

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

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

RULE CITATION: 10A NCAC 14C .1102

**DEADLINE FOR RECEIPT:**

***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:

*Generally, to the rule: The rule uses the term “adult care home”; however, there appears to be multiple definitions for this term, including G.S. 131E-101, 131E-176, and 131D-2.1.*

*On line 28, “times 365 days” is colloquial and unclear because numbers are multiplied, not days. Deleting “days” would increase clarity.*

*In subparagraphs (b)(1) and (c)(1): is “projected utilization” a term that will be understood consistently by the regulated public?*

*Will “assumptions and methodology” be consistently understood among the regulated public? Is there something specific you are looking for?*

*The rule as written requires applicants to submit certain materials but does not seem to indicate who will approve the applications or how they will be evaluated. Is this information located elsewhere in rule or statute?*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .1102 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **10A NCAC 14C .1102 PERFORMANCE STANDARDS**

4 ~~(a) An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer~~  
5 ~~existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved~~  
6 ~~unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the~~  
7 ~~total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least~~  
8 ~~90 percent.~~

9 ~~(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility,~~  
10 ~~except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a~~  
11 ~~community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number~~  
12 ~~of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed~~  
13 ~~project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly~~  
14 ~~stated.~~

15 ~~(c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average~~  
16 ~~occupancy, over the nine months immediately preceding the submittal of the application, of the total number of~~  
17 ~~licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.~~

18 ~~(d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing~~  
19 ~~facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care~~  
20 ~~home beds proposed to be operated, no later than two years following the completion of the proposed project. All~~  
21 ~~assumptions, including the specific methodologies by which occupancies are projected, shall be stated.~~

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

23 (1) "Approved beds" means nursing home or adult care home beds that were issued a certificate of need  
24 but are not being used to provide services as of the application deadline for the review period.

25 (2) "Existing beds" means nursing home or adult care home beds that are being used to provide services  
26 as of the application deadline for the review period.

27 (3) "Maximum capacity" means the total number of existing, approved, and proposed nursing home or  
28 adult care home beds times 365 days.

29 (4) "Occupancy rate" means the total number of patient days of care provided in the nursing home or  
30 adult care home beds during a full fiscal year of operation divided by maximum capacity expressed  
31 as a percentage.

32 (5) "Proposed beds" means the nursing home or adult care home beds proposed in the application under  
33 review.

34 (b) An applicant proposing to develop nursing home beds pursuant to a need determination in the annual State Medical  
35 Facilities Plan in effect as of the first day of the review period shall:

36 (1) provide projected utilization of the existing, approved, and proposed beds during each of the first  
37 three full fiscal years of operation following completion of the project;

- 1           (2) project an occupancy rate for the existing, approved, and proposed beds of at least 90 percent of  
2           maximum capacity during the third full fiscal year of operation following completion of the project;  
3           and  
4           (3) provide the assumptions and methodology used to project the utilization and occupancy rate required  
5           by Subparagraphs (1) and (2) of this Paragraph.

6 (c) An applicant proposing to develop adult care home beds pursuant to a need determination in the annual State  
7 Medical Facilities Plan in effect as of the first day of the review period shall:

- 8           (1) provide projected utilization of the existing, approved, and proposed beds during each of the first  
9           three full fiscal years of operation following completion of the project;  
10          (2) project an occupancy rate for the existing, approved, and proposed beds of at least 85 percent of  
11          maximum capacity during the third full fiscal year of operation following completion of the project;  
12          and  
13          (3) provide the assumptions and methodology used to project the utilization and occupancy rate required  
14          by Subparagraphs (1) and (2) of this Paragraph.

15  
16 *History Note: Authority G.S. ~~131E-175; 131E-176; 131E-177(1); 131E-183(b)~~; S.L. 2001, c. 234;*  
17 *Eff. November 1, 1996;*  
18 *Temporary Amendment Eff. January 1, 2002;*  
19 *Amended Eff. April 1, ~~2003~~; 2003;*  
20 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .2001

**DEADLINE FOR RECEIPT:**

***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:

*No changes.*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .2001 is readopted as published in 37:02 NCR 170-174 as follows:

2

3 **SECTION .2000 – CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES**

4

5 **10A NCAC 14C .2001 DEFINITIONS**

6 ~~The following definitions in this Rule shall apply to all rules in this Section:~~

7 ~~(1) "Home Health Agency" shall have the same meaning as defined in G.S. 131E-176(12).~~

8 ~~(2) "Home Health Services" shall have the same meaning as defined in G.S. 131E-176(12).~~

9 The following definitions shall apply to this Section:

10 (1) "Home health agency" shall have the same meaning as defined in G.S. 131E-176(12).

11 (2) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan  
12 in effect as of the first day of the review period.

13

14 *History Note: Authority G.S. 131E-177(1); 131E-183(b);*

15 *Eff. September 1, 1980;*

16 *Amended Eff. March 1, 1996; July 1, 1995; July 1, 1991; February 1, 1985; May 1, ~~1983~~; 1983;*

17 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .2003

**DEADLINE FOR RECEIPT:**

***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:

*Is "projected utilization" (line 12) a term that will be understood consistently by the regulated public?*

*The rule as written requires applicants to submit certain materials but does not seem to indicate who will approve the applications or how they will be evaluated. Is this information located elsewhere in rule or statute?*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .2003 is readopted as published in 37:02 NCR 170-174 as follows:

2

3 **10A NCAC 14C .2003 PERFORMANCE STANDARDS**

4 ~~An applicant shall project, in the third year of operation, an annual unduplicated patient caseload for the county in~~  
 5 ~~which the facility will be located that meets or exceeds the minimum need used in the applicable State Medical~~  
 6 ~~Facilities Plan to justify the establishment of a new home health agency office in that county. An applicant shall not~~  
 7 ~~be required to meet this performance standard if the home health agency office need determination in the applicable~~  
 8 ~~State Medical Facilities Plan was not based on application of the standard methodology for a Medicare certified home~~  
 9 ~~health agency office.~~

10 An applicant proposing to develop a new Medicare-certified home health agency pursuant to a need determination in  
 11 the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

- 12 (1) provide projected utilization for each of the first three full fiscal years of operation following  
 13 completion of the project;  
 14 (2) project to serve at least 325 residents of the proposed service area during the third full fiscal year of  
 15 operation following completion of the project; and  
 16 (3) provide the assumptions and methodology used to provide the projected utilization required in Item  
 17 (1) of this Rule.

18

19 *History Note: Authority G.S. 131E-177(1); 131E-183(b);*  
 20 *Eff. March 1, 1996;*  
 21 *Temporary Amendment Eff. January 1, 2002;*  
 22 *Amended Eff. April 1, ~~2003~~ 2003;*  
 23 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .2801

**DEADLINE FOR RECEIPT:**

***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:

*Is "days of care" (line 30) a defined term?*

*The phrase "inpatient rehab days of care" is unclear. Does it mean "days of inpatient rehab care"?*

*Replace "rehab" with "rehabilitation". Neither the statutes nor the code uses "rehab".*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .2801 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **SECTION .2800 - CRITERIA AND STANDARDS FOR REHABILITATION SERVICES**

4  
5 **10A NCAC 14C .2801 DEFINITIONS**

6 ~~The definitions in this Rule will apply to all rules in this Section.~~

- 7 (1) ~~"Rehabilitation Facility" means a facility as defined in G.S. 131E-176.~~
- 8 (2) ~~"Rehabilitation" means the process to maintain, restore or increase the function of disabled~~  
9 ~~individuals so that an individual can live in the least restrictive environment, consistent with his or~~  
10 ~~her objective.~~
- 11 (3) ~~"Outpatient Rehabilitation Clinic" is defined as a program of coordinated and integrated outpatient~~  
12 ~~services, evaluation, or treatment with emphasis on improving the functional level of the person in~~  
13 ~~coordination with the patient's family.~~
- 14 (4) ~~"Rehabilitation Beds" means inpatient beds for which a need determination is set forth in the current~~  
15 ~~State Medical Facilities Plan and which are located in a hospital licensed pursuant to G.S. 131E-77.~~
- 16 (5) ~~"Traumatic Brain Injury" is defined as an insult to the brain that may produce a diminished or altered~~  
17 ~~state of consciousness which results in impairment of cognitive abilities or physical functioning. It~~  
18 ~~can also result in the disturbance of behavioral or emotional functioning. These impairments may~~  
19 ~~be either temporary or permanent and cause partial or total functional disability or psychological~~  
20 ~~maladjustment.~~
- 21 (6) ~~"Stroke" (cerebral infarction, hemorrhage) is defined as the sudden onset of a focal neurologic~~  
22 ~~deficit due to a local disturbance in the blood supply to the brain.~~
- 23 (7) ~~"Spinal Cord Injury" is defined as an injury to the spinal cord that results in the loss of motor or~~  
24 ~~sensory function.~~
- 25 (8) ~~"Pediatric Rehabilitation" is defined as inpatient rehabilitation services provided to persons 14 years~~  
26 ~~of age or younger.~~

27 The following definitions shall apply to this Section:

- 28 (1) "Approved rehabilitation (rehab) beds" means rehab beds that were issued a certificate of need but  
29 are not licensed as rehab beds as of the application deadline for the review period.
- 30 (2) "Average daily census (ADC)" means the total number of inpatient rehab days of care provided  
31 during a full fiscal year of operation divided by 365 days.
- 32 (3) "Existing rehab beds" means rehab beds that are licensed as rehab beds as of the application deadline  
33 for the review period.
- 34 (4) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed  
35 rehab beds expressed as a percentage.
- 36 (5) "Proposed rehab beds" means the rehab beds proposed in the application under review.

37

1 *History Note: Authority G.S. 131E-177; 131E-183(b);*  
2 *Eff. May 1, 1991;*  
3 *Amended Eff. February 1, 1993;*  
4 *Temporary Amendment Eff. February 1, 2006;*  
5 *Amended Eff. November 1, ~~2006~~ 2006;*  
6 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .2803

**DEADLINE FOR RECEIPT:**

***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:

*Is "projected utilization" (line 12) a term that will be understood consistently by the regulated public?*

*In item 2, the verb "document" (line 15) is used, while "project" is used in most of the similar rules (e.g., .1102(b)(2) & (b)3), .2003 line 14). This suggests a distinction, is this intentional?*

*The rule as written requires applicants to submit certain materials but does not seem to indicate who will approve the applications or how they will be evaluated. Is this information located elsewhere in rule or statute?*

*Replace "rehab" with "rehabilitation". Neither the statutes nor the code uses "rehab".*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .2803 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **10A NCAC 14C .2803 PERFORMANCE STANDARDS**

4 ~~(a) An applicant proposing to establish new rehabilitation beds shall not be approved unless the average occupancy,~~  
5 ~~over the nine months immediately preceding the submittal of the application, of the total number of licensed~~  
6 ~~rehabilitation beds within the facility in which the new beds are to be operated was at least 80 percent.~~

7 ~~(b) An applicant proposing to establish new rehabilitation beds shall not be approved unless occupancy is projected~~  
8 ~~to be 80 percent for the total number of rehabilitation beds to be operated in the facility no later than two years~~  
9 ~~following completion of the proposed project.~~

10 An applicant proposing to develop rehab beds pursuant to a need determination in the annual State Medical Facilities  
11 Plan in effect as of the first day of the review period shall:

12 (1) provide projected utilization of all existing, approved, and proposed rehab beds on the hospital  
13 license during each of the first three full fiscal years of operation following completion of the  
14 project;

15 (2) document that the occupancy rate for all existing, approved, and proposed rehab beds on the hospital  
16 license shall be at least 70 percent during the third full fiscal year of operation following completion  
17 of the project; and

18 (3) provide the assumptions and methodology used to provide the projected utilization and occupancy  
19 rate required in Items (1) and (2) of this Rule.

20  
21 *History Note: Authority G.S. 131E-177; ~~131E-183~~; 131E-183(b);*

22 *Eff. November 1, ~~1996~~; 1996;*

23 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .3801

**DEADLINE FOR RECEIPT:**

***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:

*Is “days of care” (line 20) a defined term?*

*The phrase “acute care days of care” is unclear. Does it mean “days of acute care”?*

*On line 21, “divided by 365 days” is colloquial and unclear because numbers are divided, not days. Deleting “days” would increase clarity.*

*On line 26, there is a missing comma between “approved” and “and”.*

*The definition of “occupancy rate” in the other rules ends with “expressed as a percentage.” Should this be included in line 27?*

*Subparagraph (10) (starting at line 34) does not appear to be defining the phrase “Target occupancy percentage”. Instead, it appears to set standards for target occupancy percentages. Placing this in a definition rule is unclear. One way to make this clearer would be to move these targets into .3803 as a separate item or paragraph.*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .3801 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **SECTION .3800 - CRITERIA AND STANDARDS FOR ACUTE CARE HOSPITAL BEDS**

4  
5 **10A NCAC 14C .3801 DEFINITIONS**

6 ~~The following definitions shall apply to all Rules in this Section:~~

7 (1) ~~"Acute care beds" means acute care beds licensed by the Division of Health Service Regulation in~~  
8 ~~accordance with standards in 10A NCAC 13B .6200, and located in hospitals licensed pursuant to~~  
9 ~~G.S. 131E-79.~~

10 (2) ~~"Average daily census" means the number of days of inpatient acute care provided in licensed acute~~  
11 ~~care beds in a given year divided by 365 days.~~

12 (3) ~~"Campus" shall have the same meaning as defined in G.S. 131E-176(2c).~~

13 (4) ~~"Service Area" means the single or multi county area as used in the development of the acute care~~  
14 ~~bed need determination in the applicable State Medical Facilities Plan.~~

15 The following definitions shall apply to this Section:

16 (1) "Applicant hospital" means the hospital where the applicant proposes to develop the new acute care  
17 beds and includes all campuses on one license.

18 (2) "Approved beds" means acute care beds in a hospital that were issued a certificate of need but are  
19 not licensed as of the application deadline for the review period.

20 (3) "Average daily census (ADC)" means the total number of acute care days of care provided during  
21 a full fiscal year of operation divided by 365 days.

22 (4) "Existing beds" means acute care beds in a hospital that are licensed as of the application deadline  
23 for the review period.

24 (5) "Hospital system" means all hospitals in the proposed service area owned or operated by the  
25 applicant or a related entity.

26 (6) "Occupancy rate" means the ADC divided by the total number of existing, approved and proposed  
27 acute care hospital beds.

28 (7) "Proposed beds" means the acute care beds proposed to be developed in a hospital in the application  
29 under review.

30 (8) "Qualified applicant" shall have the same meaning as defined in the annual State Medical Facilities  
31 Plan in effect as of the first day of the review period.

32 (9) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan  
33 in effect as of the first day of the review period.

34 (10) "Target occupancy percentage" means:

35 (a) 66.7 percent if the ADC is less than 100;

36 (b) 71.4 percent if the ADC is 100 to 200;

37 (c) 75.2 percent if the ADC is 201 to 399; or

1                    (d) 78.0 percent if the ADC is greater than 400.

2

3    *History Note: Authority G.S. 131E-177(1); ~~131E-183~~; 131E-183(b);*

4                    *Temporary Adoption Eff. January 1, 2004;*

5                    *Eff. August 1, ~~2004~~ 2004;*

6                    *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10 NCAC 14C .3803

**DEADLINE FOR RECEIPT:**

***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 Subparagraph (1), in what way is the applicant to “document” their qualifications?*

*Is “projected utilization” (lines 17 and 23) a term that will be understood consistently by the regulated public?*

*The rule as written requires applicants to submit certain materials but does not seem to indicate who will approve the applications or how they will be evaluated. Is this information located elsewhere in rule or statute?*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .3803 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **10A NCAC 14C .3803 PERFORMANCE STANDARDS**

4 ~~(a) An applicant proposing to develop new acute care beds shall demonstrate that the projected average daily census~~  
5 ~~(ADC) of the total number of licensed acute care beds proposed to be licensed within the service area, under common~~  
6 ~~ownership with the applicant, divided by the total number of those licensed acute care beds is reasonably projected to~~  
7 ~~be at least 66.7 percent when the projected ADC is less than 100 patients, 71.4 percent when the projected ADC is~~  
8 ~~100 to 200 patients, and 75.2 percent when the projected ADC is greater than 200 patients, in the third operating year~~  
9 ~~following completion of the proposed project or in the year for which the need determination is identified in the State~~  
10 ~~Medical Facilities Plan, whichever is later.~~

11 ~~(b) An applicant proposing to develop new acute care beds shall provide all assumptions and data used to develop the~~  
12 ~~projections required in this rule and demonstrate that they support the projected inpatient utilization and average daily~~  
13 ~~census.~~

14 An applicant proposing to develop new acute care beds in a hospital pursuant to a need determination in the annual  
15 State Medical Facilities Plan in effect as of the first day of the review period shall:

- 16 (1) document that it is a qualified applicant;  
17 (2) provide projected utilization of the existing, approved, and proposed acute care beds for the  
18 applicant hospital during each of the first three full fiscal years of operation following completion  
19 of the project;  
20 (3) project an occupancy rate of the existing, approved, and proposed acute care beds for the applicant  
21 hospital during the third full fiscal year of operation following completion of the project that equals  
22 or exceeds the target occupancy percentage;  
23 (4) provide projected utilization of the existing, approved, and proposed acute care beds for the hospital  
24 system during each of the first three full fiscal years of operation following completion of the  
25 project;  
26 (5) project an average occupancy rate of the existing, approved, and proposed acute care beds for the  
27 hospital system during the third full fiscal year of operation following completion of the project that  
28 equals or exceeds the target occupancy percentage; and  
29 (6) provide the assumptions and methodology used to project the utilization and occupancy rates  
30 required in Items (2), (3), (4), and (5) of this Rule.

31  
32 *History Note: Authority G.S. 131E-177(1); ~~131E-183~~; ~~131E-183(b)~~;*  
33 *Temporary Adoption Eff. January 1, 2004;*  
34 *Eff. August 1, 2004- 2004;*  
35 *Readopted Eff. January 1, 2023.*

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

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

RULE CITATION: 10A NCAC 14C .4001

**DEADLINE FOR RECEIPT:**

***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:

*Generally, to the Rule: Unless "HI" and "HR" are elsewhere defined, do not use abbreviations.*

*On page 1, line 28, "divided by 365 days" is colloquial and unclear because numbers are divided, not days. Deleting "days" would increase clarity.*

*On page 1, lines 31 and 34, the agency uses the term it is defining in the definition of the term. This is unclear and ambiguous.*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .4001 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **SECTION .4000 - CRITERIA AND STANDARDS FOR HOSPICE INPATIENT FACILITIES AND**  
4 **HOSPICE RESIDENTIAL CARE FACILITIES**

5  
6 **10A NCAC 14C .4001 DEFINITIONS**

7 ~~The following definitions shall apply to all rules in this Section:~~

- 8 (1) ~~"Bereavement counseling" means counseling provided to a hospice patient's family or significant~~  
9 ~~others to assist them in dealing with issues of grief and loss.~~
- 10 (2) ~~"Caregiver" means the person whom the patient designates to provide the patient with emotional~~  
11 ~~support, physical care, or both.~~
- 12 (3) ~~"Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.~~
- 13 (4) ~~"Home like" means furnishings of a hospice inpatient facility or a hospice residential care facility~~  
14 ~~as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.~~
- 15 (5) ~~"Hospice" means any coordinated program of home care as defined in G.S. 131E 176(13a).~~
- 16 (6) ~~"Hospice inpatient facility" means a facility as defined in G.S. 131E 176(13b).~~
- 17 (7) ~~"Hospice residential care facility" means a facility as defined in G.S. 131E 176(13c).~~
- 18 (8) ~~"Hospice service area" means for residential care facilities, the county in which the hospice~~  
19 ~~residential care facility will be located and the contiguous counties for which the hospice residential~~  
20 ~~care facility will provide services.~~
- 21 (9) ~~"Hospice services" means services as defined in G.S. 131E 201(5b).~~
- 22 (10) ~~"Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing~~  
23 ~~Rules.~~

24 The following definitions shall apply to this Section:

- 25 (1) "Approved beds" means HI or HR beds that were issued a certificate of need but are not licensed as  
26 of the application deadline for the review period.
- 27 (2) "Average daily census (ADC)" means the total number of days of care provided in the HI or HR  
28 beds during a full fiscal year of operation divided by 365 days.
- 29 (3) "Existing beds" means HI or HR beds that are licensed as of the application deadline for the review  
30 period.
- 31 (4) "Hospice inpatient facility (HI) beds" means HI beds licensed to provide palliative and supportive  
32 medical and other health services to meet the physical, psychological, social, spiritual, and special  
33 needs of terminally ill patients in an inpatient setting.
- 34 (5) "Hospice residential facility (HR) beds" means HR beds licensed to provide palliative and  
35 supportive medical and other health services to meet the physical, psychological, social, spiritual,  
36 and special needs of terminally ill patients in a group residential setting.

1           (6) “Occupancy rate” means the ADC divided by the total number of existing, approved, and proposed  
2           HI or HR beds expressed as a percentage.

3           (7) “Proposed beds” means the HI or HR beds proposed in the application under review.

4

5    *History Note:    Authority G.S. 131E-177(1); 131E-183(b);*  
6                    *Temporary Adoption Eff. February 1, 2006;*  
7                    *Eff. November 1, ~~2006~~ 2006;*  
8                    *Readopted Eff. January 1, 2023.*

9

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

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

RULE CITATION: 10A NCAC 14C .4003

**DEADLINE FOR RECEIPT:**

***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:

*Generally, to the Rule: Unless "HI" and "HR" are elsewhere defined, do not use abbreviations.*

*In subparagraphs (a)(1) and (b)(1): is "projected utilization" a term that will be understood consistently by the regulated public?*

*In subparagraphs (a)(2) and (b)(2), the verb "document" (lines 26 and 34) is used, while "project" is used in most of the similar rules (e.g., .1102(b)(2) & (b)3), .2003 line 14). This suggests a distinction, is this intentional?*

*In subparagraphs (a)(2) and (b)(2), the verb "document" (lines 26 and 34) is used, in what way must particulars be documented?*

*On line 24, there is a missing a comma between "existing" and "approved".*

*The rule as written requires applicants to submit certain materials but does not seem to indicate who will approve the applications or how they will be evaluated. Is this information located elsewhere in rule or statute?*

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

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 1, 2022

1 10A NCAC 14C .4003 is readopted as published in 37:02 NCR 170-174 as follows:

2  
3 **10A NCAC 14C .4003 PERFORMANCE STANDARDS**

4 ~~(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall~~  
5 ~~demonstrate that:~~

6 ~~(1) the average occupancy rate of the licensed hospice beds, for each level of care, in the facility is~~  
7 ~~projected to be at least 50 percent for the last six months of the first operating year following~~  
8 ~~completion of the project;~~

9 ~~(2) the average occupancy rate for the licensed hospice beds, for each level of care, in the facility is~~  
10 ~~projected to be at least 65 percent for the second operating year following completion of the project;~~  
11 ~~and~~

12 ~~(3) if the application is submitted to address the need for hospice residential care beds, each existing~~  
13 ~~hospice residential care facility which is located in the hospice service area operated at an occupancy~~  
14 ~~rate of at least 65 percent for the 12 month period reported on that facility's most recent Licensure~~  
15 ~~Renewal Application Form.~~

16 ~~(b) An applicant proposing to add hospice inpatient facility beds to an existing hospice inpatient facility shall~~  
17 ~~document that the average occupancy of the licensed hospice inpatient facility beds in its existing facility was at least~~  
18 ~~65 percent for the nine months immediately preceding the submittal of the proposal.~~

19 ~~(c) An applicant proposing to add residential care beds to an existing hospice residential care facility shall document~~  
20 ~~that the average occupancy of the licensed hospice residential care beds in its existing facility was at least 65 percent~~  
21 ~~for the nine months immediately preceding the submittal of the proposal.~~

22 (a) An applicant proposing to develop new HI beds pursuant to a need determination in the annual State Medical  
23 Facilities Plan in effect as of the first day of the review period shall:

24 (1) provide projected utilization of all existing approved, and proposed HI beds on the license during  
25 each of the first three full fiscal years of operation following completion of the project;

26 (2) document that the occupancy rate for all existing, approved, and proposed HI beds on the license  
27 shall be at least 65 percent during the third full fiscal year of operation following completion of the  
28 project; and

29 (3) provide the assumptions and methodology used to provide the projected utilization and occupancy  
30 rate required by Subparagraphs (1) and (2) of this Paragraph.

31 (b) An applicant proposing to develop new HR beds shall:

32 (1) provide projected utilization of all existing, approved, and proposed HR beds on the license during  
33 each of the first three full fiscal years of operation following completion of the project;

34 (2) document that the occupancy rate for all existing, approved, and proposed HR beds on the license  
35 shall be at least 65 percent during the third full fiscal year of operation following completion of the  
36 project; and

1           (3) provide the assumptions and methodology used to provide the projected utilization and occupancy  
2           rate required by Subparagraphs (1) and (2) of this Paragraph.

3

4   *History Note:*    *Authority G.S. 131E-177(1); 131E-183(b);*  
5                    *Temporary Adoption Eff. February 1, 2006;*  
6                    *Eff. November 1, 2006;*  
7                    *Temporary Amendment Eff. February 1, 2008;*  
8                    *Amended Eff. November 1, ~~2008~~ 2008;*  
9                    *Readopted Eff. January 1, 2023.*