

NORTH CAROLINA REGISTER

VOLUME 34 • ISSUE 24 • Pages 2347 – 2418

June 15, 2020

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PUBLISHED BY

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
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34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
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34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
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34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
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35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
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35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
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EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

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

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



State of North Carolina

ROY COOPER
GOVERNOR

May 12, 2020

EXECUTIVE ORDER NO. 139

**ADDITIONAL REGULATORY FLEXIBILITY TO MEET NORTH CAROLINA'S
HEALTH AND HUMAN SERVICES NEEDS**

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, and 138; and

WHEREAS, more than fifteen thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and hundreds of people in North Carolina have died from the disease; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities and health care staff may be insufficient to care for those who become sick; and

WHEREAS, North Carolina and its hospitals and physician practices need to take all reasonable actions to expand the capacity of the state's health care system and improve its ability to efficiently respond to the COVID-19 pandemic, thereby reducing the probability that the demand for care in North Carolina will outpace capacity; and

WHEREAS, in some cases, these actions will require temporarily waiving or suspending legal and regulatory constraints; and

WHEREAS, in the coming days and weeks, decisions about adding and transferring resources will require real-time decision-making; and

WHEREAS, to enable rapid decision-making, the undersigned has determined that it is in the best interest of the people of North Carolina to provide the Secretary of the Department of Health and Human Services (the “Secretary”) with authority to modify or waive enforcement of certain legal and regulatory constraints as necessary in order to expand capacity and save lives; and

WHEREAS, North Carolinians who perform asbestos management, lead abatement, or lead renovation must be accredited or certified, and they must maintain their accreditations or certifications by completing refresher training courses; and

WHEREAS, due to the recent COVID-19 restrictions, North Carolina-approved training providers are offering fewer classroom refresher training classes, and online training is not an option; and

WHEREAS, the undersigned has determined that the Secretary should be authorized to extend the expiration date of asbestos professionals’ accreditations and lead professionals’ certifications so that these professionals may continue their important work; and

WHEREAS, in Subsections 1(2) and 1(3) of Executive Order No. 119, the undersigned, with the concurrence of the Council of State, delegated to the Secretary the powers to waive local health department mandated services requirements, extend the time period for public health nurses to complete training, and extend accreditations of local health departments; and

WHEREAS, the undersigned has determined that these delegations should continue; and

WHEREAS, under N.C. Gen. Stat. § 130A-34.4(a), local health departments which fail to maintain accreditation pursuant to N.C. Gen. Stat. § 130A-34.1 shall be ineligible to receive funding from the Division of Public Health; and

WHEREAS, waiver of the enforcement of N.C. Gen. Stat. § 130A-34.1 will allow local health departments in North Carolina with conditional accreditation to continue receiving critical public health funding needed to provide essential public health services, including response to the COVID-19 pandemic; and

WHEREAS, to meet these critical needs, the undersigned has determined that the Secretary requires authority to issue emergency facility guidelines adapted to the circumstances of the COVID-19 pandemic; and

WHEREAS, the U.S. Centers for Medicare and Medicaid Services (“CMS”) issued several waivers of regulations to provide flexibility to health care providers and facilities, and to maximize the work force available to provide health care services during the COVID-19 pandemic; and

WHEREAS, the undersigned has determined that the Secretary should be delegated authority to coordinate with CMS and the President to optimally utilize the CMS waivers; and

WHEREAS, because actions to expand capacity, consistent with the CMS waivers, often affect a broad set of interlinked legal requirements, the undersigned has determined that the Secretary should be delegated authority to waive or modify enforcement of those constraints; and

WHEREAS, people in North Carolina remain in need of child care for their school-aged children due to the closure of schools; and

WHEREAS, in Executive Order No. 130, the undersigned, with the concurrence of the Council of State, authorized waiver or modification of certain child care regulations; and

WHEREAS, the evolving situation during the COVID-19 pandemic continues to raise new issues, including needs for regulatory waivers that may develop at short notice; and

WHEREAS, due to the financial hardships that many child care facilities and families of covered children are experiencing, and to provide financial assistance, it is necessary to suspend or modify certain state child care regulations; and

WHEREAS, the undersigned has determined that the Secretary should be delegated authority to waive or modify enforcement of additional child care regulations; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) determined that given the high risk of spread once COVID-19 enters a health care facility, facilities must act immediately to protect residents, families, and staff from serious illness, complications, and death; and

WHEREAS, the CDC has recommended that health care facilities limit visitors to only those essential for the patient’s physical or emotional well-being and care; and

WHEREAS, to prevent the spread of COVID-19 and coordinate with the CDC, the undersigned has determined that the Secretary should be delegated the authority to restrict visitors, in accordance with the CDC guidance, at facilities that serve as residential establishments for higher-risk persons; and

WHEREAS, the North Carolina Division of Employment Security has received over one million claims for unemployment since March 10, 2020; and

WHEREAS, historically, applications for Medicaid rise during periods of increased unemployment, and a surge in applications is anticipated; and

WHEREAS, because of the COVID-19 pandemic, many people have lost or will lose their health insurance, and it will be essential to extend Medicaid to them as quickly as possible so that there are no barriers to testing and treatment; and

WHEREAS, in the coming days and weeks, decisions on how to handle the anticipated surge in Medicaid applications will need to be made in a rapid time frame, depending on when and where surges occur; and

WHEREAS, CMS guidance on Medicaid and federal Medicaid regulations provide, in the event of a disaster, flexibility to states regarding procedures for processing applications for Medicaid and for verifying eligibility to participate in the Medicaid program for applicants and current beneficiaries; and

WHEREAS, the undersigned has determined that the Secretary should have authority to utilize, in this disaster caused by COVID-19, the flexibility granted by CMS and federal Medicaid regulations; and

WHEREAS, specifically, to expand capacity for COVID-19 treatment and handle the anticipated surge in Medicaid applications, the undersigned has determined that the Secretary should have authority, consistent with the flexibility granted by CMS and federal Medicaid regulations, to modify or waive the enforcement of legal and regulatory constraints that would prevent or impair the efficient and safe intake, processing, and disposition of Medicaid applications by county Department of Social Services (“DSS”) offices; and

WHEREAS, in Executive Order No. 130, issued on April 8, 2020, the undersigned, with the concurrence of the Council of State, took a series of measures to expand the capacity of North Carolina’s health care system; and

WHEREAS, the need for these measures continues, and it would be consistent to have the provisions of this Executive Order and Executive Order No. 130 expire under the same schedule; and

WHEREAS, the undersigned has determined that there should be a common process for the Secretary to report her exercise of the delegations of power under this Executive Order, under Section 1 of Executive Order No. 119, and under Executive Order No. 130; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of that authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to “cooperate and coordinate” with the President of the United States, and the orders and authorizations below cooperate and coordinate with CMS and utilize the flexibility provided in CMS waiver letters; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor’s emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, all the authority granted by this Executive Order is intended to be temporary, and the waivers and modifications of enforcement set out in this Executive Order are intended to extend only through the period where they are needed to address the COVID-19 pandemic.

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

Section 1. Public Health

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

- A. **Asbestos and lead professionals**. To meet the goal of protecting the public health during the COVID-19 pandemic, the undersigned delegates to the Secretary the following authority:

1. To the extent necessary to ensure that there are sufficient accredited asbestos professionals to perform asbestos management work in North Carolina, the Secretary may waive or modify enforcement of the expiration date of asbestos accreditations under 10A N.C. Admin. Code 41C .0602(e). Accreditations otherwise set to expire during this State of Emergency may be extended for up to sixty (60) days following the end of this State of Emergency.
 2. To the extent necessary to ensure that there are sufficient accredited professionals to conduct lead abatement, dust sampling, and renovation work in North Carolina, the Secretary may waive or modify enforcement of the expiration dates of lead abatement certifications under 10A N.C. Admin. Code 41C .0802(e), dust sampling technician certifications under 10A N.C. Admin. Code 41C .0902(c)(3)-(4), and recertification requirements under 10A N.C. Admin. Code 41C .0902(d). Certifications otherwise set to expire during this State of Emergency may be extended for up to sixty (60) days following the end of this State of Emergency.
- B. **Public health.** To meet the goal of protecting the public health during the COVID-19 pandemic, the undersigned delegates to the Secretary the following authority.
1. The Secretary may, upon finding that a waiver or modification of enforcement will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health, (a) waive or modify enforcement of local health department mandated services requirements under 10A N.C. Admin. Code 46 .0200 and (b) may extend the time period for public health nurses to complete training sponsored by the North Carolina Department of Health and Human Services ("NCDHHS") under 10A N.C. Admin. Code 46 .0301(2)(b).
 2. Upon subdelegation of authority from the Secretary, the Local Health Department Accreditation Board may, upon finding that a waiver or modification of enforcement will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health, waive or modify enforcement of the accreditation scheduling requirements of 10A N.C. Admin. Code 48A .0205 and grant an extension of accreditation.
 3. The Secretary may, upon finding that a waiver or modification of enforcement will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health, waive or modify enforcement of N.C. Gen. Stat. § 130A-34.4(a) to the extent necessary to ensure that conditionally accredited local health departments continue to be eligible to receive public health funding from the Division of Public Health.
 4. Waivers, modifications, and extensions made under this Subsection 1(B) may remain in place for up to sixty (60) days following the end of this State of Emergency.
 5. This Subsection 1(B) replaces Subsections 1(2) and 1(3) of Executive Order No. 119. Waivers or modifications previously issued under Subsections 1(2) and 1(3) of Executive Order No. 119 shall continue to be in effect for the time periods that were listed in those previously-issued waivers or modifications.
- C. **Temporary nature of this Section.**
1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the periods listed above.
 2. The undersigned delegates to the Secretary the authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 2. Health Care Facilities and Agencies Providing Care

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Waiver or modification of enforcement.

1. To meet the goals of providing all-inclusive care, preventing the spread of COVID-19 within a highly vulnerable population, and saving lives during the COVID-19 pandemic, the undersigned delegates to the Secretary authority to waive or modify enforcement of any legal or regulatory constraints, to the extent authorized by and consistent with federal law, that would prevent or impair any of the following:
 - a. Providing hospice inpatient and hospice agency care.
 - b. Providing adult care home care.
 - c. Providing continuing care retirement care.
 - d. Providing home care and home health agency care.
 - e. Providing hospital care.
 - f. Providing nursing home facility care.
 - g. Providing ambulatory surgical facility care.
 - h. Providing agency and health care facility care by health care personnel, including but not limited to nurse aides and medication aides.
 - i. Providing emergency medical services.
2. Without limiting the foregoing, the undersigned delegates to the Secretary authority to accomplish the goals listed in Subsection (A)(1) above by waiving or modifying enforcement of any of the following regulations:
 - a. Any regulations of hospice inpatient and hospice agencies, including but not limited to 10A N.C. Admin. Code Subchapter 13K.
 - b. Any regulations of adult care homes, including but not limited to 10A N.C. Admin. Code Subchapter 13F and G.
 - c. Any regulations of continuing care retirement communities, including but not limited to 10A N.C. Admin. Code Subchapter 13H, D, F, and G.
 - d. Any regulations of home health and home care agencies, including but not limited to 10A N.C. Admin. Code Subchapter 13J.
 - e. Any regulations of hospitals, including but not limited to 10A N.C. Admin. Code Subchapter 13B.
 - f. Any regulations of nursing home facilities, including but not limited to 10A N.C. Admin. Code Subchapter 13D.
 - g. Any regulations of ambulatory surgical facilities, including but not limited to 10A N.C. Admin. Code Subchapter 13C.
 - h. Any regulations of health care personnel, including but not limited to 10A N.C. Admin. Code Subchapter 13O.
 - i. Any regulations of emergency medical service providers, including but not limited to 10A N.C. Admin. Code Subchapter 13P.

B. Temporary nature of this Section.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.
2. Any waivers or modifications made under the authority of this Section for purposes of consistency with any applicable waivers issued by CMS will have a retroactive date of March 1, 2020. That is the effective date of the CMS waivers, based upon the President's national emergency proclamation. The President issued that proclamation on March 13, 2020 and made it retroactive to March 1, 2020.
3. The undersigned delegates to the Secretary authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 3. Child Care

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Waiver or modification of enforcement.

1. To provide additional access to child care services for "covered children," as that term is defined in Executive Order No. 130 and amended by Executive Order No. 138, the undersigned delegates to the Secretary the authority to waive or modify enforcement of the following:
 - a. 10A N.C. Admin. Code, Chapter 09, Child Care Rules.
 - b. 10A N.C. Admin. Code, Chapter 10, Subsidized Child Care.
2. Prior waivers or modifications of these regulations pursuant to Executive Order Nos. 119 and 130 remain in effect.
3. The provisions of this Section supplement, rather than restrict, the emergency authority provided in Section 2 of Executive Order No. 130.

B. Temporary nature of this Section.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order. This Executive Order may be amended, extended, or replaced by subsequent Executive Orders.
2. The undersigned delegates to the Secretary the authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 4. Visitation Restrictions at High Risk Health Care Facilities.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Waiver or modification of enforcement.

1. To meet the goal of preventing the spread of COVID-19 in health care facilities, the undersigned delegates to the Secretary authority to waive or modify enforcement of any legal or regulatory constraints that would increase the potential for the spread of COVID-19 in health care facilities, including but not limited to:
 - a. Requirements for visitation in nursing homes; and
 - b. Requirements for visitation in adult care homes and family care homes; and

- c. Requirements for visitation in 24-hour care facilities for mental health, developmental disabilities, and substance abuse; and
 - d. Requirements for visitation in other health care facilities.
2. The provisions of this Section supplement, rather than restrict, the emergency authority provided in Section 7 of Executive Order No. 138.

B. Temporary nature of this Section.

- 1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.
- 2. The undersigned delegates to the Secretary the authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 5. Medicaid Eligibility Application Processing.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Waiver or modification of enforcement.

- 1. Health care remains an essential service during this State of Emergency, including the provision of Medicaid services for eligible North Carolina residents. To meet the goal of providing medical assistance through the efficient intake, processing, and disposition of Medicaid eligibility applications by county DSS offices during the COVID-19 pandemic, the undersigned delegates to the Secretary authority to waive or modify enforcement of any Division of Health Benefits regulatory constraints that would prevent, delay, or impair Medicaid eligibility application processing for initial applications and redeterminations.
- 2. Without limiting the foregoing, the undersigned delegates to the Secretary authority to waive or modify enforcement of any of the following:
 - a. Regulations on quality assurance for client eligibility, including but not limited to 10A N.C. Admin. Code 23A .0103(b)(1).
 - b. Regulations limiting the county DSS offices' ability to accept self-attestation from a client for any portion of the eligibility application prior to making an eligibility determination or redetermination, including but not limited to 10A N.C. Admin. Code 23C .0101, .0201, .0103(a), and 10A N.C. Admin. Code 23E .0209(b). Notwithstanding the provisions of this Section, however, there shall be no waiver or modification of enforcement of legal or regulatory requirements to ensure the authenticity of documents demonstrating clients' citizenship or immigration status, and county DSS offices shall not be authorized to accept self-attestations from a client for the portions of the application related to citizenship and immigration status.
 - c. Regulations establishing specific application processing standards or timelines for county DSS offices and establishing corrective actions for failure to meet the processing standards or timelines, including but not limited to 10A N.C. Admin. Code 23C .0104(b), .0201(a), .0202, .0203, .0204, and .0205.
 - d. Regulations specifying where and how applications are accepted, establishing county DSS offices' operational hours for accepting applications, and requiring DSS offices to have in-person or face-to-face contacts for any portion of eligibility application processing, including but not limited to 10A N.C. Admin. Code 23C .0101(b)(6), (b)(7), (d), (f)-(g), .0102, .0106, .0107 and 10A N.C. Admin. Code 23G .0302 and .0304.

- e. Regulations requiring county DSS offices to act or take corrective action on certain changes in a client's situation that may affect Medicaid eligibility, including but not limited to 10A N.C. Admin. Code 23E .0105(g), .0106(d), .0201, and 10A N.C. Admin. Code 23G .0201, .0202, .0203, and .0302.
- f. Regulations that establish a specific timeline or process for when and how a client can access or obtain information, documents, or records about their case, including but not limited to 10A N.C. Admin. Code 23H .0107 and .0109. Notwithstanding the provisions of this Section, however, there shall be no waiver or modification of regulations related to consent to release client information contained in 10A N.C. Admin. Code 23H .0110, .0111, .0112, and .0113.
- g. Regulations regarding liability of persons for failure to comply with the provisions of 10A N.C. Admin. Code Subchapter 23H, to the extent that the enforcement of those provisions have been waived, adjusted, or modified.
- h. Any regulations that are related to the provisions listed above.

B. Temporary nature of this Section.

- 1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.
- 2. Any waivers or modifications made under the authority of this Section for purposes of consistency with any applicable waivers issued by CMS will have a retroactive date of March 1, 2020. That is the effective date of the CMS waivers, based upon the President's national emergency proclamation. The President issued that proclamation on March 13, 2020 and made it retroactive to March 1, 2020.
- 3. The undersigned delegates to the Secretary the authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 6. Notification Process for Waivers or Modifications.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

Upon exercising any of the delegated authority described in this Executive Order, the Secretary shall notify the Office of the Governor of such actions taken. The Secretary shall also provide a summary to the Office of the Governor of exercises of the delegated authority described in Section 1 of Executive Order No. 119 and in Executive Order No. 130. The notifications and the summary required by this Section shall be made as soon as practicable under the conditions of the current emergency. The Secretary shall also notify the Codifier of Rules of waivers or modifications of regulations under the Executive Order provisions named in this paragraph.

Section 7. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 8. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 9. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 10. Effective Date


For the reasons and pursuant to the authority set forth above and set forth in Executive Order No. 130, the undersigned orders as follows:

- A. **When this Executive Order goes into effect.** Except where otherwise stated above, this Executive Order is effective immediately.
- B. **Duration of child care provisions.** Section 3 of this Executive Order shall remain in effect through 5:00 pm on May 22, 2020. This is consistent with the duration of Section 2 of Executive Order No. 130, which is on the same topic. The duration of Section 2 of Executive Order No. 130 was modified by Section 4(C) of Executive Order No. 138.
- C. **Duration of other provisions.** This Executive Order shall remain in effect until 5:00 pm on June 26, 2020. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.
- D. **Extension of Executive Order No. 130.** Executive Order No. 130, except for Section 2 and Subsection 6(A), shall remain in effect until 5:00 pm on June 26, 2020. The effective date provision of Executive Order No. 130 is amended accordingly.
- E. **Future Orders.** Future Executive Orders may repeal, replace, rescind, or extend the duration or any other term of these Executive Orders. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order. Unless otherwise expressly stated in another Executive Order, the relief from expiration dates and waivers or modifications in Sections 1 and 3 of this Executive Order shall remain in effect for the periods of time listed in those Sections following the termination of the remainder of this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 12th day of May in the year of our Lord two thousand and twenty.


 Roy Cooper
 Governor

ATTEST:


 Elaine F. Marshall
 Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

May 18, 2020

EXECUTIVE ORDER NO. 140

**EXTENDING CERTAIN TRANSPORTATION-RELATED PROVISIONS IN
PREVIOUS EXECUTIVE ORDERS**

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-25, 129-131, 133-136, and 138-139; and

WHEREAS, more than nineteen thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and hundreds of people in North Carolina have died from the disease; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, slowing the community spread of COVID-19 is critical to ensuring that our healthcare facilities remain able to accommodate those who require intensive medical intervention; and

WHEREAS, Executive Order No. 116, issued on March 10, 2020, included certain suspensions of Federal Motor Carrier Safety Regulations; and

WHEREAS, 49 C.F.R. § 390.23(a)(1)(ii)(B) allows for the undersigned to extend the suspension of the regulations in 49 C.F.R. Parts 300-399, the Federal Motor Carrier Safety Regulations, for an additional thirty (30) day period if the undersigned determines that an emergency condition continues to exist; and

WHEREAS, the undersigned has determined that the Executive Order needs to remain in place to allow for the continued expedited movement of vehicles in the state; and

WHEREAS, Executive Order No. 119, issued on March 20, 2020, the undersigned facilitated critical motor vehicle operations; and

WHEREAS, Executive Order No. 133, issued on April 17, 2020, extended the transportation related provisions in Executive Order Nos. 116 and 119; and

WHEREAS, the provisions concerning the Division of Motor Vehicles (“DMV”) in Executive Order No. 119 are set to expire unless the undersigned takes further action; and

WHEREAS, the undersigned has determined that these DMV-related provisions should be extended; and

WHEREAS, on May 13, 2020, the Federal Motor Carrier Safety Administration issued the Extension of Expanded Emergency Declaration No. 2020-0002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

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

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

Section 1. Extensions and technical amendments

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

A. Executive Order Nos. 116 and 119.

1. Sections 3 to 6 of Executive Order No. 119 (which were extended by Executive Order No. 133) are hereby extended through the end of the calendar day on June 19, 2020.

2. Sections 5 and 6 of Executive Order No. 116 (which were rewritten by Section 6 of Executive Order No. 119 and amended by Executive Order No. 133) and Sections 7 and 8 of Executive Order No. 116, which interpret and implement those sections, are also hereby extended through the end of the calendar day on June 19, 2020. Nothing in this Executive Order modifies the effectiveness of any provisions of Executive Order No. 116 other than Sections 5 through 8.
3. This Executive Order does not amend the sixty (60) day postponement of DMV-related hearings established in Section 3.f of Executive Order No. 119.
4. The first sentence of Section 8 of Executive Order No. 119 is amended to read:

“This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on June 19, 2020, or until rescinded or superseded by another applicable Executive Order; provided, however, that expiration of this Executive Order will not invalidate postponements of DMV-related hearings that occurred under Section 3.f of this Executive Order.”

B. Miscellaneous provisions. For avoidance of doubt:

1. Future Executive Orders may extend the term of the restrictions, delegations, and requirements listed above.
2. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

Section 2. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date

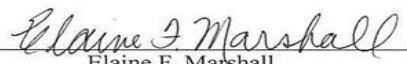
This Executive Order is effective immediately. This Executive Order shall remain in effect until June 19, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 18th day of May in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

May 20, 2020

EXECUTIVE ORDER NO. 141

EASING RESTRICTIONS ON TRAVEL, BUSINESS OPERATIONS,
AND MASS GATHERINGS: PHASE 2

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, and 138-140; and

WHEREAS, more than twenty thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and hundreds of people in North Carolina have died from the disease; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, the undersigned and the Secretary of Health and Human Services have directed hospitals, physicians' practices, and other health care entities to undertake significant actions as part of North Carolina's emergency response to address the COVID-19 pandemic; and

WHEREAS, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, the continued community spread of COVID-19 within North Carolina requires the state to continue some measures to slow the spread of this virus during the pandemic; and

WHEREAS, since the issuance of executive orders to slow the spread of COVID-19, North Carolina has “flattened the curve” and prevented a surge or spike in cases across the state, and North Carolina has also increased its capacity for testing, tracing and the availability of personal protective equipment (“PPE”); and

WHEREAS, despite the overall stability in key metrics, North Carolina’s daily case counts of COVID-19 continue to increase slightly in the context of increased testing, demonstrating the state must remain vigilant in its work to slow the spread of the virus; and

WHEREAS, should there be an increase in the percentage of emergency department visits that are due to COVID-19 like illness, an increase in the number of laboratory-confirmed cases, an increase in the positive tests as a percent of total tests, an increase in COVID-19-related hospitalizations that threaten the ability of the health care system to properly respond, or should the State’s ability to conduct testing and tracing be compromised, it may be necessary to reinstate certain restrictions eased by this Executive Order so as to protect the health, safety, and welfare of North Carolinians; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and where people are less likely to maintain social distancing by staying six (6) feet apart; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are stationary and in close contact for long periods of time; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19; and

WHEREAS, to lower the risk of contracting and transmitting COVID-19, this Executive Order imposes restrictions on businesses that limit the number of contacts between people, particularly in settings that are indoors, involve people being stationary and in close contact for long periods of time, or are part of mass gatherings; and

WHEREAS, certain types of businesses by their very nature present greater risks of the spread of COVID-19 because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration that patrons stay in the establishment; and

WHEREAS, people in North Carolina are encouraged to use a cloth face covering to reduce the spread of COVID-19, but some populations may experience increased anxiety and fear of bias and being profiled if wearing face coverings in public spaces; and

WHEREAS, if someone is the target of ethnic or racial intimidation as the result of adhering to the mask provision or as a result of the pandemic, they are encouraged to report the matter to law enforcement or another government entity; and

WHEREAS, people in North Carolina must remain flexible to account for the evolving nature and scope of the public health emergency posed by COVID-19, and also return to—in a safe, strategic, and incremental manner—their normal personal and professional activities, to the extent public health circumstances permit; and

WHEREAS, people in North Carolina are encouraged to take on the challenges of living in a community beset by a global pandemic, while also returning to school, work, and social activities in a safe, strategic and incremental manner to help reduce the risk of COVID-19 transmission; and

WHEREAS, businesses that are open during the duration of this Executive Order are encouraged to follow the Guidelines for Businesses published by the North Carolina Department of Health and Human Services (“NCDHHS”), available electronically on its website; and

WHEREAS, food service and food availability remain an important component of North Carolina’s response to the COVID-19 pandemic, such that food service providers, including restaurants and other dine-in facilities are encouraged to open to the extent practicable to safely provide food and nutrition to people in North Carolina; and

WHEREAS, it is in the interest of the State of North Carolina to provide as many viable avenues as practicable for North Carolina agricultural products to be consumed in-state in order to avoid unnecessary waste in the production of food; and

WHEREAS, the closure of on-premises dining in restaurants has significantly curtailed demand for food sold by restaurants and, therefore, disproportionately harmed workers, farms, and businesses involved in the sale of food through the restaurant supply chain and led to the waste of food produced by such workers, farms, and businesses; and

WHEREAS, because restaurants and grocery stores are served by different supply chains that cannot always be rapidly adjusted, the closure of on-premises dining in restaurants has shifted food demand to grocery stores, taxing the supply chain for grocery stores and leading to higher grocery prices for consumers; and

WHEREAS, reopening restaurants for on-premises dining in a safe, strategic manner should ameliorate the adverse economic effects on workers, farms, and businesses involved in the sale of food through the restaurant supply chain, prevent the waste of food, and reduce stress on the supply chain for grocery stores, thereby lowering grocery prices for consumers; and

WHEREAS, despite the unprecedented nature of the COVID-19 pandemic, people in North Carolina should have the opportunity to enjoy performing arts and competitive sporting events broadcast into their homes; and

WHEREAS, as long as progress continues to be met on the COVID-19 metrics, and as long as health care systems continue to be projected to have sufficient capacity for patient care, commerce that does not raise unreasonable risks of COVID-19 spread may be reopened; and

WHEREAS, with public health requirements in place and face coverings more readily available, personal care, grooming, and tattoo businesses may be reopened in a safe, strategic manner without raising unreasonable risk of COVID-19 spread; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to “cooperate and coordinate” with the President of the United States; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set “the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease,” and following this coordination, the Emergency Management Director and the State

Health Director have recommended that the Governor develop and order the plan and actions identified in this Executive Order; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the

undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article.”

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

Section 1. Definitions. In this Executive Order:

1. “Bars” means establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6), that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001, and that are principally engaged in the business of selling alcoholic beverages for onsite consumption.
2. “Core Signage, Screening, and Sanitation Requirements” are the following actions which establishments open to the public under the terms of this Executive Order must follow, namely:
 - a. Post the Emergency Maximum Occupancy in a noticeable place.
 - b. Post signage reminding attendees, customers, and workers about social distancing (staying at least six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter.
 - c. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace.
 - d. Immediately isolate and remove sick workers.
 - e. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19).

NCDHHS has prepared sample signs and a sample screening checklist questionnaire, available at <https://covid19.ncdhhs.gov/guidance>, that may be used to meet some of the requirements above. Businesses or operations do not need to use the NCDHHS sample signs and questionnaires to meet the requirements of this Executive Order.

3. “Emergency Maximum Occupancy” is defined in Section 6.
4. “Face Covering” means a covering of the nose and mouth by wearing a covering or mask for the purpose of ensuring the physical health or safety of the wearer or others as defined in Session Law 2020-3 s. 4.3(a). In the context of the COVID-19 emergency, the Face Covering works to protect other people more than the wearer.
5. “Personal Care, Grooming, and Tattoo Businesses” means businesses that (a) do not provide health care services; and (b) either (i) have workers directly touch customers or (ii) have a piece of equipment (other than a touchscreen) repeatedly come into contact directly with customers’ skin. This includes, but is not limited to, barber shops, beauty salons (including but not limited to waxing and hair removal centers), hair salons, nail salons, manicure or pedicure providers, tattoo parlors, tanning salons, and massage therapists.
6. “Recommendations to Promote Social Distancing and Reduce Transmission” are defined in Section 3(B) below.

7. “**Restaurants**” means permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food. This includes, but is not limited to, restaurants, cafeterias, food halls, dining halls, food courts, and food kiosks. This includes not only free-standing locations but also locations within other businesses or facilities, including, but not limited to airports, shopping centers, educational institutions, or private or members-only clubs where food and beverages are permitted to be consumed on premises.
8. “**Retail Business**” means any business in which customers enter a space to purchase goods or services, including but not limited to grocery stores, convenience stores, large-format retail stores, pharmacies, banks, and ABC stores. This also includes, but is not limited to, (i) retail establishments operated by the state, its political subdivisions, or agencies thereof, and (ii) state agencies under the jurisdiction of the undersigned which have a public-facing component offering a service, such as the Division of Motor Vehicles, the Department of Revenue, and shops in Department of Natural and Cultural Resources facilities.

Section 2. High-Risk Individuals Encouraged to Stay at Home.

People who are at high risk of severe illness from COVID-19 are very strongly encouraged to stay home and travel only for absolutely essential purposes. The Centers for Disease Control and Prevention (“CDC”) defines high-risk individuals as people 65 years or older **and people of any age who have serious underlying medical conditions**, including people who are immunocompromised or who have chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, or liver disease.

Section 3. Activities Outside the Home.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

- A. **Stay at Home Order Lifted.** The Stay at Home Order in Executive Order No. 138 is lifted. Individuals are strongly encouraged to telework to the greatest extent permissible by their employer.
- B. **Follow the Recommendations to Promote Social Distancing and Reduce Transmission.** When people are outside their homes, they are strongly encouraged to take the following Recommendations to Promote Social Distancing and Reduce Transmission:
 1. Maintain at least six (6) feet social distancing from other individuals, with the exception of family or household members.
 2. Wear a cloth Face Covering when leaving home and wear it inside all public settings such as grocery stores, pharmacies, or other retail or public-serving businesses. A Face Covering should also be worn outdoors when you cannot maintain at least six (6) feet distancing from other people with the exception of family or household members. These coverings function to protect other people more than the wearer.
 3. Carry hand sanitizer with you when leaving home, and use it frequently.
 4. Wash hands using soap and water for at least twenty (20) seconds as frequently as possible.
 5. Regularly clean high-touch surfaces such as steering wheels, wallets, and phones.
 6. Stay at home if sick.

Section 4. Exemptions from This Executive Order.

Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights are exempt from all the

requirements of this Executive Order and Executive Order Nos. 121 and 138, notwithstanding any other provision of this Executive Order or of Executive Order Nos. 121 and 138.

The undersigned strongly urges that entities and individuals engaging in these exempted activities follow the Recommendations to Promote Social Distancing and Reduce Transmission, avoid exceeding Emergency Maximum Occupancy in the places where they meet, and avoid holding Mass Gatherings.

Section 5. Structure of This Executive Order.

The restrictions in this Executive Order are tailored for particular situations where COVID-19 can spread. As a result, the restrictions in this Executive Order fall into three categories:

- Section 6 establishes restrictions for certain listed kinds of businesses and operations. The restrictions in this Section ensure that there is not overcrowding and spread people out in each space to reduce the risk from COVID-19.
- Section 7 establishes a Mass Gathering limit. This limit controls the risk of COVID-19 spread in events or convenings that are not covered by the specific restrictions in Section 6.
- Section 8 keeps closed certain kinds of businesses and operations because those types of businesses, by their very nature, present greater risks of the spread of COVID-19. These greater risks are due to factors such as people traditionally interacting in that space in a way that would spread COVID-19, shared equipment that is repeatedly touched by customers or attendees, or a business model that involves customers or attendees remaining in a confined indoor space over a sustained period.

Section 6. Restrictions on Certain Businesses and Operations.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Prohibition.** To control the spread of COVID-19 and protect lives during the State of Emergency, this Section lists restrictions on the operations of business establishments and other places to or from which people may travel or at which they may congregate. Businesses or operations within the scope of this Section are prohibited from operating unless they follow the restrictions stated in this Section.

B. **Retail Businesses.**

1. **Requirements for Retail Businesses.** While this Executive Order is in effect, all open Retail Businesses must do all of the following.

- a. Limit customers inside the store to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a Retail Business is the lowest number produced by applying the following two tests:
 - i. Limit the number of customers in the store to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to customers or guests).
 - ii. Limit the number of people in the store so that everyone can stay six (6) feet apart.
- b. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for customers, such as at deli counters and near high-demand products.
- c. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.

C. Restaurants.

1. **Restaurants May Open for On-Premises Service.** During the effective period of this Executive Order, restaurants may allow on-premises consumption of food and beverages. Restaurants must meet the sanitation requirements of this Section even if they are open only for take-out or delivery service.
2. **Requirements.** While this Executive Order is in effect, all open restaurants must do all of the following:
 - a. Limit customers in indoor and outdoor seating areas to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a restaurant is the lowest number produced by applying the following three tests:
 - i. Limit the number of customers in the restaurant to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to customers or guests).
 - ii. Limit the number of people in the space so that groups can stay six (6) feet apart.
 - iii. Arrange the restaurant so that customers sitting at a table are not within six (6) feet of any customers sitting at another table. Moreover, each group of customers sitting at a counter should be separated from other groups by six (6) feet.
 - b. Limit customers at tables so that no more than ten (10) people shall be seated together at the same table. However, more than ten (10) people may sit together at the same table if they are members of the same household.
 - c. Workers in Restaurants are strongly encouraged to wear Face Coverings when they are within six (6) feet of another person. Notwithstanding this general rule, people whose religious beliefs prevent them from wearing a Face Covering, people who cannot wear a Face Covering due to a medical or behavioral health condition, and people who are under twelve (12) years of age are excepted from the requirement to wear a Face Covering. Children under two (2) years of age shall not wear a Face Covering so that their breathing may not be inhibited.
 - d. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order, along with the following additional requirements:
 - i. Increase disinfection during peak times or high customer density times, and disinfect all shared objects (e.g., dining tables, booths, counters, payment terminals, tables, countertops/bars, receipt trays, condiment holders, and reusable menus) between each use.
 - ii. Promote frequent use of hand-washing and hand sanitizer for wait staff and food service staff throughout the shift and upon reporting to work. Hand washing must at least meet the requirements specified in the North Carolina Food Code Manual.
 - e. Mark six (6) feet of spacing in lines at high-traffic areas for customers, such as a cash register or place where customers wait to be seated at their table.
3. **Clarifications.** People sitting at a table need not be members of the same household and do not need to stay six (6) feet apart. Moreover, this Executive Order does not require servers and wait staff to stay six (6) feet away from customers.

4. **Miscellaneous.** A restaurant that operates consistent with the terms of this Subsection of this Executive Order shall continue to be considered an “Essential Business” for the purpose of N.C. Sess. L. 2020-03, Sec. 4.14(a) to the extent that COVID-19-related claims are made against the restaurant.

D. Personal Care, Grooming, and Tattoo Businesses.

1. **Personal Care, Grooming, and Tattoo Businesses May Open.** During the effective period of this Executive Order, Personal Care, Grooming, and Tattoo Businesses may operate, but must be in compliance with this Section.
2. **Requirements.** While this Executive Order is in effect, all open Personal Care, Grooming, and Tattoo Businesses must do all of the following:
 - a. Limit customers inside the store to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a Personal Care, Grooming, and Tattoo Business is the lowest number produced by applying the following two tests:
 - i. Limit the number of customers in the store to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location’s total square footage, including the parts of the location that are not accessible to customers or guests).
 - ii. Limit the number of people in the store so that patrons can stay six (6) feet apart.
 - b. Arrange seating so that groups of customers are separated from one another by six (6) feet.
 - c. Workers in Personal Care, Grooming, and Tattoo Businesses shall wear Face Coverings when they are within six (6) feet of another person. Notwithstanding this general requirement, people whose religious beliefs prevent them from wearing a Face Covering, people who cannot wear a Face Covering due to a medical or behavioral condition, and people who are under twelve (12) years of age are excepted from the requirement to wear a Face Covering. Children under two (2) years of age shall not wear a Face Covering so that their breathing may not be inhibited.
 - d. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order, except for the requirement to have signage remind people about staying six (6) feet apart.
 - e. Ensure that all equipment that comes into direct personal contact with customers and all furniture in service areas (such as chairs, capes, and the shampooing area in a barber shop or salon) is completely cleaned and disinfected between each customer.
 - f. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for customers, such as at cash registers and waiting areas.
3. **Recommendation.** Patrons in Personal Care, Grooming, and Tattoo Businesses are strongly encouraged to wear Face Coverings when they are within six (6) feet of another person, unless they cannot wear Face Coverings due to religious beliefs, age, or a medical or behavioral health condition.

E. Pools.

1. **Indoor and Outdoor Pools May Open.** During the effective period of this Executive Order, indoor or outdoor pool facilities (whether stand-alone or part of other facilities) may operate, but must be in compliance with this Subsection.
2. **Requirements.** While this Executive Order is in effect, all open pool facilities must do all of the following:
 - a. Limit the user capacity in the pool to no more than 50% of maximum occupancy as determined by fire code (or, when fire code number is not known, thirty-three (33) people per one thousand (1000) square feet in deck areas, wading pools and splash pads), and a maximum occupancy in the water of ten (10) people per one thousand (1000) square feet. This user capacity is the Emergency Maximum Occupancy for the pool facility.
 - b. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.
3. This Subsection applies only to shared pools in commercial settings or at residential complexes. It does not apply to family pools at people's homes.

F. Child Care Facilities.

1. **Child Care Facilities May Open and May Serve All Children.** Child care facilities may open or reopen, and they may serve all children in North Carolina. All references to "covered children" in Executive Order Nos. 130 and 138 shall refer to all children.
2. **Requirements.** Child care facilities that are open or reopened consistent with the Executive Order must abide by the following requirements:
 - a. Follow all applicable NCDHHS guidelines.
 - b. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.
 - c. Conduct a daily health screening on all individuals who are entering the building.
 - d. Immediately isolate sick workers and children from the rest of the facility and send them home.
 - e. Have a plan to work with local health departments to identify close contacts of confirmed cases in the child care setting.
 - f. Before reopening, child care facilities shall submit to NCDHHS the Emergency Child Care Provider Application. NCDHHS must approve the Emergency Child Care Provider Application before the child care facility can reopen.
3. **Relationship to Previous Executive Orders.** Subdivisions 1 and 2(a) of this Subsection completely replace Subsections (C) and (D) of Section 2 of Executive Order No. 130. Otherwise, Section 2 of Executive Order No. 130 and Section 3 of Executive Order No. 139 shall remain in effect through 5:00 pm on June 26, 2020. The effective date provisions of those Executive Orders are amended accordingly.

G. Day Camps and Overnight Camps.

1. **Requirements for Day Camps.**
 - a. Follow all applicable NCDHHS guidelines.

- b. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.
- c. Conduct a daily health screening on all individuals who are entering the building.
- d. Immediately isolate sick workers and children from the rest of the facility and send them home.
- e. Public schools operating day camps and programs may open for the purpose of the day camp or program, but must otherwise remain closed to the general public.
- f. Have a plan to work with local health departments to identify close contacts of confirmed cases in the camp setting.

2. Requirements for Overnight Camps.

- a. Follow all applicable NCDHHS guidelines.
- b. Conduct daily symptom screening of workers.
- c. Immediately isolate sick campers and staff away from others.
- d. If a camper or staff member has been diagnosed with COVID-19 or is presumed positive by a medical professional due to symptoms, the camper or staff member should be isolated away from other campers and staff until they meet the CDC criteria for release from isolation:
 - i. No fever for at least 72 hours since recovery (without the use of fever-reducing medicine); and
 - ii. Other symptoms have improved (e.g., coughing, shortness of breath); and
 - iii. At least ten (10) days have passed since first symptoms.
- e. Have a plan to work with local health departments to identify close contacts of confirmed cases in a camp setting
- f. Perform ongoing and routine environmental cleaning and disinfection of high-touch areas (e.g., doors, doorknobs, rails) with an EPA approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19), increasing disinfection during peak times or high camper density times.

3. Programs and camps for adults are not covered by this Section.

Section 7. Mass Gatherings.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Prohibition on Mass Gatherings.

1. **Prohibition.** Mass Gatherings are prohibited. “Mass Gathering” means an event or convening that brings together more than ten (10) people indoors or more than twenty-five (25) people outdoors at the same time in a single confined indoor or outdoor space, such as an auditorium, stadium, arena, or meeting hall. This includes parades, fairs, and festivals. In publicly accessible indoor facilities, the Mass Gathering limit applies per room of the facility. A household where more than ten (10) people reside is not a Mass Gathering.

The outdoor Mass Gathering limit of twenty-five (25) people applies to groups of people that may gather together in a park, and on a beach or trail.

2. **Exceptions from Prohibition on Mass Gatherings.** Notwithstanding Subsection (A)(1) above:

- a. The prohibition on Mass Gatherings does not apply to any of the restricted businesses and operations identified in Section 6 of this Executive Order, because in those situations, transmission of COVID-19 will be controlled through the measures specifically tailored for each situation that are listed in those Sections. The prohibition on Mass Gatherings also does not apply to educational institutions or government operations.
- b. The prohibition on Mass Gatherings does not include gatherings for health and safety, to look for and obtain goods and services, for work, or for receiving governmental services. A Mass Gathering does not include normal operations at airports, bus and train stations or stops, medical facilities, libraries, shopping malls, and shopping centers. However, in those settings, people must follow the Recommendations to Promote Social Distancing and Reduce Transmission as much as possible, and they should circulate within the space so that there is no sustained contact between people.

B. Parks, Trails, and Beaches.

1. Each group of people within a park, trail, or beach must be limited so that the group, counted on its own, does not exceed the Mass Gathering limit.
2. All operators of open public or private parks must meet the following requirements:
 - a. Post signage reminding attendees, customers, and workers about social distancing (staying at least six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter.
 - b. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace.
 - c. Immediately isolate and remove sick workers.
 - d. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19).
3. **Public Playgrounds Remain Closed.** Because public playground equipment may increase spread of COVID-19, public playgrounds will remain closed during the effective phase of this Executive Order, including public playground equipment located in parks.

C. **Drive-ins.** Events are not prohibited Mass Gatherings if the participants all stay within their cars, such as at a drive-in movie theater.

D. **Households.** A household where more than ten (10) people reside is not a Mass Gathering.

Section 8. Orders of Closure.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Entertainment and Fitness Facilities.

1. In addition to the restrictions on Mass Gatherings identified in Section 7 of this Executive Order, the following entertainment and fitness facilities that operate within a confined indoor or outdoor space and do not offer a retail or dining component are ordered to close. Any retail or dining component within the following entertainment and fitness facilities may operate solely for retail or dining, but those components must comply with the restrictions set out in Section 6 of this Executive Order.

2. Entertainment and fitness facilities restricted by this Subsection include, but are not limited to, the following types of business:

- Bingo Parlors, including bingo sites operated by charitable organizations
- Bowling Alleys
- Indoor Exercise Facilities (e.g., yoga studios, dance studios, martial arts facilities, indoor trampoline and rock climbing facilities)
- Gyms
- Indoor Fitness Facilities, including but not limited to indoor basketball courts, volleyball courts, racquetball courts, squash courts, and tennis courts
- Health Clubs and Fitness Centers
- Movie Theaters
- Skating Rinks
- Gaming and business establishments which allow gaming activities (e.g., video poker, gaming, sweepstakes, video games, arcade games, pinball machines or other computer, electronic or mechanical devices played for amusement)
- Venues for Receptions or Parties
- Museums
- Amusement Parks
- Bars
- Night Clubs, Dance Halls, or Music Halls where patrons are not seated.

B. **Limitations of this Executive Order.** This Executive Order solely directs that bars are not to serve alcoholic beverages for onsite consumption, and this Executive Order does not direct the closure of retail beverage venues that provide for the sale of beer, wine, and liquor for off-site consumption only. It also does not require the closure of production operations at breweries, wineries, or distilleries.

C. **Training of Professional and Collegiate Athletes.** Professional athletes and athletes performing on an agreement with an educational institution to receive a scholarship or other benefit may train within indoor fitness facilities that otherwise would be closed under Subsection A above, provided they do not exceed the Mass Gathering limit.

D. **ABC Commission.** If the Alcoholic Beverage Control Commission (the “ABC Commission”) identifies other state laws, regulations, and policies that may affect bars, restaurants, and other dining establishments identified in this Executive Order, it is directed to inform the Office of the Governor in writing. Upon written authorization from the Office of the Governor, the ABC Commission may interpret flexibly, modify, or waive those state laws, regulations and policies, as appropriate, and to the maximum extent permitted under applicable state and federal law, to effectuate the purposes of this Executive Order.

Section 9. Entertainment and Sporting Events in Large Venues.

A. **Intent.** The intent of this Section is to permit venues to hold sporting or entertainment events, for the recording of and broadcast to the public, if the venue is of sufficient size to allow people to flow in and out of the venue in a way that would avoid creating a risk of spreading COVID-19.

B. **Exception.** Therefore, as an exception to the closure of entertainment and fitness facilities in Section 8 above, an entertainment or sporting venue with at least two entrances and exits and a stated fire capacity of at least five hundred (500) may hold a performance by entertainers, performers, or athletes. The venue must control the flow of people through lobbies and other common spaces to allow social distancing and avoid the spread of COVID-19.

C. **Treatment under Mass Gathering Limit.** In this situation, and only in this situation: (1) entertainers, performers, and athletes, along with coaches, training, support, and broadcast staff, shall not count toward the Mass Gathering limit and (2) employees and other workers at facilities where entertainment and sporting events occur also shall not count toward the Mass Gathering limit.

- D. **Restrictions on Spectators.** Spectators or other attendees at any sporting or entertainment events allowed under this Section must be no more than the Mass Gathering limit of ten (10) people indoors or more than twenty-five (25) people outdoors. Moreover, any entertainers or athletes must stay six (6) feet away from spectators.
- E. **Requirements for Large Venue Operators.** Any venue operator subject to this Section allowing an event permitted by this Section shall:
1. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.
 2. Increase disinfection during peak times or high customer density times, and disinfect all shared objects (e.g., payment terminals, tables, countertops/bars, receipt trays, condiment holders) between use.
 3. Immediately isolate and remove sick workers.
 4. Any food service at sporting or entertainment events must comply with the restrictions set out in Section 6 of this Executive Order. Bars at sporting or entertainment events must remain closed.

Section 10. Provisions from Previous Executive Orders.

- A. The provisions on schools contained in Section 4(E) of Executive Order No. 138 and signed on May 05, 2020 by the undersigned are incorporated by reference into this Executive Order and adopted as if reprinted here in full.
- B. The Long Term Care provisions contained in Section 7 of Executive Order No. 138 and signed on May 05, 2020 by the undersigned are incorporated by reference into this Executive Order and adopted as if reprinted here in full.
- C. The Local Order provisions contained in Section 8 of Executive Order No. 138 and signed on May 05, 2020 by the undersigned are incorporated by reference into this Executive Order and adopted as if reprinted here in full. The references to maximum occupancy standards for Retail Businesses in Section 8 of Executive Order No. 138 shall instead refer to the equivalent provisions in this Executive Order.
- D. Otherwise, all previous travel restrictions, orders to stay at home, and prohibitions of mass gatherings in Executive Orders Nos. 121 and 138 are no longer in effect and are replaced by this Executive Order.

Section 11. Extension of Price Gouging Period.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on June 26, 2020.

The undersigned further hereby encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section 12. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 13. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 14. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 15. Enforcement.

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 16. Effective Date.

This Executive Order is effective at 5:00 pm on May 22, 2020. This Executive Order shall remain in effect through 5:00 pm on June 26, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to amend the rules cited as 10A NCAC 13C .0203, .0702, readopt with substantive changes the rules cited as 10A NCAC 13C .0202, .0501, .0902 and readopt without substantive changes the rule cited as 10A NCAC 13C .0301.

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

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

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: July 28, 2020

Time: 10:00 a.m.

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

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13C, Licensing of Ambulatory Surgical Facilities, four proposed readoption rules were part of the nine rules that were determined as “Necessary With Substantive Public Interest,” requiring readoption. Substantive changes are proposed to three rules for readoption, non-substantive changes are proposed to one rule for readoption, and two rules are proposed for amendment to update the process for the regulation of licensed Ambulatory Surgical Facilities in N.C. The proposed rules clarify the provision of anesthesia services and of nursing personnel staffing levels in the facility, clarify and make consistent construction plan submission requirements including a time limit expiration on construction approvals in accordance with industry standard, and amend outdated statutory and rule citations referenced in rule. In addition, the proposed rules have been updated through technical changes and corrections.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 14, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13C – LICENSING OF AMBULATORY SURGICAL FACILITIES

SECTION .0200 - LICENSING PROCEDURES

10A NCAC 13C .0202 REQUIREMENTS FOR ISSUANCE OF LICENSE

(a) Upon application for a license from a facility never before licensed, a representative of the Department shall make an inspection of that facility. Every building, institution, or establishment ~~for which a license that~~ has been issued a license shall be inspected for compliance with the rules found in this Subchapter. An ambulatory surgery facility shall be deemed to meet licensure requirements if the ambulatory surgery facility is accredited by The Joint Commission ~~(formerly known as "JCAHO")~~, Commission, AAAHC or AAAASF. Accreditation ~~does shall~~ not exempt a facility from statutory or rule requirements for licensure nor ~~does shall~~ it prohibit the Department from conducting inspections as provided in this Rule to determine compliance with all requirements.

(b) If the applicant has been issued a Certificate of Need and is found to be in compliance with the Rules found in this Subchapter, then the Department shall issue a license to expire on December 31 of each year.

(c) The Department shall be notified at the time of:

- (1) any change of the owner or operator;
- (2) any change of location;
- (3) any change as to a lease; and
- (4) any transfer, assignment, or other disposition or change of ownership or control of 20 percent or more of the capital stock or voting rights thereunder of a corporation that is the operator or owner of an ambulatory surgical facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of such corporation that results in the ownership or control of more than 20 percent of the stock or voting rights thereunder of such corporation by any person.

A new application shall be submitted to the Department in the event of such a change or changes.

- (d) The Department shall not grant a license until the plans and specifications that are stated in Section .1400 of this Subchapter, covering the construction of new buildings, additions, or material alterations to existing buildings are approved by the Department.
- (e) The facility design and construction shall be in accordance with the licensure rules for ambulatory surgical facilities found in this Subchapter, the North Carolina State Building Code, and local municipal codes.
- (f) Submission of Plans.

- (1) Before construction is begun, schematic plans and specifications and final plans and specifications covering construction of the new buildings, alterations, renovations, or additions to existing buildings shall be submitted to the Division for approval. When construction or remodeling of a facility is planned, one copy of construction documents and specifications shall be submitted by the owner or owner's appointed representative to the Department for review and approval. As a preliminary step to avoid last minute difficulty with construction documents approval, schematic design drawings and design development drawings may be submitted for approval prior to the required submission of construction documents.
- (2) The Division shall review the plans and notify the licensee that said buildings, alterations, additions, or changes are approved or disapproved. If plans are disapproved the Division shall give the applicant notice of deficiencies identified by the Division. Approval of construction documents and specifications shall be obtained from the Department prior to licensure. Approval of construction documents and specifications shall expire one year after the date of approval unless a building permit for the construction has been obtained prior to the expiration date of the approval of construction documents and specifications.
- (3) The plans shall include a plot plan showing the size and shape of the entire site and the location of all existing and proposed facilities.

- (4) ~~Plans shall be submitted in duplicate. The Division shall distribute a copy to the Department of Insurance for review of the North Carolina State Building Code requirements if required by the North Carolina State Building Code which is hereby incorporated by reference, including all subsequent amendments. Copies of the Code may be accessed electronically free of charge at: <http://www.ecodes.biz/ecodes-support/Free-Resources/2012NorthCarolina/12NorthCarolina-main.html>.~~

- (g) To qualify for licensure or license renewal, each facility shall provide to the Division, with its application, an attestation statement in a form provided by the Division verifying compliance with the requirements defined in Rule .0301(d) of this Subchapter.

Authority G.S. 131E-91; 131E-147; 131E-149. S.L. 2013-382, s. 13.1.

10A NCAC 13C .0203 SUSPENSION OR REVOCATION: AMBULATORY SURGICAL FACILITY

- (a) The license may be suspended or revoked at any time for noncompliance with the ~~regulations~~ rules of the Department.
- (b) Suspension or revocation of the license shall be covered by the rules regarding contested cases as found in ~~40 NCAC 3B .0200~~ G.S. 150B-23.
- (c) Notwithstanding ~~Subsection Paragraph~~ (a) and (b) of this Rule, the Department may summarily suspend the license pursuant to ~~General Statute G.S.~~ G.S. 150B-3(c).

Authority G.S. 131E-148; 131E-149; 143B-165; 150B-3(c); 150B-23.

SECTION .0300 – GOVERNING AUTHORITY MANAGEMENT

10A NCAC 13C .0301 GOVERNING AUTHORITY (READoption WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - ANESTHESIA SERVICES

10A NCAC 13C .0501 PROVIDING ANESTHESIA SERVICES

Only a physician, ~~dentist~~ dentist, or qualified anesthetist or qualified anesthesiologist as defined in Rule .0103 of this Subchapter, shall administer anesthetic ~~agents (general and regional).~~ agents. Podiatrists shall administer only local anesthesia. The governing authority shall establish written policies and procedures concerning the provision of anesthesia services, including the designation of those persons authorized to administer ~~anesthetics.~~ anesthetics in accordance with State law.

Authority G.S. 131E-149.

SECTION .0700 - RADIOLOGY SERVICES

10A NCAC 13C .0702 REGULATIONS FOR PERFORMED SERVICES

Radiation protection shall be provided in accordance with the rules and regulations adopted by the Radiation Protection Commission found in ~~40 NCAC 3G, and the recommendations of the National Council on Radiation Protection and Measurements.~~ 10A NCAC 15. Records shall be kept of at least annual checks and calibration of all ionizing radiation therapy equipment used in the facility.

Authority G.S. 131E-149.

SECTION .0900 - NURSING SERVICES

10A NCAC 13C .0902 NURSING PERSONNEL

(a) ~~An adequate number of licensed~~ Licensed and ancillary nursing personnel shall be on duty to assure that staffing levels meet the ~~total~~ nursing needs of patients ~~based on the number of patients~~ in the facility and their individual nursing care needs.

(b) At least one registered nurse shall be in the facility during the hours ~~it is in~~ of operation. Nursing personnel shall be assigned to duties consistent with their training and experience.

Authority G.S. 131E-149.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to amend the rules cited as 10A NCAC 13D .2001, .3003 and repeal the rule cited as 10A NCAC 13D .2506.

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

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

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: July 14, 2020

Time: 10:00 a.m.

Location: Dorothea Dix Park, Lineberger Building, Room 134, 1205 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: *The N.C. Medical Care Commission is proposing to amend two rules and repeal one rule for the Rules for the Licensing of Nursing Homes in 10A NCAC 13D for ventilator assisted care to be consistent with the federal regulations for Nursing Homes for individuals with this type of care need.*

There is an identified need for more ventilator assisted care units in nursing homes as currently, access to care for these residents is challenging with there being only three Nursing Homes in the

State providing residents ventilator assisted care. Incorporating the requirements in the Code of Federal Regulations (CFR) in the proposed rule amendments eliminates the differences in the standards between the State licensure rules and the CFR. The requirements in the proposed rule amendments will be broadened to allow more access for ventilator assisted care service in Nursing Homes and the requirements will be up to date, relevant, and backed by research.

The proposed rule amendments include definitions clarifying technical changes and the deletion of a definition due to its update and relocation to Rule 10A NCAC 13D .3003. The rules revise the requirements for the administration of respiratory care including respiratory therapists' scope of practice in accordance to statute. Direct care nursing personnel staffing ratios have been relocated and incorporated into one rule. The requirements for the qualifications and responsibilities of the pulmonary physician have been updated, relocated and incorporated into amended Rule 10A NCAC 13D .3003; therefore, Rule 10A NCAC 13D .2506 is being repealed as the requirements in the rule are redundant and no longer needed.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 14, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

- ☒ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (\geq \$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .2000 – GENERAL INFORMATION

10A NCAC 13D .2001 DEFINITIONS

In addition to the definitions set forth in G.S. 131E-101, the following definitions will shall apply throughout this Subchapter:

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish.
- (2) "Accident" means an unplanned event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (3) "Addition" means an extension or increase in floor area or height of a building.
- (4) "Administrator" as defined in G.S. 90-276(4).
- (5) "Alteration" means any construction or renovation to an existing structure other than repair, maintenance, or addition.
- (6) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Brain injury long term care is provided through a medically supervised interdisciplinary process and is directed toward maintaining the individual at the optimal level of physical, cognitive, and behavioral functions.
- (7) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (8) "Combination facility" means a combination home as defined in G.S. 131E-101.
- (9) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living, including bathing, dressing, grooming, transferring, eating, and using speech, language, or other communication systems. A comprehensive, inpatient rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial, and cognitive deficits.
- (10) "Department" means the North Carolina Department of Health and Human Services.
- (11) "Director of nursing" means a registered nurse who has authority and ~~direct~~ responsibility for all nursing services and nursing care.
- (12) "Discharge" means a physical relocation of a patient to another health care setting, the discharge of a patient to his or her home, or the relocation of a patient from a nursing bed to an adult care home bed, or from an adult care home bed to a nursing bed.
- (13) "Existing facility" means a facility currently licensed, a proposed facility, a proposed addition to a licensed facility, or a proposed remodeled licensed facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter, to the effective date of this Rule.
- (14) "Facility" means a nursing facility or combination facility as defined in this Rule.
- (15) "Incident" means any accident, event, or occurrence that is unplanned, or unusual, and has ~~actually~~ caused harm to a patient, or has the potential for harm.
- (16) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (17) "Interdisciplinary" means an integrated process involving representatives from disciplines of the health care team.
- (18) "Licensee" means the person, firm, partnership, association, corporation, or organization to whom a license to operate the facility has been issued. The licensee is the legal entity that is responsible for the operation of the business.
- (19) "Medication error rate" means the measure of discrepancies between medication that was ordered for a patient by the health care provider and medication that is ~~actually~~ administered to the patient. The medication error rate is calculated by dividing the number of errors observed by the surveyor by the opportunities for error, multiplied times 100.
- (20) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's belongings or money without the patient's consent.
- (21) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.
- (22) "New facility" means a proposed facility, a proposed addition to an existing facility, or a proposed remodeled portion of an existing facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter after the effective date of this Rule.
- (23) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and provides nursing or nursing-related services to patients in

a nursing home. A nurse aide is not a licensed health professional. Nursing homes that participate in Medicare or Medicaid shall comply with 42 CFR Part 483.75(e), which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations may be accessed at http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08; <https://www.ecfr.gov>.

- (24) "Nursing facility" means a nursing home as defined in G.S. 131E-101.
- (25) "Patient" means any person admitted for nursing care.
- (26) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing or combination facility.
- (27) "Repair" means reconstruction or renewal of any part of an existing building for the purpose of its maintenance.
- (28) "Resident" means any person admitted for care to an adult care home part of a combination facility as defined in G.S. 131E-101.
- (29) "Respite care" means services provided for a patient on a temporary basis, not to exceed 30 days.
- (30) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with ~~rules~~ rules, laws, and regulations as set forth in G.S. 131E-117; Subchapters 13D and 13F of this Chapter; and 42 CFR Part 483, Requirements for States and Long Term Care Facilities.
- (31) ~~"Ventilator dependence" means a physiological dependency by a patient on the use of a ventilator for more than eight hours a day.~~
- (32)(31) "Violation" means a failure to comply with ~~the regulations, standards, and requirements~~ rules, laws, and regulations as set forth in G.S. 131E-117 and 131D-21; Subchapters 13D and 13F of this Chapter; or 42 CFR Part 483, Requirements for States and Long Term Care Facilities, that ~~directly~~ relates to a patient's or resident's health, safety, or welfare, or ~~which~~ that creates a ~~substantial~~ risk that death, or ~~serious~~ physical harm ~~will~~ may occur.

Authority G.S. 131E-104.

SECTION .2500 - PHYSICIAN'S SERVICES

10A NCAC 13D .2506 PHYSICIAN SERVICES FOR VENTILATOR DEPENDENT PATIENTS

Authority G.S. 131E-104.

SECTION .3000 - SPECIALLY DESIGNATED UNITS

10A NCAC 13D .3003 VENTILATOR DEPENDENCE ASSISTED CARE

(a) The general requirements in this Subchapter shall apply when applicable. In addition, facilities having patients requiring the use of ventilators for more than eight hours a day shall meet the following requirements: For the purpose of this Rule, ventilator assisted individuals, means as defined in 42 CFR Part 483.25(i), F695, herein incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations, Title 42, Public Health, Part 482-End, 2019 may be accessed free of charge online at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf.

(b) Facilities having patients who are ventilator assisted individuals shall:

- (1) ~~The facility shall be located within 30 minutes of an acute care facility.~~ administer respiratory care in accordance with 42 CFR Part 483.25(i), F695;
 - (2) ~~Respiratory therapy shall be provided and supervised by a respiratory therapist currently registered by the National Board for Respiratory Care.~~ administer respiratory care in accordance with the scope of practice for respiratory therapists defined in G.S. 90-648; and The respiratory therapist shall:
 - (a) ~~make, as a minimum, weekly on site assessments of each patient receiving ventilator support with corresponding progress notes;~~
 - (b) ~~be on-call 24 hours daily; and~~
 - (c) ~~assist the pulmonologist and nursing staff in establishing ventilator policies and procedures, including emergency policies and procedures.~~
 - (3) ~~Direct nursing care staffing shall be in accordance with Rule .3005 of this Section.~~ provide pulmonary services from a physician who has training in pulmonary medicine according to The American Board of Internal Medicine. The physician shall be responsible for respiratory services and shall:
 - (A) establish with the respiratory therapist and nursing staff, ventilator policies and procedures, including emergency procedures;
 - (B) assess each ventilator assisted patient's status at least monthly with corresponding progress notes;
 - (C) respond to emergency communications 24-hours a day; and
 - (D) participate in individual care planning.
- (c) Direct care nursing personnel staffing ratios established in Rule .2303 of this Subchapter shall not be applied to nursing services for patients who are ventilator assisted at life support settings. The minimum direct care nursing staff shall be 5.5 hours per patient day, allocated on a per shift basis as the facility chooses; however, in no event shall the direct care nursing staff

fall below a registered nurse and a nurse aide I at any time during a 24-hour period.

Authority G.S. 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g, that the Medical Care Commission intends to readopt with substantive changes the rules cited as 10A NCAC 13K .0102, .0401, .0604 and readopt without substantive changes the rules cited as 10A NCAC 13K .0701 and .1104.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://info.ncdhhs.gov/dhhs/ruleactions.html>

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: July 29, 2020

Time: 10:00 a.m.

Location: Dorothea Dix Park, Lineberger Building, Conference Room 134, 1205 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13K, Hospice Licensing Rules, these five rules were part of the 18 rules that were determined as "Necessary With Substantive Public Interest," requiring readoption. With input from stakeholders, substantive changes have been made to these proposed rules. The proposed rules incorporate current standards updates to delete definitions and to reference definitions to General Statute. The proposed rules update language and nomenclature, and update the reference for TB testing guidelines for at-risk employees. The proposed rules update and clarify outdated language and General Statute references to resident rights. In addition, the proposed rules incorporate technical changes to clarify wording, correct grammar, remove ambiguous words, and to add a reference and wording for incorporation of material in a rule by reference.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHRS.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 14, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)

from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13K – HOSPICE LICENSING RULES

SECTION .0100 – GENERAL INFORMATION

10A NCAC 13K .0102 DEFINITIONS

In addition to the definitions set forth in G.S. ~~131E-201~~ 131E-201, the following definitions shall apply throughout this ~~Subchapter~~ following Subchapter:

- (1) "Agency" means a licensed hospice as defined in ~~Article 10~~ G.S. 131E-201(3).
- (2) ~~"Attending Physician" means the physician licensed to practice medicine in North Carolina who is identified by the patient at the time of hospice admission as having the most significant role in the determination and delivery of medical care for the patient.~~
- (3)(2) "Care Plan" means the proposed method developed in writing by the interdisciplinary care team through which the hospice seeks to provide services ~~which~~ that meet the patient's and family's medical, ~~psychosocial~~ psychosocial, and spiritual needs.
- (4)(3) "Clergy Member" means an individual who has received a degree ~~from an~~ from a theological school and has fulfilled ~~appropriate~~ appropriate denominational seminary requirements; or an individual who, by ordination or authorization from the individual's denomination, has been approved to function in a pastoral capacity. Each hospice shall designate a clergy member responsible for coordinating spiritual care to hospice patients and families.
- (5)(4) "Coordinator of Patient Family Volunteers" means an individual on the hospice ~~staff team~~ staff team who coordinates and supervises the activities of all patient family volunteers.
- (6)(5) "Dietary Counseling" means counseling given by a licensed ~~dietitian~~ dietitian, licensed

- dietitian/nutritionist, or licensed nutritionist as defined in G.S. 90-357. G.S. 90-352.
- (7)(6) "Director" means the person having administrative responsibility for the operation of the hospice.
- (7) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (8) "Governing Body" means the group of persons responsible for overseeing the operations of the hospice, ~~specifically for~~ including the development and monitoring of policies and procedures related to all aspects of the operations of the hospice program. The governing body ensures that all services provided are consistent with accepted standards of hospice practice.
- (9) "Hospice" means a coordinated program of services as defined in G.S. ~~131E-176(13a).~~ 131E-201.
- (10) "Hospice Caregiver" means an individual on the hospice staff team who has completed hospice caregiver training as defined in ~~10A NCAC 13K Rule .0402 of this Subchapter~~ and is assigned to a hospice residential facility or hospice inpatient unit.
- (11) "Hospice Inpatient Facility or Hospice Inpatient Unit" means ~~a licensed facility as defined in G.S. 131E-201(3).~~ G.S. 131E-201(3a).
- (12) "Hospice Residential Facility" means as defined in G.S. ~~131E-201(5) is a facility licensed to provide hospice care to hospice patients as defined in G.S. 131E-201(4) and their families in a group residential setting.~~ G.S. 131E-201(5a).
- (13) "Hospice ~~Staff~~ Team" means ~~members of the interdisciplinary team as defined in G.S. 131E-201(7), nurse aides, administrative and support personnel and patient family volunteers.~~ G.S. 131E-201(6).
- (14) "Informed Consent" means the agreement to receive hospice care made by the patient and family ~~which~~ that specifies in writing the type of care and services to be provided. The informed consent form shall be signed by the patient prior to service. If the patient's medical condition is such that a signature cannot be obtained, a signature shall be obtained from the individual having legal guardianship, applicable durable or health care power of attorney, or the family member or individual assuming the responsibility of primary caregiver.
- (15) "Inpatient Beds" means ~~beds licensed as such by the Department of Health and Human Services for use by hospice patients, for medical management of symptoms or for respite care.~~
- ~~(16)~~(15) "Interdisciplinary Team" means ~~a group of hospice staff as defined in G.S. 131E-201(7).~~ G.S. 131E-201(6).
- ~~(17)~~(16) "Licensed Practical Nurse" means ~~a nurse holding a valid current license as required by G.S. 90, Article 9A.~~ as defined in G.S. 90-171.30 or G.S. 171.32.
- ~~(18)~~(17) "Medical Director" means a physician licensed to practice medicine in North Carolina who directs the medical aspects of the hospice's patient care program.
- (18) "Nurse Practitioner" means as defined in G.S. 90-18.2(a).
- (19) "Nurse Aide" means an individual who is authorized to provide nursing care under the supervision of a licensed nurse, has completed a training and competency evaluation program or competency evaluation program and is listed on the Nurse Aide Registry, at the Division of Health Service Regulation. If the nurse aide performs Nurse Aide II tasks, ~~he or she~~ the nurse aide must shall also meet the requirements established by the N.C. Board of Nursing as defined in 21 NCAC 36 ~~.0405.~~ .0405, incorporated by reference including subsequent amendments and editions. This Rule may be accessed at <http://reports.oah.state.nc.us/ncac.asp> at no charge.
- ~~(20)~~ "Occupational Therapist" means ~~a person duly licensed as such, holding a current license as required by G.S. 90-270.29.~~
- ~~(21)~~(20) "Patient and Family Care Coordinator" means a registered nurse designated by the hospice to coordinate the provision of hospice services for each patient and family.
- ~~(22)~~(21) "Patient Family Volunteer" means an individual who has received orientation and training as defined in Rule .0402 of this Subchapter, and provides volunteer services to a patient and the patient's family in the patient's home or in a hospice inpatient facility or hospice inpatient unit, or a hospice residential facility.
- ~~(23)~~(22) "Pharmacist" means ~~an individual licensed to practice pharmacy in North Carolina as required in G.S. 90-85(15).~~ as defined in G.S. 90-85.3.
- (24) "~~Physical Therapist~~" means ~~an individual holding a valid current license as required by G.S. 90, Article 18B.~~
- ~~(25)~~(23) "Physician" means ~~an individual licensed to practice medicine in North Carolina.~~ as defined in G.S. 90-9.1 or G.S. 90-9.2.
- ~~(26)~~(24) "Premises" means the location or licensed site ~~from which~~ where the agency provides hospice services or maintains patient service records or advertises itself as a hospice agency.

- ~~(27)~~(25) "Primary Caregiver" means the family member or other person who assumes the overall responsibility for the care of the patient in the patient's home.
- ~~(28)~~(26) "Registered Nurse" means ~~a nurse holding a valid current license as required by G.S. 90, Article 9A, as defined in G.S. 90-171.30 or G.S. 90-171.32.~~
- ~~(29)~~(27) "Respite Care" means care provided to a patient for temporary relief to family members or others caring for the patient at home.
- (30) ~~"Social Worker" means an individual who performs social work and holds a bachelor's or advanced degree in social work from a school accredited by the Council of Social Work Education or a bachelor's or an advanced degree in psychology, counseling or psychiatric nursing.~~
- (31) ~~"Speech and Language Pathologist" means an individual holding a valid current license as required by G.S. 90, Article 22.~~
- ~~(32)~~(28) "Spiritual Caregiver" means an individual authorized by the patient and family to provide for their spiritual ~~direction~~. needs.

Authority G.S. 131E-202.

SECTION .0400 - PERSONNEL

10A NCAC 13K .0401 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with the rules set forth in 10A NCAC 41A. ~~41A, which is incorporated by reference, including subsequent amendments and editions.~~ These policies and procedures shall include provisions for compliance with 29 CFR 1910 (~~Occupational~~ Occupational Safety and Health ~~Standards~~) Standards, which is incorporated by reference including subsequent amendments, amendments and editions. ~~Emphasis shall be placed on compliance with These editions shall include 29 CFR 1910.1030 (Airborne and Bloodborne Pathogens). Bloodborne Pathogens.~~ Copies of Title 29 Part 1910 can be ~~purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty one dollars (\$21.00) and may be purchased with a credit card.~~ obtained online at no charge at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=10051&p_table=STANDARDS.

(b) Hands-on care employees ~~must~~ shall have a baseline skin test for tuberculosis. Individuals who test positive ~~must~~ shall demonstrate non-infectious status prior to assignment in a patient's home. Individuals who have previously tested positive to the tuberculosis ~~skin~~ test shall obtain a baseline and subsequent annual verification that they are free of tuberculosis symptoms. The verification shall be obtained from the local health department, a private ~~physician~~ physician, or health nurse employed by the agency. The ~~Tuberculosis Control Communicable Disease~~ Branch of the North Carolina Department

of Health and Human Services, Division of Public Health, ~~1902 1905~~ Mail Service Center, Raleigh, NC ~~27699-1902 27699-1905~~ will ~~provide~~, provide free of charge guidelines for conducting and verification utilizing ~~and~~ Form ~~DEHNR DHHS~~ 3405 (Record of Tuberculosis Screening). Employees identified by agency risk assessment to be at risk for exposure ~~are required to~~ shall be subsequently tested ~~at intervals prescribed by OSHA standards, in accordance with Centers for Disease Control (CDC) guidelines, which is incorporated by reference with subsequent amendments and editions. A copy of the CDC guidelines can be obtained online at~~ no charge at https://search.cdc.gov/search/?query=TB+testing+intervals&site_limit=&utf8=%E2%9C%93&affiliate=cdc-main.

~~(b)~~(c) Written policies shall be established and implemented ~~which by the agency that~~ include personnel record content, orientation, patient family volunteer training, and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for ~~at~~ least one year.

~~(c)~~(d) Job descriptions for every position, including volunteers involved in direct patient/family services, shall be established ~~in writing which by the agency and shall~~ include the position's qualifications and specific responsibilities. ~~Individuals~~ Hospice team member(s) shall be assigned only to duties ~~for which that~~ they are trained and competent to ~~perform and when applicable for which they are properly licensed.~~ perform, or licensed to perform.

~~(d)~~(e) Personnel records shall be established and maintained for ~~all hospice staff, team,~~ both paid and direct patient/family services volunteers. These records shall be maintained ~~at least for~~ one year after termination from agency employment, employment or volunteer service ends. When ~~requested,~~ requested by the State ~~surveyors,~~ the records shall be available on the agency premises for inspection by the Department. The records shall include:

- (1) an application or resume ~~which that~~ lists education, ~~training~~ training, and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the ~~staff;~~ team member(s);
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis annual screening for ~~those employees for whom the test is necessary as described in Paragraph (a) of this Rule;~~ hands-on care team;
- (5) documentation of Hepatitis B immunization or declination for hands on care ~~staff;~~ team;
- (6) ~~airborne and~~ bloodborne pathogen training for ~~hands-on~~ hands-on care ~~staff;~~ team, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency ~~policy and policy,~~ or at least annually;
- (8) verification of ~~staff credentials as applicable;~~ team member(s) credentials;
- (9) records of the verification of competencies by agency supervisory personnel of ~~all~~ skills

required of hospice services personnel to carry out patient care ~~tasks to which the staff is assigned.~~ tasks. The method of verification shall be defined in agency policy.

Authority G.S. 131E-202.

SECTION .0600 - PATIENT/FAMILY CARE

10A NCAC 13K .0604 PATIENT'S RIGHTS AND RESPONSIBILITIES

(a) A hospice agency shall provide each patient with a written notice of the patient's rights and responsibilities in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of services. The agency ~~must~~ shall maintain documentation showing that each patient has received a copy of ~~his~~ their rights and ~~responsibilities.~~ responsibilities as defined in G.S. 131E-144.3.

- (b) ~~The notice shall include at a minimum the patient's right to:~~
- (1) ~~be informed and participate in the patient's plan of care;~~
 - (2) ~~voice grievances about the patient's care and not be subjected to discrimination or reprisal for doing so;~~
 - (3) ~~confidentiality of the patient's records;~~
 - (4) ~~be informed of the patient's liability for payment for services;~~
 - (5) ~~be informed of the process for acceptance and continuance of service and eligibility determination;~~
 - (6) ~~accept or refuse services;~~
 - (7) ~~be informed of the agency's on-call service;~~
 - (8) ~~be advised of the agency's procedures for discharge; and~~
 - (9) ~~be informed of supervisory accessibility and availability~~

~~(c)~~ (b) A hospice agency shall provide ~~all~~ patients with a business hours telephone number for information, ~~questions~~ questions, or complaints about services provided by the agency. The agency shall also provide the Division of Health Service Regulation's complaints ~~number and the Department of Health and Human Services~~ Caroline number, intake telephone numbers: within N.C. (800) 624-3004; outside of N.C. (919) 855-4500. The Division of Health Service Regulation shall investigate all allegations of non-compliance with the ~~rules.~~ rules of this Subchapter.

~~(d)~~ (c) A hospice agency shall initiate an investigation within ~~72 hours~~ 72 hours of complaints made by a patient or ~~his or her~~ family. Documentation of both the existence of the complaint and the resolution of the complaint shall be maintained by the ~~agency.~~ agency, at a minimum of one-year, in accordance with hospice agency policy and procedures.

Authority G.S. 131E-202.

SECTION .0700 - PATIENT/FAMILY CARE PLAN

10A NCAC 13K .0701 CARE PLAN (READoption WITHOUT SUBSTANTIVE CHANGES)

SECTION .1100 - HOSPICE RESIDENTIAL CARE

10A NCAC 13K .1104 DIETARY SERVICES (READoption WITHOUT SUBSTANTIVE CHANGES)

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 34 – BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to amend the rule cited as 21 NCAC 34B .0110.

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

Proposed Effective Date: *November 1, 2020*

Public Hearing:

Date: *July 7, 2020*

Time: *10:00 a.m.*

Location: *1033 Wade Ave., Suite 108, Raleigh, NC 27605*

Reason for Proposed Action: *To modernize the work report requirements for resident trainees performing traineeships for the purpose of obtaining licensure.*

Comments may be submitted to: *Stephen E. Davis, NC Board of Funeral Service, 1033 Wade Ave., Suite 108, Raleigh, NC 27605*

Comment period ends: *August 14, 2020*

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

- ☐ **State funds affected**
- ☐ **Local funds affected**

- ☐ Substantial economic impact (>= \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

21 NCAC 34B .0110 ~~REPORTS ON WORK~~ REPORTS AND CHECKLISTS

(a) ~~The Active resident trainee trainees shall submit a report to the Board every month on a form provided by the Board. Board no later than the 10th day of the calendar month that immediately follows the month during which the work was performed. On the report, the resident trainee shall provide: The resident trainee shall furnish the name of the trainee; the reporting period for the work report; the name and address of the funeral establishment where the resident trainee is serving; a description of the work performed during the preceding month; and any other information the Board deems necessary as required by law. The form shall be signed by the resident trainee and must be certified as correct by the licensee under whom the trainee served during the period and by the manager of the funeral establishment. The names of the deceased persons, and the names of the purchasers of preneed funeral contracts, on whose cases the trainee assisted and reported during traineeship must be retained by the trainee until his traineeship requirement has been fulfilled, and during such time such information shall be subject to inspection by the Board or its authorized agent. Such reports must be filed in the office of the Board not later than the 10th day of the calendar month which immediately follows the completion of each one month period of resident traineeship. Failure to submit such reports when due shall be sufficient cause for suspension or revocation of the certificate of resident traineeship.~~

- (1) The trainee's name and signature;
- (2) The month during which the work was performed;
- (3) The number of hours worked during the preceding month;
- (4) The name and address of the funeral establishment where the resident trainee is working;
- (5) A description of the work performed during the preceding month;
- (6) The name, license number, and notarized signature of the trainee's supervisor; and
- (7) The name, license number, and notarized signature of the licensed manager of the funeral establishment where the resident trainee is working.

(b) By signing the report, the trainee's supervisor shall certify that the data contained in the report is correct. Neither the trainee nor the trainee's supervisor shall be permitted to amend or revise the work report after it is submitted to the Board. The Board shall not accept incomplete work reports and a trainee who fails to submit a complete work report by the date on which it is due shall be subject to the provisions of Paragraph (c) of this Rule.

(c) A late fee of twenty-five dollars (\$25.00) shall be assessed against the trainee for each work report that is submitted to the

Board after the date on which it is due. Additionally, following a trainee's first failure to timely submit a work report, the Board shall issue the trainee a letter that cautions against future non-compliance with this Rule. Following a trainee's second failure to timely submit a work report, the work set forth in the second untimely work report shall not be credited toward the certification of the trainee's resident traineeship. Following a trainee's third failure to timely submit a work report, the Board shall revoke the trainee's resident traineeship.

(d) Resident trainees must maintain a checklist for each decedent for whom he or she performs funeral services on a form provided by the Board. The checklist shall contain the following information:

- (1) The name of the deceased person;
- (2) The date on which the services were provided;
- (3) The trainee's name and signature;
- (4) A description of the funeral services provided; and
- (5) The supervisor's signature.

(e) Resident trainees must maintain a list of the preneed funeral contracts with which the resident trainees participated.

(f) All documents and information set forth in this Rule must be retained by the trainee until his or her traineeship requirement has been certified by the Board, and during such time such information shall be subject to inspection by the Board or its authorized agent.

Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)e.,(4)g; 90-210.67(a); 90-210.69(a).

**CHAPTER 68 – ADDICTIONS SPECIALIST
PROFESSIONAL PRACTICE BOARD**

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Addictions Specialist Professional Practice Board intends to readopt with substantive changes the rules cited as 21 NCAC 68 .0101, .0102, .0201, .0202, .0204, .0209, .0214, .0216, .0217, .0222, .0223, .0227, .0228, .0401-.0405, .0407, .0501, .0503, .0508, .0509, .0512, .0602, .0605, .0606, .0620, .0709 readopt without substantive changes the rules cited as 21 NCAC 68 .0220, .0221, .0224-.0226, .0301, .0303, .0304, .0307, .0502, .0504-.0507, .0510, .0511, .0601, .0603, .0604, .0607-.0611, .0615, .0701-.0708 repeal through readoption the rules cited as 21 NCAC 68 .0213, .0215 and .0406.

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

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

Proposed Effective Date: *October 1, 2020*

Public Hearing:

Date: *July 17, 2020*

Time: 12:00 p.m.

Location: 1046 Washington St., Raleigh, NC 27605

Reason for Proposed Action: *Periodic Existing Rules Review - Updated clinical terms, added electronic submission instructions, combined and clarified training approval process instructions, added language on approval of university specialty curricula, added language on ethics and social media, clarified committee responsibilities, removed outdated instructions and clarified supervisor responsibilities and duties.*

Comments may be submitted to: Barden Culbreth, 1046 Washington St., Raleigh, NC 27605; email barden@ncaddictionsboard.org

Comment period ends: August 14, 2020

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

SECTION .0100 - GENERAL

21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms mean:

- (1) "Applicant" means a person who submits documentation seeking Board status for registration, certification, or licensure.
- (2) "~~Application packet~~" ~~means a set of instructions and forms required by the Board for registration.~~
- (3)(2) "Approved supervisor" means a person who monitors and directs the activities of a substance ~~abuse~~ use disorder professional in the role of ~~an applicant~~ a supervisor or a practice supervisor as set out in G.S. 90-113.31A. This is a person who fulfills or is in the process of

fulfilling the requirements for this Board designation of approved supervisor pursuant to Rule .0211 of this Chapter by completing its academic, didactic, and experiential requirements.

- (4)(3) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems, and needs for the development of a treatment or service plan for a substance use disorder.
- (5)(4) "Clinical application" means the assumption of professional and ethical responsibilities in the form of clinical supervision defined in Item (7) of this Rule in a clinical setting for 300 hours as well as the utilization of practice dimensions that include:
 - (a) clinical evaluation;
 - (b) treatment planning;
 - (c) referral;
 - (d) service coordination;
 - (e) counseling;
 - (f) education for the individual client, family or community; and
 - (g) documentation.
- (6)(5) "Clinical setting" means a location where the primary purpose is the delivery of behavioral health care to clients, patients, and consumers.
- (7)(6) "Clinical supervision" means clinical oversight required for all credentials with 50 percent clinical supervision that shall accrue in person and face-to-face while in the same room: the balance of this requirement may be fulfilled electronically via video, face-to-face, if performed in real time.
- (8)(7) "Clinical supervision specific education" means training that covers the aspects of clinical supervision of a substance ~~abuse~~ use disorder professional or any of the Twelve Core Functions in their clinical application.
- (9)(8) "Client" means an individual who is in receipt of substance ~~abuse~~ use disorder counseling.
- (10)(9) "Complainant" means a person who has filed a an ethical complaint pursuant to these Rules.
- (11)(10) "Consultation" means a meeting for discussion, decision-making, and planning with other service providers for the purpose of providing substance ~~abuse~~ use disorder counseling services.
- (12)(11) "Crisis" means a radical change of status event in the course of treatment related to alcohol or drug use that threatens to compromise or destroy the rehabilitation effort.
- (13)(12) "Deemed status group" means those persons who are credentialed as clinical addictions specialists because of their membership in a deemed status as defined in G.S. 90-113.31A(15).
- (14)(13) "Education" means a service that is designed to inform and teach various groups including

- clients, families, schools, businesses, churches, industries, civic, and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (15)(14) "Full-time" means 2,000 hours of substance ~~abuse~~ use disorder professional experience per year.
- (16)(15) "General professional skill building" means education provided to enhance the general skills of a ~~substance abuse~~ substance use disorder professional.
- (17)(16) "Hearing panel" means members of a committee designated by the chairperson of the committee to conduct an informal hearing to determine whether the applicant meets the standards required to be maintained for or awarded a credential.
- (18)(17) "Impairment" means a mental illness, substance ~~abuse, use disorder,~~ chemical dependency, or physical ~~illness.~~ illness that inhibits the ability of the professional to meet the treatment needs of the client and his or her family.
- (19)(18) "Letter of reference" means a letter that recommends a person for ~~certification,~~ credentialing.
- (20)(19) "Membership in good standing" means a member's credential is not in a state of revocation, lapse, or suspension. However, an individual whose credential is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (21)(20) "Passing score" means the score set and provided by the entity administering the exam.
- (22)(21) "Person served" means an individual who is not a client but is in receipt of substance ~~abuse~~ use disorder prevention counseling.
- (23)(22) "Personal service" means the delivery of a document into the hands of the person to whom it is addressed.
- (24)(23) "President" means the President of the Board.
- (25)(24) "Prevention consultation" means a service provided to other mental health, human service, community planning, development organization, or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention of alcohol and drug abuse.
- (26)(25) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
 - (b) education and skill development;
 - (c) community organization;
 - (d) public and organizational policy; and
 - (e) professional growth and responsibility.
- (27)(26) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources available to transfer services.
- (28)(27) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- (29)(28) "Reinstatement" means an action where the Board restores registration, certification, or licensure to an applicant after the applicant completes the requirements imposed by the Board.
- (30)(29) "Relapse" means a return to the pattern of substance ~~abuse~~ misuse as well as the process during which indicators appear prior to the person's return to the pattern of substance ~~abuse~~ misuse or a re-appearance or exacerbation of physical, psychological, or emotional symptoms of impairment.
- (31)(30) "Renewal" means an action by the Board granting a substance abuse professional a consecutive registration, certification, or licensure based upon the completion of requirements for renewal as prescribed by statute and the rules of the Board.
- (32)(31) "Revival" means an action by the Board granting a substance abuse professional a registration, certification, or licensure following a lapse of registration, certification, or licensure wherein the professional must also meet the requirements for renewal.
- (33)(32) "Reprimand" means a written warning from the Board to a person making application for certification or licensure by the Board or registered, certified, or licensed by the Board.
- (34)(33) "Respondent" means a person who is making application for registration, certification, or licensure by the Board or is registered, certified, or licensed by the Board against whom a complaint has been filed.
- (35)(34) "Sexual activity" or "sexual contact" ~~means:~~ means soliciting or engaging in any activities of a sexual nature, including kissing, fondling, or touching of the body, specifically to the genitals but may include other parts of the body meant to cause sexual arousal.
- (a) ~~Contact between the penis and the vulva or the penis and the anus;~~
 - (b) ~~Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;~~
 - (c) ~~The penetration, however slight, of the anal or genital opening of another by a hand, finger, or any object with an intent to abuse, humiliate, harass,~~

- ~~degrade, arouse, or gratify the sexual desire of any person;~~
- (d) ~~Vaginal intercourse, cunnilingus, fellatio, or anal intercourse, if initiated, agreed to, or not resisted by the substance abuse professional; or~~
- (e) ~~Kissing or the intentional touching of the other's lips, genital area, groin, inner thigh, buttocks, breasts, or any other body parts, as well as the clothing covering any of these body parts for the purpose of sexual stimulation or gratification of either the substance abuse professional or the client if initiated or agreed to or not resisted by the substance abuse professional.~~
- (36)(35) "Substance ~~abuse~~ use disorder counseling experience " means approved supervised experience that may be full-time, part-time, paid or voluntary, and shall include all of the Twelve Core Functions as set forth in Rule .0204 of this Chapter as documented by a job description and a supervisor's evaluation.
- (37)(36) "Substance ~~abuse~~ use disorder prevention consultant experience" means approved supervised experience that may be full-time, part-time, paid or voluntary, and shall include ~~all of~~ the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (38)(37) "Substance ~~abuse~~ use disorder specific" means education focused upon alcohol and other drugs and the substance ~~abusing~~ using population and is provided for a substance ~~abuse~~ use disorder professional by an individual whose education and experience is in the field of alcohol and other drugs.
- (39)(38) "Supervised practice" means supervision of the applicant in the knowledge and skills related to substance ~~abuse~~ use disorder professionals.
- (40)(39) "Supervisor of record" means the substance ~~abuse~~ use disorder professional primarily responsible for providing applicant or practice supervision to a supervisee.
- (41)(40) "Suspension" means a loss of registration, certification, or licensure by a substance abuse professional or the privilege of making application for registration, certification, or licensure by an applicant for one of these credentials.

Authority G.S. 90-113.30; 90-113.31A; 90-113.31B; 90-113.33; 90-113.40; 90-113.41; 90-113.41A.

21 NCAC 68 .0102 BOARD MAILING ADDRESS

- (a) Unless otherwise directed, all correspondence shall be mailed to the following address:
North Carolina ~~Substance Abuse~~ Addiction Specialist

Professional Certification Practice Board
P.O. Box 10126
Raleigh, NC 27605.

- (b) The Board website shall be located at www.ncsappb.org.

Authority G.S. 90-113.30; 90-113.33.

SECTION .0200 - CERTIFICATION

21 NCAC 68 .0201 APPLICATION FOR REGISTRATION

- (a) Applications, inquiries and forms shall be obtained from the Board's website, www.ncsappb.org and ~~returned~~ submitted to the ~~Board.~~ Board for review and approval.
- (b) To obtain an application packet, the applicant shall ~~submit a check or money order for~~ pay a non-refundable fee in the amount of twenty-five dollars (\$25.00) ~~and a letter of intent stating the credential sought by the applicant.~~ through the Board's application found on the website, www.ncsappb.org.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CREDENTIAL

- (a) Individuals shall register with the Board prior to providing professional services. This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the applicant with an understanding of his or her standing in the credentialing process.
- (b) To register, the applicant shall ~~send~~ submit the following to the Board:
- (1) Completed ~~registration form~~ application provided by the Board;
 - (2) Documentation of the degree required for a credential;
 - (3) A signed supervision ~~contract on a form~~ agreement provided by the Board documenting the proposed supervision process by an applicant supervisor;
 - (4) ~~A signed form attesting to the applicant's promise to adhere~~ An attestation or otherwise signed adherence by the applicant to the ethical standards of the Board;
 - (5) Documentation of three hours of educational training in ethics;
 - (6) Completed criminal history record check;
 - (7) Job description evidencing applicant is practicing under the scope of practice for the credential sought;
 - (8) Current resume;
 - (9) Completed special needs statement revealing special testing needs on a form provided by the Board if applicable; and
 - (10) ~~A check or money order~~ Payment in the amount as set in Rule .0205 that is non-refundable and made payable to the Board.

- (c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.

- (d) Registration with the Board shall be for a period as set out in G.S. 90-113.40A.
- (e) An applicant shall become a Registrant upon receipt of ~~written~~ notification from the Board.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40; 90-113.40A; 90-113.46A.

21 NCAC 68 .0204 SUPERVISED PRACTICUM FOR CERTIFIED ~~SUBSTANCE ABUSE COUNSELOR~~ ALCOHOL AND DRUG COUNSELOR AND LICENSED CLINICAL ADDICTIONS SPECIALIST

(a) All applicants for the certified ~~substance abuse~~ alcohol and drug counselor or the clinical addictions specialist credential shall complete a 300 hour practicum supervised by an applicant supervisor and the practicum shall cover all core functions of counseling. Verification of at least ten hours of this practicum shall be made in each of the core functions of this Rule. These 120 hours of the practicum shall be divided into one hour of supervision for every 10 hours of practice in each one of the 12 core functions. These core functions are:

- (1) Screening to determine a client is appropriate and eligible for admission to a particular program;
- (2) Intake to provide the administrative and initial assessment procedures for admission to a program;
- (3) Orientation of the client to the general nature and goals of the program, rules governing client conduct, notice of the hours during which services are available, treatment costs to be borne by the client, if any, and client's rights;
- (4) An assessment to identify and evaluate for the purpose of the development of a treatment plan an individual's strengths, weaknesses, problems and needs;
- (5) The treatment planning process whereby the counselor and client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized;
- (6) Counseling to assist individuals, families, or groups in achieving goals through exploration of a problem and its ramifications, examination of attitudes and feelings, consideration of alternative solutions, and making decisions;
- (7) Case management activities which bring services, agencies, resources or people together within a planned framework of action toward the achievement of established goals;
- (8) Providing those crisis intervention services which respond to an alcohol or other drug abuser's needs during acute emotional and physical distress;
- (9) Provision of client education information to individuals and groups describing alcohol and other drug abuse and the available services and resources;

- (10) Referring the client whose needs cannot be met by the counselor or agency to other support systems and community resources available;
- (11) Charting the results of the assessment and treatment plan while writing reports, progress notes, discharge summaries and other client-related data necessary for the compilation of necessary reports and recordkeeping; and
- (12) Consultation with substance abuse and other professionals to assure comprehensive, quality care for the client.

(b) The remaining 180 hours of this practicum shall be in any of the core function areas.

(c) Upon completion of the 300 hours, the supervisor shall complete an evaluation ~~form~~ reviewing the certified ~~substance abuse~~ alcohol and drug counselor or clinical addictions specialist professional development and provide it to the Board, documenting the 300 hours of practice, including 30 hours of ~~supervision on a form provided by the Board.~~ supervision.

(d) Pursuant to G.S. 90-113.40(a)(7), the practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an applicant supervisor.

(e) Pursuant to G.S. 90-113.40(c)(1), the 300 hours of practical training provided by an applicant supervisor shall be completed as part of the required two years postgraduate supervised ~~substance abuse~~ clinical addictions counseling experience.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40.

21 NCAC 68 .0209 RECIPROCITY

(a) If a counselor, prevention consultant, clinical supervisor, or clinical addictions specialist holds a credential issued by an ~~IC&RC/AODA, Inc.~~ IC&RC member board or a successor organization as a certified ~~substance abuse counselor (to include alcohol and other drugs),~~ alcohol and drug counselor, certified prevention consultant, certified clinical supervisor or ~~credentialed~~ licensed clinical addictions specialist, the person may transfer this credential to North Carolina by applying a transfer fee ~~as assessed by the IC&RC/AODA, Inc.~~ paid to the IC&RC or its successor organization.

(b) The reciprocal credential effective date shall remain the same as in the previous state.

(c) At the time when re-credentialing is required, it will be the individual's responsibility to submit an application for re-credentialing. For the period of the first re-credentialing in North Carolina, the Board shall accept the member's former state re-credentialing requirements for the purpose of reciprocal re-credentialing. At the end of this re-credentialing period, it shall be the individual's responsibility to conform to the re-credentialing requirements of North Carolina in effect at the time of re-credentialing.

(d) In the event that the individual's IC&RC member board does not administer the same level exam required for reciprocal certification or licensing in North Carolina, the applicant shall be required to complete and pass the exam required by the rules of this Chapter and the North Carolina General Statute.

Authority G.S. 90-113.30; 90-113.33; 90-113.36; 90-113.37A.

21 NCAC 68 .0213 CONTINUING EDUCATION APPROVAL POLICY

~~(a) The Board shall approve educational events for professional credentialing. One certified hour is defined as one contact hour of participation in an organized continuing education experience. Continuing education used to meet the credentialing requirements shall be reviewed and approved according to these Rules. If the sponsor does not obtain approval from the Board, the individual participants shall be responsible for supplying all of the required information for each continuing education session at the time of request for credentialing or re-credentialing. Upon request, the Standards Committee shall review requests quarterly. Submission of approval requests shall be received 45 days prior to opening day of the event.~~

~~(b) Any applicant for training approval shall submit a training approval request form including:~~

- ~~(1) Title of course, date, location, individual or organization sponsor, whether it will be held only once or recurring.~~
- ~~(2) Presenter(s) who shall attach a resume outlining expertise in the subject area and content of the session.~~
- ~~(3) A description of the contents of a track, course, seminar, and the type of credit hours being requested to indicate if it is substance abuse specific, general skill building, or required training pursuant to other specialized credentials including Criminal Justice Addictions Professionals, Clinical Supervisors, Residential Facility Directors, or Prevention Consultants.~~
- ~~(4) Agenda, to include the breakdown of time including a 15 minute break for every two hours of education and amount of time allowed for meals.~~
- ~~(5) The sponsor or individual seeking approval shall pay an annual fee as follows:
(A) \$25.00 for up to 10 hours;
(B) \$50.00 for more than 10 hours and up to 20 hours;
(C) \$75.00 for more than 20 hours and up to 30 hours;
(D) \$100.00 for more than 30 hours and up to 40 hours;
(E) \$125.00 for more than 40 hours.~~

~~(c) Training approved by IC&RC/AODA, Inc. or its successor organization member boards and organizations granted deemed status shall be accepted with documentation of completion.~~

~~(d) In service training shall meet the same requirements as set out in Paragraphs (b) and (c) of this Rule. However, if persons who are non employees of the sponsoring and presenting agency are invited to participate, then it is not considered in-service and Board pre approval shall be required. Education received within the organization by outside trainers is not considered in-service.~~

~~(e) Presenters shall be given one hour of credit for every one hour presented. However, if the original presentation is repeated, hours can only be credited for the original presentation.~~

~~(f) The Board may revise or rescind credit hours if information is received documenting that a previously approved event was not presented as it was approved.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.37A; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0214 COLLEGE AND UNIVERSITY SUBSTANCE ABUSE USE DISORDER SPECIALTY CURRICULA

(a) The standards committee shall be notified by a school of its intent to provide a substance ~~abuse~~ use disorder specialty curricula.

(b) Upon notification of the school's intent to provide a substance ~~abuse~~ use disorder specialty curriculum, the Board shall inform the school that the following information shall be needed from the applicant school:

- (1) Curricula description including number of hours of substance ~~abuse~~ use disorder specific ~~credits; credits~~. No more than 50 percent of educational hours may be obtained in an online asynchronous format;
- (2) Information as to how the educational requirements for substance ~~abuse~~ use disorder specialty shall be met within the curricula pursuant to G.S. 90-113.41A(a)(2) a.-k.;
- (3) The names and resume of any faculty who shall be teaching the substance ~~abuse~~ use disorder curricula;
- (4) The name of the school in which the substance ~~abuse~~ use disorder curricula shall be housed and organizational contact information; and
- (5) Specific guidelines and information on the field experience that shall be required of students including current substance ~~abuse~~ use disorder specific field placements and supervision. A clinical supervisor intern or certified clinical supervisor shall supervise the students enrolled in the substance use disorder specialty curricula described in this Section pursuant to 21 NCAC 68 .0204.

(c) The ~~standards committee~~ Standards Committee shall review curricula to determine if the proposal meets educational, hour, substance ~~abuse~~ use disorder specific and supervised experience qualifications.

(d) The ~~curricula review subcommittee of the standards committee~~ Standards Committee shall present recommendations to the Board.

(e) The Board shall notify the school of the status of its request and any recommendation.

(f) The curricula shall be submitted for review every three years. Application for extension of the curricula shall be made 90 days prior to the current expiration date. A previously approved substance use disorder specialty curricula school may forgo review by notifying the Board that there have been no substantive changes to the approved curricula.

~~(g) Individuals applying who have completed a curriculum from a school meeting the criteria set forth in Subparagraphs (b)(1)~~

through (b)(5) of this Rule shall submit an official masters or more advanced degree transcript from the university or college.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0215 VERIFICATION

~~(a) Application for verification of credential shall be made to the Board.~~

~~(b) A request for verification shall be made in writing and submitted with a check or money order in the amount of twenty-five dollars (\$25.00).~~

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40.

21 NCAC 68 .0216 BACKGROUND INVESTIGATION

(a) Every applicant for ~~an initial credential~~ Registration issued pursuant to Article 5C of Chapter 90 of the General Statutes shall provide, at her or his expense, a completed complete a fingerprint card background check and accompanying release of information form, ~~provided by the Board~~, meeting the standards set by the State Bureau of Investigation and obtained within 60 days of the date the applicant submits all the prerequisites for his or her credential.

(b) The applicant shall provide any additional information regarding any pending charge or conviction as requested by the Board.

(c) An applicant shall submit a verified statement listing all criminal convictions received by the applicant, subsequent to the date of the application. Failure to make full and accurate disclosure shall be grounds for immediate application denial or other disciplinary action applicable to registration, certification, or licensure pursuant to G.S. 90-113.44.

(d) Criminal histories from any jurisdiction shall be categorized as defined by North Carolina law.

(e) The categories of crimes (committed as separate incidents) are as follows:

- (1) Category I. The following crimes:
 - (A) Murder, attempted murder, or manslaughter of a child 16 or under; or
 - (B) Sexual assault, including attempted sexual assault, rape, indecent liberties with a child, molestation, or sexual assault of a child, or the attempt to commit any of the aforementioned crimes.
- (2) Category II. Crimes that primarily result in bodily or emotional harm to others, including:
 - (A) Manslaughter of a person over 16 years of age;
 - (B) Kidnapping or attempted kidnapping;
 - (C) Arson of an occupied dwelling;
 - (D) Robbery with a dangerous weapon or attempted robbery with a dangerous weapon;
 - (E) Felony assault other than a sexual assault;
 - (F) First degree burglary;

(G) Trafficking in controlled substances as it is defined in Article 5 of Chapter 90 of the General Statutes; or

(H) Any other felony that results in bodily or emotional harm to another.

(3) Category III. The following misdemeanors and felonies that do not primarily result in bodily or emotional harm to others:

(A) Three or more DWIs within the most recent seven years;

(B) Assault (misdemeanor);

(C) Felony larceny;

(D) Fraud, obtaining property by false pretenses, financial transaction card theft;

(E) Unauthorized use of an aircraft;

(F) Unlawfully carrying a weapon;

(G) Theft of a vehicle;

(H) Falsification of government documentation (felony);

(I) Arson of an unoccupied dwelling or other building within the curtilage;

(J) Burglary other than in the first degree;

(K) Sale and delivery violations of the North Carolina Controlled Substances Act resulting in a felony conviction;

(L) Embezzlement;

(M) Forgery;

(N) Any burning of property prosecuted as a felony;

(O) Robbery not with a dangerous weapon;

(P) Perjury;

(Q) Felony receiving and possessing stolen goods;

(R) Breaking and entering; or

(S) Any other felony not otherwise categorized.

(4) Category IV. The following misdemeanors:

(A) Any combination of three or more Category V offenses, except offenses occurring within the same incident shall be considered a single offense;

(B) Two DWIs within the most recent seven years;

(C) Possession of a controlled substance;

(D) Injury or damage to property;

(E) Resisting arrest;

(F) Larceny;

(G) Prostitution;

(H) Criminal mischief;

(I) Driving while license suspended or revoked;

(J) Falsification of government documents;

(K) Any misdemeanor burning; or

(L) Any other misdemeanor not otherwise categorized.

(5) Category V. Category V offenses are:

- (A) One DWI within the most recent seven years;
- (B) Disorderly conduct;
- (C) Intoxicated and disruptive in public;
- (D) Three or more incidents resulting in worthless check convictions; or
- (E) Shoplifting or concealment.

(f) The following sanctions have been established by the Board according to the categories of crimes:

- (1) An applicant with a Category I conviction shall have at least 15 years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category I conviction to be eligible for registration, certification, or licensure.
- (2) An applicant with a Category II conviction shall have at least 10 years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for certification or licensure. Notwithstanding a Category II conviction, an applicant may be registered no sooner than five years following the date the applicant has completed all aspects of his or her sentence.
- (3) An applicant with a Category III conviction shall have at least five years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for certification or licensure. Notwithstanding a Category III conviction, an applicant may be registered immediately following the date the applicant has completed all aspects of his or her sentence.
- (4) An applicant with a Category IV conviction shall have at least three years elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for certification or licensure. Notwithstanding a Category IV conviction, an applicant may register immediately following the date the applicant has completed all aspects of his or her sentence.
- (5) An applicant with a Category V conviction shall have at least one year elapsed since the applicant has completed all aspects of his or her sentence received as a result of the last Category V conviction to be eligible for certification or licensure. Notwithstanding a Category V conviction, an applicant may register immediately following the date the applicant has completed all aspects of his or her sentence.

(g) If a waiting period prior to licensure as a driver of a motor vehicle results from a conviction for a DWI offense, this waiting period shall not be considered an aspect of an applicant's sentence required to be completed prior to the awarding of a credential.

(h) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in Article 5C of Chapter 90 and Chapter 150B of the North Carolina General Statutes and the North Carolina Administrative Code.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44.

21 NCAC 68 .0217 SUPERVISED PRACTICUM FOR CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL CERTIFICATION

(a) All applicants for the criminal justice addictions professional certification shall complete 300 hours ~~practicum~~ practicum as set forth in G.S. 90-113.40(d1)(2). ~~The applicant supervisor shall:~~

- ~~(1) Train the criminal justice addictions professional and cover all criminal justice performance domains as set out in G.S. 90-113.31B(6);~~
- ~~(2) Submit verification that at least 10 hours of practice was provided in each of the performance domains; and~~
- ~~(3) Provide verification of at least one hour of supervision for every 10 hours of practice in each one of the performance domains on a supervisor evaluation form provided by the Board.~~

~~(b) The remaining hours of the practicum shall be in any of the performance domains.~~

~~(c) Upon completion of 300 hours, the applicant supervisor shall:~~

- ~~(1) Complete an evaluation form reviewing criminal justice addictions professional's development as a professional;~~
- ~~(2) Document the 300 hours of practice to include 30 hours of supervision by the applicant supervisor; and~~
- ~~(3) Submit this information to the Board on a form provided by the Board.~~

~~(d)(b)~~ The practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as a substance use disorder professional as long as it is supervised by an applicant supervisor. The practicum shall take place within a criminal justice addiction professional setting to include a workplace for law enforcement, the judiciary, or corrections.

Authority G.S. 90-113.31A; 90-113.31B(6); 90-113.40; 90-113.40B.

21 NCAC 68 .0220 NOTICE TO APPLICANT OF FAILURE TO SATISFY BOARD (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0221 APPLICANT HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0222 ETHICS AND QUALITY ASSURANCE INQUIRY

(a) Information that is the basis for an inquiry into the issue of whether the applicant meets the ethical standards of the Board

may be referred to the Chairperson of the ~~Standards Quality Assurance~~ Committee for review and further investigation. The Chairperson may pursue the investigation of this matter pursuant to the procedures used to investigate ethics complaints.

(b) Information that is the basis for an inquiry into the issue of whether the credentialed professional meets the ethical standards of the Board may be referred to the Chairperson of the Ethics Committee for review and further investigation. The Chairperson may pursue the investigation of this matter pursuant to the procedures used to investigate ethics complaints.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.44.

21 NCAC 68 .0223 STANDARDS AND QUALITY ASSURANCE COMMITTEE ACTION ACTIONS

(a) The Standards The Quality Assurance Committee may take any of the following actions:

- (1) Review applications for credentialing and ~~re-credentialing; re-credentialing; and~~
- (2) Recommend or deny candidates for credentialing and ~~re-credentialing; re-credentialing.~~
- (3) ~~Review curricula requirements for Board approved training events;~~
- (4) ~~Review curricula requirements for Board approval of college or university courses; and~~
- (5) ~~Investigate complaints of illegal practice.~~

(b) The Standards Committee may take any of the following actions:

- (1) Review curricula requirements for Board approved training events;
- (2) Review curricula requirements for Board approval of college or university courses; and
- (3) Recommend changes to curricula to reflect best practices and current trends in substance use disorder treatment and prevention.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0224 CREDENTIALING STATUS DENIED IF SERVING SENTENCE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0225 SUSPENSION OF AUTHORITY AND ESCROW OF FUNDS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0226 ARMED SERVICES EXTENSION FOR CREDENTIAL (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0227 CREDENTIAL BY ENDORSEMENT OR RECIPROCITY BASED ON MILITARY SERVICE

(a) An applicant for a ~~substance abuse~~ substance use disorder professional credential by endorsement or reciprocity based on military service shall have his or her training honored automatically pursuant to the standards of the International

Certification and Reciprocity ~~Consortium/Alcohol and Other Drug Abuse, Incorporated. Consortium (IC&RC).~~ The applicant shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

- (1) a reciprocity application form prescribed by the ~~International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated~~ IC&RC and provided by the Board as found at its website: www.ncsappb.org that shall be found accompanying the reciprocity information on the website;
- (2) the application fee required by rule applicable to the specific credential as set forth in this Chapter;
- (3) written evidence demonstrating that the applicant has been awarded a military occupational specialty as a substance abuse professional and that the applicant has engaged in practice as a substance abuse professional for at least 1,500 clinical hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of any act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required shall be received by the Board office.
(c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

Authority G.S. 90-113.31A(14); 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1.

21 NCAC 68 .0228 SUBSTANCE ABUSE CREDENTIAL BY ENDORSEMENT OR RECIPROCITY BASED ON STATUS AS MILITARY SPOUSE

(a) An applicant for a substance ~~abuse~~ use disorder credential by endorsement or reciprocity based on the applicant's status as a military spouse shall have his or her training honored automatically pursuant to the standards of the International Certification and Reciprocity ~~Consortium/Alcohol and Other Drug Abuse, Incorporated. Consortium (IC&RC).~~ The applicant shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

- (1) a reciprocity application form prescribed by the ~~International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated~~ IC&RC and provided by the Board as found at its website: <http://www.ncsappb.org> that shall be found accompanying the reciprocity information on the website;
- (2) the application fee required by rule applicable to the specific credential as set forth in this Chapter;

- (3) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
- (A) holds a current substance abuse credential from another jurisdiction whose standards for the credential are substantially equivalent to or greater than those required for the credential described in G.S. 90, Article 5C, this Chapter, and is the subject of the application; and
 - (B) has engaged in practice as a substance abuse professional demonstrating the scope of practice as defined by G.S. 90-113.31B for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of an act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

- (b) All information required shall be received by the Board office.
 (c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

Authority G.S. 90-113.31A(14); 90-113.31B; 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1.

SECTION .0300 - CLINICAL ADDICTIONS SPECIALIST

21 NCAC 68 .0301 SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0303 APPLICATION FOR DEEMED STATUS BY PROFESSIONAL DISCIPLINE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0304 THREE-YEAR STANDARDS REVIEW OF DEEMED STATUS STANDING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0307 REVOCATION OF CREDENTIAL WHEN CHANGE IN STATUS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 - EDUCATION

21 NCAC 68 .0401 EDUCATION APPROVAL POLICY

- (a) ~~The Certification Board shall approve educational events for professional certification or certification renewal. One certified hour is defined as one contact hour of participation in an organized education experience under sponsorship approved in accordance with these rules.~~
- (b) ~~The Certification Board shall review and approve all education used to meet the certification requirements.~~

~~(c) Approval may be requested by an individual applicant or by a sponsor or presenter. If the sponsor does not obtain credit from the Certification Board, the individual participants shall be responsible for supplying all of the required information for each session at the time of request for certification, recertification, or conversion. The Standards and Credentials Committee shall review requests once monthly.~~

~~(d) To insure a determination of a request prior to the date of presentation, sponsors, presenters, or individuals shall submit requests 45 days prior to opening day of the event.~~

(a) The Board shall approve educational events for professional credentialing. One certified hour is defined as one contact hour of participation in an organized continuing education experience. Continuing education used to meet the credentialing requirements shall be reviewed and approved according to these Rules. If the sponsor does not obtain approval from the Board, the individual participants shall be responsible for supplying all of the required information for each continuing education session at the time of request for credentialing or re-credentialing. Submission of approval requests shall be received 45 days prior to opening day of the event.

(b) Any applicant for training approval shall submit a training approval request form including:

- (1) Title of course, date, location, individual or organization sponsor, whether it will be held only once or recurring.
- (2) Presenter(s) who shall attach a resume outlining expertise in the subject area and content of the session.
- (3) A description of the contents of a track, course, seminar, and the type of credit hours being requested to indicate if it is substance abuse specific, general skill building, or required training pursuant to other specialized credentials including Criminal Justice Addictions Professionals, Clinical Supervisors, Residential Facility Directors, or Prevention Consultants.
- (4) Agenda, to include the breakdown of time including a 15 minute break for every two hours of education and amount of time allowed for meals.
- (5) The sponsor or individual seeking approval shall pay an annual fee as follows:
 - (A) \$25.00 for up to 10 hours;
 - (B) \$50.00 for more than 10 hours and up to 20 hours;
 - (C) \$75.00 for more than 20 hours and up to 30 hours;
 - (D) \$100.00 for more than 30 hours and up to 40 hours;
 - (E) \$125.00 for more than 40 hours.

(c) Training approved by IC&RC/AODA, Inc. or its successor organization member boards and organizations granted deemed status shall be accepted with documentation of completion.

(d) In-service training shall meet the same requirements as set out in Paragraphs (b) and (c) of this Rule. However, if persons who are non-employees of the sponsoring and presenting agency are invited to participate, then it is not considered in-service and

Board pre-approval shall be required. The presenting agency or organization may contract with outside trainers to present to their employees and this shall be considered in-service training.

(e) Presenters shall be given one hour of credit for every one hour presented. However, if the original presentation is repeated, hours can only be credited for the original presentation.

(f) The Board may revise or rescind credit hours if information is received documenting that a previously approved event was not presented as it was approved.

(g) The Board may grant 15 clock hours of education for each college or university semester credit; the standard 3 credit semester course may be equal to 45 clock hours of education.

Authority G.S. 90-113.30; 90-113.37; 90-113.40.

21 NCAC 68 .0402 GENERAL GUIDELINES

(a) The guidelines set forth in this section shall apply to each approval request for obtaining credit for didactic and academic hours for course, curricula, and training ~~events held January 1, 1987 or thereafter.~~ events seeking pre-approval from the Board for professionals to use to meet their educational requirements for initial credentialing or renewal.

~~(b) The following information and standards shall be required:~~

- ~~(1) Title of course, date, location, sponsor (individual or organization), and whether it shall be held only once or periodically;~~
- ~~(2) The name of the presenter(s) and a resume outlining his or her expertise in the subject area and content of the session;~~
- ~~(3) A sufficient description of the contents of a track, course, seminar, or other unit of academic pursuit and the type of credit hours being requested to indicate if it is substance abuse specific or general skill building;~~
- ~~(4) An agenda reflecting the breakdown of time including a 15 minute break for every two hours of education and amount of time allowed for meals;~~
- ~~(5) Each application for training approval may include a copy of the objective evaluation tool to be used;~~
- ~~(6) The summary of evaluations may be submitted to the Board within 45 days following the program date(s).~~

~~(e)(b)~~ The Certification Board shall have the right to review programs by sending a Certification Board member or designee to monitor the event or a portion of the event. When fulfilling this quality assurance role, the designated person shall present a letter of introduction to the presenter. notify the presenter or training sponsor in writing.

~~(d)(c)~~ Certification hours shall be awarded only for actual hours attended.

~~(e)~~ Certificates shall not be released until the event ends and they shall be modified to reflect actual hours completed.

~~(f)(d)~~ Providers of Board approved events shall be required to document attendance at individual events for schools, courses, curricula and conferences.

~~(g)(e)~~ Event sponsors shall maintain attendance and evaluation records for no less than three years.

~~(h) Training approved by International Certification and Reciprocity Consortium (ICRC) member boards shall be accepted with documentation of completion.~~

Authority G.S. 90-113.30; 90-113.37; 90-113.40.

21 NCAC 68 .0403 EMPLOYER INSERVICE TRAINING EVENT

(a) An ~~employer~~ inservice event shall be a training session that shall be provided by the applicant's employer for the purpose of professional ~~certification~~ credentialing and limited to the employees of that agency. ~~and it shall be approved by the Board for this purpose as with other training events.~~ The Board shall accept inservice training for professional credentialing and renewal but reserves the right to attend and evaluate the inservice training as described in 21 NCAC 68 .0402.

(b) An applicant's training in substance use disorder and prevention provided as part of military employment shall be considered inservice training.

Authority G.S. 90-113.30; 90-113.37; 90-113.40.

21 NCAC 68 .0404 CREDIT DENIAL OR LIMITATION

~~(a) Credit shall not be given for the following:~~

- ~~(1) Presentations given by banquet speakers unless the content meets the requirements described in this Section;~~
- ~~(2) One's own case presentation required for certification; or~~
- ~~(3) Registration time.~~

~~(b)~~ The Board shall revise or rescind credit hours if information is received documenting that a previously approved event was not presented as it was approved. The Board may deny credit approval based on failure to provide accurate information to the Board as part of the credit approval application.

Authority G.S. 90-113.30; 90-113.37; 90-113.40.

21 NCAC 68 .0405 SPONSOR GUIDELINES

(a) Sponsors or presenters shall submit requests for approval prior to the event and shall allow the Board 45 days for review and approval. Requests by sponsors or presenters ~~postmarked submitted~~ after the event has taken place shall may not be reviewed or approved by the Board, but shall be returned. Board. Documentation of the event attendance shall then be submitted by each individual at the time request is made for ~~certification or recertification or conversion.~~ credentialing or renewal.

(b) All approvals from the Board ~~shall be in writing and~~ shall include the event approval number.

(c) Sponsors shall be responsible for providing a certificate of attendance which includes the approval number and number of approved education hours.

(d) Any event given on a recurring basis, as in the example of college courses, may be given approval on a yearly basis. Renewal of credit approval shall be based on ~~submission of a letter notification~~ by the sponsor or presenter documenting no change in course content. Any changes in content or method shall be submitted for review and approval in order to maintain prior

approval. When changes have been made in content, method or agenda, the fee shall be the same as for a new event.

(e) Fees for review and approval of events:

- (1) ~~For 1-10 hours of instruction the Board shall impose a fee of twenty five dollars (\$25.00);~~
- (2) ~~For 11-20 hours of instruction the Board shall impose a fee of fifty dollars (\$50.00);~~
- (3) ~~For 21-30 hours of instruction the Board shall impose a fee of seventy five dollars (\$75.00);~~
- (4) ~~For 31-40 hours of instruction the Board shall impose a fee of one hundred dollars (\$100.00);~~
- (5) ~~For 41-50 hours of instruction the Board shall impose a fee of one hundred twenty five dollars (\$125.00);~~
- (6) ~~For 51-100 hours of instruction the Board shall impose a fee of one hundred fifty dollars (\$150.00).~~
- (7) ~~For greater than 100 hours of instruction the Board shall impose a fee greater than one hundred fifty dollars (\$150.00) and those additional charges shall be imposed in incremental amounts as set forth in Subparagraphs (e)(1) through (6) of this Rule, not to exceed three hundred dollars (\$300.00).~~

Authority G.S. 90-113.30; 90-113.37; 90-113.38; 90-113.40.

21 NCAC 68 .0406 PROCEDURES FOR APPROVAL OF SELF-STUDY COURSES

- (a) ~~Self study courses may be submitted for approval for certification and recertification hours.~~
- (b) ~~A copy of all documents including test and documentation of completion shall be submitted with the application.~~
- (c) ~~No more than 50% of hours may be credited through self study programs.~~
- (d) ~~Self study courses may not be repeated for credit.~~
- (e) ~~A fee of one hundred fifty dollars (\$150.00) shall be submitted for each course by the vendor for pre approval by the Board. Pursuant to G.S. 90-113.39, approval is for one year from the date the Certification Board approves the application.~~
- (f) ~~Self study approved by IC&RC/AODA, Inc. member boards and organizations granted deemed status shall be accepted with documentation of completion.~~

Authority G.S. 90-113.30; 90-113.37; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0407 APPLICANT GUIDELINES

- (a) ~~After January 1, 1985, to gain credit for an applicant's education for certification, recertification or conversion, the~~ The applicant shall provide the event approval number and proper documentation of attendance which includes:
 - (1) Certificate of attendance; or
 - (2) Training cards or sheets signed by a sponsor or presenter.
- (b) Documents not acceptable to establish that an applicant has received continuing education are as follows:
 - (1) Canceled checks;
 - (2) Receipts;

- (3) Letters from supervisors who were non-participants in the course; or
- (4) Program schedules.

(c) If the sponsor failed to obtain approval for an event, the applicant shall be responsible for supplying the required information for each session as stated in Rule .0402 of this Section.

(d) ~~To gain credit for didactic or academic hours of continuing education events held prior to January 1, 1985, the following standards apply:~~

- (1) ~~The Board shall accept education previously approved by the former N.C. Alcoholism Certification Board and N.C. Drug Abuse Professional Certification Board.~~
- (2) ~~Events held between January 1, 1980 and December 31, 1984 shall include all of the information required pursuant to Rule .0402 of this Section, except the resume of the presenter.~~
- (3) ~~Events held prior to January 1, 1980 may be approved if a description of the material, method, number of hours and presenter's name is provided by the applicant.~~

(e) ~~It is the responsibility of the individual applicant to put together a package of hours in accordance with criteria contained herein. Sixty hours of education shall be completed within the two years immediately prior to request for certification or recertification or conversion. There shall be no time frame on the remaining required hours for certification, to include conversion.~~

(f) ~~Inservice events shall be identified as such.~~

(g) ~~If a page of material is received from the applicant which does not comply with the above requirements, it shall be returned to the applicant.~~

(h) ~~Request for approval shall be mailed to the Board.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.40.

SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT FOR THE SUBSTANCE ABUSE PROFESSIONAL

21 NCAC 68 .0501 PURPOSE AND SCOPE

- (a) The ethical principles governing the credentialed substance ~~abuse~~ use disorder professional are established to protect the public health, safety and welfare.
- (b) The primary goal of this code is to set forth principles to guide the conduct of the substance ~~abuse~~ use disorder professional. The Board may deem violation of these standards malpractice, negligence, incompetence, or engaging in conduct that could result in harm or injury to the public.
- (c) Ethical principles shall provide a standard for the substance ~~abuse~~ use disorder professional in his or her professional roles, relationships and responsibilities.
- (d) Upon submission of an application for a credential, each applicant shall review the ethical standards in these Rules, sign or otherwise adhere to the "Applicant's Code of Ethical Conduct" ~~form, and return it to the Board agreeing thus agreeing~~ to uphold the ethical principles of conduct.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

**21 NCAC 68 .0502 NON-DISCRIMINATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

21 NCAC 68 .0503 COMPETENCE

- (a) The substance ~~abuse~~ use disorder professional shall employ the requisite knowledge, skill and proficiencies ~~of a substance abuse practitioner~~ competently ~~providing services~~ within his or her scope of practice.
- (b) The substance ~~abuse~~ use disorder professional shall strive to learn about cultural and ethnic values in order to provide the highest level of care for a client who possesses a diverse or unfamiliar cultural or ethnic background.
- (c) The substance ~~abuse~~ use disorder professional shall provide the necessary interpretive services to any client or refer the person for necessary services.
- (d) The substance ~~abuse~~ use disorder professional shall assist in eliminating prevention, intervention, treatment, and supervision practices by persons unqualified or unauthorized to practice in the field.
- (e) The substance ~~abuse~~ use disorder professional who knows of unethical conduct or of unprofessional practices by a substance ~~abuse~~ use disorder professional shall report such violations to the Board.
- (f) The substance ~~abuse~~ use disorder professional shall recognize boundaries and limitations of his or her competencies and not offer services or use techniques outside of his or her professional competencies and scope of practice.
- (g) The substance ~~abuse~~ use disorder professional who identifies a need for services outside his or her skill, training or experience shall refer the client to an appropriate professional or shall seek supervision and training to provide the required services for the individual.
- (h) The substance ~~abuse~~ use disorder professional shall complete reports and record keeping functions in a manner that supports the client's treatment experience and welfare.
- (i) The substance ~~abuse~~ use disorder professional shall recognize the negative impact impairment has on his or her functioning in public and professional performance and shall ~~seek an assessment by a Board approved provider and follow the recommendations, report such impairment to the Board for investigation and review, which may result in disciplinary or non-disciplinary action.~~
- (j) No applicant shall be credentialed as a substance ~~abuse~~ use disorder professional who is serving any part of a court-ordered sentence as specifically prohibited by 21 NCAC 68 .0224.

Authority G.S. 90-113.30; 90-113.34; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44.

21 NCAC 68 .0504 LEGAL STANDARDS AND ETHICAL STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0505 EDUCATION AND TRAINING STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**21 NCAC 68 .0506 PUBLICATION CREDIT
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 68 .0507 CLIENT WELFARE
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

21 NCAC 68 .0508 CONFIDENTIALITY

- (a) The substance ~~abuse~~ use disorder professional shall protect the privacy of current and former clients and shall not disclose confidential information without prior consent.
- (b) The substance ~~abuse~~ use disorder professional shall inform the client and obtain written permission for the use of interview material for training purposes and observation of an interview.
- (c) The substance ~~abuse~~ use disorder professional shall make provisions for the maintenance of confidentiality and the ultimate disposition of confidential records. These provisions shall be consistent with the prohibition against disclosure of records or other information concerning any client in a federally-assisted alcohol or drug abuse program as it appears in 42 C.F.R., Part 2, 42 U.S.C. 290ee-3, the HIPAA Privacy Rule appearing in 45 CFR Sections 160 and 164 and State law.
- (d) The substance ~~abuse~~ use disorder professional shall disclose confidential information ~~only:~~
- (1) ~~when there is clear and imminent danger to the client or to other persons or a medical emergency and then only to the appropriate professional worker or public authorities;~~
 - (2) ~~when compelled by law to provide such information;~~
 - (3) ~~with a proper consent form in writing issued pursuant to 42 C.F.R., Part 2, 42 U.S.C. 290ee-3; or~~
 - (4) ~~for internal program communications and communications that do not disclose patient-identifying information, only in accordance with state confidentiality rules found in 10A NCAC 26B and federal guidelines found in 42 CFR Part 2.~~
- (e) With prior written consent the substance ~~abuse~~ use disorder professional shall discuss the information obtained in a clinical or consulting relationship only in a professional setting and only for a professional purpose concerned with the case. Written and oral reports shall present only data germane to the purpose of the evaluation.
- (f) The substance ~~abuse~~ use disorder professional shall use material in classroom teaching and writing only when the identity of the person involved is disguised adequately to prevent disclosure or documented permission is given by the party or the information is in the public domain.

Authority G.S. 90-113.30; 90-113.43; 90-113.44.

21 NCAC 68 .0509 CLIENT RELATIONSHIPS

- (a) The substance ~~abuse~~ use disorder professional shall not enter into a client/professional relationship with members of ~~one's~~ the professional's immediate family. For the purpose of this Rule "immediate family" means spouse, parent, sibling, child, grandparent, grandchild, stepchild, stepparent, parent-in-law, and child-in-law.

(b) The professional shall avoid dual relationships that could impair professional judgment or increase the risk of exploitation of a client. For the purpose of this Rule "dual relationships" includes relationships in a social media setting where the professional and client have access to privileged information including relationships, photographs, and personal thoughts and opinions of the professional and the client.

(c) Sexual activity or sexual contact of a substance abuse professional with a client shall be restricted as follows:

- (1) The substance ~~abuse~~ use disorder professional shall not engage in or solicit sexual activity or sexual contact with a current client.
- (2) The substance ~~abuse~~ use disorder professional shall not engage in or solicit sexual activity or sexual contact with a former client for five years after the termination of the counseling or consulting relationship.
- (3) The substance ~~abuse~~ use disorder professional shall not engage in or solicit sexual activity or sexual contact with any client the professional knows to be currently in treatment at his or her own agency or place of professional employment.
- (4) The substance ~~abuse~~ use disorder professional shall not knowingly engage in or solicit sexual activity or sexual contact with any identified former client of his or her own agency or place of professional employment for five years after the termination of the counseling or consulting relationship if both the professional was employed at the agency and the former client was a client of the agency during the same time period.
- (5) Because sexual activity with a client is harmful to the client, a substance ~~abuse~~ use disorder professional shall not engage in sexual activities with a former client even after a five-year interval unless the substance abuse professional who engages in such activity after the five years following cessation or termination of treatment bears the burden of demonstrating that there has been no harm to the client in light of all relevant factors, including the following:
 - (A) The amount of time that has passed since treatment services were terminated;
 - (B) The nature and duration of the treatment services;
 - (C) The circumstances of termination;
 - (D) The client's personal history;
 - (E) The client's current mental status;
 - (F) The likelihood of adverse impact on the client and others; and
 - (G) Any statement made or action taken by the substance abuse professional during the course of treatment suggesting or inviting the possibility

of a post-termination sexual or romantic relationship with the client.

(d) The substance ~~abuse~~ use disorder professional shall not misuse his or her professional relationship for sexual, financial, or any other personal advantage.

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44.

**21 NCAC 68 .0510 INTERPROFESSIONAL
RELATIONSHIPS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**21 NCAC 68 .0511 REMUNERATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 68 .0512 RESPONSIBILITIES OF
SUPERVISOR AND SUPERVISEE**

(a) A professional who has received a credential from the Board and who is serving as a clinical or practice supervisor shall:

- (1) Be aware of his or her position with respect to supervisees and therefore not exploit the trust and reliance of such persons.
- (2) Avoid dual relationships that could impair professional judgment, increase the risk of exploitation, or cause harm to the supervisee. To implement this standard the supervisor shall not:
 - (A) Instruct or supervise a person with whom the supervisor has participated in a sexual activity; a person living in the supervisor's household; or ~~a family member who is related to the supervisor as a child, parent, grandchild, sister, brother, grandparent, spouse, mother in law, father in law, son in law, daughter in law, stepson, stepdaughter, stepmother, stepfather, brother in law, sister in law, spouse's grandparent, spouse's grandchild, grandchild's spouse, or spouse of a grandparent. A supervisor is related to an aunt, uncle, great aunt, or great uncle only if that relative is the sibling of the person's parent or grandparent. an immediate family member.~~
 - (B) Provide therapy or therapeutic counseling services to supervisees; or
 - (C) Solicit or engage in sexual activity or contact with supervisees during the period of supervision.
- (3) Be trained in and knowledgeable about supervision methods and techniques.
- (4) Supervise or consult only within his or her knowledge, training, and competency.
- (5) Guide his or her supervisee to perform services responsibly, competently, and ethically. As authorized by the supervisee's employer, the supervisor shall assign to his or her supervisees

only those tasks or duties that these individuals can be expected to perform competently, based on the supervisee's education, experience, or training, either independently or with the level of supervision being provided.

- (6) ~~Not disclose the~~ Withhold confidential information provided by a supervisee except:
 - (A) As mandated by law;
 - (B) To prevent harm to a client or other person involved with the supervision;
 - (C) In educational or training settings where there are multiple supervisors, and then only to other supervisors who share responsibility for the performance or training of the supervisee; or
 - (D) If consent is obtained.
- (7) Establish and facilitate a process for providing evaluation of performance and feedback to a supervisee. To implement this process the supervisee shall be informed of the timing of evaluations, methods, and levels of competency expected. Supervision documentation shall be signed by the supervisor and supervisee and include the date, time, duration, method, and topic of the supervision session.
- (8) ~~Not endorse~~ Withhold endorsement of supervisees for credentialing, employment, or completion of an academic training program if they believe the supervisees are not qualified for the endorsement. A supervisor shall develop a plan to assist a supervisee who is not qualified for endorsement to become qualified.
- (9) Make financial arrangements for any remuneration with supervisees and organizations only if these arrangements are in writing. All fees shall be disclosed to the supervisee prior to the beginning of supervision.
- (10) Review documentation of previously supervised work experience, provided by the supervisee, for the purpose of credentialing by the Board. The supervisor may verify these hours to the Board if the supervisor deems that appropriate supervision and ethical practice was performed and may include these verified hours in their evaluation to the Board.

(b) The Supervisor of record shall provide notice to the office of the Board within 30 days from the date of the last session of clinical supervision that supervision has terminated. Upon receipt of this notice, as soon as is practicable, the Board shall ~~mail a certified notice to~~ notify the supervisee that he or she has 30 days to obtain supervision to retain the current credential. The supervisee shall ~~provide the Board with a Board-approved~~ add a new supervisor or otherwise update their supervision contract signed and dated by the supervisor and supervisee to maintain the supervisee's credential, on file with the Board. This contract shall be postmarked, indicating that it was mailed to the office within

~~the 30 day time period after receipt of the certified notice from the Board.~~

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

SECTION .0600 – GROUNDS FOR DISCIPLINE AND DISCIPLINARY PROCEDURES

21 NCAC 68 .0601 GROUNDS FOR PROFESSIONAL DISCIPLINE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0602 COMPLAINT PROCEDURES

(a) Initiation. Any individual with personal knowledge that any person has violated the code of ethics, any other rules of the Board, or G.S. 90, Article 5C may file a complaint against the substance ~~abuse~~ use disorder professional by submitting a ~~written complaint.~~ Complaint through the Ethics Complaint Form found on the Board's website, www.ncsappb.org.

(b) Form. The complaint shall be in ~~writing,~~ written or typed format stating the nature of the alleged offense and signed or otherwise attested to be true by the complainant. The complaint shall include:

- (1) The name, address, and telephone number of the complainant;
- (2) The name and address of the person against whom the complaint is made;
- (3) A statement of the facts that describes the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0603.

(d) Following an investigation of the complaint, the ethics chairperson shall try to reach a settlement through informal procedures pursuant to G.S. 150B-22.

(e) Once the ethics committee concludes there is a basis to schedule a disciplinary hearing before the Board, the committee chairperson shall notify the person against whom the complaint is made. The notice to the respondent shall include the following:

- (1) State the section(s) of the code of ethics, other rules of the Board, or G.S. 90, Article 5C which the complaint alleges has been violated;
- (2) Direct that the respondent reply in writing and by certified mail within 15 days of receipt of this notice;
- (3) Inform the respondent that failure to respond in writing within 15 days may result in revocation of credential.

(f) Whenever practicable, notice shall be given by personal service or by certified mail at the last known address of the respondent. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) The Board may receive official correspondence in an ethics case through e-mail in order to further the investigation or when the subject of an investigation is unable to use or has been unresponsive to certified mail or other methods of delivery. The Board may use Law Enforcement or a private investigator licensed by Private Protective Services to personally serve a respondent.

(g) If notice cannot be given either by personal service or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. A party that cannot with due diligence be served by personal delivery or certified mail may be given notice to respond to a complaint by publication. Service of notice by publication shall consist of publishing a notice by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county of respondent's last address provided to the Board by the respondent. There shall be mailed to the party at or immediately prior to the first publication a copy of the notice to respond by publication to the respondent's last known address. Upon completion of such service there shall be filed with the Board by the ethics committee chairperson an affidavit showing the publication and mailing substantially in accordance with the requirement of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served. The notice shall include a statement by the Board that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the Board with information whereby respondent can be served by the deadline specific in the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (d) of this Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

(h) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s).

Authority G.S. 90-113.30; 90-113.33; 90-113.44; 113.45.

21 NCAC 68 .0603 INVESTIGATION OF COMPLAINT (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0604 HEARING BEFORE BOARD (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0605 METHOD OF DISCIPLINE

(a) In the course of the disciplinary investigation or hearing the Board may:

- (1) Deny a credential;
- (2) Revoke a credential;
- (3) Suspend a credential until further order of the Board or for a specified period of time;
- (4) Admonish, reprimand, or censure the Respondent; or

(5) Take other actions not to be considered a disciplinary action, including a letter of caution or letter of warning ~~with~~ without the consent of the Respondent.

(b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed for an additional period of time while the Respondent satisfies all of the conditions of the consent order based on the Respondent's failure to complete the order for reasons outside the Respondent's control.

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.37; 90-113.43; 90-113.44; 90-113.45.

21 NCAC 68 .0606 EFFECT OF ACTIONS OF COURT OR OF OTHER PROFESSIONAL GROUPS

(a) If a person credentialed or applying for a credential from the Board has been disciplined by another professional organization or convicted of a felony or a misdemeanor, the ethics committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline is discovered, it shall be referred to the ethics committee and shall be treated by the ethics committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent shall prove to the committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the court, organization or board is without basis; or
- (2) Following an investigation by the Board, the disciplinary action by the court, organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

(d) ~~Registrants and certified professionals~~ The substance use disorder professionals shall notify the Board within 30 days from the date of any charges, conviction or finding of guilt, or pleading of nolo contendere for all criminal convictions. This reporting shall include DWI charges, arrests and convictions but exclude all other traffic convictions pursuant to G.S. 20.

(e) Failure to report these criminal convictions shall be considered a violation of the ethical principles of conduct.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44; 90-113.45.

21 NCAC 68 .0607 DISCRETION OF BOARD (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0608 CONFIDENTIALITY (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 68 .0609 PETITION FOR REOPENING CASE (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

**21 NCAC 68 .0610 AWARDING THE CREDENTIAL
FOLLOWING DENIAL (READOPTION WITHOUT
SUBSTANTIVE CHANGES)****21 NCAC 68 .0611 PROOF OF REHABILITATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0615 INFORMAL PROCEEDINGS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0620 PUBLICATION OF ETHICS
SANCTIONS**

Sanctions of admonition, reprimand, censure, suspension or revocation of a credential shall be published by the Board as soon as it is practicable.

Authority G.S. 90-113.30; 90-113.33; 90-113.42; 90-113.43; 90-113.44.

SECTION .0700 – APPEALS PROCESS**21 NCAC 68 .0701 HEARING BEFORE BOARD:
TIME REQUIREMENT (READOPTION WITHOUT
SUBSTANTIVE CHANGES)****21 NCAC 68 .0702 RIGHT TO HEARING
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0703 REQUEST FOR HEARING
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0704 HEARING REQUESTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0705 NOTICE OF HEARING
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0706 WHO SHALL HEAR
CONTESTED CASES (READOPTION WITHOUT
SUBSTANTIVE CHANGES)****21 NCAC 68 .0707 PETITION FOR
INTERVENTION (READOPTION WITHOUT
SUBSTANTIVE CHANGES)****21 NCAC 68 .0708 TYPES OF INTERVENTION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****21 NCAC 68 .0709 DISQUALIFICATION OF
BOARD MEMBER**

(a) Self-disqualification of Board Member. If for any reason the Board member determines that factors render him or her unable to conduct or participate in the hearing and perform all duties in an impartial manner, he or she shall ~~submit, in writing, to the~~ notify the Board Chair of his or her disqualification.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that the Board member personally is biased or otherwise unable to conduct or participate in the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The envelope of such affidavit shall bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (NAME OF CASE)."

(c) Contents of Affidavit. The affidavit must state all facts the party deems relevant to the disqualification of the Board member.

(d) Timeliness of Affidavit. An affidavit of disqualification shall be considered timely if filed at least 10 days before commencement of the hearing. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of the facts which give rise to a reasonable belief that the Board member may be disqualified pursuant to this Rule.

(e) Procedure for Determining Disqualification is as follows:

- (1) The ~~President~~ Chair of the Board may appoint a member of the Board to investigate the allegations of the affidavit and report his or her findings and recommendations to the Board.
- (2) The Board, with such assistance as it deems appropriate, shall decide whether to disqualify the challenged individual.
- (3) The person whose disqualification is to be determined will not participate in the decision but will have the right to furnish information to the Board.
- (4) A record of proceedings and the reasons for decisions reached shall be maintained as part of the contested case.

(f) Disqualification or withdrawal of a Board member because of personal bias or otherwise will not cause the hearing to be postponed unless a quorum is not available.

Authority G.S. 90-113.30; 90-113.39; 90-113.40.

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

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Rule-making Agency: Onsite Wastewater Contractors and Inspectors Certification Board

Rule Citation: 21 NCAC 39 .0904

Effective Date: May 20, 2020

Findings Reviewed and Approved by the Codifier: May 12, 2020

Reason for Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high

risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order no. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

SECTION .0900 – RULEMAKING PROCEDURES

21 NCAC 39 .0904 WAIVER OR EXTENSION

The Board may waive or extend any rule in this Chapter that is not statutorily required if a certificate holder submits a written request. The Board may also waive or extend any rule in this Chapter that is not statutorily required upon its own initiative. Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
- (5) notice to and opposition by the public;
- (6) need for the waiver or extension; and
- (7) previous requests for waivers or extensions submitted from the requesting party.

History Note: Authority G.S. 90A-74; 150B-19(6); Emergency Adoption Eff. May 20, 2020.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10F .0317 and .0327*

Effective Date: *June 1, 2020*

Date Approved by the Rules Review Commission: *May 21, 2020*

Reason for Action: *A serious and unforeseen threat to the public health, safety or welfare and G.S. 150B-21.1 (a)(7). A no wake zone, shore to shore, within 85 yards north and south of the NC Hwy 24/27/73 bridge eastbound and westbound spans, otherwise known as the James B. Garrison Bridge, is needed to mitigate water safety hazards during a NC DOT bridge construction project. Additionally, the temporary rule includes a no wake zone surrounding a boathouse and marina at 712 Berry Hill Drive in Norwood, NC. Increased boater activity surrounding newer commercial activities at this marina necessitates this amendment. The WRC has statutory authority (G.S. 150B-21.1(a)(7)) to establish no wake zones through temporary rulemaking procedures.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0317 STANLY COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters and portions of waters described as follows:

- (1) ~~Narrows Reservoir, otherwise known as Badin Lake; and Badin Lake.~~
- (2) ~~Lake Tillery: Turner Beach Cove shore to shore, south of a point at 35.22529 N, 80.09318 W.~~
- (2) Lake Tillery.
 - (A) Turner Beach Cove shore to shore, south of a point at 35.22529 N, 80.09318 W.
 - (B) The waters within 50 yards of the fuel docks at the Boathouse and Marina at 712 Berry Hill Drive in Norwood.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat

launching ramp while on the waters of a regulated area described in Paragraph (a) of this Rule.

(c) Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of a regulated area described in Paragraph (a) of this Rule.

(d) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated area described in Paragraph (a) of this Rule:

(e) Placement of Markers. The Board of Commissioners of Stanly County shall be the designated agency for placement of markers implementing this Rule.

(f) Notwithstanding Paragraphs (a) through (e) of this Rule, no person shall operate a vessel at greater than no-wake speed in the waters of Lake Tillery shore to shore, within 85 yards north and 85 yards south of the NC Hwy 24/27/73 bridge eastbound and westbound spans, otherwise known as the James B. Garrison Bridge. The North Carolina Wildlife Resources Commission shall be the designated agency for placement and maintenance of markers for this regulated area.

History Note: Authority G.S. 75A-3; 75A-15; Eff. February 1, 1976; Amended Eff. July 1, 1995; March 25, 1978; November 1, 1977; Temporary Amendment Eff. June 1, 1998; Amended Eff. July 1, 2000; April 1, 1999; July 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016; Amended Eff. October 1, 2018; Emergency Amendment Eff. July 30, 2019; Temporary Amendment Eff. June 1, 2020; October 1, 2019.

15A NCAC 10F .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule shall apply to the waters and portions of waters described as follows:

- (1) Badin Lake.
 - (A) the cove west of Lakeshore Drive and east of Strand Drive, southeast of a line at the mouth of the cove from a point on the east shore at 35.49242 N, 80.09241 W to a point on the west shore at 35.49242 N, 80.09241 W;
 - (B) Lake Forest Drive Cove shore to shore, west of a point 50 yards east of the fueling site at the marina at 35.48739 N, 80.10918 W;
 - (C) Garr Creek shore to shore, north of a line beginning at a point on the east shore at 35.47952 N, 80.13633 W to a point on the west shore at 35.47946 N, 80.13932 W; and

- (D) the channel between Beyer's Island and the mainland, shore to shore beginning at a line from a point on Beyer's Island at 35.49102 N, 80.10221 W to a point on the mainland at 35.49230 N, 80.10241 W, ending at a line westward, from a point on Beyer's Island at 35.48988 N, 80.10573 W to a point on the mainland at 35.49077 N, 80.10702 W.
- (2) Lake Tillery.
- (A) the waters within 50 yards of the boat ramp in the south end of Woodrun Cove at 35.33113 N, 80.06277 W;
- (B) Carolina Forest Cove shore to shore and the waters within 50 yards of the boat ramps and boat slips at the end of Arroyo Drive in Carolina Forest Community, from a point on the south shore at 35.36276 N, 80.05386 W, northeast to a point on the north shore at 35.36405 N, 80.05304 W; and
- (C) Lilly's Bridge Boating Access Area shore to shore, from line 25 feet north of the SR 1110 bridge otherwise known as Lilly's Bridge Road at a point on the east shore at 35.23223 N, 80.06166 W, to a point on the west shore at 35.23289 N, 80.06318 W, to a line 200 feet southwest of the Lilly's Bridge Boating Access Area, from a point on the east shore at 35.23067 N; 80.06262 W, to a point on the west shore at 35.23156 N; 80.06437 W.
- (3) Tuckertown Reservoir.
- (b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.
- (c) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any regulated area described in Paragraph (a) of this Rule.
- (d) Badin Lake Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the marked swimming area on Badin Lake at the Pinehaven Village beach area at 370 Pinehaven Drive in New London, within 50 feet of the shoreline between points at 35.49927 N, 80.11428 W; and 35.49934 N, 80.11437 W.
- (e) Placement of Markers. The Board of Commissioners of Montgomery County shall be the designated agency for placement of the markers implementing Parts (a)(1)(A), (B), (C), (2)(A) and (B), and Subparagraph (a)(3) of this Rule. The North Carolina Wildlife Resources Commission is the designated agency for placement and maintenance of the markers implementing Part (a)(2)(C) of this Rule. The Board of Commissioners of Montgomery County shall be the designated agency for placement and maintenance of the ropes and markers implementing Paragraph (d) of this Rule.

(f) Notwithstanding Paragraphs (a) through (e) of this Rule, no person shall operate a vessel at greater than no-wake speed in the waters of Lake Tillery shore to shore, within 85 yards north and 85 yards south of the NC Hwy 24/27/73 bridge eastbound and westbound spans, otherwise known as the James B. Garrison Bridge. The North Carolina Wildlife Resources Commission shall be the designated agency for placement and maintenance of markers for this regulated area.

History Note: Authority G.S. 75A-3; 75A-15; Eff. November 1, 1977; Amended Eff. December 1, 1990; May 1, 1989; March 25, 1978; Temporary Amendment Eff. June 1, 1998; Amended Eff. April 1, 1999; July 1, 1998; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2006; June 1, 2005; April 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016; Amended Eff. October 1, 2018; April 1, 2017; Emergency Amendment Eff. July 30, 2019; Temporary Amendment Eff. October 1, 2019; Amended Eff. May 1, 2020; Temporary Amendment Eff. June 1, 2020.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

Rule-making Agency: *Board of Barber Examiners*

Rule Citation: *21 NCAC 06F .0128; 06N .0111*

Effective Date: *June 1, 2020*

Date Approved by the Rules Review Commission: *May 21, 2020*

Reason for Action: *A serious and unforeseen threat to the public health, safety or welfare in the form of a coronavirus outbreak in North Carolina. The governor declared a state of emergency on March 10, 2020. Several barber schools gave the board notice that they have closed or will be closing their facilities due to the outbreak. To allow students to continue to receive education, the board proposed to eliminate rules that would prevent schools from being able to offer online classes. The board also proposed to alleviate the reporting requirements for schools because the pandemic would cause a decrease in staff levels. The temporary rule would also allow schools that offer online classes to have additional time to meet reporting requirements.*

SUBCHAPTER 06F – BARBER SCHOOL

SECTION .0100 – BARBER SCHOOL

21 NCAC 06F .0128 WAIVER OF REQUIREMENTS DURING DISASTER OR EMERGENCY

(a) If the Governor declares a state of emergency, the following exceptions shall apply to barber schools and students:

- (1) Schools shall maintain a monthly record of the subject matter taught to the student in theory classes, the requirement in Rule .0110(4) of this Subchapter for a weekly record notwithstanding.
- (2) Schools shall provide to the Board the list of students required by G.S. 86A-22(5) by the last day of each month, the requirement in Rule .0110(6) of this Subchapter for schools to submit the list by the 15th of each month notwithstanding.
- (3) Within 60 days of the date on which any student completes his or her course of study, drops out of school, or transfers to another school, the barber school shall return the student permit to the Board, the requirement in Rule .0113(d) of this Subchapter to return the student permit within five business days notwithstanding.
- (4) Students shall not be required to meet the requirements in Rule .0122 of this Subchapter if the students are attending online classes.
- (5) No student shall be given credit for more than 10 total hours during any instruction day, the restriction to eight hours in Rule .0124(a) of this Subchapter notwithstanding.
- (6) The restrictions on off-campus hours in Rule .0124(c) of this Subchapter shall not apply to hours that students receive during a state of emergency.
- (7) Schools shall not be required to revise the handbooks required by Rule .0125 of this Subchapter to reflect the exceptions listed in this Rule.

(b) The exceptions in this Rule shall only apply through the duration of the state of emergency.

*History Note: Authority G.S. 86A-22;
Emergency Adoption Eff. March 27, 2020- 2020;
Temporary Adoption Eff. June 1, 2020.*

SUBCHAPTER 06N – FEES AND FORMS

21 NCAC 06N .0111 FORM BAR-10

(a) The Form BAR-10 is a report that shall be filed monthly by the manager of the school for each student enrolled in barber school. It requires the following:

- (1) the name of the school submitting the report;
- (2) the name and date of enrollment of the student;
- (3) the month and year for which the report is filed;
- (4) the dates and hours of the student's absences;
- (5) the dates and hours of the student's attendance;
- (6) the number of patrons served for clinical services; and
- (7) the subject matter covered in practical and theory courses.

(b) The Form BAR-10 shall be submitted to the Board over the signature of the manager of the school and co-signed by the student.

~~(c) The Form BAR-10 shall be returned to the Board within five business days of the date on which~~ If a student completes his or her course of study, drops out of school, or transfers to another school, the barber school shall return the Form BAR-10 to the Board:

- (1) within five business days; or
- (2) within 30 days if the student's enrollment ends during the effective period of a state of emergency declared by the Governor.

*History Note: Authority G.S. 86A-22;
Eff. May 1, 1989;
Readopted Eff. July 1, 2016;
Emergency Adoption Eff. March 27, 2020- 2020;
Temporary Adoption Eff. June 1, 2020.*

* * * * *

CHAPTER 40 – BOARD OF OPTICIANS

Rule-making Agency: Board of Opticians

Rule Citation: 21 NCAC 40 .0113

Effective Date: June 1, 2020

Date Approved by the Rules Review Commission: May 21, 2020

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare. On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issues Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

SECTION .0100 - LOCATION

21 NCAC 40 .0113 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, business or training

establishment, trainee, or continuing education course provider submits a written request. ~~The Board may also waive any rule in this Chapter that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during an exercise of emergency authority by a federal, state, or local governmental authority impacting North Carolina citizens based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

*History Note: Authority G.S. 90-249; 150B-19(6);
Emergency Adoption Eff. April 9, 2020;
Temporary Adoption Eff. June 1, 2020.*

CHAPTER 61 - RESPIRATORY CARE BOARD

Rule-making Agency: *Respiratory Care Board*

Rule Citation: *21 NCAC 61 .0901*

Effective Date: *June 1, 2020*

Date Approved by the Rules Review Commission: *May 21, 2020*

Reason for Action: *A serious and unforeseen threat to the public health, safety or welfare. On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. This National Emergency Response is to ensure respiratory care practitioners can be licensed without any delay by waiving continuing education requirements and late fees pursuant to G.S. 90-652 (9)(13) and 90-660 (5).*

SECTION .0900 – NATIONAL EMERGENCY RESPONSE WAIVERS FOR CERTAIN RULES

21 NCAC 61 .0901 RULE WAIVERS

In light of the State of National Emergency declared by President Trump as a result of the COVID-19 Virus, ~~and the urgent need to have respiratory care practitioners available to provide respiratory services to patients afflicted with COVID-19 Virus,~~ the Board has determined to waive certain provisions in its rules, as set forth in this Rule, below, and during the effective period of this Temporary Rule.

- (1) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0201(a)(4) that requires each applicant for an initial license renewal to provide a copy of current certification in Basic Life Support (BLS);
- (2) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0201(b)(1) ~~which that~~ states that for applicants who have not practiced respiratory care for a period of time greater than one year, but less than five years, the applicant must provide evidence of 12 hours of continuing education, that meet the requirements of 21 NCAC 61 .0401, for each full year of inactivity;
- (3) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0204(a)(4) that requires following the late renewal of any license, an additional late fee of seventy-five dollars (\$75.00);
- (4) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0302(c) that requires each applicant for renewal to provide proof of completion of continuing education requirements as established in this Chapter;
- (5) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0302(e) that requires each applicant for renewal to provide a copy of current certification in Basic Life Support (BLS);
- (6) The Board shall waive the requirement for licensure set forth in 21 NCAC 61.0302(f) that requires licenses lapsed in excess of 24 months shall not be renewable;
- (7) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0305(b) that requires an individual licensed on inactive status to convert his or her license to active status by ~~submission of a renewal application~~ and payment of the renewal fee and late fee and provide evidence of the completion of a minimum of 12 hours of continuing education that meets the requirements of 21 NCAC 61 .0401 for each full year of inactivity;
- (8) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0401(a) for continuing education requirements, and shall renew licenses without compliance with this provision;

TEMPORARY RULES

- (9) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0401(e) that requires a licensee to be subjected to a random audit for proof of compliance with the Board's requirements for continuing education; and submitted to the Board no later than 30 days of receipt of the audit notice.
- (10) The Board shall waive the requirement for licensure set forth in 21 NCAC 61 .0401(f) that requires continuing education audits be

*History Note: Authority G.S. 90-652(1); 90-652(2); 90-652(9); 90-652(11); 90-652(13);
Emergency Rule Eff. March 23, 2020;
Temporary Adoption Eff. June 1, 2020.*

This Section contains information for the meeting of the Rules Review Commission May 21, 2020 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Brian P. LiVecchi
W. Tommy Tucker, Sr.

Appointed by House

Jeanette Doran (1st Vice Chair)
Andrew P. Atkins
Anna Baird Choi (2nd Vice Chair)
Paul Powell
Garth Dunklin

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941

RULES REVIEW COMMISSION MEETING DATES

June 18, 2020	July 16, 2020
August 20, 2020	September 17, 2020

RULES REVIEW COMMISSION MEETING**MINUTES****May 21, 2020**

The Rules Review Commission met on Thursday, May 21, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via telephone. The Commissioners held a telephonic meeting to ensure compliance with Executive Order 138, other orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners Jeff Hyde and Tommy Tucker were present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, and Paul Powell.

Staff members present were Commission Counsel, Ashley Snyder and Amanda Reeder; and Alex Burgos. Amber Cronk May, Commission Counsel, was present via teleconference.

The meeting was called to order at 9:00 a.m. with Chairman Hyde presiding.

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

APPROVAL OF MINUTES

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the April 16, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Temporary rule for the Executive Director of the Board of Elections.

FOLLOW UP MATTERS**Structural Pest Control Committee**

02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Elections

08 NCAC 10B .0103 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Care Commission

10A NCAC 13F .0202, .0204, .0208, .0209, .0212; and 13G .0202, .0204, .0208, .0209, .0212, and .0213 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Department of Insurance

The agency is addressing the objections for 11 NCAC 12 .0321 and .0514. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0109 and .0704 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Sedimentation Control Commission

15A NCAC 04C .0103 and .0106 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Auctioneer Licensing Board

The agency is addressing the technical changes for 21 NCAC 04B .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0701, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, .0815, .0816, .0817, .0818, and .0819. No action was required by the Commission.

Board of Examiners for Engineers and Surveyors

The agency is addressing the technical changes for 21 NCAC 56 .0303, .0304, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and .1607. No action was required by the Commission.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – Upon the call of the Chair, the rules were objected to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to these Rules for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required for these Rules in its Notice of Text, published May 15, 2019. Pursuant to G.S. 150B-21.9(a), following a request from the public, the RRC sent the rules to the Office of State Budget Management (OSBM) to determine if these rules created a substantial economic impact. In a letter dated May 11, 2020, OSBM stated that fiscal note was required for these three rules.

Therefore, pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the Commission found that the agency did not comply with the APA.

LOG OF FILINGS (PERMANENT RULES)

Pesticide Board

Upon the call of the Chair, the period of review was extended for the following rules to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission extended the period of review for 02 NCAC 09L .0101, .0102, .0103, .0308, .0310, .0317, .0318, .0402, .0502, .0503, .0504, .0505, .0509, .0515, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0529, .0602, .0603, .0701, .0702, .0703, .0705, .0707, .0810, .1001, .1002, .1003, .1005, .1006, .1009, .1102, .1103, .1104, .1105, .1107, .1108, .1109, .1111, .1201, .1202, .1302, .1303, .1305, .1306, .1401, .1402, .1404, .1805, .1806, .1901, .1902, .1905, .1906, .1907, .1908, .1909, .1914, .2001, .2002, .2003, .2004, .2201, .2202, and .2203. in accordance with G.S. 150B-21.10. They did so in response to a request from the Pesticide Board to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Upon the call of the Chair, the Commission objected to 02 NCAC 09L .1913 by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to 02 NCAC 09L .1913 for lack of clarity and lack of necessity. The Rule is repetitive of the effective date contained in the history note and is therefore unnecessary. The Rule also does not specify whether the term “these Rules” refers to the rules of this Section or the rules of this Subchapter, making it unclear.

Parks and Recreation Authority

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Department of Transportation

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Real Estate Commission

Upon the call of the Chair, the rules were approved with the exception of 21 NCAC 58H .0401 by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 58H .0401 in by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

The Commission extended the period of review for 21 NCAC 58H .0401 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address public comments received regarding this Rule.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the NC Real Estate Commission and have been involved in discussions regarding these Rules.

Building Code Council

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission received over 10 letters of objection to the NC Plumbing Code, Sections 702.1, 702.4, 1102.2, and 1102.7. Pursuant to G.S. 150B-21.3, these Rules are subject to legislative review and a delayed effective date.

LOG OF FILINGS (TEMPORARY RULES)

Prior to the review of the temporary rule from the Executive Director of the Board of Elections, the Chair called the meeting into a brief recess at 9:56 a.m. The meeting resumed at 10:06 a.m.

During the review of the temporary rule from the Executive Director of the Board of Elections, the Chair called the meeting into a brief recess at 10:37 a.m. The meeting resumed at 10:42 a.m.

Executive Director of the Board of Elections

08 NCAC 01 .0106 - Upon the call of the Chair, the Commission declined to approve the Rule by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None. The vote was in accordance with G.S. 150B-21.1(b) and G.S. 150B-21.9.

The Commission determined that the Rule did not meet the criteria to qualify as a temporary rule under G.S. 150B-21.1(a). Specifically, the Commission found that the agency failed to show that adherence to notice and hearing requirements required for permanent rulemaking were contrary to the public interest for this amendment, such that immediate adoption would be required.

Further, the Commission objected to this Rule based on lack of statutory authority as set forth in G.S. 150B-21.9(a)(1). Specifically, the Commission found that the agency does not have the authority to expand the definition of “natural disaster” as proposed in Part (b)(1)(H) of the Rule.

The Commission also found Part (b)(1)(H) contained unclear language. As such, the Commission also objected based upon ambiguity, as set forth in G.S. 150B-21.9(a)(2).

In addition, the Commission found that the agency failed to provide notice to the public that the language in Paragraph (d) would be added to the Rule. As such, the Commission objected for lack of notice required by G.S. 150B-21.1(a3).

Jay DeLancy, with the Voter Integrity Project of North Carolina, Addressed the Commission.

Andy Jackson, with the Civitas Institute, addressed the Commission.

Katelyn Love, with the agency, addressed the Commission.

Wildlife Resources Commission

15A NCAC 10F .0317 and .0327 - Upon the call of the Chair, the Rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Barber Examiners

21 NCAC 06F .0128 and 06N .0111 - Upon the call of the Chair, the Rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

State Board of Opticians

21 NCAC 40 .0113 - Upon the call of the Chair, the Rule was approved by roll-call vote, ayes 5, noes 3 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin–5. Voting in the negative: LiVecchi, Tucker, and Powell - 3.

Catherine Lee, with the agency, addressed the Commission.

Prior to the review of the rules from the State Board of Opticians, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

Respiratory Care Board

21 NCAC 61 .0901 - Upon the call of the Chair, the Rule was approved by roll-call vote, ayes 8, noes 1 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, and Powell – 8. Voting in the negative: Tucker-1.

COMMISSION BUSINESS

The meeting adjourned at 11:48 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 18, 2020 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

Telephonic Attendees

Agency	Name
Structural Pest Control Committee	Jim Burnette
Structural Pest Control Committee	Victor Lennon
Structural Pest Control Committee	Richard Willis
Structural Pest Control Committee	Roger Bryan
Board of Elections	Katelyn Love
Medical Care Commission	Nadine Pfeiffer
Medical Care Commission	Ibtisam Zatari
Medical Care Commission	Tichina Hamer
Department of Insurance	Loretta Bunch
DEQ	Jennifer Everett
Auctioneer Licensing Board	Charlie Diehl
Building Code Council	Carl Martin
Pesticide Board	Pat Jones
DNCR	Mariah Street
Department of Transportation	Helen Landi
Department of Transportation	Hannah Jernigan
Department of Transportation	Ebony Pittman
Department of Transportation	David Harris
Real Estate Commission	Melissa Vuotto
Real Estate Commission	Rob Padgett
State Board of Elections	Katelyn Love
Civitas Institute	Andy Jackson
Voter Integrity Project	Jay DeLancy
Wildlife Resources Commission	Michael Smallwood
Wildlife Resources Commission	Betsy Haywood
Board of Barber Examiners	Dennis Seavers
Respiratory Care Board	Bill Croft
Opticians	Catherine Lee
Opticians	Sue Hodgins
DES	Regina Adams
Citizen	Trina Smith
Transparent Elections NC	Lynne Bernstein
Citizen of Wake County	Tripp Black
DHHS	Meghan Lamphere
Citizen of Wake County	Nicole Black
NC GOP	David Harris
Citizen of Onslow County	Steve Stephenson
Citizen of Wake County	Angela Starr

LIST OF APPROVED TEMPORARY RULES

May 21, 2020 Meeting

WILDLIFE RESOURCES COMMISSION

<u>Stanly County</u>	15A NCAC 10F .0317
<u>Montgomery County</u>	15A NCAC 10F .0327

BARBER EXAMINERS, BOARD OF

<u>Waiver of Requirements During Disaster or Emergency</u>	21 NCAC 06F .0128
<u>Form Bar-10</u>	21 NCAC 06N .0111

OPTICIANS, STATE BOARD OF

<u>Waiver</u>	21 NCAC 40 .0113
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RESPIRATORY CARE BOARD

<u>Rule Waivers</u>	21 NCAC 61 .0901
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LIST OF APPROVED PERMANENT RULES

May 21, 2020 Meeting

STRUCTURAL PEST CONTROL COMMITTEE

<u>Application for Licenses and Cards: Examination</u>	02 NCAC 34 .0302
<u>Recertification</u>	02 NCAC 34 .0309
<u>Records: Pesticides and Application Equipment Used</u>	02 NCAC 34 .0328
<u>Ancillary Activities</u>	02 NCAC 34 .0331
<u>Wood-Destroying Insects: Excluding Subterranean Termites</u>	02 NCAC 34 .0501
<u>Pesticides for Subterranean Termite Prevention and/or Con...</u>	02 NCAC 34 .0502
<u>Subterranean Termite Control: Buildings After Constructed</u>	02 NCAC 34 .0503
<u>Reporting Damage: Infestation: Uninspected Areas</u>	02 NCAC 34 .0504
<u>Subterranean Termite Preventions/Res Bldgs Under Const</u>	02 NCAC 34 .0505
<u>Min Require/Subterranean Termite Prev/Commercial Bldgs Un...</u>	02 NCAC 34 .0506
<u>Wood-Destroying Insects and Other Organism Reports</u>	02 NCAC 34 .0602
<u>Written Records of Household Pest Control</u>	02 NCAC 34 .0703
<u>Decision of Committee</u>	02 NCAC 34 .1206

PARKS AND RECREATION AUTHORITY

<u>Eligible Participants</u>	07 NCAC 13K .0102
<u>Funding Cycle</u>	07 NCAC 13K .0103
<u>Evaluation of Applications</u>	07 NCAC 13K .0105
<u>Grant Agreement</u>	07 NCAC 13K .0106
<u>Matching Requirements</u>	07 NCAC 13K .0107
<u>Eligible Projects and Costs</u>	07 NCAC 13K .0108
<u>Site Control and Dedication</u>	07 NCAC 13K .0109
<u>Inspections</u>	07 NCAC 13K .0110

ELECTIONS, STATE BOARD OF

<u>Voting Procedures</u>	08 NCAC 10B .0103
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MEDICAL CARE COMMISSION

<u>The License</u>	10A NCAC 13F .0202
<u>Applying for a License to Operate a Facility not Currentl...</u>	10A NCAC 13F .0204
<u>Renewal of License</u>	10A NCAC 13F .0208
<u>Conditions for License Renewal</u>	10A NCAC 13F .0209
<u>Denial or Revocation of License</u>	10A NCAC 13F .0212
<u>The License</u>	10A NCAC 13G .0202
<u>Application for a License to Operate a Home not Currently...</u>	10A NCAC 13G .0204
<u>Renewal of License</u>	10A NCAC 13G .0208
<u>Conditions for License Renewal</u>	10A NCAC 13G .0209
<u>Denial and Revocation of License</u>	10A NCAC 13G .0212
<u>Appeal of Licensure Action</u>	10A NCAC 13G .0213

PRIVATE PROTECTIVE SERVICES BOARD

<u>Rulemaking and Administrative Hearing Procedures</u>	14B NCAC 16 .0109
<u>Investigation for Unarmed Security Guard Registration</u>	14B NCAC 16 .0704

SEDIMENTATION CONTROL COMMISSION

<u>Who May Assess</u>	15A NCAC 04C .0103
<u>Criteria</u>	15A NCAC 04C .0106

TRANSPORTATION, DEPARTMENT OF

<u>Selective Vegetation Removal Permit Required to Remove Ve...</u>	19A NCAC 02E .0601
<u>Requests for Selective Vegetation Removal Permits for a F...</u>	19A NCAC 02E .0602
<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0603
<u>Conditions of Selective Vegetation Removal Permit for Fac...</u>	19A NCAC 02E .0604
<u>Requests for Selective Vegetation Removal Permits for Out...</u>	19A NCAC 02E .0608
<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0609
<u>Conditions of Selective Vegetation Removal Permit for Out...</u>	19A NCAC 02E .0610
<u>Beautification and Replanting Requirements for Selective ...</u>	19A NCAC 02E .0611

REAL ESTATE COMMISSION

<u>Broker-In-Charge</u>	21 NCAC 58A .0110
<u>License Application and Fee</u>	21 NCAC 58A .0302
<u>Petition for Predetermination</u>	21 NCAC 58A .0305
<u>Provisional Broker to be Supervised by Broker</u>	21 NCAC 58A .0506
<u>Procedures for Requesting Hearings When Applicant's Chara...</u>	21 NCAC 58A .0616
<u>Equivalent Credit</u>	21 NCAC 58A .1708
<u>Denial or Withdrawal of Continuing Education Credit</u>	21 NCAC 58A .1710
<u>Continuing Education Required of Nonresident Brokers</u>	21 NCAC 58A .1711
<u>Extensions of Time to Complete Postlicensing Education</u>	21 NCAC 58A .1903
<u>Denial or Withdrawal of Postlicensing Education Credit</u>	21 NCAC 58A .1904
<u>Definitions</u>	21 NCAC 58H .0101
<u>Applicability</u>	21 NCAC 58H .0201
<u>Application for Education Provider Certification</u>	21 NCAC 58H .0202
<u>Education Director</u>	21 NCAC 58H .0203
<u>Policies and Procedures Disclosure</u>	21 NCAC 58H .0204
<u>Course Materials</u>	21 NCAC 58H .0205

<u>Advertising and Recruitment Activities</u>	21 NCAC 58H .0206
<u>Course Completion Certificates and Reports</u>	21 NCAC 58H .0207
<u>Education Provider Records</u>	21 NCAC 58H .0208
<u>Expiration and Renewal of Provider Certification</u>	21 NCAC 58H .0209
<u>Denial, Withdrawal, or Termination of Education Provider ...</u>	21 NCAC 58H .0210
<u>Prelicensing and Postlicensing Roster Reporting</u>	21 NCAC 58H .0211
<u>School Records</u>	21 NCAC 58H .0212
<u>Evaluations of Instructor Performance</u>	21 NCAC 58H .0213
<u>Expiration and Renewal of a School Approval or License</u>	21 NCAC 58H .0214
<u>Denial, Withdrawal, or Termination of School Approval or ...</u>	21 NCAC 58H .0215
<u>Prelicensing, Postlicensing, and Update Course Instructor...</u>	21 NCAC 58H .0301
<u>Application and Criteria for Instructor Approval</u>	21 NCAC 58H .0302
<u>Denial or Withdrawal of Instructor Approval</u>	21 NCAC 58H .0303
<u>Instructor Conduct and Performance</u>	21 NCAC 58H .0304
<u>Digital Video Recordings</u>	21 NCAC 58H .0305
<u>Continuing Education Elective Course Requirements</u>	21 NCAC 58H .0402
<u>Commission Created Update Courses</u>	21 NCAC 58H .0403
<u>Course Scheduling</u>	21 NCAC 58H .0404
<u>Denial or Withdrawal of Sponsor Approval</u>	21 NCAC 58H .0405
<u>Approval and Renewal of Elective Course</u>	21 NCAC 58H .0406
<u>Continuing Education Elective Course Requirements</u>	21 NCAC 58H .0407
<u>Commission Created Update Courses</u>	21 NCAC 58H .0408
<u>Records and Commission Review</u>	21 NCAC 58H .0409
<u>Continuing Education Course Scheduling and Notification</u>	21 NCAC 58H .0410
<u>Continuing Education Course Attendance</u>	21 NCAC 58H .0411
<u>Continuing Education Roster Reports and Certificates</u>	21 NCAC 58H .0412
<u>Continuing Education Course Cost, Cancellation, and Refunds</u>	21 NCAC 58H .0413
<u>Advertising</u>	21 NCAC 58H .0414

BUILDING CODE COUNCIL

<u>2018 NC Administrative Code/Inspections of Component or E...</u>	107.6
<u>2018 NC Residential Code/Cross Bracing</u>	AM109.1.4
<u>2018 NC Residential Code/Height</u>	R311.7.8.1
<u>2018 NC Building Code/Allowable Number of Stories Above G...</u>	504.4
<u>2018 NC Building Code/Height</u>	905.3.1
<u>2018 NC Building Code/Type A Units</u>	1107.6.2.2.1
<u>2018 NC Fire Code/Temporary Sleeping Units for Disaster R...</u>	321
<u>2018 NC Fire Code/Height</u>	905.3.1
<u>2018 NC Plumbing Code/Above-Ground Sanitary Drainage and ...</u>	702.1
<u>2018 NC Plumbing Code/Fittings</u>	702.4
<u>2018 NC Plumbing Code/Cured in Place Piping</u>	718
<u>2018 NC Plumbing Code/Single Stack Vent System</u>	917
<u>2018 NC Plumbing Code/Engineered Single Stack Systems</u>	917.1.1
<u>2018 NC Plumbing Code/Inside Storm Drainage Conductors</u>	1102.2
<u>2018 NC Plumbing Code/Fittings</u>	1102.7

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 984-236-1850.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton

Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer
Tenisha Jacobs

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
19	DHR	02961	4/28/2020	Learning Early Childhood Center LLC	v.	Division of Child Development and Early Education- Department of Health and Human Services	Ward
19	DHR	06158	4/22/2020	Bridges of Hope Inc	v.	NC Department of Health and Human Services, Division of Health Benefits	Bawtinheimer
19	DHR	06607	4/15/2020	Marika Bright	v.	NC Department of Health and Human Services	Ward
19	DOJ	04778	4/9/2020	Stephanie McGhee	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	05064	4/27/2020	Lamar Krider	v.	North Carolina Sheriffs Education and Training Standards Commission	Jacobs
19	DOJ	06722	4/17/2020	Matthew Joseph Jankowski	v.	North Carolina Alarm Systems Licensing Board	Jacobs
19	INS	04536	4/13/2020	Kelly Kavit	v.	North Carolina State Health Plan for Teachers and State Employees	Jacobs
19	INS	05717	4/22/2020	Elizabeth Nickels	v.	North Carolina State Health Plan	Lassiter
19	OSP	05480	4/1/2020	Wei Wen Gou	v.	North Carolina State University	Bawtinheimer
19	OSP	05604	4/8/2020	Amie Roberts	v.	Transylvania County Department of Social Services Director Darrell Renfroe	Sutton
19	SOS	06198	4/17/2020	Linda Verdi Rice	v.	NC Department of the Secretary of State	Lassiter
19	SOS	06568	4/21/2020	Gardenia Johnson	v.	NC Department of the Secretary of State Attn: Ann Wall General Counsel	Malherbe
19	UNC	03351	4/16/2020	Kim Smith	v.	University of North Carolina Hospitals	Ward

CONTESTED CASE DECISIONS

				<u>Unpublished</u>			
20	ABC	00178	4/3/2020	NC Alcoholic Beverage Control Commission	v.	Casey Lynn Smith T/A Caseys Cove	May
20	ABC	00402	4/3/2020	NC Alcoholic Beverage Control Commission	v.	Naeem Ahmed Bhatti T/A Washington Quick Mart	May
20	CPS	00358	4/14/2020	Tina B Cline	v.	North Carolina Crime Victims Compensation Commission	Malherbe
19	CSE	05598	4/7/2020	Nathan J Trautman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05719	4/27/2020	Christopher Harrell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
19	CSE	05796	4/27/2020	Fritz S Chevalier	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	05805	4/28/2020	Aslam Tawhid	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	05833	4/21/2020	David L Wright	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton
19	CSE	05906	4/22/2020	Ian Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	05955	4/3/2020	James Scott Whitaker	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05964	4/15/2020	Ariel J Moreiras	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	06001	3/19/2020; 4/30/2020	Geoffrey R Vincent	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Malherbe
19	CSE	06004	4/21/2020	Jeffrey B Sluder	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton
19	CSE	06005	4/6/2020	William J Matson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Service	Culpepper
19	CSE	06023	4/2/2020	Kenneth J Wolford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	06024	4/15/2020	Joshua C Nelson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Lassiter
19	CSE	06055	4/6/2020	Fredrick L Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Lassiter
19	CSE	06128	4/21/2020	Thomas J Weaver	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton

CONTESTED CASE DECISIONS

19	CSE	06131	4/30/2020	Marcel A Pestano Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06134	4/22/2020	Calop Thomason	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	06177	4/23/2020; 4/27/2020	Jermaine A McNair	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	CSE	06253	4/27/2020	Johan Rosario	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
19	CSE	06261	4/3/2020	Fernando A rivera	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06343	4/7/2020	William E Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06382	4/13/2020	Howard Michael Stein Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
19	CSE	06475	4/8/2020	Joe Nelms	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DCS	06057	4/16/2020	Ronald L Waterman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	DHR	06026	4/8/2020	Lori Ann Buie	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Jacobs
20	DHR	00728	4/22/2020	Dr Edward A Patterson	v.	DOCD	Mann
20	DHR	00729	4/1/2020	Aqcrevcia Japhuer Jones	v.	Golden Year Nursing Home Department of Health and Human Services Division of Health Service Regulation	Overby
20	DHR	01242	4/17/2020	Jeffrey Levenbook	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinhimer
20	EHR	00470	4/8/2020	KG Plaza LLC	v.	NC Department of Environmental Quality	Jacobs
20	EHR	00761	4/24/2020	Derrick Stroud	v.	North Carolina Department of Environmental Quality	Overby
20	OAH	00087	4/22/2020	Cheryl A Jenkins	v.	Office of Administrative Hearings	Mann
20	SOS	00426	4/21/2020	Rhondra Simpson	v.	Department of the Secretary of State	Malherbe
20	SOS	00548	4/21/2020	Samantha E Foster	v.	North Carolina Department of the Secretary of State Notary Public Division	Malherbe