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The **NORTH CAROLINA REGISTER**

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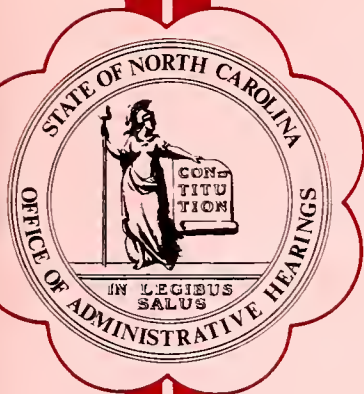
ISSUE DATE: June 1, 1993

Volume 8 • Issue 5 • Pages 401 - 455

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
(January 1993 - December 1993)

Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
03/01/93	02/08/93	02/15/93	03/16/93	03/31/93	04/20/93	06/01/93
03/15/93	02/22/93	03/01/93	03/30/93	04/14/93	04/20/93	06/01/93
04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
05/03/93	04/12/93	04/19/93	05/18/93	06/02/93	06/20/93	08/02/93
05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/93
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11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 9
COMMISSION FOR A
COMPETITIVE NORTH CAROLINA**

WHEREAS, the increasing globalization of economic relationships, the movement of goods, information, technology and capital across national boundaries, and the restructuring of national and state economies have changed the conditions for long-term economic success; and

WHEREAS, increasing the ability of North Carolina's people, communities, and enterprises to compete successfully in a global market place is vital to the long-term economic prosperity and quality of life for the citizens of this state; and

WHEREAS, building the long-term competitive capacity for the people, communities, and enterprises of North Carolina requires concerted and cooperative effort by the public sector; the private sector, and the nonprofit sector, and new forms of partnerships that involve the contributions that each sector is best positioned to make; and

WHEREAS, effective public sector action and successful partnerships are dependent upon a commonly shared view of long-term economic success, a clear understanding of the necessary roles each partner must play in achieving that success, and clear and specific measures of desired outcomes that focus the efforts of all partners; and

WHEREAS, the public sector must rethink its role as an effective partner for long-term development by becoming more entrepreneurial in action, by tying resources directly to desired long-term outcomes, by establishing clear benchmarks for measuring performance, by holding itself accountable to the people for measurable performance, and by instituting performance based budgeting to hold agencies and programs similarly accountable;

NOW THEREFORE, by the authority vested in me as Governor by the constitutions and laws of North Carolina and the United States, it is **ORDERED**:

Section 1. ESTABLISHMENT

The Commission for a Competitive North Carolina is hereby established to develop a long-term, comprehensive vision for competitive people, communities, and enterprises; to determine the appropriate role of state government in achieving

that vision; to recommend changes in policies and programs compatible with that role; to define measurable outcomes to achieve the vision of competitive people, communities, and enterprises; and to establish performance measures for periodically measuring progress in achieving those outcomes.

Section 2. MEMBERSHIP

The Commission shall consist of up to 40 members appointed by the Governor. The membership may include representatives of the private sector, the nonprofit sector, local government, and the NC General Assembly.

Section 3. CHAIR

The Governor shall serve as Chair of the Commission. The Governor will appoint one Vice Chair representing the private sector and one Vice Chair representing the nonprofit sector, who shall serve for two years.

Section 4. TASK FORCES

The Governor shall also appoint chairs for the task forces of the Commission. The Governor, Vice Chairs, and the Task Force Chairs shall form the Steering Committee for the Commission. The task forces shall consist of members of the commission, plus such other resource persons as the Steering Committee shall designate. Task forces shall be organized on the following topics, plus such others as the Steering Committee shall designate as necessary to accomplish the mission of the Commission: the business environment, the people and the workforce, the natural environment, the physical and technological infrastructure, the international environment, and entrepreneurial governance.

Section 5. MEETINGS

The Commission shall meet at the call of the Governor.

Section 6. PURPOSE

The purpose of the Commission for a Competitive North Carolina is to prepare a long-term, comprehensive vision for competitive people, communities and enterprises in North Carolina; define measurable outcomes for achieving that vision; establish performance standards for periodically assessing progress toward that vision; recommend changes in methods of operation for state government programs and agencies to achieve that

vision; and recommend a permanent organizational structure for monitoring performance measures and updating outcomes and recommendations. The Commission will prepare a final report to the people of North Carolina not later than fall, 1994 that includes necessary actions to accomplish the recommendations in that report.

The Commission shall, in the performance of its tasks and functions:

- Conduct a comprehensive review of all prior studies and reports by public or private entities in North Carolina relevant to the mission, tasks, and function of the commission.
- Conduct a comprehensive review of all prior studies and reports by public or private entities relevant to the mission, tasks, and function of the Commission by other states, including Oregon, Florida, Minnesota, Arizona, and Texas.
- Conduct an examination of major industrial sectors in North Carolina to determine likely changes in response to long-term economic competitiveness and likely impacts on people, enterprises, and communities in North Carolina.
- Use focus groups and other appropriate methods to gather input from representatives of the public sector, the private sector, the nonprofit sector, and the citizens of this state on the most critical issues for long-term competitiveness, the relative priority of these issues, strategic goals, barriers to achieving those goals, and the aspirations of the people of this state for their children, their communities, their natural environment, and their economic opportunities.
- Gather such other data and information as may be necessary and useful for accomplishing the purpose of the Commission.
- Work cooperatively with other boards, commissions, and entities and take maximum advantage of their resources and activities that can provide useful information and insight to the purpose of this Commission.
- Propose a long-term vision for a competitive North Carolina that reflects the results of the studies, reviews, analyses, focus groups, public testimony, and other forms of insight that the Commission receives in the process of performing its tasks and functions.
- Propose measurable outcomes that will determine success in accomplishing that long-term vision.
- Propose performance measures to determine progress toward achieving those outcomes.
- Propose specific actions to enable the Governor and the legislature to take effective action to focus resources on strategic initiatives.
- Propose specific changes in the governance of relevant programs and activities in state government to enable them to focus more directly on desired outcomes and be held accountable for those outcomes; to operate as part of an efficient, integrated system; to engage in new forms of partnerships; to have an impact of significant scale and magnitude to accomplish desired long-term outcomes; and to operate effectively and efficiently in a rapidly changing environment to maintain and improve the competitiveness of North Carolina's people, communities, and enterprises in a global market place.
- Propose a permanent organizational structure that would monitor performance measures, update the recommendations in view of that performance and a changing environment, and issue periodic reports to the Governor, the legislature, and the people of North Carolina on the progress of the state in achieving the specified objectives.
- Prepare a final report on its findings and recommendations.

Section 7. COOPERATION OF STATE AGENCIES

All state agencies shall cooperate with the Commission as it implements its tasks and functions. The Governor's Policy Office shall serve as coor-

dinator of agency staff and other staff assistance to the Commission.

Section 8. ADMINISTRATION AND EXPENSES

The Department of Administration shall provide necessary administrative and support services to fulfill the Commission's tasks and functions.

The Commission is authorized to accept grants, gifts, bequests, and other offers of assistance necessary to carry out its tasks and functions. The operating budget for the Commission shall derive solely from such grants, gifts, bequests, and other offers of assistance. Also, each state agency cooperating in the work of the Commission may provide additional funds from its own budget to support the Commission.

Members of the Commission and staff shall receive necessary travel and subsistence expenses in accordance with state law.

Section 9. EFFECTIVE DATE

This Executive Order is effective immediately.

Done in the Capitol City of Raleigh, North Carolina this 5th day of May, 1993.

EXECUTIVE ORDER NUMBER 10 ESTABLISHING THE QUALITY LEADERSHIP AWARDS COUNCIL

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

Section 1. Establishment.

The Quality Leadership Awards Council ("Council") is hereby established. The Council shall have two subordinate committees: the Examination Board and the Recognition Committee. It may have other committees as well.

Section 2. Membership.

1. The Council shall consist of not more than thirty members, including:

- A. the Secretary of Commerce, or his designee;
- B. the President of the University of North Carolina System, or his designee;
- C. the President of the System of Community Colleges, or his designee;
- D. the Commissioner of Labor, or his

designee;

- E. a member recommended by the Lieutenant Governor;
- F. a member recommended by the Speaker of the House;
- G. the President of North Carolina Citizens for Business and Industry;
- H. the Chair of the North Carolina Quality Leadership (NCQL) Foundation, or his designee;
- I. two appointees by the Governor from the education or non-profit sectors;
- J. no more than twelve ranking officials of organizations receiving a Quality Leadership Award ("Award") from the State;
- K. four industrial representatives;
- L. the Chair of the Commission on Workforce Preparedness; and
- M. the Governor, or his designee.

2. The members of the Board of Examiners subordinate committee shall be drawn from professional and technical experts in total quality management and quality assurance-related fields. Members shall be invited to serve by the Council and shall serve at its pleasure.

3. The members of the Recognition Committee shall be drawn from business, industry, education, and government personnel concerned with award programs and public relations, especially representing industry associations and regional councils concerned with quality and productivity improvement. Members shall be invited to serve by the Council and shall serve at its pleasure.

Section 3. Chair, Terms, and Vacancies.

Those members under subsection (J) above shall serve three-year terms, which shall start in the year after winning the Award. The members under subsections (E) and (F) above shall serve at the pleasure of the Governor. The Governor shall fill all vacancies. However, should a vacancy occur in a seat held by a member recommended by the Lieutenant Governor or the Speaker of the House, the Governor shall fill that vacancy only after recommendation by the appropriate official. The Council shall elect its Chair from among its members.

Section 4. Purposes.

The purposes of the Council shall be:

- A. to enhance education and training of management and workforce, both current and future;
- B. to improve competitiveness of North Carolina business and industry, especially

- supplier relationships;
- C. to encourage exchange of information toward quality improvement, especially through regional councils and industry associations; and
- D. to promote application of the seven principles of total quality management in North Carolina organizations.

Section 5. Duties.

1. The North Carolina Quality Leadership Awards Council shall have the following responsibilities:

- A. approve and announce Quality Leadership Award ("Award") and Honor Roll recipients in the following categories: manufacturing and service industries (large-, medium-, and small-sized); and education, government, health care, and non-profit institutions;
- B. approve guidelines consistent with the principles of total quality management with which to examine applicant organizations;
- C. approve appointments of Judges and Examiners;
- D. arrange appropriate annual awards and recognition for recipients;
- E. recommend changes in the awards process, in cooperation with the N.C.Q.L. Foundation;
- F. cooperate with related education, training, technology transfer, and research initiatives proposed by the N.C.Q.L. Foundation; and
- G. arrange for a Master of Ceremonies in presenting the Awards.

2. The Board of Examiners shall:

- A. conduct evaluation of applicant organizations by assessing applications, making recommendations, and conducting site visits of participating organizations;
- B. recommend Award guidelines;
- C. nominate Award recipients; and
- D. recommend Examiners and Judges to the Council.

3. The Recognition Committee shall:

- A. recommend the types of awards; and
- B. recommend the format and timing of ceremonies.

Section 6. Administrative Support.

Operations support for the Council and Examination Board, including administrative and training activities, shall be provided by the NCQL Founda-

tion staff. The Department of Commerce, the University of North Carolina System, and the System of Community Colleges may provide additional staff and administrative support on a voluntary basis.

Section 7. Rescission.

Executive Orders 119 and 166 of the Martin Administration are hereby rescinded.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 5th day of May, 1993.

EXECUTIVE ORDER NUMBER 11 GOVERNOR'S COUNCIL OF FISCAL ADVISORS

WHEREAS, it is desirable that Governors have benefit of the combined counsel of those officials primarily responsible for the State's fiscal affairs. NOW THEREFORE, to accomplish that end and pursuant to authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment.

There is established the Governor's Council of Fiscal Advisors whose membership shall consist of:

- (a) The State Treasurer
- (b) The State Auditor
- (c) The State Budget Officer
- (d) The Secretary of the Department of Revenue
- (e) The State Controller
- (f) The Governor's General Counsel
- (g) The Governor's Advisor for Policy

Section 2. Purpose.

The purpose of the Council shall be to consider and advise the Governor concerning the fiscal affairs of the State.

Section 3. Meetings.

(a) The Council shall meet with the Governor in regular sessions each quarter at such times as the Governor directs and in special session at the Governor's call.

(b) In addition, the Council shall meet without the Governor in regular session at such times as the Council selects and in special session at the call of the State Budget Officer.

(c) The Governor shall preside at all meetings of

the Council at which he is present. The State Budget Officer shall preside at all meetings of the Council at which the Governor is not present. Agendas for all meetings of the Council shall be prepared by the State Budget Officer and distributed to attendees in advance of the meetings.

(d) Council members shall attend Council meetings in person and not by surrogates.

Section 4. Invitees.

In addition to Council members, the following are invited to attend and participate in Council meetings as the Governor's invitees:

- (a) the Executive Assistant
- (b) The Deputy State Budget Officer
- (c) the Lieutenant Governor or his designee
- (d) the Director of Fiscal Research for the North Carolina General Assembly or his designee.

Section 5. Attendance at other meetings.

Council members who are not members of the Council of State may attend meetings of the Council of State as invitees of the Governor. Council members who are not members of the Advisory Budget Commission may attend meetings of the Advisory Budget Commission as invitees of the Governor.

Section 6. Administration.

The Office of State Budget and Management shall provide staff and administrative support to the Council.

Section 7. Expenses.

Council members shall serve without compensation or reimbursement for expenditures incurred by them in attending Council meetings.

Section 8. Rescission of prior orders.

Executive Order Number 122 by Governor James G. Martin is hereby rescinded.

This executive order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 5th day of May, 1993.

**EXECUTIVE ORDER NUMBER 12
PUBLIC SCHOOL ADMINISTRATOR
TASK FORCE**

WHEREAS, this Administration has a goal of doing more with less in our public schools by

increasing effectiveness and efficiency;

WHEREAS, business and industry leaders have built up valuable expertise in using this strategy;

WHEREAS, the most effective and efficient ratio of local public school administrators to teachers and students is not known;

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

Section 1. Establishment

There is hereby established a Public School Administrator Task Force ("Task Force").

Section 2. Membership and Terms

The Task Force shall consist of eight business and industry leaders with experience in improving effectiveness and efficiency in their organizations. Two of the members shall be selected upon the recommendation of the Speaker of the House and two members shall be selected upon the recommendation of the Senate President Pro Tem. The remaining members shall be appointed by the Governor. The members shall serve for six months.

Section 3. Duties

The Task Force shall have the following duties:

- (a) Analyze existing ratios of local public school administrators to teachers and students;
- (b) Determine the ratio necessary to effectively and efficiently administer quality education at the local level;
- (c) Develop guidelines for local public school administrators to follow in implementing more effective and efficient administration; and
- (d) Report its findings and recommendations to the Joint Legislative Education Oversight Committee and to the State Board of Education.

Section 4. Administration and Expenses

The Task Force members shall be reimbursed for necessary travel and other expenses as allowed by North Carolina law. Administrative and staff support for the Task Force shall be provided by the Department of Administration.

This order is effective June 1, 1993, and shall terminate December 1, 1993.

Done in the Capital City of Raleigh, North
Carolina, this the 7th day of May, 1993.

G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:LLT:TGL:lrj

DJ 166-012-3

93-0705

April 27, 1993

George A. Weaver, Esq.

Lee, Reece & Weaver

P. O. Box 2047

Wilson, North Carolina 27894-2047

Dear Mr. Weaver:

This refers to the procedures for conducting the June 8, 1993, special election in Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 1, 1993.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner

Acting Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

**TITLE 4 - DEPARTMENT OF
COMMERCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alcoholic Beverage Control Commission intends to amend rule cited as 4 NCAC 2R .1903.

The proposed effective date of this action is September 1, 1993.

The public hearing will be conducted at 10:00 a.m. on July 9, 1993 at the Commission Hearing Room, 3322 Garner Road, Raleigh, NC 27610.

Reason for Proposed Action: To allow local ABC boards the option to discontinue a time-consuming procedure of placing a stamp on each individual liquor container.

Comment Procedures: Written comments should be directed to the Administrator of the ABC Commission, P. O. Box 26687, Raleigh, NC 27611. Comments will be received until conclusion of hearing on July 9, 1993.

**CHAPTER 2 - ALCOHOLIC BEVERAGE
CONTROL COMMISSION**

**SUBCHAPTER 2R - ORGANIZATIONAL
RULES: POLICIES AND PROCEDURES**

**SECTION .1900 - SALES OF LIQUOR
TO MIXED BEVERAGES PERMITTEES**

**.1903 LOCAL BOARD PRODUCT
IDENTIFICATION**

Prior to the sale of any container of spirituous liquor to the public at retail, the local board ~~shall~~ may affix to the container or the individual container's packaging a stamp that indicates the following:

- (1) local board system of sale; and
- (2) local board store number.

Statutory Authority G.S. 18B-807.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to adopt rules cited as 4 NCAC 3J .0101, .0201 - .0205, .0301 - .0306, .0401 - .0402.

The proposed effective date of this action is September 1, 1993.

The public hearing will be conducted at 8:30 a.m. on June 24, 1993 at the Dobbs Building, Suite 6210, 430 North Salisbury Street, Raleigh, North Carolina.

Reason for Proposed Action: To interpret and effectuate the Refund Anticipation Loan Act codified at Chapter 53, Article 20 of the North Carolina General Statutes (N.C. Gen. Stat. section 53-245, et seq.) and to provide for the protection of the borrowing public..

Comment Procedures: Comments may be made orally or in writing and must be submitted no later than Thursday, July 1, 1993, 5:30 p.m. Comments should be directed to: T. Mercedes Oglukian, Special Counsel, North Carolina Banking Commission, Post Office Box 29512, 430 North Salisbury Street, Raleigh, North Carolina 27626-0512 (Tel: (919) 733-3016; Fax: (919) 733-6918).

CHAPTER 3 - BANKING COMMISSION

**SUBCHAPTER 3J - REFUND
ANTICIPATION LOAN**

SECTION .0100 - ADMINISTRATIVE

.0101 DEFINITIONS; FILINGS

(a) As used in these Rules, unless the context clearly requires otherwise:

- (1) "Applicant" shall have the same meaning as set forth in G.S. 53-246(1).
- (2) "Commission" shall have the same meaning as set forth in G.S. 53-246(2).
- (3) "Commissioner" shall have the same meaning as set forth in G.S. 53-246(3).
- (4) "Controlling person" shall mean any person as defined herein who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the

- registrant.
- (5) "Creditor" shall have the same meaning as set forth in G.S. 53-246(4).
 - (6) "Creditor fee" shall mean the fee imposed by the creditor which funds the refund anticipation loan in consideration for funding the refund anticipation loan.
 - (7) "Debtor" shall have the same meaning as set forth in G.S. 53-246(5).
 - (8) "Electronic filing fee" shall mean the fee imposed by the facilitator in consideration for the electronic filing of a tax return.
 - (9) "Executive officer" shall have the same meaning as such term is defined in Regulation "O" promulgated by the Board of Governors of the Federal Reserve System, and codified in the Code of Federal Regulations at Title 12, Chapter II, Part 215.
 - (10) "Facilitator" shall have the same meaning as set forth in G.S. 53-246(6).
 - (11) "Facilitator loan fee" shall mean the fee imposed by the facilitator in consideration for assisting the debtor in obtaining the refund anticipation loan.
 - (12) "Income tax return preparation fee" shall mean the fee imposed by a person in consideration for preparation of the debtor's tax returns.
 - (13) "Loan-related fee" shall mean any fee other than a creditor fee, facilitator loan fee or electronic filing fee paid by the debtor for transmittal to third persons who provide services in connection with the refund anticipation loan.
 - (14) "Person" shall have the same meaning as set forth in G.S. 53-246(7).
 - (15) "Refund anticipation loan" shall have the same meaning as set forth in G.S. 53-246(8).
 - (16) "Refund Anticipation Loan Act" shall mean the Refund Anticipation Loan Act codified at Chapter 53, Article 20 of the North Carolina General Statutes (G.S. 53-245, et seq.).
 - (17) "Refund anticipation loan fee" shall have the same meaning as set forth in G.S. 53-246(9) and shall include a creditor fee, facilitator loan fee, and loan-related fee as defined herein.
 - (18) "Registrant" shall have the same meaning as set forth in G.S. 53-246(10).
 - (19) "Transmitter" shall mean any person as defined herein who transmits electronic

returns directly to the Internal Revenue Service. This term shall include persons who receive information to be reformatted and transmitted to the Internal Revenue Service, i.e., third-party transmitters.

(b) An application for registration or any report, notice, form or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Commissioner of Banks
Post Office Box 29512
Raleigh, North Carolina 27626-0512

Statutory Authority G.S. 53-245; 53-246; 53-248; 53-253; 150B-21.2.

SECTION .0200 - APPLICATION AND RENEWAL

.0201 APPLICATION FOR REGISTRATION AS A FACILITATOR

(a) Any person who would like to engage in business as a facilitator pursuant to the Refund Anticipation Loan Act shall first be registered with the Commissioner, unless such person is exempt from registration pursuant to G.S. 53-247(c) or G.S. 53-254. An application for registration shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.

(b) The application for registration as a facilitator shall include the following:

- (1) A description of the applicant's organizational structure, including the name, business and residence address and business telephone number of the applicant, its partners, executive officers, directors and controlling persons;
- (2) Copies of the following documents, where applicable:
 - (A) The applicant's Articles of Incorporation, or general or limited partnership agreement;
 - (B) A Certificate of Existence or Certificate of Good Standing not more than 90 days old from the applicant's state of incorporation;
 - (C) A Certificate of Authority to do business in this State;
 - (D) A copy of the applicant's Certificate of Assumed Name;
- (3) A description of the applicant's operations, including the names and addresses of the banks which will fund refund

- anticipation loans to its customers, and the names and addresses of transmitters and any other intermediary parties involved in the process of facilitating refund anticipation loans;
- (4) A description of the business(es) in which the applicant is primarily engaged;
 - (5) The applicant's Electronic Filer Identification Number (EFIN) as provided by the Internal Revenue Service;
 - (6) Proof that the applicant has been accepted by the Internal Revenue Service to participate in its electronic filing program for the present tax year;
 - (7) Disclosure of any civil judgments entered against the applicant, its partners, executive officers, directors or controlling persons during the past 10 years which have remained partially or wholly unpaid;
 - (8) Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, its partners, executive officers, directors or controlling persons which involve fraud or dishonesty;
 - (9) Disclosure of any felony convictions entered against the applicant, its partners, executive officers, directors or controlling persons;
 - (10) Disclosure of any misdemeanor convictions entered against the applicant, its partners, executive officers, directors or controlling persons which involve theft, fraud, or dishonesty;
 - (11) Disclosure of any enforcement proceeding brought against the applicant, its partners, executive officers, directors or controlling persons by any agency or department of this State, the Federal government or any other state which involves the revocation or suspension of any business license;
 - (12) Disclosure of whether the applicant, any partner, executive officer, director, or controlling person has been denied acceptance in or suspended from the Electronic Filing Program of the Internal Revenue Service;
 - (13) Disclosure of whether the applicant is, or has ever been, the subject of the following proceedings: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or simi-

lar proceeding;

- (14) Three business references, including one bank reference;
- (15) The address of each office in this State at which the applicant intends to facilitate refund anticipation loans.

(c) The application for registration as a facilitator shall be accompanied by a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(a).

(d) The application shall be in writing and verified.

(e) Incomplete application files shall be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of request.

Statutory Authority G.S. 53-245(b); 53-247(a); 53-248(a); 53-253; 150B-21.2.

.0202 ISSUANCE OF A CERTIFICATE OF REGISTRATION

Upon receipt of a completed application and payment of the fee required by G.S. 53-248(a), the Commissioner shall review the application and conduct such investigation of the applicant as necessary to make the findings required by G.S. 53-248(a). If the Commissioner finds that the applicant has met the conditions of G.S. 53-248(a), the Commissioner shall issue the applicant a renewable Certificate of Registration.

Statutory Authority G.S. 53-248(a), (b); 53-253; 150B-21.2.

.0203 EXPIRATION AND RENEWAL

(a) A Certificate of Registration shall be valid from the date of issuance and, unless timely renewed, shall expire on December 31 of each year.

(b) Thirty days prior to the date of expiration, each registrant that would like to renew its Certificate of Registration shall submit a renewal application to the Commissioner. The renewal application shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.

(c) Unless the registrant timely renews its Certificate of Registration, the registrant shall not, after the date of expiration, engage in business as a facilitator in this State.

(d) If the Certificate of Registration expires, the registrant shall apply for a Certificate of Registration pursuant to Rule .0201 of this Section if it wishes to engage in business as a facilitator in this

State.

Statutory Authority G.S. 53-248(b); 53-253; 150B-21.2.

.0204 APPLICATION FOR RENEWAL OF CERTIFICATE OF REGISTRATION

(a) The application for renewal of the Certificate of Registration shall include the following:

- (1) Where applicable, any amendments to the application for registration filed pursuant to Rule .0201 of this Subchapter;
- (2) A written verification of the accuracy of the application for Certificate of Registration filed pursuant to Rule .0201 of this Subchapter and any amendments filed pursuant to Rules .0204(a)(1) and .0305 of this Subchapter.

(b) The application for renewal of the Certificate of Registration shall be accompanied by a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(b) for each existing office and a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(a) for each new office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

(c) Incomplete applications for renewal of the Certificate of Registration shall be closed and the application for renewal deemed denied without prejudice when the registrant has not submitted information requested by the Commissioner within 30 days of such request.

Statutory Authority G.S. 53-248(a), (b); 53-253; 150B-21.2.

.0205 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION

(a) A Certificate of Registration shall be neither transferable nor assignable.

(b) The circumstances under which the Commissioner shall deem a change in the registrant's organizational structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to, the following:

- (1) If the registrant is a corporation:
 - (A) A change in ownership of 50% or more of the registrant's stock;
 - (B) The conversion of the corporation into a general or limited partnership or proprietorship;
- (2) If the registrant is a general or limited

partnership:

- (A) A change in one of the registrant's general partners;
- (B) The conversion of the general partnership into a limited partnership, corporation or proprietorship;
- (C) The conversion of the limited partnership into a general partnership, corporation or proprietorship;
- (3) If the registrant is a proprietor:
 - (A) The conversion of the proprietorship into a general or limited partnership or corporation;
 - (B) The sale of all of the assets of the registrant's business to another person.

(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the Certificate of Registration shall become void and the registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. If the entity which results from the change in the registrant's organization would like to engage in business as a facilitator in this State, it shall apply for a Certificate of Registration pursuant to Rule .0201 of this Section.

Statutory Authority G.S. 53-253; 150B-21.2.

SECTION .0300 - OPERATIONS, REPORTING REQUIREMENTS, NOTIFICATIONS

.0301 CHECK CASHING SERVICES

A registrant which offers check cashing services shall not require a debtor to use such services for cashing a check which represents the proceeds of a refund anticipation loan.

Statutory Authority G.S. 53-250(5); 53-253; 150B-21.2.

.0302 RECORD AND BOOKKEEPING REQUIREMENTS

(a) A registrant shall maintain the following records with respect to each application for a refund anticipation loan in this State. These records shall be kept in an office or offices of the registrant in this State. This Rule shall not be interpreted to require a registrant to maintain one central office at which all records required herein are located:

- (1) Name of applicant for a refund anticipation loan;
- (2) Social security number of applicant for

- a refund anticipation loan;
- (3) Date of application;
- (4) Disposition of application, e.g., whether loan was funded, denied, etc.;
- (5) The gross amount of the refund anticipation loan;
- (6) The amount of the creditor fee;
- (7) The amount of the facilitator loan fee, if any;
- (8) The amount of the loan-related fees, if any;
- (9) The amount of the electronic filing fee;
- (10) The amount of the income tax return preparation fees, if any;
- (11) The amount of refund anticipation loan proceeds disbursed by the registrant to the debtor;
- (12) The date on which refund anticipation loan proceeds were disbursed by the registrant to the debtor;
- (13) The identity of the registrant's executive officer, partner or employee originating the application for the refund anticipation loan;
- (14) The number, identity of drawer and amount of the check delivered to the debtor in payment of the proceeds of the refund anticipation loan;
- (15) A copy of Internal Revenue Service Form No. 8453 or any successor Form.

(b) An original (where the drawer is the registrant) or a copy of all checks delivered by the registrant to each debtor in payment of the proceeds of the refund anticipation loan shall be available upon request by the Commissioner.

(c) All records required by Paragraph (a) of this Rule may be maintained in any reasonable manner that the registrant selects. Where applicable, the information required by Paragraph (a) of this Rule may be maintained by the retention of copies of forms used to comply with state or federal statutes, rules and regulations.

(d) All records required to be kept pursuant to Paragraph (a) of this Rule may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media. However, records kept in this manner shall be convertible into clearly legible, tangible documents within 24 hours of request. This time period shall be extended for an additional reasonable time by the Commissioner if he finds that good cause for extension exists.

(e) All records required to be kept pursuant to Paragraph (a) of this Rule shall be kept for a period of at least three years.

Statutory Authority G.S. 53-249; 53-250; 53-253; 150B-21.2.

.0303 FILING AND POSTING OF FEE SCHEDULE

(a) The fee schedule required by G.S. 53-249(a) shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.

(b) The fee schedule referenced in Paragraph (a) of this Rule shall include the following fees:

- (1) The creditor fee;
- (2) The facilitator loan fee;
- (3) Any loan-related fee;
- (4) The electronic filing fee.

(c) Pursuant to G.S. 53-249(c), the registrant shall display the following fees:

- (1) The creditor fee;
- (2) The facilitator loan fee;
- (3) All loan-related fees;
- (4) The electronic filing fee.

Statutory Authority G.S. 53-249(a), (c); 53-253; 150B-21.2.

.0304 DISCLOSURES

(a) For the purposes of G.S. 53-249(d)(1), (2), the registrant shall disclose to the debtor the following fees:

- (1) The creditor fee;
- (2) The facilitator loan fee;
- (3) All loan-related fees;
- (4) The electronic filing fee;
- (5) The total dollar amount of the fees disclosed pursuant to Subparagraphs (a)(1)-(3) of this Rule.

(b) For the purposes of G.S. 53-249(d)(5), the term "appropriate taxing authority" shall mean the Internal Revenue Service.

(c) All disclosures made pursuant to G.S. 53-249(d) shall be made on a form or forms detached from the application. The registrant shall provide an applicant for a refund anticipation loan with a copy of all such disclosure forms. In the case of an application for a refund anticipation loan by a married couple who are filing a joint tax return, the registrant may satisfy this provision by providing one copy of all such disclosure forms to the couple.

Statutory Authority G.S. 53-249(d); 53-253; 150B-21.2.

.0305 AMENDMENTS TO APPLICATION

A registrant shall maintain a current application

with the Commissioner. If there is a change in the information contained in the application, the registrant shall notify the Commissioner within 30 days of the effective date of such change. Notification to the Commissioner shall be accomplished either by letter or by revision of the applicable pages of the application filed pursuant to Rule .0201 of this Subchapter. If the registrant elects to comply with this Rule by revising its application, it shall obtain the applicable pages of the application from the Commissioner.

Statutory Authority G.S. 53-253; 150B-21.2.

.0306 CESSATION OF OPERATIONS

(a) A registrant shall notify the Commissioner in writing of its decision to cease operations as a facilitator in this State.

(b) A registrant shall surrender its Certificate of Registration to the Commissioner no later than 30 days after it has ceased operations in this State.

Statutory Authority G.S. 53-253; 150B-21.2.

SECTION .0400 - ENFORCEMENT

.0401 HEARINGS

Any hearing conducted pursuant to G.S. 53-251 shall proceed in accordance with 4 NCAC 3B .0200, et seq., and G.S. 150B.

Statutory Authority G.S. 53-251; 53-253; 150B-21.2.

.0402 EXAMINATIONS, AUDITS

The Commissioner may conduct or cause to be conducted an examination or audit of the books and records of any registrant at any time when considered proper.

Statutory Authority G.S. 53-253; 53-254; 150B-21.2.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule cited as 10 NCAC 14L .0602, with changes from the proposed text noticed in the Register, Volume 8, Issue 1, pages 7 - 21, and Volume 7, Issue 23, pages 2550 - 2551.

The proposed effective date of this action is October 1, 1993.

Reason for Proposed Action: *To clarify capacity level for facilities licensed as Residential Treatment Centers, which provide services to children or adolescents.*

Comment Procedures: *Written comments must be submitted to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603 prior to July 2, 1993. Fiscal information on this Rule is available, upon request, from the Division.*

Editor's Note: *An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.*

Editor's Note: *This Rule was filed as a temporary rule effective May 10, 1993 for a period of 180 days or Until the Permanent Rule Becomes Effective, Whichever is Sooner.*

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14L - LICENSURE RULES FOR MENTAL HEALTH FACILITIES

SECTION .0600 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE MENTALLY ILL

.0602 CAPACITY

(a) Each facility shall serve no more than:

(1) nine children; or

(2) ~~and nine adolescents, at any one time.~~

(b) Any facility currently licensed as a Residential Treatment Center under this Section on the effective date of this Rule, and providing services to more than nine children or nine adolescents, may continue to provide services at no more than the facility's license capacity as of the effective date of this Rule.

(c) At no time shall a Residential Treatment

Center serve more than 24 children or 24 adolescents.

Statutory Authority G.S. 122C-26; 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 50B .0311, .0313, .0403 and .0406.

The proposed effective date of this action is September 1, 1993.

The public hearing will be conducted at 1:30 p.m. on July 2, 1993 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 50B .0311 & .0313 - Amendments allow for an exclusion from income and resources when there is an approved plan for aged, blind, and disabled individuals to achieve self support (PASS).

10 NCAC 50B .0403 - Rule necessary to allow exemption of up to \$12,000 worth of property contiguous to the homesite if owned by the applicant, regardless of whether the applicant owns the homesite property.

10 NCAC 50B .0406 - Rule supports the automation of the deductible balance collection project and establishes an order for Medicaid covered services incurred on the same day.

Comment Procedures: Written comments concerning these amendments must be submitted by July 2, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

**SUBCHAPTER 50B - ELIGIBILITY
DETERMINATION**

SECTION .0300 - CONDITIONS

FOR ELIGIBILITY

.0311 RESERVE

North Carolina has elected the option under Section 1902(f) of the Social Security Act to limit Medicaid eligibility for the aged, blind or the disabled to individuals who meet eligibility requirements more restrictive than those under Supplemental Security Income. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.
- (a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:
 - (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
 - (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.
- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services of a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, contact the clerk of court for interven-

tion. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

- (c) When a Medicaid application is filed on behalf of an individual who:
 - (i) is alleged to be mentally incompetent,
 - (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
 - (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence is supported by a physician's certification or other competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, the resources shall be excluded except as provided in Sub-items (1)(d) or (e) of this Rule.
- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in Chapters 1 or 35A of the North Carolina General Statutes.
- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence from sources including

but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual that the member was in fact incompetent. Any such showing of incompetence is subject to rebuttal by competent evidence as specified herein and in Sub-item (1)(c) of this Rule.

- (2) The limitation of resources held for reserve for the budget unit shall be as follows:
 - (a) For Family and Children's related categorically needy cases, one thousand dollars (\$1,000) per budget unit;
 - (b) For aged, blind or disabled cases and Family and Children's related medically needy cases, one thousand five hundred dollars (\$1,500) for a budget unit of one person, two thousand two hundred fifty dollars (\$2,250) for a budget unit of two persons and increases of one hundred dollars (\$100.00) for each additional person in the budget unit over two, not to exceed a total of three thousand, fifty dollars (\$3,050).
- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
 - (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
 - (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy and medically needy aid to the aged, blind, or disabled cases protected by grandfathered provisions are:
 - (a) Cash on hand;
 - (b) The current balance of savings accounts, except savings of a student saving his earnings for educational purposes;

- (c) The current balance of checking accounts;
 - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (e) Equity in motor vehicles, including motor homes, determined to be non-essential according to Rule .0403 of this Subchapter;
 - (f) Equity in excess of one thousand dollars (\$1,000) in motor vehicles, including motor homes, determined to be essential according to Rule .0403 of this Subchapter;
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Trust funds;
 - (j) The portion of lump sum payments remaining after the month of receipt;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Equity in real property not used as the homesite or not producing an income;
 - (m) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;
 - (n) Salable remainder interest in life-estate property not used as the budget unit's homesite;
 - (o) Patient accounts in long term care facilities.
- (5) Resources counted in the determination of financial eligibility for aid to categorically needy aged, blind or disabled cases not protected by grandfathered provisions are:
- (a) Cash on hand;
 - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
 - (c) The balance of savings account, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;
 - (d) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (e) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (f) Trust funds;
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Revocable burial contracts and burial trusts;
 - (j) The portion of lump sum payments remaining after the month of receipt;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Patient accounts in long term care facilities;
 - (m) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
 - (n) Equity in real and/or personal property when the combined equities is six thousand dollars (\$6,000) or less and the property does not yield a net annual income of at least six percent of the equities;
 - (o) Equity in real and/or personal property when the combined equities exceed six thousand dollars (\$6,000);
 - (p) Equity in personal property, subject to (5) (m) and (n) of this Rule, is limited to:
 - (i) Mobile homes not used as homesite,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment;
 - (q) Equity in real property, subject to (5) (m) and (n) of this Rule, is limited to:
 - (i) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult

- children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;
- (ii) Fee simple interest;
- (iii) Salable remainder interest;
- (iv) Tenancy by the entireties interest only.
- (6) Resources counted in the determination of financial eligibility for aid to medically needy aged, blind or disabled cases not protected by grandfathered provisions are:
 - (a) Cash on hand;
 - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
 - (c) The balance of savings accounts, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;
 - (d) ~~(e)~~ The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (e) ~~(d)~~ Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand dollars (\$1,000);
 - (f) ~~(e)~~ Trust funds;
 - (g) ~~(f)~~ Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) ~~(g)~~ Negotiable and salable promissory notes and loans;
 - (i) ~~(h)~~ Revocable burial contracts and burial trusts;
 - (j) ~~(i)~~ The portion of lump sum payments remaining after the month of receipt;
 - (k) ~~(j)~~ Individual Retirement Accounts or other retirement accounts or plans;
 - (l) ~~(k)~~ Patient accounts in long term care facilities;
 - (m) ~~(l)~~ Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
 - (n) ~~(m)~~ Equity in real property and personal property that does not produce a net annual income;

- (o) ~~(n)~~ Equity in personal property, subject to (6)(m) of this Rule, is limited to:
 - (i) Mobile homes not used as homesite,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment;
- (p) ~~(o)~~ Equity in real property, subject to (6)(m) of this Rule, is limited to interest in real estate other than that used as the budget unit's homesite and includes:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons.
- (7) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
 - (a) Cash on hand;
 - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
 - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
 - (d) The portion of lump sum payments remaining after the month of receipt;
 - (e) Cash value of life insurance policies owned by the budget unit;
 - (f) Revocable trust funds;
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Revocable pre-paid burial contracts;
 - (j) Patient accounts in long term care facilities;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Equity in non-essential personal property limited to:
 - (i) Mobile homes not used as home,

- (ii) Boats, boat trailers and boat motors,
- (iii) Campers,
- (iv) Farm and business equipment;
- (v) Equity in excess of one thousand five hundred dollars (\$1,500) in one motor vehicle determined to be essential under Rule .0403 of this Subchapter;
- (vi) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
- (m) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial plots.
- (8) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
 - (a) Cash on hand;
 - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
 - (c) The balance of checking accounts less the currently monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (e) Trust funds;
 - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (g) Negotiable and salable promissory notes and loans;
 - (h) Revocable prepaid burial contracts;
 - (i) Patient accounts in long term care facilities;
 - (j) Individual Retirement Accounts or other retirement accounts or plans;
 - (k) Equity in non-essential, non-income producing personal property limited to:
 - (i) Mobile home not used as home,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment,

- (v) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
- (l) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial plots.

Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.

.0313 INCOME

(a) Income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
 - (A) RSDI,
 - (B) Veteran's Administration,
 - (C) Railroad Retirement,
 - (D) Pensions or retirement benefits,
 - (E) Workmen's Compensation,
 - (F) Unemployment Compensation,
 - (G) Support Payments,
 - (H) Contributions,
 - (I) Dividends or interest from stocks, bonds, and other investments,
 - (J) Trust fund income,
 - (K) Private disability or employment compensation,
 - (L) That portion of educational loans, grants, and scholarships for maintenance,
 - (M) Work release,
 - (N) Lump sum payments,
 - (O) Military allotments,
 - (P) Brown Lung Benefits,
 - (Q) Black Lung Benefits,
 - (R) Trade Adjustment benefits,
 - (S) SSI when the client is in long term care,
 - (T) VA Aid and Attendance when the client is in long term care,
 - (U) Foster Care Board payments in excess of state maximum rates for M-AF clients who serve as foster parents,
 - (V) Income allocated from an institutional-

- ized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d),
- (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d),
- (X) Sheltered Workshop Income,
- (Y) Loans if repayment of a loan and not counted in reserve,
- (Z) Income deemed to Family and Children's clients.
- (2) Earned Income.
 - (A) Income from wages, salaries, and commissions,
 - (B) Farm Income,
 - (C) Small business income including self-employment,
 - (D) Rental income,
 - (E) Income from roomers and boarders,
 - (F) Earned income of a child client who is a part-time student and a full-time employee,
 - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents,
 - (H) Earned income tax credits for the Aged, Blind or Disabled only,
 - (I) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in (1) or (2) of this Rule will be considered available unless specifically excluded by (b) of this Rule, or by regulation or law.
 - (b) Income from the following sources shall not be counted in the calculation of financial eligibility:
 - (1) Earned income of a child who is a part-time student but is not a full-time employee;
 - (2) Earned income of a child who is a full-time student;
 - (3) Incentive payments and training allowances made to WIN training participants;
 - (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VIS-TA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
 - (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
 - (6) Earnings of M-AABD clients who are participating in ADAP (Adult Developmental Activity Program) training programs for a specified period;
 - (7) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work, sporadic babysitting, etc.;
 - (8) Relocation payments;
 - (9) Value of the coupon allotment under the Food Stamp Program;
 - (10) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. If home grown produce is sold, count as earned income;
 - (11) Benefits received from the Nutrition Program for the Elderly;
 - (12) Food Assistance under the Child Nutrition Act and National School Lunch Act;
 - (13) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
 - (14) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, etc., except for any portion used or designated for maintenance;
 - (15) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
 - (16) Benefits received under Title VII of the Older Americans Act of 1965;

- (17) Payments received under the Experimental Housing Allowance Program (EHAP);
- (18) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (19) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (20) Income of a child under 21 in the budget unit who is participating in JTPA and is receiving as a child;
- (21) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (22) Payments to Indian tribe members as permitted under P.L. 94-114;
- (23) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (24) SSI except for individuals in long term care;
- (25) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (26) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his affairs. Such benefits must be accounted for separate from the payee's own income and resources;
- (27) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (28) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (29) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (30) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (31) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (32) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (33) Adoption assistance;
- (34) Incentive payments made to a client participating in a vocational rehabilitation program;
- (35) Title XX funds received to pay for services rendered by another individual or agency;
- (36) Any amount received as a refund of taxes paid;
- (37) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a disabled widow or widower resulting from the 1983 Actuarial Reduction Formula (ARF) which caused the loss of SSI effective January, 1984, for an M-AA, M-AB, or M-AD client:
 - (A) Who received a disabled widow or widower's benefit and SSI simultaneously in 1983 as identified by the Social Security Administration, and
 - (B) Who lost SSI because of the elimination of the ARF, and
 - (C) Who is not now eligible for SSI, and
 - (D) Who was between 50 and 59 years of age in 1983, and
 - (E) Who applied for Medicaid no later than June 30, 1988, and
 - (F) Who is classified as Categorically Needy;
- (38) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a client or his financially responsible spouse or parent(s), who:
 - (A) Is classified as Categorically Needy for the M-AA, M-AB, or M-AD programs, and
 - (B) Lost SSI or State/County Special Assistance (S/C-SA) for any reason, and
 - (C) Would currently be eligible for SSI or S/C-SA if all COLA's since he was last eligible for and received RSDI and SSI or S/C-SA concurrently were disregarded;
- (39) The RSDI benefit for a client who:
 - (A) Is a disabled widow or widower or surviving divorced spouse, and
 - (B) Received SSI for the month prior to

the month he began receiving RSDI, and

- (C) Would continue to be eligible for SSI if the RSDI benefit were not counted, and

- (D) Is not entitled to a Medicare Part A.

(40) Earnings of aged, blind and disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration.

(c) Income levels for purpose of establishing financial eligibility are those amount approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;
- (2) An individual living in a long term care facility or other medical institution shall be allowed a thirty dollar (\$30.00) income level, and a couple in the same room in a long term care facility shall be allowed a sixty dollar (\$60.00) income level;
- (3) Individuals who are in a long term care facility for a temporary period of six months or less shall be allowed the income level provided by statute in addition to the thirty dollar (\$30.00) level.

Authority G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d); 45 C.F.R. 233.20 ;P.L. 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992.

SECTION .0400 - BUDGETING PRINCIPALS

.0403 RESERVE

(a) The value of resources held by the client or by a financially responsible person shall be consid-

ered available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;
- (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;
- (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph (c) of this Rule.

(d) The reserve limit for the budget unit for aged, blind or disabled cases shall be determined as follows:

- (1) The reserve limit for two persons shall be allowed when spouses live together in a private living situation or when the couple share the same room in long term care;
- (2) Allow the reserve limit for one person for the Community Alternative Program (CAP) client with a spouse at home and only count the resources that are available to the CAP client in determining his countable reserve;
- (3) The reserve limit for one person is allowed for the client who is in long term care and the spouse remains in the home;

- (4) The reserve allowance for one person is allowed for the client who is in long term care and the spouse is in domiciliary care;
 - (5) The reserve limit allowed for a blind or disabled minor child who lives with his parent or parents or is temporarily absent includes the child and the parent or parents with whom the child lives;
 - (6) The reserve limit allowed for a blind or disabled dependent child under age 19 who is in long term care shall include only the child if his care and treatment are expected to exceed 12 months, as certified by the child's physician.
- (e) Countable resources for Family and Children's related cases will be determined as follows:
- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
 - (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;
 - (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.
- (f) The homesite shall be excluded from countable resources as follows: when it is the principal place of residence for the client. The homesite is defined as the house and lot, plus all buildings on the lot, in the city or the house and the land the house is on, to a maximum of one acre, plus all buildings on the acre, in a rural area.
- (1) For all aged, blind or disabled cases and ~~medically needy families~~ family and children ~~children's~~ related cases, in addition to the homesite is the client's principal place of residence, which includes the house and in the city the lot on which the house sits and all the buildings on the lot, or in a rural area the land on which the house sits, up to

one acre, and all buildings on the acre, and, for all aged, blind, or disabled cases and medically needy family and children's related cases, the homesite shall include real property contiguous to the home with a tax value of less than also includes up to twelve thousand dollars (\$12,000) tax value in real property contiguous to the principal place of residence, regardless of whether the principal place of residence is owned by the client.

- (2) ~~For all aged, blind or disabled cases the equity in the homesite shall be excluded when the client is in long term care and his spouse, minor children or adult disabled children remain in the home or a physician has certified in writing that the client will return home within six months from the date of entry into the hospital or long term care facility.~~ Additional value in real property contiguous to the principal place of residence shall be a countable resource.

- (3) The exclusion of the homesite from countable resources set forth in Subparagraphs (f)(1) and (2) of this Rule shall also be applicable for all aged, blind, or disabled cases when the client is in long term care and his spouse, minor children, or adult disabled children remain in the home or a physician has certified in writing that the client will return home within six months from the date of entry into the hospital or long term care facility.

(g) For categorically needy aged, blind or disabled cases without grandfathered protection, nonhome property and personal property that is income producing shall be excluded from resources when the budget unit's equity in the property does not exceed six thousand dollars (\$6,000) and the property produces a net annual return of at least six percent of the excludable equity value for each income producing activity.

(h) For medically needy Families and Children cases and medically needy aged, blind or disabled cases without grandfathered protection, if the client or any member of the budget unit has ownership in a probated estate, the value of the individual's proportionate share of the countable property shall be a countable resource unless the property can be excluded as the homesite or as income producing property, as stated in (e) and (f) of this Rule.

- (i) The equity in non-excluded real property

shall be counted toward the reserve level of the budget unit.

(j) A motor vehicle shall be determined an essential vehicle as follows:

- (1) For aged, blind or disabled individuals with grandfathered protection, if public transportation cannot be used because it is not available or because of his physical or mental condition and the vehicle is needed to:
 - (A) Obtain regular medical treatment, or
 - (B) Retain employment, or
 - (C) Go shopping if the shopping area is more than one-half mile from the client's home, or
 - (D) Go shopping if the client is responsible for shopping and is physically limited from walking one-half mile, or
 - (E) Transport children to and from school and the school is not within reasonable walking distance;
- (2) For aged, blind or disabled cases without grandfathered protection and medically needy Family and Children's related cases, a vehicle must be specially equipped for use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment.

(k) The value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.

(l) The current market value of a remainder interest in life estate shall be determined by applying the remainder interest percentage from the chart in the Medicaid Eligibility Manual to the tax value of the property. A lower current market value for remainder interest may be established by offering the interest for sale and the highest offer received, if any, is less than the value determined by application of the values chart to the tax value.

(m) For all aged, blind or disabled cases, up to one thousand five hundred dollars (\$1,500) may be excluded from countable resources for the client and his spouse under the burial exclusion. Apply the one thousand five hundred dollar (\$1,500) burial exclusion for each individual separately. Only the following resources may be excluded and they must be excluded in the following order:

- (1) Irrevocable pre-need burial contracts, burial trusts, or other irrevocable arrangements established for burial expenses;

- (2) Face value of life insurance policies that accrue cash value when the total face value of all policies for the budget unit is one thousand five hundred dollars (\$1,500) or less and the cash value was not counted in reserve;

- (3) Revocable burial contracts or trusts established for burial expenses. Any excess remains a countable resource;

- (4) Cash value of life insurance that has been designated for burial expenses if the cash value was considered in determining countable reserve. Any cash value in excess of one thousand five hundred dollars (\$1,500) remains a countable resource.

(n) For all aged, blind or disabled cases and medically needy Family and Children's related cases, the value of trust funds established for the client or for any member of the budget unit is a countable resource unless it is determined by the courts that the funds are not available for the beneficiary of the trust.

(o) For a married individual:

- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under these rules must be considered when determining his or her countable reserve.

- (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (p) of this Rule.

(p) For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or

- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

Authority G.S. 108A-54; 108A-55; 143-127.1(d); S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)51; 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; Correll vs. DSS/DMA/DHR, No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981).

.0406 DEDUCTIBLE

(a) Deductible shall apply to clients living in the community in private living quarters or residential group facilities, except that a client in long term care who is expected to return to his home within six months retains his private living status.

(b) The client or his representative shall be responsible for providing bills, receipts, insurance benefit statements or Medicare EOB to establish incurred medical expenses and his responsibility for payment. If the client has no representative and he is physically or mentally incapable of accepting this responsibility, the county shall assist him.

(c) Expenses shall be applied to the deductible when they meet the following criteria:

- (1) The expenses are for medical care or service recognized under state or federal tax law;
- (2) The are incurred by a budget unit member;
- (3) They are incurred:
 - (A) During the certification period for which eligibility is being determined and the requirements of Paragraph (d) of this Rule are met; or
 - (B) Prior to the certification period and the requirements of Paragraph (e) of this Rule are met.

(d) Medical expenses incurred during the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The expenses are not subject to payment by any third party including insurance, government agency or program except when such program is entirely

funded by state or local government funds, or private source; or

- (2) The private insurance has not paid such expenses by the end of the application time standard; or
- (3) For certified cases, the insurance has not paid by the time that incurred expenses equal the deductible amount; or
- (4) The third party has paid and the client is responsible for a portion of the charges.

(e) The unpaid balance of a Medical expense incurred prior to the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The medical expense was:
 - (A) Incurred within 24 months immediately prior to:
 - (i) The month of application for prospective or retroactive certification period or both; or
 - (ii) The first month of any subsequent certification period; or
 - (B) Incurred prior to the period described in Subparagraph (e)(1)(A) of this Rule; and a payment was made on the bill during that period; and
- (2) The medical expense:
 - (A) Is a current liability;
 - (B) Has not been applied to a previously met deductible; and
 - (C) Insurance has paid any amount of the expense covered by the insurance.

(f) Incurred medical expenses shall be applied to the deductible in the chronological order in ~~which they are incurred by calendar date except that expenses remaining after insurance payments for lump sum of charges shall be computed by except that:~~

- (1) ~~Determining average daily charge excluding discharge date from hospital; If medical expenses for Medicaid covered services and non-covered services occur on the same date, apply charges for non-covered services first; and~~
- (2) ~~Determining average daily insurance payment for the same number of days; If both hospital and other covered medical services are incurred on the same date, apply hospital charges first; and~~
- (3) ~~Subtracting average daily insurance payment from the average daily charge to establish client's daily responsibility. If a portion of charges is still owed~~

after insurance payment has been made for lump sum charges, compute incurred daily expense to be applied to the deductible as follows:

- (A) Determine average daily charge excluding discharge date from hospitals; and
- (B) Determine average daily insurance payment for the same number of days; and
- (C) Subtract average daily insurance payment from the average daily charge to establish client's daily responsibility.

(g) Eligibility shall begin on the day that incurred medical expenses ~~prove~~ reduce the deductible ~~is met to \$0~~, except that the client ~~shall be~~ is financially liable for ~~that the~~ portion of his medical expenses incurred on the first day of eligibility ~~which are that were~~ applied to the balance of ~~reduce~~ the deductible to \$0. ~~Notice of the deductible balance shall be sent to the hospital if the client was hospitalized on the date deductible is met. If hospital charges were incurred on the first day of eligibility, notice of the amount of those charges applied to meet the deductible shall be sent to the hospital for deduction on the hospital's bill to Medicaid.~~

(h) The receipt of proof of medical expenses and other verification shall be documented in the case record.

Authority G.S. 108A-54; 42 C.F.R. 435.732; 42 C.F.R. 435.831; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File Number C-C-74-483; Alexander v. Flaherty Consent Order filed February 14, 1992.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR, Commission for Health Services intends to amend rule cited as 15A NCAC 13B .0201.

The proposed effective date of this action is October 9, 1993.

The public hearing will be conducted at 10:00 a.m. on July 15, 1993 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, North Carolina.

Reason for Proposed Action: To facilitate the availability of new lined landfill capacity in a timely manner.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. Persons who wish to speak at the hearing should contact John P. Barkley at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: This Rule was filed as a temporary rule effective May 19, 1993 to expire on October 9, 1993 or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

.0201 PERMIT REQUIRED

(a) No person shall establish or allow to be established on his land, a solid waste management facility, or otherwise treat, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division.

(b) The permit, except for land clearing and inert debris permits, shall have two parts, as follows:

(1) A permit to construct a solid waste management facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with the applicable rules set forth in this Subchapter and so as to provide reasonable protection to the environment and the public health. Except as provided in Subparagraphs (b)(2) and (b)(3) of this Rule, ~~An~~ an applicant shall not clear or grade land or commence construction for a solid waste management facility until a construction permit has been issued.

~~(2) A permit to operate a solid waste management facility may not be issued unless it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.~~

(2) Subject to the limitations specified in this Subparagraph, an applicant for a permit to construct a sanitary landfill intended to conform to the siting and design requirements for municipal solid waste landfills ("MSWLF") established in 40 C.F.R. Part 258 may, prior to issuance of a construction permit, proceed at its own risk to clear and grade land, or otherwise commence construction of the proposed MSWLF, if all the following conditions apply:

(A) The site plan for the proposed MSWLF has been approved by the Division; and

(B) The site has been determined by the Division to comply with Rules .0503 and .0504 of this Subchapter;

(C) The proposed MSWLF is intended to provide disposal capacity in lieu of a currently operating unlined landfill

which shall permanently cease accepting solid waste no later than the date the new MSWLF becomes operational.

(3) An applicant for a permit to construct a MSWLF who desires to initiate construction prior to issuance of the permit shall submit a written request to the Director of the Division which provides evidence satisfactory to the Division of the conditions specified in Subparagraph (b)(2) of this Rule, and which clearly specifies the maximum extent of clearing, grading or other construction the applicant proposes to undertake prior to receipt of its permit. Under no circumstances will initiation of the soil liner or synthetic liner construction begin prior to issuance of a construction permit. The Division Director may approve more limited interim construction activity than proposed by the applicant as, in the Division Director's sole discretion, may be required to help ensure that any activity undertaken prior to issuance of an applicant's construction permit shall be in accordance with all applicable laws related to the protection of the environment. Additionally, the Division Director's approval shall be contingent upon the applicant's acknowledgement by Memorandum of Agreement (MOA) with the Division that it is proceeding at its own risk and with the understanding and agreement that the applicant's initiation of such interim construction activity does not provide it with any type of vested right or other expectation it can rely on that issuance of a permit will be forthcoming. Furthermore, the applicant shall agree to immediately cease all such clearing, grading or other construction activity upon initial notification by the Division that a permit to construct the proposed MSWLF will not be issued. The applicant shall restore the site to original land contours and reestablish vegetation to the extent practical unless other environmentally acceptable restoration is approved by the Division. No approval shall be issued until the applicant has provided a bond determined by the Division to be sufficient to restore the site to the

original land contours and reestablish vegetation to the extent practical.

- (4) A permit to operate a solid waste management facility may not be issued unless it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

- (5) Subparagraphs (b)(2) and (b)(3) shall be in effect only until October 9, 1993.

(c) Land clearing and inert debris facilities may be issued a combined permit to construct and operate the facility.

(d) Land clearing and inert debris facilities subject to Rule .0563 Item (1) may construct and operate after notification as provided for under Rule .0563 Item (2).

(e) Permits, including those issued prior to the effective date of this Rule, shall be reviewed every five years. Modifications, where necessary, shall be made in accordance with rules in effect at the time of review for those areas of a permitted sanitary landfill site which have not previously received solid waste.

(f) All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, unsanitary conditions, or potential public health hazard.

Statutory Authority G.S. 130A-294.

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNHR, Commission for Health Services intends to adopt rule cited as 15A NCAC 21D .1202. No hearing is required. Rules 15A NCAC 21D .1201-1207 were previously published in Volume 7, Issue 24, March 15, 1993, with a proposed effective date of July 1, 1993. A public hearing was held on March 31, 1993. Rule 15A NCAC 21D .1202 is being published to take comments on the proposed new text for 30 days. Rules 15A NCAC 21D .1201-1207 now have a proposed effective date of October 1, 1993.

The proposed effective date of this action is October 1, 1993.

Reason for Proposed Action: For the administration of the new funding source for nutrition services.

Comment Procedures: All written comments must be submitted no later than 5:00 p.m. on July 2, 1993 to Alice Lenihan, P.O. Box 1008, Raleigh, NC 27605-0008 (919) 715-0636.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - WIC/NUTRITION

SECTION .1200 - MATERNAL AND CHILD HEALTH BLOCK GRANT NUTRITION PROGRAM

.1202 PROVIDER ELIGIBILITY

Local health departments are eligible to receive Maternal and Child Health Block Grant Nutrition Program funds from the Division. All providers that contract for the receipt of MCH Block Grant Nutrition Program funds are required to provide services in accordance with rules of this Section.

Statutory Authority G.S. 130A-361.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule cited as 16 NCAC 6H .0004.

The proposed effective date of this action is October 1, 1993.

The public hearing will be conducted at 9:30 a.m. on June 28, 1993 at the State Board Room, 7th Floor, Education Bldg., 301 N. Wilmington St., Raleigh, NC 27601-2825.

Reason for Proposed Action: To respond to change in G.S. 115C-264.

Comment Procedures: Any interested person may submit views either in writing prior to or at the hearing or orally at the hearing. Written comments may be sent to the Department and must be postmarked no later than July 2, 1993 addressed to: Harry Wilson, Room 2806, Education Building, Raleigh, N. C.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6H - FEDERAL PROGRAMS

.0004 CHILD NUTRITION PROCEDURES

(a) National School Lunch Program policies and standards are as follows:

- (1) A la carte sales are limited to foods contributing to the nutritional well-being of the child and aiding in the establishment of good food habits. School food authorities and sponsoring organizations may provide these foods under the following conditions:
 - (A) Sponsors Except as provided by G.S. 115C-264, sponsors must operate all food and beverage services during or before the established lunch period through the school food service department.
 - (B) The school food service department retains all receipts from the sale of these items.
 - (C) Sponsors must use all food service income for the purpose of the school's non-profit child nutrition programs.
 - (D) A Except as provided by G.S. 115C-264, a la carte items may not include foods of minimum nutritional value, as follows:
 - (i) soda water (soda pop),
 - (ii) water ices,
 - (iii) chewing gum,
 - (iv) processed foods made predominately from sweeteners or artificial sweeteners with a variety of minor ingredients. These foods include hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy, and candy-coated popcorn; and

(v) confections and carbonated drinks.

(E) Adults may purchase individual food items without purchasing a complete lunch.

(2) Competitive food sales by a school of extra food items in the lunchroom or its general environs must be on a non-profit basis. "On a non-profit basis" means that the sponsor deposits income from the sale of such food items to the account of the school's non-profit lunch and breakfast programs and uses the income solely for these programs.

(A) The Except as provided by G.S. 115C-264, the school may sell extra food items after the established lunch hour is over, only with the approval of the LEA. The established lunch hour is over when the last pupil has been served for the day.

(B) Occupational home economics instructional programs which operate under an approved annual vocational education plan and which involve the preparation and sale of foods to individuals other than students are not in competition with the child nutrition program.

(C) The Department may deny the opportunity to participate in the program to any school food authority which operates in violation of state policy.

(b) Sponsors must use receipts from child nutrition programs for the cost of operation as outlined in current federal regulations and state policy.

(c) No full-time public school employee is eligible for part-time employment in food services.

(d) The only adults who may eat in the school food service department are school employees, personnel on official school business and invited local patrons. These persons pay, as a minimum, the adult price for lunch.

Statutory Authority G.S. 115C-263; 115C-264.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Certification Board for Social Work intends to amend rules cited as 21 NCAC 63 .0104, .0201, .0306, .0401,

.0501; and adopt rule cited as 21 NCAC 63 .0210.

The proposed effective date of this action is September 1, 1993.

The public hearing will be conducted at 10:00 - 11:00 a.m. on June 18, 1993 at Keyes Management, Inc., 130 South Church Street, Asheboro, NC 27203.

Reason for Proposed Action:

21 NCAC 63 .0104 - To update information as specified in the law pertaining to the Board Membership.

21 NCAC 63 .0201 - To provide supervision by the qualified professional in the discipline of social work.

21 NCAC 63 .0210 - To provide requirements for applicants seeking provisional certificates.

21 NCAC 63 .0306 - To increase examination fees to the maximum coverage due to increase in costs.

21 NCAC 63 .0401 - To provide additional continuing education requirements as related to ethics.

21 NCAC 63 .0501 - To provide written confirmation from approved applicants to their acceptance of the Board's Ethical Standards for Practice.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to five minutes. The address of the Board is P.O. Box 1043, Asheboro, NC 27204. Written comments or arguments must be received by the Board no later than July 2, 1993.

CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

SECTION .0100 - GENERAL

.0104 ORGANIZATION OF THE BOARD

~~The North Carolina Certification Board for Social Work is composed by law of seven members appointed by the governor to staggered terms of three years. The composition of the board shall include four certified social workers (two certified social workers and two certified clinical social workers). Among the social workers, one member shall be employed in the field of social work education, one member from the private sector and~~

~~one member from the public sector. The three remaining members shall be from the general public. The composition of the Board shall be in accordance with G.S. 90B-5. The Board shall elect a chairperson, vice chairperson and secretary-treasurer from its membership to serve for a term of at least one year. The Board shall hold at least eight meetings each year and four members shall at all times constitute a quorum. Members of the Board are expected to attend all meetings.~~

Statutory Authority G.S. 90B-7.

SECTION .0200 - CERTIFICATION

.0201 DEFINITIONS

The following definitions apply to the levels of certification in this Section:

- (1) Related human services fields shall include psychology, sociology, counseling, rehabilitation, criminal justice, public policy, public administration, and human resources. The Board may, within its discretion, consider other fields not specifically set out in this Subparagraph.
- (2) Two years of experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of social work functions. (1500 hours of work for a fee or salary per 12 month period.) Practicum or internship experience taken as part of an educational program are not included.
- (3) Appropriate supervision (clinical) shall mean post-master's or post-doctoral experience directly supervised by a qualified social worker, psychiatrist, or clinical psychologist certified clinical social worker defined in this Act. The social work supervisor should have had at least two years of social work clinical experience after completion of the master's or doctorate in social work and be eligible for certification as a clinical social worker under the Act. ~~The psychologist and psychiatrist should be licensed and appropriately board certified by the respective discipline. A minimum of 100 hours of group or individual supervision is required. 75 of the 100 hours must be individual supervision. Individuals certified through the Academy of Certified Social Workers, the National Federation of Health Care Providers in Clinical~~

Social Work, Inc., or the Register of Clinical Social Workers already meet the supervision requirement.

- (4) Clinical setting shall mean any school, hospital, community mental health center, university counseling center, family or social services agency, or supervised independent practice. Such settings may be under public or private auspices and provide psychotherapeutic or social intervention for psychosocial problems of individuals, couples, families or groups.
- (5) Administrative setting shall mean any setting where the delivery of social work services are directed, supervised, planned and/or coordinated. Activities include, but are not necessarily limited to, policy development and implementation, management, program evaluation, planning and staff development.
- (6) Appropriate supervision and training (manager) shall mean course work or workshops in organizational and community services and/or two years (3,000 hours) of paid employment under supervision in an administrative setting.

Statutory Authority G.S. 90B-3; 90B-5; 90B-6.

.0210 PROVISIONAL CERTIFICATES

(a) The Board shall issue a provisional certificate pursuant to G.S. 90B-7(f).

(b) Applications and forms are to be obtained and returned to the North Carolina Board for Social Work.

(c) An application fee of fifty dollars (\$50.00) will be assessed for processing each application.

(d) All provisional applicants who have not met requirements for two years supervised clinical experience shall receive on-going supervision until this requirement is satisfied.

(e) The provisional certificate shall be renewed every six months by submission to the Board of the appropriately completed renewal and supervision form and a fee of twelve dollars and fifty cents (\$12.50) 30 days prior to the renewal date.

Statutory Authority G.S. 90B-7.

SECTION .0300 - EXAMINATIONS

.0306 EXAMINATION FEES

(a) An ~~additional~~ examination fee of one hundred dollars (\$100.00) will be assessed for administration and processing of ~~the~~ any written exami-

nation. ~~An unsuccessful applicant shall be assessed a fee of seventy five dollars (\$75.00) in order to retake the examination.~~

~~(b) An examination fee of fifty dollars (\$50.00) will be assessed for the administration and processing of a second written examination if an applicant seeks certification at two different levels.~~

(b) (e) An applicant who fails to appear for an examination shall be assessed a fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) in order to take the examination at a later date.

Statutory Authority G.S. 90B-6.

SECTION .0400 - RENEWAL OF CERTIFICATION

.0401 CONTINUING EDUCATION

Continuing education for certification renewal is required to maintain professional knowledge and technical competency. Certification shall be afforded on a two year basis. However, certification shall expire on the second June 30 after certification has been issued. Renewal of certification shall be based on 40 hours of renewal credits within the two year cycle. However, if a certification is for less than a full two year period, then renewal shall be accorded based on 30 hours of renewal credits. One unit of credit is equal to one contact hour. One academic course semester hour credit shall be equivalent to 15 clock hours. Credit for auditing an academic course shall be for actual clock hours attended during which instruction was given and shall not exceed the academic credit allowed. Continuing education activities may include:

- (1) academic social work courses taken for credit or audit;
- (2) formal agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to the enhancement of social work, practice, values, skills and knowledge;
- (3) cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are clearly related to the enhancement of social work practice, values, skills and knowledge;
- (4) self-directed learning projects with prior approval by the Board. The maximum number for projects is 20 clock hours. A renewal unit shall not be granted for identical programs completed within the same certification renewal period, job

- (5) orientation or on the job training; and
during each renewal period all certified social workers shall engage in a minimum of two-hours of continuing education focused on ethics.

Statutory Authority G.S. 90B-6; 90B-9.

SECTION .0500 - ETHICAL GUIDELINES

.0501 INTRODUCTION

A certified social worker shall promote professional policies and practices which enhance the delivery of social work services. Upon approval of certification, each applicant shall review the Ethical Standards and return a signed statement to the Board agreeing to abide by these standards.

Statutory Authority G.S. 90B-2.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation = Title, Chapter, Subchapter and Rule(s)
AD = Adopt
AM = Amend
RP = Repeal
With Chgs = Final text differs from proposed text
Corr = Typographical errors or changes that requires no rulemaking
Eff. Date = Date rule becomes effective
Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

NORTH CAROLINA ADMINISTRATIVE CODE

APRIL 93

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	12	Justice
3	State Auditor	15A	Environment, Health, and Natural Resources
4	Economic and Community Development	20	State Treasurer
10	Human Resources	21	Occupational Licensing Boards
11	Insurance		32 - Medical Examiners
			34 - Mortuary Science

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	25	.0108		✓		✓		05/03/93	
			.0209 - .0210		✓		✓		05/03/93	
			.0211		✓				05/03/93	
			.0213		✓		✓		05/03/93	
			.0302		✓		✓		05/03/93	
			.0401		✓		✓		05/03/93	
			.0503 - .0504		✓				05/03/93	
			.0505 - .0506		✓		✓		05/03/93	
			.0603		✓		✓		05/03/93	
			.0605		✓		✓		05/03/93	
			.0701 - .0703		✓		✓		05/03/93	
			.0801		✓				05/03/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	25	.0802		✓		✓		05/03/93	
			.0901	✓					05/03/93	
3	NCAC	3							05/01/93	
transferred and recodified to										
20	NCAC	2N								
4	NCAC	3F	.0403					✓		
			renumbered to .0402							
	5A		.0101		✓				05/03/93	
			.0106		✓				05/03/93	
	5B		.0101 - .0103		✓		✓		05/03/93	
			.0105		✓		✓		05/03/93	
	5C		.0101		✓				05/03/93	
			.0103		✓		✓		05/03/93	
			.0201		✓		✓		05/03/93	
			.0301		✓				05/03/93	
			.0303		✓		✓		05/03/93	
	5D		.0101		✓		✓		05/03/93	
			.0107	✓					05/03/93	
			.0201 - .0202		✓		✓		05/03/93	
			.0203		✓				05/03/93	
			.0204			✓			05/03/93	
	16G		.0311		✓				05/03/93	
10	NCAC	1D	.0107	✓					05/01/93	
		1M	.0001	✓					05/01/93	
			.0002 - .0003	✓			✓		05/01/93	
			.0004 - .0008	✓					05/01/93	
	3C		.2020 - .2021	✓			✓		05/01/93	
			.2022 - .2023	✓					05/01/93	
			.2024	✓			✓		05/01/93	
			.2025 - .2026	✓					05/01/93	
			.2027 - .2030	✓			✓		05/01/93	
			.2033	✓			✓		05/01/93	
	3H		.1150 - .1151	✓			✓		05/01/93	
			.1152 - .1153	✓					05/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3H	.1154	✓			✓		05/01/93	
			.1155 - .1156	✓					05/01/93	
			.1157 - .1160	✓			✓		05/01/93	
			.1163	✓			✓		05/01/93	
			.1204		✓				05/01/93	
	3J		.3302		✓				06/01/93	
			.3420		✓				06/01/93	
			.3425		✓				06/01/93	
	3L		.0903		✓				05/01/93	
			.1110		✓		✓		07/01/93	
			.1202		✓				05/01/93	
	41E		.0504		✓		✓		07/01/93	
			.0506		✓				07/01/93	
			.0511		✓				07/01/93	
			.0603		✓				07/01/93	
	41G		.0507		✓				07/01/93	
			.0705		✓		✓		07/01/93	
			.0707		✓		✓		07/01/93	
	41I		.0102 - .0103		✓		✓		07/01/93	
			.0201 - .0202			✓			07/01/93	
			.0204			✓			07/01/93	
			.0303		✓		✓		07/01/93	
			.0304		✓				07/01/93	
			.0305		✓		✓		07/01/93	
			.0306 - .0307		✓				07/01/93	
			.0308		✓		✓		07/01/93	
			.0401 - .0402		✓				07/01/93	
			.0409 - .0410		✓				07/01/93	
11	NCAC	4	.0428			✓			05/03/93	
		11B	.0607		✓		✓		05/01/93	
			.0610		✓		✓		05/01/93	
	16		.0301 - .0303	✓			✓		05/03/93	
12	NCAC	7D	.0906	✓			✓		05/03/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
12	NCAC	11	.0203					✓		
15A	NCAC	2H	.0105					✓		
			.0107					✓		
		7H	.1205		✓				04/23/93	
		7K	.0203		✓				05/03/93	
		10D	.0003					✓		
		18A	.2537		✓				05/01/93	180 DAYS
		18D	.0201		✓				05/03/93	
			.0206		✓				05/03/93	
		20D	.0234		✓		✓		05/01/93	
20	NCAC	2N							05/01/93	
	transferred and recodified from									
3	NCAC	3								
21	NCAC	32H	.0400					✓		
		34A	.0102		✓				05/01/93	
			.0201		✓				05/01/93	
		34D	.0102 - .0103	✓					05/01/93	
			.0201	✓			✓		05/01/93	
			.0301 - .0302	✓			✓		05/01/93	
			.0303 - .0304	✓					05/01/93	
			.0401 - .0402	✓					05/01/93	
			.0403	✓			✓		05/01/93	
			.0404	✓					05/01/93	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

Environmental Policy Act

<i>1 NCAC 25 .0213 - Environmental Policy Act Advisory Committee</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0401 - Method of Compliance</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0506 - Review Process</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0603 - Format and Content</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

COMMERCE

Banking Commission

<i>4 NCAC 3F .0402 - Required and Permissible Investments</i>	<i>RRC Objection</i>	<i>01/21/93</i>
<i>Agency Withdrew Rule</i>	<i>Obj. Cont'd</i>	<i>02/18/93</i> <i>03/19/93</i>

Cemetery Commission

<i>4 NCAC 5B .0103 - Hearings</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0101 - Report</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0201 - Report</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0202 - Delivery</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Savings Institutions Division: Savings Institutions Commission

<i>4 NCAC 16A .0105 - Restrictions: Payment of Dividends & Repurchase of Stock</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>4 NCAC 16G .0311 - Required Provisions in Plan of Conversion</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<i>15A NCAC 16A .1208 - Use of Program Funds</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Coastal Management

<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>
<i>Rule Returned to Agency</i>	<i>RRC Objection</i>	<i>01/21/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>03/01/93</i>
<i>15A NCAC 7H .1205 - Specific Conditions</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Rule Returned to Agency</i>		<i>04/15/93</i>

Environmental Health

<i>15A NCAC 18A .1948 - Site Classification</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Environmental Management

<i>15A NCAC 2H .1103 - Definitions</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>15A NCAC 2H .1110 - Implementation</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>03/18/93</i>

Laboratory Services

<i>15A NCAC 20D .0234 - Criteria & Procedures: Decert./Denial/Downgrading</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Solid Waste Management

<i>15A NCAC 13A .0013 - The Hazardous Waste Permit Program - Part 270</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10I .0001 - Definitions</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Rule Returned to Agency</i>		<i>01/21/93</i>

HUMAN RESOURCES

Children's Services

<i>10 NCAC 41E .0514 - Child Care & Development: Health</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>10 NCAC 41G .0705 - Medical Program</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>10 NCAC 41Q .0201 - Personnel</i>	<i>RRC Objection</i>	<i>04/15/93</i>

Departmental Rules

<i>10 NCAC 1M .0002 - Complaints</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>10 NCAC 1M .0003 - Investigation</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Facility Services

10 NCAC 3C .2020 - Definitions	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2021 - Physician Reqs/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2030 - Physical Facility Reqs/Inpatient Rehab Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2033 - Deemed Status/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1150 - Definitions	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1151 - Physician Reqs/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1160 - Physical Facility Reqs/Inpatient Rehab Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1163 - Deemed Status/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93

Medical Assistance

10 NCAC 50B .0203 - Application Processing Standards	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

24 NCAC 1M .0202 - Eligibility	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0204 - Selection Procedures	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0205 - Administration	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Repealed Rule	Obj. Removed	01/21/93
24 NCAC 1M .0206 - Program Fees	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Withdrew Rule		01/21/93
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93

24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0306 - Funding Commitment	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93

INSURANCE

Actuarial Services

11 NCAC 16 .0303 - Annual Filing	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93

Consumer Services

11 NCAC 4 .0428 - Enforcement	RRC Objection	03/18/93
Agency Revised Rule	RRC Objection	03/18/93
Agency Repealed Rule	Obj. Removed	04/15/93

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	RRC Objection	11/19/92
Agency Revised Rule	RRC Objection	11/19/92
Rule Returned to Agency		12/17/92
Agency Filed Rule for Codification Over RRC Objection	Eff.	12/29/92
11 NCAC 11B .0508 - Foreign Company Securities: Verifiable Capital/Surplus	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
11 NCAC 11B .0607 - Application - Employers	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	04/15/93

11 NCAC 11B .0608 - Deposits: Bonds: Excess Insurance - Employers Agency Revised Rule	RRC Objection 03/18/93 Obj. Removed 03/18/93
11 NCAC 11B .0610 - Application - Groups Agency Revised Rule	RRC Objection 03/18/93 Obj. Removed 04/15/93
11 NCAC 11H .0002 - License - Steps Agency Revised Rule	RRC Objection 03/18/93 Obj. Removed 03/18/93

JUSTICE

Private Protective Services

12 NCAC 7D .0205 - Corporate Business License Agency Revised Rule	RRC Objection 02/18/93 Obj. Removed 03/18/93
12 NCAC 7D .0809 - Authorized Firearms	RRC Objection 04/15/93

LICENSING BOARDS AND COMMISSIONS

Electrical Contractors

21 NCAC 18B .0703 - Reciprocity: Virginia Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
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Medical Examiners

21 NCAC 32A .0001 - Location Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0101 - Definitions Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0209 - Fee Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0210 - Deadline Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0211 - Passing Score Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0212 - Time and Location Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0213 - Graduate Medical Ed & Training for Licensure Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0214 - Personal Interview Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0215 - Examination Combinations Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0305 - Examination Basis for Endorsement Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0309 - Personal Interview Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0314 - Passing Flex Score Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32B .0315 - Ten Year Qualification Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93
21 NCAC 32C .0003 - Prerequisites for Incorporation Rule Returned to Agency - Improper Notice	RRC Objection 02/18/93 Obj. Cont'd 02/18/93

21 NCAC 32C .0006 - Charter Amendments and Stock Transfers	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32H .0102 - Definitions	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 32H .0901 - Conditions	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

Optometry

21 NCAC 42B .0302 - Continuing Education	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42E .0203 - Consultant; Advisor, Staff Optometrist/Ind Contractor	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42L .0005 - Written Answers to the Notice of Hearing	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42M .0006 - Termination	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

REVENUE**Individual Income Tax Division**

17 NCAC 6B .0107 - Extensions	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	09/17/92
17 NCAC 6B .0115 - Additions to Federal Taxable Income	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	09/17/92
17 NCAC 6B .0116 - Deductions from Federal Taxable Income	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	09/17/92
17 NCAC 6B .0117 - Transitional Adjustments	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	09/17/92
17 NCAC 6B .3406 - Refunds	RRC Objection	08/20/92
Agency Revised Rule	Obj. Removed	09/17/92

STATE PERSONNEL**Office of State Personnel**

25 NCAC 1D .0511 - Reduction in Force Priority Consideration	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

15A NCAC 3O .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 3O .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
Utey C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNH	92 EHR 1140	Gray	04/13/93	
City of Salisbury v. Environment, Health, & Natural Resources	92 EHR 1472	Morrison	04/22/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
HUMAN RESOURCES				
O.C. Williams v. Human Resources	91 CSE 0036*2	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
O.C. Williams v. Human Resources	91 CSE 1158*2	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
Randy Chambliss v. Human Resources	91 CSE 1187	Morgan	04/28/93	
Melvin White v. Human Resources	91 CSE 1192	Morgan	05/17/93	
Jefferson D. Boylen v. Human Resources	91 CSE 1217	Morgan	05/17/93	
Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	

* Consolidated cases.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Gregory L. Washington v. Human Resources	92 CSE 0075	Morgan	04/01/93	
Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*	Reilly	03/25/93	
David Rollins v. Human Resources	92 CSE 1334	Morrison	05/06/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
James P. Miller III v. Human Resources	92 CSE 1361	Gray	04/16/93	
Larry L. Crowder v. Human Resources	92 CSE 1396	Reilly	04/15/93	
Carlos Bernard Davis v. Human Resources	92 CSE 1404	Reilly	04/15/93	
Timothy Brian Eller v. Human Resources	92 CSE 1414	Reilly	04/20/93	
Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
Rene Thomas Rittenhouse v. Human Resources	92 CSE 1421	Nesnow	04/20/93	
Thomas Edward Williamson v. Human Resources	92 CSE 1422	Reilly	04/20/93	
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
William E. Ingram v. Human Resources	92 CSE 1450	Reilly	04/15/93	
Dale Robert Stuhre v. Human Resources	92 CSE 1516	Reilly	05/11/93	
Tommy Malone v. Human Resources	92 CSE 1520	Mann	05/07/93	
James C. Dixon Jr. v. Human Resources	92 CSE 1522	Becton	05/11/93	
Wallace M. Cooper v. Human Resources	92 CSE 1527	Reilly	05/11/93	
Jarvis N. Price v. Human Resources	92 CSE 1531	Morrison	05/12/93	
Thomas L. Yates v. Human Resources	92 CSE 1535	Gray	05/10/93	
Robert E. Tarlton Sr. v. Human Resources	92 CSE 1536	Gray	05/17/93	
Rodney Devard Clemons v. Human Resources	92 CSE 1539	Gray	05/10/93	
James A. Coleman v. Human Resources	92 CSE 1540	Reilly	05/11/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	
William C. Hubbard v. Human Resources	92 CSE 1562	Mann	05/12/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Johnny W. Cooke v. Human Resources	92 CSE 1585	Becton	05/11/93	
Isaac Maxwell v. Human Resources	92 CSE 1589	Reilly	04/26/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*	Reilly	03/25/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 447
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
James H. Hunt Jr. v. Div. of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 449
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
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CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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3. In 1987, absent parent Glenn Phillips became subject to a court order requiring that a total of \$220 per month be withheld from his wages by his employer, Royal Insurance. Of this amount, \$214 was required to be paid to current child support and \$6.00 was to be paid to outstanding arrears. Respondent's distribution record shows that in some months, \$220 was received by Respondent from the employer, but in other months, more than that amount (generally \$330) was received, and in some months, less than \$220 (generally \$110) was received. Respondent has never produced evidence of the actual dates that the employer withheld support from Mr. Phillip's wages or the amounts withheld on those dates.

CONCLUSIONS OF LAW

1. The Consent Decree requires Respondent, in any income withholding case in which it is unable to determine in a timely manner the actual dates of withholding by an employer, to reconstruct the dates of the child support payments by applying any amounts received in a month in excess of the monthly support obligation to prior months in which less than the monthly support obligation was received.

2. Paragraph 18(d) of the Consent Decree requires Respondent to reconstruct child support payments for all child support received and distributed by Respondent on or after January 1, 1989, even if the reconstruction requires that that support be applied to months prior to 1989, so long as a valid court order or administrative notice for income withholding was in effect in that month and less than the monthly support obligation in effect already had been applied by Respondent to that month.

3. The decision of the North Carolina Court of Appeals in Sampson County Child Support Enforcement Agency v. Bolton, 377 S.E. 2d 88 (NC App. 1989) has no application to this case because there is no evidence that Respondent instructed the employer to withhold more than the monthly support obligation of \$220 in any month, or even that the employer did, in fact, withhold more than \$220 in any month.

RECOMMENDED DECISION

Petitioner's Cross Motion for Summary Judgment is granted for the reasons set forth herein. The Department of Human Resources will make the final decision in this contested case. It is recommended that the Agency adopt the Conclusions of Law set forth above and comply with provisions of the Cassell v. Flaherty Consent Decree by applying all support payments received on or after January 1, 1989 from Glenn Phillips' employer to the most recent previous months in which the amount required to be paid under the payment schedule had not already been applied.

NOTICE

Before the Agency makes the final decision, it is required by North Carolina General Statutes §150B-36(a) to give each party an opportunity to file Exceptions to this Recommended Decision, and to present written arguments to those in the Agency who will make the final decision.

The Agency is required by North Carolina General Statutes §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' Attorneys of Record and to the Office of Administrative Hearings.

This the 30th day of April, 1993.

By:

Beecher R. Gray
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DHR 1145**

JAMES H. HUNT JR.

Petitioner,

v.

DIVISION OF MEDICAL ASSISTANCE,

N.C. DEPARTMENT OF HUMAN RESOURCES,

Respondent.

RECOMMEND DECISION

A Petition for a Contested Case Hearing was filed on behalf of the Petitioner in which it is alleged that the Petitioner needs private duty nursing services as defined by federal regulations and the State has denied the needed services by imposing a more stringent definition of private duty nursing by requiring that the services provided must be services that can only be performed by a licensed nurse. The State, while admitting that the Petitioner needs a great deal of individual and continuous attention, contends that the services required are not "substantial and complex continuous care" such as to require that they be performed by a licensed nurse.

This matter was heard before Brenda B. Becton, Administrative Law Judge, on February 24, 1993, in High Point, North Carolina. At the conclusion of the hearing, the parties were afforded an opportunity to file written submissions. The record was closed on March 29, 1993.

APPEARANCES

Petitioner: Stanley B. Sprague, Attorney, Central
Carolina Legal Services, Inc., Greensboro, North Carolina.

Respondent: Claud R. Whitener, III, Associate Attorney
General, N.C. Department of Justice, Raleigh, North Carolina.

ISSUE

Whether the Respondent properly denied the Petitioner's request for eight hours or more each day of continuous private duty nursing services under the Medicaid Program.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. On June 3, 1992, the Petitioner's physician, Charles Brett, wrote Olivia Hill, Supervisor of Special Care Services for the Division of Medical Assistance, Department of Human Resources, requesting that the 18 year old Petitioner be given private duty nursing eight hours a day, seven days a week. The Petitioner was receiving only five, one-hour visits in his home, with his mother providing the rest of the care.

2. The Petitioner is a profoundly retarded male with the mentality of a two or three month old child. He is in a persistent vegetative state, and he cannot communicate with anyone or cooperate in any way in his own care. He also has a V/P shunt which transfers fluid from his brain to his stomach. He suffers from chronic bronchitis and other serious physical problems.
3. For many years, the Petitioner has been dependent on oral suctioning for respiratory support. He is unable to swallow or cough to clear secretions, and if not suctioned, he will roll secretions around his mouth until he chokes, aspirates, or stops breathing. He also needs suctioning when he is nauseated or vomits. Three to five times each week, he holds his neck in a hyperextended position, which increases the chance that he will choke or aspirate.
4. Since around November 17, 1992, the Petitioner has received oxygen by order of his attending physician, with up to two liters per minute administered into his nostrils. The Petitioner needs oxygen due to his mild respiratory distress and his substantial and continued cyanosis (i.e. his skin turns a bluish color due to insufficient oxygen). He does not have a tracheostomy. While the device that regulates the oxygen has a warning device that beeps when the patient is not receiving enough oxygen, the Petitioner jerks his head so much that it is not possible to keep the warning device fully operational all the time. Therefore, it is necessary that someone constantly be in the room with the Petitioner to check the oxygen machine.
5. The Petitioner's lungs need constant analysis. All four lobes are constantly either congested, or produce rattling or loud rubbing sounds. His lung capacity has been declining, thereby reducing his ability to fight off infections.
6. It is difficult to feed the Petitioner. The amount of food that he is given must be varied based on his condition, and must be limited when his secretions are high or when gastric irritation or gastrointestinal bleeding is present. Foods must be blended to the right consistency because excessive fluid can lead to vomiting and choking. The Petitioner must be fed through a gastrostomy tube. He cannot be fed too fast or he will get air in his stomach, causing him to become rigid and unmanageable.
7. The Petitioner must be given chest percussions several times a day in order to prevent the decline of his lung capacity and to prevent pneumonia. He also must be given range of motion exercises. These exercises are difficult to administer because his extremities are rigid and his right hip is dislocated and sometimes swollen.
8. The Petitioner's attending physician, Charles Brett, M.D., has ordered that the Petitioner be put into a wheelchair twice each day. Placing the Petitioner in this upright position stimulates him to cough (thereby clearing his lungs), helps his circulation, and improves his stamina. However, the Petitioner has not been put into the wheelchair at all during the last six months, due to the lack of continuous nursing care. The Petitioner's mother alone, is unable to move the Petitioner to or from his bed to the wheelchair, even with the use of the Hoyer lift in her home. Therefore, she cannot leave him in the wheelchair during the nurse's absence since the mother cannot return him to the bed should he vomit or have a bowel movement.
9. The Petitioner recently was a patient in Cone Hospital in Greensboro from around January 29 to February 15, 1993. The Petitioner was admitted for social reasons while his mother was admitted for pneumonia. While he was not placed in the intensive care ward, sitters were hired for him at government expense to provide constant care that the hospital nurses and other employees were unable to provide.
10. There are a number of services that the Petitioner requires that only a skilled nurse can perform, including the administration of oxygen, analyzing the condition of his lungs, checking blood pressure, G tube feedings, giving chest percussions, and giving range of motion exercises.

11. There are a number of services that the Petitioner requires that a person other than a licensed nurse could perform, such as oral suctioning, and moving the patient.
12. Of the services performed by persons other than the Petitioner's mother, the services that must be performed by a skilled nurse constitute over half of the total services required.
13. The visiting nurses who come to the Petitioner's house now for five one-hour visits a day, seven days a week, are unable to provide all the care needed by Petitioner and ordered by his physician Charles A. Brett, M.D.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following

CONCLUSIONS OF LAW

1. Rule 26B .0121 of Title 10 of the North Carolina Administrative Code does not conflict with 42 C.F.R. 440.80 and, therefore, is valid as applied in this case.
2. Rule 26B .0121 provides that to qualify for "private duty nursing", the services must be "medically necessary", which means that "the person must require substantial and complex continuous nursing care by a licensed nurse." This requires only that at least half of the time that care is being provided by visiting nurses and aides, the care would require the expertise of a licensed nurse to properly perform.
3. The Petitioner's medical needs meet the definition of "private duty nursing services" under 10 NCAC 26B .0121 because over half the time that care is being provided, he requires more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility.
4. In addition, 10 NCAC 26B .0121(c)(3) offers as an example of the type of case that requires "private duty nursing" the situation of a patient who "is dependent on other device-based respiratory support, including tracheostomy care, suctioning, and oxygen support." This means that a patient qualifies for "private duty nursing" whenever he is dependent on any of the three examples of being "dependent on other device-based respiratory support" (i.e., tracheostomy care, suctioning, and oxygen support).
5. The Petitioner's medical needs comport with the example of "private duty nursing" in 10 NCAC 26B .0121(c)(3), since he is dependent on suctioning, even though he does not require tracheostomy care and may not be dependent on oxygen.

RECOMMENDED DECISION

The North Carolina Department of Human Resources will make the Final Decision in this contested case. It is recommended that Agency adopt the Findings of Fact and Conclusions of Law set forth above and enter judgment in favor of the Petitioner and provide private duty nursing care for 8 continuous hours a day, 7 days a week, commencing immediately.

ORDER

IT IS HEREBY ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with the North Carolina General Statutes 150B-36(b).

NOTICE

The agency making the final decision in this Contested Case is required to give each party an opportunity to file exceptions to this Recommended Decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. §150B-36(a).

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This the 13th day of May, 1993.

Brenda B. Becton
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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