The remainder of this Part becomes effective on October 1, 2023.

### **PART III. BORN-ALIVE ABORTION SURVIVORS PROTECTION**

**SECTION 3.(a)** Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1M.

"Born-Alive Abortion Survivors Protection Act.

**"§ 90-21.140. Definitions.**

As used in this Article, the following definitions apply:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
- (3) Born alive. – With respect to a member of the species *Homo sapiens*, this term means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

**"§ 90-21.141. Findings.**

The General Assembly makes the following findings:

- (1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws.
- (2) Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care.

1 10A NCAC 14E .0106 is amended under temporary procedures with changes as follows:

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3 **10A NCAC 14E .0106 APPLICATION**

4 (a) Prior to the admission of patients, an ~~application from the applicant for a new clinic for certification [licensure]~~  
5 ~~shall be submitted to and approved by the Division. submit an application for licensure and receive approval from the~~  
6 ~~Division.~~

7 (b) Application forms may be obtained by contacting the Division ~~at 2712 Mail Service Center Raleigh, NC 27699-~~  
8 ~~2712.~~

9 (c) The application form shall set forth: ~~the ownership, staffing patterns, clinical services to be rendered, [and]~~  
10 ~~professional staff in charge of services, [services.] and general information that would be helpful to the Division's~~  
11 ~~understanding of the clinic's operating program.~~

12 (1) ~~Name of applicant;~~

13 (2) ~~Name of facility;~~

14 (3) ~~Ownership disclosure;~~

15 (4) ~~Building owner;~~

16 (5) ~~Building owner;~~

17 (6) ~~Building management;~~

18 (7) ~~Sanitation services;~~

19 (8) ~~Medical director;~~

20 (9) ~~Other medical staff;~~

21 (10) ~~Director of nursing;~~

22 (11) ~~Other nursing staff; and~~

23 (12) ~~Consulting pathologist.~~

24 (d) After construction requirements in Section .0200 of this Subchapter have been met and the application for  
25 ~~certification~~ licensure has been received and approved, the Division shall conduct an on-site, ~~certification~~ licensure  
26 survey.

27 (e) ~~Each certificate [license] must be renewed at the beginning of each calendar year. The governing authority shall~~  
28 ~~file an application for renewal of certification [licensure] with the Division at least 30 days prior to the date of~~  
29 ~~expiration on forms furnished by the Division. Failure to file a renewal application shall result in expiration of the~~  
30 ~~certificate [license] to operate.~~

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32 *History Note:* Authority *G.S. 14-45.1(a); 131E-153; 131E-153.2; S.L. 2023-14, s. [2.2]; 2.4;*

33 *Eff. February 1, 1976;*

34 *Readopted Eff. December 19, 1977;*

35 *Amended Eff. July 1, 1994;*

36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24,*  
37 *2019;*

1                   *Codifier determined that agency's findings of need did not meet criteria for emergency rule on June*  
2                   *22, 2023;*  
3                   *Emergency Rule Eff. June 30, 2023;*  
4                   *Repealed Eff. July 1, 2023 pursuant to G.S. ~~150B-21.7~~. 150B-21.7;*  
5                   *Temporary Amendment Eff. October 27, 2023.*

1 10A NCAC 14E .0107 is amended under temporary procedures with changes as follows:

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3 **10A NCAC 14E .0107 ISSUANCE OF ~~CERTIFICATE~~ LICENSE**

4 (a) The Division shall issue a ~~certificate~~ license if it finds the facility can:

5 (1) Comply with all requirements described in this Subchapter; and

6 (2) ~~Assure that, in the event that complications arise from the abortion procedure, an OB-GYN board~~  
7 ~~certified~~ Have a board certified OB-GYN or board eligible physician by the American Board of  
8 Obstetrics and Gynecology shall be ~~available.~~ available in the event that complications arise from  
9 an abortion procedure.

10 (b) Each ~~certificate~~ license shall be issued only for the premises and persons or organizations named in the application  
11 and shall not be transferable.

12 (c) The governing authority shall notify the Division in writing, within 10 working days, of any change in the name  
13 of the facility or change in the name of the administrator.

14 (d) The facility shall report to the Division all incidents, within 10 working days, of vandalism to the facility such as  
15 fires, ~~explosions~~ explosions, or other action ~~causing disruption of that prevents~~ services ~~from [being provided.]~~  
16 providing abortion services.

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18 *History Note:* Authority ~~G.S. 14-45.1(a);~~ 131E-153; 131E-153.2; S.L. 2023-14, s. ~~2.2~~; 2.4;

19 *Eff. February 1, 1976;*

20 *Readopted Eff. December 19, 1977;*

21 *Amended Eff. July 1, 1994;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24,*  
23 *2019;*

24 *Codifier determined that agency's findings of need did not meet criteria for emergency rule on June*  
25 *22, 2023;*

26 *Emergency Rule Eff. June 30, 2023;*

27 *Repealed Eff. July 1, 2023 pursuant to G.S. ~~150B-21.7.~~ 150B-21.7.*

28 *Temporary Amendment Eff. October 27, 2023.*

1 10A NCAC 14E .0109 is amended under temporary procedures with changes as follows:

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**10A NCAC 14E .0109 RENEWAL**

~~(a)~~ Each certificate, license, ~~unless previously suspended or revoked, pursuant to the applicable rules and statutes shall be renewable annually renewed at the beginning of each calendar year. upon the filing of an application, payment of the non refundable renewal fee as defined in G.S. 131E-269, 131E-153.2, and approval by the Division.~~

(b) The renewal application form shall set forth:

(1) ~~Name of applicant;~~

(2) ~~Name of facility;~~

(3) ~~Ownership disclosure;~~

(4) ~~Building owner;~~

(5) ~~Building owner;~~

(6) ~~Building management;~~

(7) ~~Sanitation services;~~

(8) ~~Medical director;~~

(9) ~~Other medical staff;~~

(10) ~~Director of nursing;~~

(11) ~~Other nursing staff;~~

(12) ~~Consulting pathologist;~~

(13) ~~The number of procedures performed during the reporting period; and~~

(14) ~~The number of patients that were transferred to a hospital during a reporting period.~~

~~((b))~~(c) Upon the filing of a renewal application, the clinic must pay a non-refundable renewal fee as defined in G.S. ~~131E-153.2.~~

~~((e))~~(d) An application for renewal of licensure must be filed with the Division at least 30 days prior to the date of expiration. Renewal application forms shall be furnished by the Division.

~~((d))~~(e) Failure to file a renewal application shall result in expiration of the license to operate.

*History Note: Authority G.S. 14-45.1(a); 131E-269; 131E-153; 131E-153.2; 143B-10; S.L. 2023-14, s. 2.2; 2.4; Eff. February 1, 1976; Readopted Eff. December 19, 1977; Amended Eff. October 1, 2015; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 24, 2019; Codifier determined that agency's findings of need did not meet criteria for emergency rule on June 22, 2023; Emergency Rule Eff. June 30, 2023; Repealed Eff. July 1, 2023 pursuant to G.S. 150B-21.7. 150B-21.7;*

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Temporary Amendment Eff. October 27, 2023.