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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

IN ADDITION

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NPDES Permit

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Commerce
Dental Examiners
Environment, Health, and Natural Resources
Human Resources
Insurance
Justice
Physical Therapy Examiners

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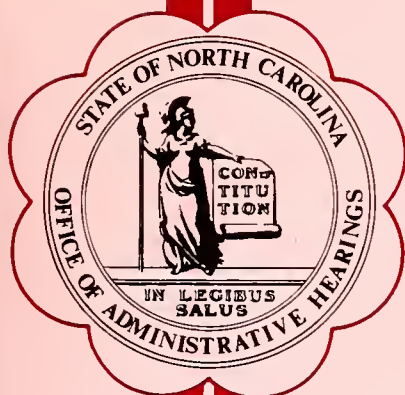
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RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

ISSUE DATE: August 2, 1993

Volume 8 • Issue 9 • Pages 709 - 792



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 |
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| 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.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

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

COMMISSION FOR HEALTH SERVICES

Notice of Intent to Adopt a Temporary Rule Amendment

Notice is hereby given that the EHNR-Commission for Health Services intends to amend DETERMINATION OF FINANCIAL ELIGIBILITY cited as 15A NCAC 24A .0202 in a temporary action, Eff. August 9, 1993, For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner.

The Commission for Health Services will decide on the proposed temporary amendment to establish income scales at its regularly scheduled meeting on August 4, 1993. This meeting starts at 10:00 a.m. and will be held in the Norton Board Room, Cooper Memorial Health Building - 6th Floor, 225 N. McDowell St., Raleigh, NC.

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
POST OFFICE BOX 29535
RALEIGH, NORTH CAROLINA 27626-0535

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMIT

Public notice of intent to issue a State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges associated with the following activity:

1. NPDES General Permit No. NCG550000 for the point source discharge of domestic wastewater associated with single family residences and other similar discharges.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permit and Fact Sheet concerning the draft Permit is available by writing or calling:

Ms. Coleen Sullins, P.E., Supervisor
NPDES Permits Group
Water Quality Section
N.C. Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
Telephone (919) 733-5083

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than September 1, 1993. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permit, Fact Sheet and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 925-D, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. All such comments and requests regarding this matter should make reference to Permit Number NCG550000 - Single Family Residences.

Date: July 16, 1993

A. Preston Howard, Jr., P.E., Director
Division of Environmental Management

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alcoholic Beverage Control Commission intends to amend rule cited as 4 NCAC 2R .1502.

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

The public hearing will be conducted at 10:00 a.m. on September 17, 1993 at the ABC Commission Hearing Room, 3322 Garner Road, Raleigh, N.C.

Reason for Proposed Action: To raise mark-up percentage for profit for local ABC boards, as authorized by G.S. 18B-804(b)(3), to help offset rising costs and stagnant sales volume.

Comment Procedures: Written comments and arguments should be submitted prior to September 17, 1993 to the ABC Commission, P.O. Box 26687, Raleigh, NC 27611-6687. Persons desiring to speak at the hearing are requested to notify the Administrator prior to September 17.

Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on July 1, 1993, OSBM on July 1, 1993, N.C. League of Municipalities on July 1, 1993, and N.C. Association of County Commissioners on July 1, 1993.

CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR

.1502 MARKUP FORMULA

(a) On every delivered case of spirituous liquors, there is to be added a ~~77.5250~~ 78.8400 percent markup, which is derived by the following formula: (x) equals the base price of the case, including freight and bailment charges. ~~Thirty-five~~ Thirty-six hundredths percent equals the markup allowed local boards; therefore, ~~1.3500(x)~~ 1.3600(x) equals the delivered case cost plus the ~~35.00~~ 36.00 percent local markup, or the "retail price," excluding all taxes.

Example: ~~.350000(x)~~ .360000(x) local markup
~~.378000(x)~~ .380800(x) state tax [28% of ~~1.3500(x)~~ 1.3600(x)]
~~.047250(x)~~ .047600(x) state tax retained locally [3.5% of ~~1.3500(x)~~ 1.3600(x)]
~~.775250(x)~~ .788400 total markup

(b) The selling price of spirituous liquor, which includes the cost of goods, local markup and all taxes, is derived by following these steps:

- (1) Determine the subtotal case cost by adding base case cost, freight and bailment together;
 - (2) Multiply the subtotal case cost by ~~1.775250~~ 1.788400, to four decimals;
 - (3) Add the bailment surcharge as determined by the commission;
 - (4) Divide the result by the number of bottles in the case;
 - (5) Add five cents (\$.05) rehabilitation tax [Add one cent (\$.01) for bottles 50 ml. or less];
 - (6) Add five cents (\$.05) for the local board charge [Add one cent (\$.01) for bottles 50 ml. or less];
 - (7) Round the result to an integer evenly divisible by five cents (\$.05). The breaking point is one cent (\$.01), 1 mill; the mill is underlined.
- (A) If cent equals \$.00, it remains \$.00;
 - (B) If cent equals \$.05, it remains \$.05;
 - (C) If cent equals \$.010, (mill is 0), round downward to \$.00;

- (D) If cent equals \$.011, (if mill is 1-9), round upward to \$.05;
- (E) If cent equals \$.060, (mills is 0), round downward to \$.05;
- (F) If cent equals \$.061, (if mill is 1-9), round upward to \$.10;
- (G) If cent equals \$.411, .42, .43, .44, round upward to \$.45;
- (H) If cent equals \$.461, .47, .48, .49, round upward to \$.50;
- (8) The result is the retail selling price per bottle.

Statutory Authority G.S. 18B-203(a)(3); 18B-207; 18B-804.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

SUBCHAPTER 26H - REIMBURSEMENT PLANS

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26H .0305 - .0309 and amend rules cited as .0301 - .0304.

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

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

Reason for Proposed Action: Rules necessary to establish more reasonable reimbursement based on extensive review by Division of Medical Assistance. It's also much more detailed on what are allowable costs and proper procedures for Division of Medical Assistance.

Comment Procedures: Written comments concerning these rules must be submitted by September 1, 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.

Editor's Note: These Rules were filed as temporary adoptions and amendments effective July 8, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 26 - MEDICAL ASSISTANCE

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0301 PAYMENT FOR SERVICES - PROSPECTIVE REIMBURSEMENT PLAN FOR ICF-MR FACILITIES

~~Beginning October, 1981 Intermediate Care Facilities - Mental Retardation (ICF MR) shall be reimbursed prospectively as provided in Rule .0303 of this Section. All certified intermediate care facilities - mentally retarded (ICF-MR) participating in the North Carolina Medicaid Program are reimbursed on a prospective basis as set forth hereunder, except that state-operated facilities shall be reimbursed their reasonable and allowable costs in accordance with the Medicare principles of reimbursement and with the applicable provisions of this plan. This plan is developed in accordance with the requirements of 42 CFR 447 Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services. Providers shall comply with all federal regulations and with the provisions of this plan.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0302 REPORTING REQUIREMENTS

~~(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a report of its costs and other financial information related to reimbursement annually. The report must include costs from a fiscal period beginning on July 1 and ending on June 30 and must be submitted to the state on or before the September 30 that immediately follows the June 30 year end. A new provider must submit a report for the period beginning with the date of certification and ending on June 30. Facilities that file reports after the due date will be charged a penalty of up to five hundred dollars (\$500.00) per day for each day after September 30 that the report is delinquent. The Division of Medical Assistance~~

may extend the deadline for filing the report if, in its view, good cause exists for the delay. For providers with cost reporting periods ending on a date other than June 30 which were enrolled in the Medicaid program prior to July 1, 1986, this provision shall become effective for the fiscal period ending June 30, 1988.

(b) These cost reports shall detail the providers cost for the entire reporting period, or for the period of participation in the plan if less than a full cost reporting year, for allowable costs. The allowable reasonable, and necessary costs of any services are determined in accordance with regulations as defined in the HIM 15 manual, and adopted by reference pursuant to NCGS 150B-14(a)(2)(e), establishing the method or methods to be used and the items included.

(c) Allowable costs will be recorded on the basis of generally accepted accounting principles using the accrual method of accounting except that governmental institutions will have the option of using the accrual or cash method of accounting.

(d) Each cost report will be verified by the state agency or its representative for completeness, accuracy and reasonableness through a desk review. Desk reviews are to be completed within six months from the date of submission. A desk audit or field audit of the cost report will be performed as required. All cost reports will be desk reviewed in accordance with standard procedures. On site audits will be performed in accordance with applicable state and federal laws and regulations.

(e) Providers, with the prior approval of the Division of Medical Assistance, may file joint or combined cost reports for multiple facilities if those facilities are under common ownership or control, operate as a reasonably coherent unit (e.g., share staff or other resources), share a common management and accounting structure (e.g., single home office), and are in reasonably close geographic proximity. The Division of Medical Assistance shall assign a single common per diem rate to all the facilities in each group that files a single combined cost report.

(a) Financial reports shall include the following:

(1) Budget reports: Each provider shall include appropriate budget information in its application for an initial rate for a new facility:

- (A) The budget should reflect the projected annual operating results of each of the two years subsequent to the commencement of operating said facility.
- (B) The budget information used to sup-

port the Certificate of Need award shall be provided to the Division of Medical Assistance on or before 30 days prior to the enrollment of said facility by the Medicaid program.

(C) Budgets are not deemed to be appropriately filed unless they are properly prepared, in accordance to guidelines established by the Division of Medical Assistance.

(2) Cost reports: Each facility that receives payments from the North Carolina Medicaid Program shall prepare and submit a separate annual cost report of its costs, a working trial balance related to reimbursement, and other financial information as requested by the Division of Medical Assistance. Providers that have an approved combined uniform rate in accordance with Rule .0304 Paragraph (n) of this reimbursement plan shall file a combined cost report that is supported by the individual facility cost reports. For these providers, the combined cost report should be filed with the Division of Medical Assistance Audit Section while the individual facility cost reports should be filed with the Division of Medical Assistance Rate Setting Section.

(A) The cost report shall cover a 12 month period, from July 1 to the following June 30, unless another time frame is specified by the Division of Medical Assistance.

(B) The cost report shall be submitted to the state on or before the September 30 that immediately follows the June 30 year end. The Division of Medical Assistance may grant an extension of time of up to 30 days for filing the cost report, upon showing of just cause in writing by the provider.

(C) For new facilities a cost report shall be submitted for the period beginning with the date of certification and ending on the following June 30.

(D) The cost report shall be submitted on the medium and in the format based on the Chart of Accounts specified by the Division of Medical Assistance. All costs shall be shown on the cost reports in accordance with guidelines established by the Division of Medical Assistance. A cost report that does

not meet the requirements of the Division of Medical Assistance is deemed not to be filed.

(E) Currently filed cost reports shall reflect the decisions and judgments expressed by the Division of Medical Assistance auditors on previous cost reports.

(F) All related organizations shall file a Medicaid cost statement identifying their costs, adjustments to costs, and allocation of costs along with the ICF-MR facility's cost report. A home office, or parent company, shall be recognized as a related organization. Auditable records to support these costs shall be made available to the Division of Medical Assistance and its designated contract auditors. Undocumented costs shall be disallowed for Medicaid reimbursement.

(G) Cost reports should clearly identify related party transactions. Failure to do so may result in the related cost being disallowed for Medicaid reimbursement purposes.

(b) Additional information reporting requirements for facilities shall include, but not be limited to, the following:

(1) Each facility providing day treatment services shall be required to submit, in conjunction with the cost report, a separate report itemizing the actual expense attributable to the provision of day treatment services and the actual number of client days associated with said expense. Said report shall be in the format approved by the Division of Medical Assistance.

(2) Each provider operating a facility, upon the request of the Division of Medical Assistance, shall submit statistical data and other information relevant to the administration and operation of said facility. Such reports shall be submitted within the time frames authorized in the request.

(3) Each provider operating a facility shall file with the Division of Medical Assistance, in conjunction with the annual cost report, a separate listing of all clients who were served during the period covered by the cost report. Said report shall be in the format approved by the Division of Medical Assistance.

(4) Each provider that issues an annual report to its shareholders shall file a copy of said report with the Division of Medical Assistance. Said report shall be filed within 30 days of its issuance to the shareholders.

(5) Each provider that has a compensatory stock option plan shall file a copy of said plan with the Division of Medical Assistance, within 30 days of its implementation.

(6) A provider shall file an information report with the Division of Medical Assistance within 30 days of receiving notification from either the North Carolina Department of Revenue or the Internal Revenue Service that items, previously reported and allowed on a cost report, have been disallowed on the provider's associated tax return.

(c) Requirements for certification of financial reports.

(1) Each provider that operates a facility shall complete the required financial reports in accordance with the following rules and in the order of priority stated:

(A) Cost shall be represented in accordance with the specific provisions of the plan as set forth in this Rule.

(B) Costs shall be reported in conformance with the Medicare Provider Reimbursement Manual, HCFA 15, which is incorporated by reference with subsequent changes and amendments pursuant to G.S. 150B-14(a)(2)(C). Said manual is commonly referred to as the HIM-15 manual.

(C) Costs shall be reported in conformance with generally accepted accounting principles.

(D) Governmental institutions have the option of using the accrual or cash method of accounting.

(2) Cost reports prepared for facilities shall be certified for their compliance with Subparagraph (c)(1) of this Rule by the provider's executive director or designated officer.

(3) Budget reports prepared for facilities shall be certified for their fair representation of anticipated disbursements and receipts related to the Medicaid ICF-MR program by the

provider's executive director or designated officer.

(d) Requirements for the revision of financial reports shall include the following:

(1) In the event the Division of Medical Assistance determines a cost report does not meet the requirement of the Division of Medical Assistance during a detailed review, the provider shall have 30 days from the date of said notification to submit a revised cost report or additional data. Such revised data or report shall be certified by the provider's executive director or designated officer.

(2) In the event that the provider discovers that a report submitted to the Division of Medical Assistance is incomplete, inaccurate or incorrect the provider shall immediately notify the Division of Medical Assistance that such error(s) exist. The provider shall have 30 days from the date of said notification to submit a revised report or additional data. Such data or report shall meet the certification requirements of the report being corrected.

(3) Failure to file the corrected reports on a timely basis in accordance to either Subparagraph (d)(1) or (2) of this Rule shall result in the related report being considered not filed and subject to the provisions under this Rule related to the failure to file said reports. However, the Division of Medical Assistance may grant an extension of time of up to 30 days to file said corrected reports, upon the showing of just cause by the provider in writing.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0303 REQUIREMENTS FOR FINANCIAL RECORDS

(a) ~~Prospective rates for each ICF MR provider shall be determined annually to be effective for a 12 month period beginning July 1 and ending the following June 30. These rates shall be derived from actual cost data from a base year to be selected by the state presented in cost reports submitted to and audited by the state agency. The year to which this cost report applies shall be known as the base year. Appropriate adjustments~~

~~may be made to these base year costs to accommodate changes in applicable federal and state laws or regulations.~~

(b) ~~The per diem rate for each provider in the base year shall be determined by dividing the total allowable costs in that year by the total actual number of patient days.~~

(e) ~~The base year per diem rate for each provider will be inflated from the base year to the year in which the rate will apply using inflation factors for each intervening year computed as follows:~~

(1) ~~Cost data from the base year cost reports will be aggregated to determine the proportion (percent of total) of cost in each of the following categories:~~

(A) ~~Labor;~~

(B) ~~Other Operating;~~

(C) ~~Capital which includes the cost for use or ownership of physical plant and movable equipment.~~

(2) ~~Inflation rates for each category will be established using official estimates of inflation provided by the North Carolina Office of Budget and Management for the year in which the rate shall apply.~~

(A) ~~Labor costs shall be inflated by the estimate of the increase in Average Annual Service Wages in North Carolina, adjusted for any special factors related to ICF MR personnel, however, salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Director of the Division of Medical Assistance;~~

(B) ~~Other costs shall be inflated by the estimate of the Implicit Price Deflator for the U. S. Gross National Product; however, management fees shall be limited to a sum equal to seven percent of the maximum ICF rate in the state during the current fiscal year;~~

(C) ~~Capital cost shall not be inflated.~~

(3) ~~Rates determined in 10 NCAC 26H .0303(e)(2) will be multiplied times the percentages determined in 10 NCAC 26H .0303(e)(1) to obtain a weighted inflation rate for each category of cost.~~

(4) ~~The weighted rates determined in 10 NCAC 26H .0303(e)(3) will be added to obtain the composite inflation rate.~~

(5) ~~No inflation factor for any provider will exceed the maximum amount permitted for that provider by federal or state law or regulation.~~

(d) ~~The prospective rate established in Paragraph (e) of this Rule, will be paid to the provider for every Medicaid eligible day during the year in which it will apply. These prospective rates may be determined after the date in which they are to go into effect and paid retroactively to that date.~~

(e) ~~If allowable costs are less than prospective payments during a cost reporting period, a provider may retain one half of the difference between costs and payments, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments must be refunded to the Division of Medical Assistance.~~

(f) ~~Effective for facilities that have been awarded a certificate of need on or after January 1, 1993, new providers are those that have not filed a cost report covering at least one full year of normal operations. A new provider's initial rate shall be a negotiated rate based upon the provider's proposed budget. This rate for a new facility shall not exceed the average rate being allowed for existing facilities or any other limit established in state law. The rate shall be rebased to the actual cost incurred in the first full year of normal operations in the year after audited data for that first year of normal operations is completed.~~

(g) ~~A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost vacation leave earned for that year and all previous years less vacation leave used or expended over the same period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on a reasonable estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.~~

(h) ~~Start up costs are costs incurred by an ICF-MR provider while preparing to provide services. It includes the cost incurred by providers to provide services at the level necessary to obtain certification less any revenue or grants related to start up. The North Carolina Medicaid Program will reimburse these start up costs up to a~~

~~maximum equal to the facility's rate times its beds times 120 days. This reimbursement will be included in the facility's per diem rate. These start up costs will be amortized over 36 months and will be reported as Administrative and General in the operating cost report. A start up cost report will be required to be submitted along with the initial cost report submitted by the new ICF MR provider once certified to participate in the Medicaid program. See Paragraph (a) of this Rule for initial cost reporting requirements. No advance of start up funds shall be made. This Paragraph will be effective for facilities that are awarded a Certificate of Need on or after January 1, 1992.~~

(i) ~~The annual capital cost or lease expense limitation shall apply:~~

(1) ~~To all facilities with 21 or more beds and to facilities consisting of multiple detached buildings in which at least one contains eight certified beds. The facilities covered by this limit shall have been awarded a Certificate of Need before January 1, 1993. The annual capital cost or lease expense limit shall be the lesser of actual cost or the sum of Subparagraphs (i)(1)(A) and (B) of this Rule as follows:~~

(A) ~~The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars (\$30,000) per bed (capital recovery base) during fiscal year 1982-83 adjusted for changes in the following cost indexes:~~

(i) ~~For the period after 1982-83 and prior to 1992-93 the capital recovery base shall be adjusted for changes in the Dodge Building Cost Index of North Carolina cities.~~

(ii) ~~For the period after 1991-92 the capital recovery base shall be adjusted for changes in the implicit price deflator for residential structures as provided by the Office of State Budget and Management. Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.~~

(B) ~~An interest allowance equal to 10 percent of the capital recovery base~~

used to compute annual depreciation on plant and fixed equipment.

(C) ~~This annual capital cost or lease expense limit does not apply to leases in effect prior to August 3, 1983.~~

(2) ~~To all facilities that have been awarded a Certificate of Need on or after January 1, 1993, the annual capital cost or lease expense shall be limited to the lesser of actual cost or the fair and reasonable depreciation and interest expense calculated on the capital recovery based in effect at the time of certification and enrollment into the Medicaid program.~~

(A) ~~Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.~~

(B) ~~Interest expense is computed using a 10 percent rate of interest.~~

(C) ~~The capital recovery base is established as thirty thousand dollars (\$30,000) of plant and fixed equipment assets per bed during the fiscal year 1982-83 adjusted for the changes in the cost indexes contained in Subparagraphs (i), (1)(A), (i) and (ii) of this Rule.~~

(D) ~~Recovery of the cost of material additions to plant and fixed equipment subsequent to certification and enrollment in the Medicaid program shall be subject to review on a case by case basis.~~

(j) ~~In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate.~~

Each provider shall maintain facility specific financial records which reflect all expenditures

incurred and revenues earned related to its ICF-MR services in the Medicaid Program. In addition, the financial records shall properly and clearly reflect all other sources of funds available to the facility's Medicaid ICF-MR program.

(1) Such financial records shall provide clear and precise justification and support for entries included in the cost report, and included in related budgets.

(2) The financial records shall include at a minimum separate accounts for each type of expense, revenue, and other funding resources included in the annual cost report. All items on the cost report shall be supported by clear and precise financial records. Cost reports that fail this requirement are deemed to be improperly filed and subject to the provisions under this Rule related to the failure to file said reports.

(3) Effective July 1, 1993, property ownership and use, housekeeping, and operation and maintenance of plant costs related to day treatment services should be separately accounted for on the provider's books and records. Said costs should be reported separately as direct care costs on the 1994 cost report, consistent with guidelines established by the Division of Medical Assistance.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c.479, s. 86; 42 C.F.R. Part 447, Subpart C.

.0304 RATE SETTING METHODS FOR NON-STATE FACILITIES

~~Reconsideration reviews on rates must be filed in writing within 60 days after a provider receives notification of its prospective rate. Such reconsideration reviews will be processed in accordance with the provisions of 10 NCAC 26K.~~

(a) A prospective rate is determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

(1) Group 1 - Facilities with six beds or less and provider owns less than 150

total beds in said facilities.

- (2) Group 2 - Facilities with six beds or less and provider owns 150 or more beds in said facilities.
- (3) Group 3 - Facilities with seven to 15 beds.
- (4) Group 4 - Facilities with 16 to 40 beds.
- (5) Group 5 - Facilities with over 40 beds.
- (6) Group 6 - Facilities with medically fragile clients. For rate reimbursement purposes under this plan, medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.

(b) Facilities shall be reclassified into appropriate groups as defined in Paragraph (a) of this Rule when necessary.

- (1) When a facility is reclassified, the rate will be adjusted retroactively back to the beginning of the current rate year. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical Assistance.
- (3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.
- (4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each and every facility is properly classified for rate setting purposes.

(c) Rates are derived from either filed, desk or field audited cost reports for a base year period to be selected by the state. The rate setting impact of a facility filing a less than full year's cost report in the base year shall be fully considered by the Division of Medical Assistance in determining the

appropriate per diem rate.

(d) Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

(e) Each prospective rate consists of the sum of the three components as follows:

- (1) Property ownership and use (POU);
- (2) Administrative and General and Operation and Maintenance of Plant (AG/OMP);
- (3) Direct care.

(f) The POU rate is based on the Medicaid cost reflected in the POU cost center as shown on the 1992 cost report format, except for POU costs related to day programs are treated like all other day program costs and therefore are considered to be direct care costs.

(g) The AG/OMP rate is based on the sum of the Medicaid cost reflected in the AG, housekeeping and OMP cost centers as shown on the 1992 cost report format, except for the following:

- (1) Labor related OMP costs are considered to be direct care costs. Non-labor related OMP costs, as reflected in the 1992 cost report format, are included as OMP costs for determining the AG/OMP component of a facility's rate.
- (2) Non-labor related housekeeping costs, as reflected in the 1992 cost report format, are included as OMP costs for determining the AG/OMP component of a facility's rate. Labor related housekeeping costs are considered to be direct care costs.
- (3) OMP and housekeeping costs related to day programs are treated like all other day program costs and therefore are considered to be direct care costs.

(h) The direct care rate is based on the Medicaid cost as shown on the 1992 cost report format, less the costs related to POU and AG/OMP discussed in Paragraphs (f) and (g) of this Rule.

(i) The facility's total per diem rate shall be

limited to the lesser of the actual amount incurred in the base year or the sum of the fiftieth percentile of each cost category, achieved by the related facility group in the base year.

(j) Exceptions to the fiftieth percentile cost category cap included in Paragraph (i) are, as follows:

- (1) Facility Group 2 - The per diem amounts for each of the three cost categories are to be limited to reasonable amounts as determined by the Division of Medical Assistance.
- (2) Facility Group 3 - POU costs are limited to an amount which is determined to be reasonable by the Division of Medical Assistance. The rate for a facility in this group is the lower of the facility's actual costs during the base year, or the sum of the POU, as determined in this Subparagraph, and the AG/OMP and direct costs, as determined in accordance with Paragraph (i) of this Rule.
- (3) Facility Group 4 - Cost categories are limited to the cost incurred in the base year by the facility in this category determined to represent fair and reasonable costs for this group as determined by the Division of Medical Assistance.
- (4) Facility Group 5 - Cost categories are limited to the weighted average cost incurred by the facilities in this group during the base year.

(k) If, during a cost reporting period, allowable costs are less than prospective payments that are not based on an appeal, then a provider may retain one-half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. If allowable costs are less than prospective payments that are based on an appeal, then all of the unexpended payments shall be refunded to the Division of Medical Assistance. Cost in excess of a facility's total prospective payment rate are not reimbursable.

(l) To compute each facility's current prospective rate, the total rate established by Paragraphs (a) through (j) of this Rule is adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.

(1) Price level adjustment factors are

computed using aggregate base year costs in the following manner:

(A) Costs shall be separated into three groups:

- (i) Labor,
- (ii) Non-labor,
- (iii) Fixed.

(B) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total industry cost.

(C) Price level adjustment factors for each cost group shall be established as follows:

- (i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance.
- (ii) Nonlabor. The percentage change for nonlabor costs is based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
- (iii) Fixed. No price level adjustment shall be made for this category.

(D) The weights computed in Subparagraph (1)(1)(B) of this Rule shall be multiplied times the rates computed in Paragraph (c) of this Rule. These weighted rates shall be added to obtain the composite inflation rate.

(m) The initial rate for facilities that have been awarded a Certificate of Need on or after January 1, 1993 is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (l) of this Rule, or the average current rate paid to facilities in the appropriate facility group as determined by Division of Medical Assistance, or the rate

currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year after an audit of the first year of normal operation is completed.

- (1) For facilities that have been awarded a Certificate of Need before January 1, 1993, the initial rate is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (1) of this Rule, or the maximum rate paid to facilities in the appropriate facility group, or the rate currently paid to the owning provider, if the provider has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year after an audit of the first year of normal operation is completed.
- (2) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner. When a Group 2 provider purchases a facility currently reimbursed as a Group 1 facility, the purchased facility shall receive the lower of the rate generated by the Group 1 reimbursement methodology or the rate generated by the Group 2 methodology.
- (3) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of properly prepared budgets and supporting information.
- (4) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certificated by the Medicaid Program.
- (n) A provider with more than one facility in a

particular facility group, except Group 5, may be allowed to recover costs through a combined uniform rate for all facilities in a particular facility group.

- (1) Combined uniform rates for chain providers within a particular facility group may be approved upon written request from the provider and after review by the Division of Medical Assistance.
- (2) An approved combined uniform rate must be applied to all facilities owned by the chain provider in a particular facility group.
- (3) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.
- (4) A combined uniform rate approved for chain providers prior to July 1, 1993, is considered to be void subsequent to July 1, 1993, if the combined uniform rate is inconsistent with the rate setting provisions of this Section.
 - (o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this plan for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.
 - (p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.
 - (q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance may approve an interim rate.
 - (1) The interim rate shall not exceed the rate cap established under this Section for the applicable facility group.
 - (2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.

(3) The provider shall repay to the Division of Medical Assistance any overpayment resulting from the interim rate exceeding the subsequent permanent rate.

(r) In addition to the prospective per diem rate developed under this Section, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart 2, Section 1910.1030 of the Code of Federal Regulations. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Section 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Section 1910.1030 in the prospective rate. This interim add on shall be removed, upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Section 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.

(s) All rates, except those noted otherwise in this Rule, approved under this Rule are considered to be permanent.

(t) In the event that the rate for a facility cannot be developed so that it shall be effective on the first day of the rate period, due to the provider not submitting the required reports by the due date, the average rate for facilities in the same facility group, or the facility's current rate, whichever is lower, shall be in effect until such time as the Division of Medical Assistance can develop a new rate.

(u) When the Division of Medical Assistance develops a new rate for a facility for which a rate was paid in accordance with Paragraph (t) of this Rule, the rate developed shall be effective on the first day of the second month following the receipt by the Division of Medical Assistance of the required reports. The Division of Medical Assistance may, upon its own motion or upon application and just cause shown by the provider, within 60 days subsequent to submission of the delinquent report, make the rate retroactive to the beginning of the rate period in question. Any overpayment to the provider resulting from this temporary rate being greater than the final approved prospective rate for the facility shall be

repaid to the Medicaid Program.

(v) ICF-MR facilities meeting the requirements of the North Carolina Division of Facility Services as a facility affiliated with one or more of the four medical schools in the state and providing services on a statewide basis to children with various developmental disabilities who are in need of long-term high acuity nursing care, dependent upon high technology machines (i.e. ventilators and other supportive breathing apparatus) monitors, and feeding techniques shall have a prospective payment rate that approximates cost of care. The payment rate may be reviewed periodically, no more than quarterly, to assure proper payment. A cost settlement at the completion of the fiscal period year end is required. Payments in excess of cost are to be returned to the Division of Medical Assistance.

(w) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost of vacation leave earned for that year and all previous years less vacation leave used or expended over the same time period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on an estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(x) The annual prospective rate, effective beginning each July 1, for facilities that commenced operations under the Medicaid Program subsequent to the base year used to establish rates, and therefore did not file a cost report for the base year, shall be based on the facility's initial rate, established in accordance with Paragraph (m) of this Rule, and the applicable price level changes, in accordance with Paragraph (l) of this Rule.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. Part 447, Subpart C.

.0305 ALLOWABLE COSTS

(a) To be considered allowable, costs shall not exceed fair and reasonable levels as determined by Division of Medical Assistance, and shall be

required to provide necessary client care under the Medicaid Program.

- (1) The cost of goods or services sold to non-Medicaid clients shall be excluded in determining the allowable client related expenses reimbursable under the Medicaid program. If the provider has not determined the cost of such items, the revenue generated from such sales shall be used to offset the total cost of such services.
- (2) Examples of sources of such income items include, but are not limited to:
 - (A) supplies and drugs sold by the facility for use by nonresidents,
 - (B) telephone and telegraph services for which a charge is made,
 - (C) discount on purchases,
 - (D) employee rental of living quarters,
 - (E) cafeterias,
 - (F) meals provided to staff or a client's guest for which there is a charge,
 - (G) lease of office and other space by concessionaires providing services not related to intermediate care facility services,
 - (H) interest income except for income earned of qualified pension funds and income from gifts or grants which are donor restricted.

(b) Except where specific rules concerning allowability of costs are stated herein, the Division of Medical Assistance shall use as its major determining factor in deciding on the allowability of costs, the Medicare Provider Reimbursement Manual, published by the U.S. Department of Health and Human Services' Health Care Financing Administration (HCFA). Where specific rules stated herein or in HIM-15 are silent concerning the allowability of costs, the Division of Medical Assistance shall determine allowability of costs based on a case specific review taking into consideration the reasonableness of said costs and their relationship to client care and generally accepted accounting principles, consistent with this Rule.

(c) As determined by the Division of Medical Assistance, expenses or portion of expenses reported by an individual facility that are not reasonably related to the efficient and economical provision of care in accordance to the requirements of this Rule, because of either the nature or amount of the item, shall not be allowed.

- (1) Reasonable compensation, as determined by Division of Medical

Assistance, of individuals employed by a provider is an allowable cost, provided such employees are engaged in client related functions and that the compensation is reasonable in light of industry historical data. The historical data shall include, but not be limited to, salary levels for similar services in the same market in which the facility is located.

- (2) Payroll records shall be maintained by the provider to substantiate the staffing costs reported to the Division of Medical Assistance. Payroll records shall indicate each employee's classification, hours worked, rate of pay, and the functional area to which the employee was assigned and actually worked. If an employee performs duties in more than one cost center, the provider shall maintain periodic time studies in order to allocate salary and wage costs to the appropriate cost centers, as determined by the Division of Medical Assistance. These periodic time studies shall be maintained in accordance with the Medicare Provider Reimbursement Manual.

- (3) The Division of Medical Assistance shall not reimburse costs related to excess staff.

- (4) Compensation for owners is allowable only for duties which otherwise would require the employment of another individual in the provision of ICF-MR related services. Said compensation shall be limited to a reasonable amount, as determined by the Division of Medical Assistance, not to exceed that paid in the local market place for similar type duties. Compensation for owners is not allowable where the services are not related to the provision of ICF-MR related services.

(d) As determined by the Division of Medical Assistance, costs which are not properly related to client care or treatment, and which principally afford diversion, entertainment or amusement to owners, operators, or employees of the facility shall not be allowed.

(e) As determined by the Division of Medical Assistance, costs for any interest expense related to funding expenses in excess of a fair and reasonable amount, or penalty imposed by governmental agencies or courts and the costs of

insurance policies obtained solely to insure against such penalty, shall not be allowed.

(f) As determined by the Division of Medical Assistance, costs of contributions or other payments to political parties, candidates or organizations shall not be allowed.

(g) As determined by the Division of Medical Assistance, only that portion of dues paid to any professional association which has been demonstrated to be reasonable in amount and attributable to Medicaid Program related expenditures other than for lobbying or political contributions shall be allowed. The burden of proof shall be on the provider to justify the inclusion of any professional association dues. Association budgets may be considered in determining said justification.

(h) Any cost of the sale, purchase, alteration, construction, rehabilitation or renovation of a physical plant or interest in real property shall be considered allowable up to the amount approved by the Division of Medical Assistance. Cost is limited by the applicable provisions of Paragraphs (i) and (l) of this Rule. Cost is allowable only to the extent it is necessary for the provision of adequate client care under this Rule, as determined by the Department of Human Resources. Cost, and the associated financing, equal to or greater than ten thousand dollars (\$10,000) related to existing facilities or the construction of replacement facilities is subject to prior Division of Medical Assistance approval. Providers shall not incur said costs in a piece meal fashion in order to avoid the ten thousand dollars (\$10,000) limit. Failure to acquire prior approval may result in the disallowance of said cost from Medicaid reimbursement.

- (1) The provider shall file the necessary documentation to support the justification for the proposed expenditure and related financing with the Division of Medical Assistance no later than 90 days prior to the proposed transaction's commencement date.
- (2) The Division of Medical Assistance shall render a decision in writing to the provider on the propriety of the proposed transaction no later than 30 days prior to the proposed transaction's commencement date.
- (3) The time requirements of Subparagraphs (h) (1) and (2) of this Rule may be altered, with just cause shown, by the Division of Medical Assistance.

(4) For any transaction resulting in a change of ownership, the valuation of the asset shall be limited to the lesser of the allowable acquisition cost of the asset to the first owner of record who has received Medicaid payment for said asset, less any accumulated depreciation, plus any allowable improvements, or the acquisition cost of the asset to the new owner. Payment of rent by the Medicaid enrolled provider to the lessor of a facility shall constitute Medicaid payments under this Rule.

(5) Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under Medicaid, shall not be allowable for reimbursement.

(6) An exception may be applied by the Division of Medical Assistance to the requirements of either Subparagraph (h) (4) or (5) of this Rule, if it can be proven that the change in ownership shall result in increasing the level of care provided to the facility's clients up to the level required by the Division of Facility Services.

- (A) In order to meet this exception, it shall be proven that the previous facility owner was not providing, and was incapable of providing, adequate client service, as determined by the Department of Human Resources.
- (B) The burden of proof in supporting this exception is on the provider. The provider shall request, in writing, consideration of this exception from the Division of Medical Assistance.
- (C) Consideration of this exception may result in the Division of Medical Assistance allowing some or all of the costs in Subparagraph (h) (5) for Medicaid reimbursement.
- (D) Consideration of this exception may result in the Division of Medical Assistance allowing a substitute valuation for the transferred property under Subparagraph (h) (4) that is greater than the limit noted, but in no instance greater than the acquisition

cost of the asset to the new owner.

(i) A facility's annual rental payments for real property may be considered an allowable cost subject to the following conditions and the limits included in Paragraph (i) (1) of this Rule:

(1) The lease is reviewed by and acceptable to the Division of Medical Assistance.

(A) The lease shall not be acceptable if the associated asset(s) are not needed for client care as determined by the Division of Medical Assistance.

(B) The lease shall not be acceptable if alternate means of financing is deemed available and more economical. In making this determination all aspects of the economic impact of the lease shall be examined, including length of lease, the cost of the asset to the owner, and the incremental rate of return provided to the lessor. In addition, the lessee's incremental implicit rate of interest and financial position shall be considered.

(C) The test of reasonableness shall take into account the agreement between the owner and the tenant regarding the payment of related property costs.

(D) Absent clear justification to the contrary, material capital improvements to leased property that are necessary to maintain the asset in its ordinary state of usability at the commencement of the lease, shall be the responsibility of the lessor. Examples of said costs are roof or utility service replacement due to reasons beyond the prudent control of the lessee.

(E) Effective July 1, 1993, requests for prior approval of new leases and lease renewals must be submitted whenever possible at least 120 days prior to the last date for the exercise of the lease or lease renewal option.

(F) Failure to acquire prior approval of leases and lease renewals may result in the disallowance of said cost from Medicaid reimbursement.

(2) The lease shall be considered an arm's-length transaction under HIM-15. Leases failing the HIM-15 arm's-length transaction test shall be reimbursed at the leased asset's reasonable cost of depreciation, interest, if any, and other

related expenses, including but not limited to reasonable maintenance costs, as determined by the Division of Medical Assistance. It is the responsibility of the provider to maintain auditable records to document these ownership costs to the Division of Medical Assistance or its designated contract auditors. Undocumented costs may be disallowed.

(3) The lease amount is comparable to similar leases for properties with similar functions in the same geographical area.

(4) The lease agreement between unrelated parties shall include the provision that the amount of rental to be paid by the lessee to the lessor shall not, in any event, exceed the amount approved by the Division of Medical Assistance.

(i) Depreciation shall be an allowable cost when based upon factors of historical costs and useful life. Depreciation shall be subject to the provisions of this Paragraph and Subparagraph (j)(1) of this Rule. For the purpose of this Section:

(1) Unless an exception is made by the Division of Medical Assistance, the useful life shall be the higher of the reported useful life or that from the Estimated Useful Lives of Depreciable Hospital Assets (1988 edition), published by the American Hospital Association, and available by writing to the American Hospital Association, 840 Lake Shore Drive, Chicago, Illinois, 60611. In certain instances, a useful life that is based upon historical experience as shown by documentary evidence and approved by the Division of Medical Assistance may be allowed. Should the provider desire a depreciation rate different from that based on the general Rule in Subparagraph (j) (1) of this Rule, then said provider shall make the request in writing to the Division of Medical Assistance. Upon review and analysis, the Division of Medical Assistance shall make a determination in writing as to the reasonableness of said request.

(2) The depreciation method used shall be the straight-line method.

(3) Unless an exception is granted by the Division of Medical Assistance, depreciated rates shall be applied

- uniformly and consistently, in accordance with this Rule and generally accepted accounting principles. Should the provider discover that depreciation has been improperly recorded in prior years, then the provider shall within 30 days report the error to the Division of Medical Assistance. The impact of the error on the provider's rate shall be fully considered by the Division of Medical Assistance and a rate adjustment may be made, with due cause shown. Failure to record depreciation properly may result in disallowance for Medicaid reimbursement purposes.
- (4) Depreciation paid to the provider by the Medicaid Program shall be prudently used by said provider to meet the financial requirements of providing adequate service to the ICF-MR clients.
- (A) Payment to related parties for costs disallowed by this Rule for Medicaid reimbursement may be considered imprudent use of depreciation reimbursement.
- (B) Imprudent use of Medicaid reimbursement of depreciation may result in the provider being required by the Division of Medical Assistance to fund the depreciation through a qualified independent entity or disallowance of depreciation for Medicaid reimbursement.
- (5) In order to substantiate depreciation expense for Medicaid reimbursement purposes, the property records shall include, at a minimum, all of the following, for assets purchased on or after July 1, 1993:
- (A) The depreciation method used,
- (B) A description of the asset,
- (C) The date the asset was acquired,
- (D) The cost of the asset,
- (E) The salvage value of the asset,
- (F) The depreciation cost,
- (G) The estimated useful life of the asset,
- (H) The depreciation expense each year,
- (I) The accumulated depreciation.
- (6) The recovery of losses associated with the disposal or abandonment of assets used to provide necessary services to the Medicaid program shall be determined on a case by case basis. Requests for recovery shall be made in writing and are subject to prior Division of Medical Assistance approval. Failure to acquire approval may result in the disallowance of said costs.
- (7) The treatment of gains associated with the disposal of assets used to provide necessary services to the Medicaid program shall be based on this Rule and the HIM-15.
- (k) Interest cost may be considered an allowable cost subject to the following conditions, and the limits included in Paragraph (k)(l) of this Rule:
- (1) Interest for capital indebtedness, where the interest expense results from the initial financing of the capital indebtedness and the capital indebtedness represents all or part of the current Division of Medical Assistance approved value of the property. The property shall be necessary for the provision of adequate service, as determined by the Department of Human Resources, to the clients of the ICF-MR facility. The financing shall be prudently incurred.
- (2) The interest rate shall not be in excess of the amount a prudent borrower would pay at the time the loan was incurred. In determining the reasonableness of the interest rate, all associated factors at the time the loan was incurred shall be considered, including, but not limited to the following:
- (A) Current market rates of interest in the economy.
- (B) Industry specific rates of interest.
- (C) Provider specific financial position.
- (3) The loan agreement shall be entered into between parties not related through control, ownership, affiliation, or personal relationship as defined in HIM-15, unless this provision is waived in writing by the Division of Medical Assistance. Such waiver shall be based on, but not limited to, a demonstration of need for the indebtedness and cost savings resulting from the transaction. The burden of proof shall be on the provider to provide proper support and justification for such waiver to the Division of Medical Assistance. Loans from a related party must be clearly identified and reported separately on the

- annual cost report.
- (4) Interest expense on working capital indebtedness is allowable, subject to the Division of Medical Assistance's approved level of working capital, and subject to the standards listed of this Rule.
 - (A) Interest on excess working capital is specifically denied.
 - (B) Working capital shall be established at the level necessary to support the facility's operations, after taking into full consideration the lead/lag impact of the facility's expenditures and reimbursements.
 - (5) Interest expense for capital indebtedness where the interest expense results from the refinancing of the capital indebtedness, and the refinancing has the prior approval of the Division of Medical Assistance, shall be allowed in that amount associated with the outstanding principal prior to refinancing. Interest costs may be allowed in excess of the amount associated with the outstanding principal balance prior to refinancing, if the purpose of the debt is to acquire assets to be used for care of persons served by the facility and all other applicable requirements of this Rule are met. Interest expense resulting from the inclusion of the closing costs, such as, but not limited to, attorney's fees, recording costs and points in the refinancing transaction shall be considered allowable.
 - (A) The provider should file all necessary documents supporting its request for refinancing prior approval to the Division of Medical Assistance no later than 120 days prior to the proposed refinancing date.
 - (B) The Division of Medical Assistance shall render a decision regarding the prior approval request no later than 30 days prior to the proposed refinancing date.
 - (C) Based upon just cause shown, the Division of Medical Assistance may waive the time requirements included in Parts (k)(5)(A) and (B) of this Rule, but in all cases there shall be enough time allowed to evaluate the proposed refinancing.
 - (6) In all cases, in order for the interest expense to be allowable it shall be necessary to satisfy a financial need related to the adequate provision of recipient care, as determined by the Division of Medical Assistance. Loans which result in excess funds or investments are not considered necessary.
 - (7) Interest expense may not be allowable when related to loans that failed to receive prior approval, as required, from the Division of Medical Assistance.
 - (8) In no event shall interest expense be allowed on a facility's cost that is deemed to be excessive.
 - (l) The annual capital cost or lease expense limitations shall apply:
 - (1) To all facilities with 21 or more beds and to facilities consisting of multiple detached buildings in which at least one contains nine certified beds. The facilities covered by this limit shall have been awarded a Certificate of Need before January 1, 1993. The annual capital cost or lease expense limit shall be the lesser of actual cost or the sum of Parts (A) and (B) as follows:
 - (A) The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars (\$30,000) per bed (capital recovery base) during fiscal year 1982-83 adjusted for changes in the following cost indexes:
 - (i) For the period after 1982-83 and through the period 1991-92 the capital recovery base shall be adjusted for changes in the Dodge Building Cost Index of North Carolina Cities.
 - (ii) For the period beginning July 1, 1992 the capital recovery base shall be adjusted for changes in the implicit price deflator for residential structures as provided by the Office of State Budget and Management. Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.
 - (B) An interest allowance equal to 10

- percent of the capital recovery base used to compute annual depreciation on plant and fixed equipment.
- (C) This annual capital cost or lease expense limit does not apply to leases in effect prior to August 3, 1983.
- (2) To all facilities that have been awarded a Certificate of Need on or after January 1, 1993, the annual capital cost or lease expense shall be limited to the lesser of actual cost or the fair and reasonable depreciation and interest expense calculated on the capital recovery base in effect at the time of certification and enrollment into the Medicaid program.
- (A) Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.
- (B) Interest expense is computed using a 10 percent rate of interest.
- (C) The capital recovery base is established as thirty thousand dollars (\$30,000) of plant and fixed equipment assets per bed during the fiscal year 1982-83 adjusted for the changes in the cost indexes contained in Subparagraphs (1)(1)(A), (i) and (ii) of this Rule.
- (D) Recovery of the cost of material additions to plant and fixed equipment subsequent to certification and enrollment in the Medicaid program shall be subject to review on a case by case basis, consistent with the provisions of this Rule.
- (E) This capital cost or lease expense limitation should be considered the absolute maximum allowable for Medicaid reimbursement. In evaluating the reasonableness of a particular facility's capital cost or lease expense, regional costs of land and construction should be considered. In cases where the reasonable regional costs are less than those derived from Subparagraph (1)(2)(C) of this Rule, then the regional costs should be used in determining the appropriate capital cost or lease expense limitations.
- (i) Generally, in determining fair and reasonable facility cost, the average cost of similar construction in the same local area should be used. This test of reasonableness should be applied to all components of the facility's construction cost, including square footage and per unit costs.
- (ii) Absent strong, clear justification to the contrary, no six bed facility shall be allowed to recover capital cost and lease expense related to square footage in excess of 3200 square feet.
- (3) Failure to provide supporting evidence of actual facility cost incurred may result in disallowance of said cost.
- (m) For providers whose annual reimbursement from the Medicaid program exceeds one million dollars (\$1,000,000,) all contracts with related parties as defined by HIM-15 in the amount of ten thousand dollars (\$10,000) or more shall receive prior approval from the Division of Medical Assistance.
- (1) Failure to file said contracts with the Division of Medical Assistance may result in disallowance of the related cost from Medicaid reimbursement.
- (2) The contracts should be filed with the Division of Medical Assistance 90 days prior to the effective date of said contracts.
- (n) Restricted funds are funds expended by the facility which include grants, gifts, and income from endowments, whether cash or otherwise, which shall be used only for a specific purpose as designated by the donor or grant instrument. Restricted funds are to be deducted from the designated Medicaid Program costs when determining allowable costs. Unrestricted funds are funds expended by the provider which include grants, gifts, and income from endowments, cash or otherwise, given to a provider without restriction by the donor as to their use. Unrestricted funds are to be deducted from the designated Medicaid program costs when determining allowable costs.
- (o) When multiple facilities or operations are owned by a single entity with a central office, the central office records shall be maintained as a separate set of records with costs and revenues separately identified and appropriately allocated to individual facilities. Allocation of central office costs shall be reasonable and conform to the directives of the Division of Medical Assistance and generally accepted accounting principles.

Such costs are allowable only to the extent that the central office is providing services related to client care and the provider can demonstrate that the central office costs improved efficiency, economy, or quality of recipient care. The burden of demonstrating that costs are client related lies with the provider.

(1) If a provider has business enterprises other than those reimbursed by Medicaid, then the revenues, expenses, statistical and financial records for such enterprises shall be clearly identifiable from the records of the operations reimbursed by Medicaid.

(2) If an audit establishes that records are not maintained so as to clearly identify Medicaid information, none of the co-mingled costs shall be recognized as Medicaid allowable costs and the provider's rate shall be adjusted to reflect the disallowance as of the earlier of the commencement of the rate period related to the co-mingled costs, or the commencement of the co-mingling of said costs.

(3) After the co-mingled costs have been satisfactorily allocated and reported to the Division of Medical Assistance, and based on good cause shown, the Division of Medical Assistance may retroactively adjust the facility's rate.

(4) Central office costs are generally charged to the Administrative and General cost center. In some cases, however, certain personnel costs which are direct patient care oriented may be allocated to direct care cost centers if time records are maintained to document the performance of direct patient care services. No home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:

- (A) specific time records of work performed at each facility, or
- (B) client days in each facility to which the costs apply relative to the total client days in all the facilities to which the costs apply.

(p) All criteria and limitations used by the Division of Medical Assistance to subject individual provider cost data to tests of reasonableness shall be made available to a provider upon written request. In determining

reasonableness of costs, the Division of Medical Assistance may compare major cost centers or total costs of similar providers and may request satisfactory documentation from providers whose cost does not appear to be reasonable. Similar providers are those with like levels of client care, size, and geographic location.

(q) Start-up costs are costs incurred by an ICF-MR facility while preparing to provide services at said facility. It includes the cost incurred by providers to provide services at the level necessary to obtain certification less any revenue or grants related to start-up. The North Carolina Medicaid Program shall reimburse these start-up costs up to a maximum equal to the facility's rate times its beds times 120 days.

(1) Effective for all facilities whose Certificate of Need was granted on or after January 1, 1993, the start-up cost reimbursement shall be added to the facility's per diem rate calculated in accordance to the related provisions of this plan. These start-up costs shall be amortized over a 36 month period and shall be reported as administrative and general in the cost report. No advance of these start-up costs shall be made. These costs shall not be included in calculating the facility's total AG/OMP costs for rate setting purposes in accordance with this Rule.

(2) Effective for all facilities whose CON was granted prior to January 1, 1993, the start-up reimbursement shall be made in addition to the facility's per diem rate. No advance of start-up funds shall be made prior to the submission of the start-up cost report. An interim payment not to exceed 80 percent of the allowable start-up costs can be made at the written request of a provider after a start-up cost report has been filed. The remaining balance of appropriately incurred start-up costs shall be paid after the desk audit of the start-up cost report has been completed. Any balance due to the Medicaid program shall be repaid promptly.

(3) A start-up cost report shall be filed in accordance to the guidelines established by the Division of Medical Assistance.

(4) Allowable start-up costs may include, but not be limited to:

- (A) personal services expenses,
- (B) utility expenses.

- (C) property taxes,
- (D) insurance expenses,
- (E) employee training expenses,
- (F) housekeeping expenses,
- (G) repair and maintenance expenses,
- (H) administrative expenses.

(5) All costs that are properly identifiable as organization costs, or capitalizable as construction costs, shall be classified as such and excluded from start-up costs.

(6) Cost related to increasing bed capacity in an existing facility shall not be treated as start-up costs.

(r) Only that portion of management fees that is directly related to client care and is not otherwise functionally covered by the current staffing pattern is allowable in the calculation of a facility's actual, allowable, and reasonable costs. Management fees on a per diem basis shall be limited to seven percent of the maximum intermediate care rate for nursing facilities enrolled in the Medicaid Program. Management fees are charged to the Administrative and General Cost Center. In some cases, however, a portion of a management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Records to support these costs shall be made available to staff of the Division of Medical Assistance. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:

- (1) specific time records of work performed at each facility, or
- (2) client days in each facility to which the costs apply relative to the total client days in all facilities to which the costs apply.

(s) The following costs are considered non-allowable facility costs because they are not related to client care or are specifically disallowed under the North Carolina State Plan:

- (1) bad debts;
- (2) advertising, except personnel want ads, and one line yellow page (indicating facility address);
- (3) charity, courtesy allowances, discounts, refunds, rebates and other similar items granted by the provider;
- (4) life insurance (except for employee group plans);

- (5) prescription drugs and insulin (available to recipients under the State Medicaid Drug Program);
- (6) vending machine expenses;
- (7) state or federal corporate income taxes, plus any penalties and interest;
- (8) telephone, television, or radio for personal use of client;
- (9) retainers, unless itemized services of equal value have been rendered;
- (10) finer or penalties;
- (11) ancillary costs that are billable to Medicare or other third party payors;
- (12) property taxes and other expenses related to real estate deemed by the Division of Medical Assistance to be in excess of the reasonable amount needed for the physical facility;
- (13) property taxes, insurance, maintenance and other expenses related to facility costs deemed by the Division of Medical Assistance to be in excess of the reasonable amount necessary for quality client care;
- (14) costs associated with lawsuits filed against the Department of Human Resources which are not upheld by the courts;
- (15) personal use of company assets resulting in unreasonable levels of compensation;
- (16) meals provided to employees;
- (17) charitable contributions;
- (18) costs related to excessive or unnecessary levels of care;
- (19) interest associated with Medicaid overpayment repayment plans agreed to by both the provider and the Division of Medical Assistance;
- (20) costs related to frivolous appeals;
- (21) costs resulting from provider negligence;
- (22) costs related to any illegal activity;
- (23) costs disallowed on the associated tax return by the Internal Revenue Service or the North Carolina Department of Revenue, unless specifically allowable under this plan;
- (24) promotional items designed to promote the provider's public image;
- (25) costs associated with the interests of provider shareholders and not direct care related;
- (26) costs related to client care incurred in prior years, unless specific approval

acquired from the Division of Medical Assistance;

(27) country club dues.

(t) Providers shall use a competitive bidding process in order to purchase or lease vehicles.

(1) Providers shall explore cost differentials between leasing and purchasing of vehicles and shall choose the least expensive alternative.

(2) Daily logs detailing the use of vehicles shall be maintained by the provider.

(u) Purchase of services, major renovations, capital equipment, and supplies that exceed five thousand dollars (\$5,000) annually shall be made through a competitive bidding process or a request for proposal process. A bid may be obtained for a maximum of three years. Facilities shall not purchase in a piece meal fashion to avoid the five thousand dollars (\$5,000) limit. Purchases without bids shall be based upon sole source justification supported by documentation of the uniqueness or the limited availability of services. Failure to execute this bidding process may result in the costs of the applicable goods and services being disallowed for Medicaid reimbursement purposes.

(v) Reasonable costs associated with self-insurance programs are allowable, as determined by the Division of Medical Assistance. All material facts related to said programs shall be disclosed to the Division of Medical Assistance. Failure to disclose may result in the disallowance of said costs.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 CFR 447, Subpart C.

.0306 PAYMENT ASSURANCE

(a) The State shall pay each provider of ICF-MR services, who furnishes the services in accordance with the requirements of the State Plan and the Participation agreement, the amount determined under the plan.

(b) In no case shall the payment rate for services provided under the plan exceed the facility's customary charges to the general public for such services.

(c) The payment methods and standards set forth herein are designed to enlist the participation of any provider who operates a facility both economically and efficiently. Participation in the program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the State Plan. This reimbursement plan is effective consistent with and on approval of the State Plan for Medical

Assistance.

(d) In all circumstances involving third party payment, Medicaid is the payor of last resort.

(e) The State may withhold payments to providers under the following circumstances:

(1) If the State has an expectation that the provider will not expend the total prospective rate for reasonable and allowable patient care costs, the State may, at its discretion, withhold a portion of each payment so as to avoid a large amount due back to the State.

(2) Upon provider termination from the Medicaid Program the State may withhold a sum of money from provider payments that it reasonably expects will be due when final reimbursement settlements for all previous periods, including the period in which the termination occurred, are completed.

(3) Upon determination of any sum due the Medicaid Program or upon instruction from a legally authorized agent of State or Federal Government, the State may withhold sums to meet the obligations identified.

(4) Upon written request of the provider, and with good cause shown, the Division of Medical Assistance may approve a repayment schedule in lieu of withholding funds.

(5) The State may withhold up to 20 percent per month of a provider's payment for failure to file a timely cost report or other relevant information related to a facility's operation and requested by the Division of Medical Assistance. These funds shall be released to the provider after the cost report or the related information requested by the Division of Medical Assistance is acceptably filed. The provider shall experience delayed payment while the check is routed to the State and split for the amount withheld.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 CFR 447, Subpart C.

.0307 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

(a) A certified State-operated ICF-MR facility is reimbursed for the reasonable costs that are

necessary to efficiently meet the needs of its clients and to comply with federal and state laws and regulations. Payments shall be suspended if annual reports are not filed. The Division of Medical Assistance may extend the deadline for filing the report if in its view good cause exists for the delay. The reasonableness and allowability of costs incurred by state-operated facilities shall be determined by the Division of Medical Assistance.

(b) A per diem rate based on the provider's estimated annual cost divided by patient days shall be used to make interim payments. A tentative settlement shall be issued based on the desk audit performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.

(c) Any payments in excess of costs shall be refunded to the Division of Medical Assistance. Any reasonable costs in excess of payments shall be paid to the provider. An annual field audit may be performed by a qualified independent auditor to determine the final settlement amounts.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 CFR 447, Subpart C.

.0308 RATE APPEALS

(a) The Division of Medical Assistance shall consider only the following appeals for adjustment to the rates which would result in an annual rate increase to the provider from the Medicaid Program of one thousand dollars (\$1,000) or more.

- (1) Appeals because of changes in the information used to calculate a facility's prospective rate.
- (2) Appeals for significant increases or decreases in a facility's overall base period operating costs due to, but not limited to, implementation of new programs, changes in staff or service, changes in the characteristics or number of clients, changes in a financing agreement, capital renovations, expansions or replacements which have been either mandated or approved by the Division of Medical Assistance and, except in life-threatening situations, approved in advance by the applicable State agencies.
- (3) In order for said changes to be considered, they shall be consistent with all of the provisions of this plan. Effective July 1, 1994, an appeal shall not be granted unless the provider can

demonstrate that it is necessary for the financial stability of the provider and is needed by the provider in order to deliver proper levels of service to it clients, under Medicaid guidelines. Absent strong convincing evidence to the contrary, a provider's ability to provide services at a cost equal to or below the approved rate, as reflected on the most recent annual cost report, demonstrates financial stability and the lack of need for a rate increase.

(4) Upon proper notification to the provider in writing, the Division of Medical Assistance may instigate a proceeding to reduce the provider's rates. A rate reduction proceeding may be initiated upon the determination of just cause by the Division of Medical Assistance. Grounds for just cause may include, but are not limited to, the following:

- (A) The provider has achieved material over collections of Medicaid funds derived from the prospective rate being greater than reasonable Medicaid costs.
- (B) Changes in Federal or State laws or regulations resulting in material operational cost savings.
- (C) Material changes in client profile resulting in the need for less costly services.
- (D) The burden of proof shall be on the Division of Medical Assistance to prove the need for said rate reduction.
- (5) In determining a fair and reasonable rate under appeal, the Division of Medical Assistance shall take into consideration all funds available to the provider. Providers are expected to utilize all available funds to provide the services that their clients need.
- (6) Reasonable occupancy factors, as established by the Division of Medical Assistance, shall be utilized in establishing fair and reasonable rates in the appeal process.
- (7) Prospective rates determined under the rate appeal mechanism may be applied retroactively to the later of the beginning of the rate year in which said appeal was filed, or the date of certification of the related facility, or the effective date during the facility's current rate year of the item(s) that

caused the need for the change in rates.

- (8) The Division of Medical Assistance shall not pay interest on the final dollar settlement resulting from the retroactive impact of any rate appeals.

(b) Notification of appeal:

- (1) In order to appeal a rate the facility shall send to the Division of Medical Assistance an appeal application in writing either within 60 days of the facility receiving the rate computation or within 60 days of the beginning of the rate period in question.

- (2) The appeal application shall set forth the basis for the appeal and the issues of fact. Appropriate documentation shall accompany the application and the Division of Medical Assistance may request in writing such additional documentation as it deems necessary.

(c) The burden of proof on appeal shall be on the facility to present clear and convincing evidence to demonstrate the rate requested in the appeal is necessary to ensure efficient and economical operation, and meets the criteria of this Rule.

(d) There shall be a written notification by the Division of Medical Assistance of the final decision on the facility's rate appeal. However, at no point in the appeal process shall the facility have a right to an interim report of any determinations made by any of the parties to the appeal.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 CFR 447, Subpart C.

.0309 AUDITS

(a) Each facility shall maintain the statistical and financial records which formed the basis of the reports required by this Rule and submitted to the Division of Medical Assistance for five years from the date on which the reports were submitted or due, whichever is later, or for such longer periods as may be required under State or Federal law. Each cost report shall be verified by the state agency or its representative for completeness, accuracy, and reasonableness through a desk audit. Field audits shall be performed as required. When a combined cost report is filed under this plan, only the combined cost report is subject to desk and field audit, unless the Division of Medical Assistance determines that the supporting individual facility cost reports need to be audited.

(b) All such records shall be subject to audit for

a period of five years from the later of the date on which all required reports were filed with the Division of Medical Assistance or the date on which such reports were due.

- (1) Desk or field audits shall be conducted by the Division of Medical Assistance, its designated contract auditors, or other governmental agencies at a time and place and in a manner determined by said governmental agencies.

- (2) The audits may be performed on any financial or statistical records required to be maintained.

- (3) Any findings of a described audit of this Rule shall constitute grounds for recoupment at the discretion of the Division of Medical Assistance, provided that such audit finding relates to the allowable costs.

(c) All filed cost reports shall be desk audited and tentative settlements made in accordance with the provisions of this plan. This settlement is issued within 180 days of the date the cost report was filed or within 272 days of the end of the June 30 fiscal year reflected in the cost report, whichever is later. The state may elect to perform field audits on any filed cost reports within three years of the date of filing and issue a final settlement on a time schedule that conforms to Federal law and regulation. If the state decides not to field audit a facility a final reimbursement notice may be issued based on the desk audited settlement. The state may reopen and field audit any cost report after the final settlement notice in order to comply with Federal law and regulation or to enforce laws and regulations prohibiting abuse of the Medicaid Program and particularly the provisions of this reimbursement plan. These changes to the Payment for Services Prospective Reimbursement Plan for ICF-MR Facilities will become effective when the Health Care Financing Administration, U.S. Department Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about July 1, 1993 as #MA 93-12, wherein the Director proposes amendments of the State Plan to amend Payment for Services - Prospective Reimbursement Plan for ICF-MR Facilities.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt rules cited as 10 NCAC 42B .2401; 42D .1826; and amend rules cited as 10 NCAC 42C .2004, .2302, .2402, .2501, .3601; 49E .0002.

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

The public hearing will be conducted at 10:00 a.m. on September 2, 1993 at the Albemarle Bldg., Room 943-2, 325 N. Salisbury St., Raleigh, N.C.

Reason for Proposed Action:

10 NCAC 42B .2401; 42C .2004, .2302, .2402, .2501, .3601; 42D .1826 - To adopt and amend rules which were recommended by Domiciliary Care Rules Review Committee.

10 NCAC 49E .0002 - To bring rules into compliance with current procedures and the approved Title IV-A State Plan.

Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to the Special Assistant, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B - LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .2400 - ADMINISTRATIVE PENALTY DETERMINATION PROCESS

.2401 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

10 NCAC 42C .3601 shall control for this Subchapter.

Statutory Authority G.S. 131D-2; 131D-34; 143B-153.

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2004 GENERAL HEALTH REQUIREMENTS

(a) The administrator ~~must have a medical examination, including necessary tests shall be tested~~ for tuberculosis, ~~disease~~ within ~~30~~ 90 days before employment ~~and annually thereafter~~. The Form DSS 1864 is to be used to record the results. Annually thereafter, the administrator is to ~~undergo the necessary tests for tuberculosis and verify to the county department of social services that he~~ There shall be documentation on file in the home that the administrator is free of tuberculosis in a communicable stage using a record designated by the Division of Social Services disease that poses a direct threat to the health or safety of others.

(b) ~~The supervisor in charge must have a medical examination, including the necessary tests for tuberculosis, within 30 days before or seven days after employment. The Form DSS 1864 is to be used to record the results. Annually thereafter, the supervisor in charge is to undergo the necessary tests for tuberculosis and verify to the county department of social services that he is free of tuberculosis in a communicable stage using a record designated by the Division of Social Services.~~

(b) (e) All other staff and live-in non-residents ~~must undergo the necessary tests shall be tested~~ for tuberculosis ~~disease~~ within ~~30~~ 90 days before or seven days after employment or living in the home, and annually thereafter. There ~~must~~ shall be documentation on file in the home that each person is free of tuberculosis ~~in a communicable stage using a record designated by the Division of Social Services disease that poses a direct threat to the health or safety of others.~~

(d) ~~The Division of Facility Services and the county department of social services may jointly request at any time a medical or psychological examination of any staff member or live-in person. This may be done when in their judgment the person, due to a physical or mental condition, is not adequately performing his required duties, is jeopardizing the health of others living in the home, or is adversely affecting the performance of staff duties. Note: The necessary tests for tuberculosis are those recommended by the Division of Health Services for staff in high risk settings. The local health department may be contacted to provide necessary tuberculosis screening.~~

(c) Tests for tuberculosis disease shall comply with the control measures adopted by the Commission for Health Services as specified in 15A NCAC 19A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Environment, Health, and Natural Resources, Tuberculosis Control Branch, Post Office Box 27687, Raleigh, North Carolina 27611-7687.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .2300 - SERVICES

.2302 HEALTH CARE

(a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.

(b) The resident or his responsible person is to be allowed to choose a physician to attend to him.

(c) Immediate arrangements must be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care of his own physician. The name, address and telephone number of the resident's physician is to be recorded on ~~Form DSS 1865~~, the Resident Register.

(d) If a resident is hospitalized, a completed FL-2 or patient transfer form must be obtained before the resident can be readmitted to the facility.

(e) Between annual medical examinations there may be a need for a physician's care. The ~~Form DSS 1867 or an equivalent~~ resident's health services record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.

(f) All contacts (office, home or telephone) with the resident's physician are to be recorded on ~~Form DSS 1867 or an equivalent~~ the resident's health services record which is to be retained in the resident's record in the home. The physician's orders ~~must~~ shall be included in the resident's health services record used for the resident, as follows: including telephone orders initialed by staff and signed by the physician within 30 days from the date the order is given.

~~(1) When the resident is examined in the physician's office, the health services record is to be taken and the physician is to add all necessary information;~~

~~(2) When the physician examines the resident in the home, the physician is to add all necessary information into the health services record; and~~

~~(3) When a physician's order is given by telephone, the administrator or supervisor in charge must enter this into the health services record, initial it and have the physician sign it within 30 days from the date the order is given.~~

(g) The use of a physical restraint refers to the application of a mechanical device to a person to limit movement for therapeutic or protective reasons, excluding siderails for safety reasons. Residents shall be physically restrained only as provided for in the Declaration of Residents' Rights, G.S. 131D-21 (5), and in accordance with the following:

(1) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.

(2) In emergency situations the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.

(3) The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked, loosened, or removed.

(4) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).

(5) The physician ordering the physical restraint shall update the restraint order at a minimum of every six months.

(6) If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.

(h) The administrator must have specific written instructions recorded as to what to do in case of

sudden illness, accident, or death of a resident.

(i) There must be an adequate supply of first aid supplies available in the home for immediate use.

(j) The administrator must make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .2400 - ADMISSION POLICIES

.2402 MEDICAL EXAMINATION

(a) Each resident ~~must~~ shall have a medical examination ~~including the necessary tests and be tested~~ for tuberculosis, ~~disease~~ before admission and annually thereafter. ~~The necessary tests for tuberculosis are those recommended by the Division of Health Services for residents in high risk settings. Tests for tuberculosis disease shall comply with the control measures adopted by the Commission for Health Services as specified in 15A NCAC 19A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Environment, Health, and Natural Resources, Tuberculosis Control Branch, Post Office Box 27687, Raleigh, North Carolina 27611-7687.~~

(b) The results of the complete examination are to be entered on Form FL-2 or MR-2. The examining date recorded on the FL-2 or MR-2 must be no more than 90 days prior to the person's admission or readmission to the home. The FL-2 or MR-2 must be in the facility before admission or readmission or accompany the resident upon admission or readmission and be reviewed by the administrator or supervisor-in-charge before admission or readmission. If the information on the form is not clear or is insufficient, the administrator or supervisor-in-charge must contact the physician for clarification in order to determine if the services of the facility can meet the individual's needs. The completed Form FL-2 or MR-2 must be filed in the resident's record in the home.

(c) The administrator must make arrangements for any resident, who has been an inpatient of a psychiatric facility within 12 months before entering the home and who does not have a current plan for psychiatric care, to be examined by a local physician or a physician in a mental health center within 30 days after admission and to have

a plan for psychiatric follow-up care when indicated, using Form DSS-1867 or an equivalent record.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .2500 - DISCHARGE POLICIES

.2501 OTHER LIVING ARRANGEMENTS

The administrator must discuss with the resident and his responsible person of the need to make other plans for the resident when:

- (1) The resident's physician indicates the resident's condition has improved to the point he can live outside a domiciliary facility with family or community support services;
- (2) The resident's physician certifies that the resident needs professional nursing care or intermediate care under medical supervision. In this situation, plans for other placement must be made as soon as possible and the county department of social services will assist the administrator or resident in making arrangements for necessary care when requested;
- (3) The resident's condition is such that he is a danger to himself or poses a direct threat to the health or safety of others;
- (4) The resident makes a written request or otherwise indicates an earnest desire to transfer to another licensed home; and
- (5) The resident's adjustment to the home is not satisfactory as determined by the administrator and the resident or his responsible person. This is only to be done after a reasonable period of time during which the resident was provided help with adjusting to the home. It is the responsibility of the administrator to contact the resident's responsible person and the county department of social services and request assistance to help the resident in adjusting. This request is to be made at the first indication of an adjustment problem.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .3600 - ADMINISTRATIVE PENALTY DETERMINATION PROCESS

.3601 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) The county department of social services shall identify areas of non-compliance resulting from an investigation or monitoring visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department decides to recommend an administrative penalty as defined in G.S. 131D-34, it shall prepare ~~a Negative Action Proposal~~ an administrative penalty proposal for submission to the Division of Facility Services; ~~Group Care Facilities Branch~~. The proposal shall include documentation that the facility administrator was notified of the county department's intent to prepare and forward a ~~negative action proposal~~ an administrative penalty proposal to the Division of Facility Services; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the contents of the proposal; and then extended an opportunity to request a local conference with the county department, allowing the administrator 10 days to respond prior to forwarding the proposal. The conference, if requested, shall include county department management staff. The administrator may request a conference and produce information to cause the county department to change its proposal. The county may rescind its proposal; or change its proposal and submit it to the ~~Group Care Facilities Branch~~; Division of Facility Services or submit it unchanged to the ~~Group Care Facilities Branch Division~~. The branch shall review the proposal and forward it to the proposal shall be reviewed by the Division's Internal Review Committee.

(b) The Internal Review Committee shall be comprised of three members:

- (1) The ~~assistant deputy~~ chief of the Medical Facilities Licensure Section, or a person designated by the chief of the Medical Facilities Licensure Section, who shall serve as chairman;
- (2) ~~The head of the Group Care Facilities Branch or a~~ A person designated by the chief of the Licensure Domiciliary and Group Care Section; and
- (3) A third party selected by the ~~chief of the Licensure Section~~ deputy director of the Division of Facility Services.

(c) The Division of Facility Services shall notify the administrator by certified mail within 10 working days from the time the proposal is received by the Internal Review Committee that an administrative penalty is being considered.

(d) The administrator shall have 10 working

days from receipt of the notification to provide the Division and the county department of social services any additional written information relating to the proposed administrative penalty. Any information provided shall be considered by the Internal Review Committee. The administrator shall have five working days from receipt of the notification to advise the Division as to whether the administrator, and authorized representative or both plan to meet with the Internal Review Committee.

(e) If the administrator chooses to attend the meeting as provided in Paragraph (d) of this Rule, the Division shall notify representatives of the county department of social services and the Division of Aging of the administrator's plans to meet with the Committee or any change in the date or time of the meeting. The agency that conducted the investigation shall be responsible for notifying the complainant, if any. The complainant, if any, may attend the meeting relating to his or her complaint.

(f) The Internal Review Committee shall review all ~~Negative Action Proposals~~ administrative penalty proposals, any supporting evidence, and any additional information provided by the administrator that may have a bearing on the proposal such as documentation not available during the investigation or monitoring visit, action taken to correct the violation and plans to prevent the violation from recurring.

(g) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of Internal Review Committee meetings.

(h) Time shall be allowed during the Internal Review Committee meetings for individual presentations, the total for which shall normally be one hour for each facility where the violations took place, but shall not exceed two hours. The amount of time allowed, up to two hours, shall be at the discretion of the Internal Review Committee chair. The order in which presenters shall speak and length of presentations shall be at the discretion of the chair.

(i) If it is determined that the administrator has violated applicable rules or statutes, the Internal Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131D-34. The Division shall notify the administrator and the county department of social services by certified mail of the Committee's decision within five working days following the Internal Review Committee meeting. Copies of the letter to the administrator shall be forwarded by the Division to all parties involved

with the penalty recommendation. The agency that conducted the investigation shall be responsible for notifying the complainant, if any.

(j) If the recommended penalty is classified as Type B but is not a repeat violation (as defined by G.S. 131D-34), the administrator may accept the recommendation and notify the Division by certified mail within five working days following receipt of the recommendation. If the penalty is accepted, the administrator has 60 days from receipt of the recommendation to pay the penalty.

(k) If the recommended penalty is a Type A violation; is a Type B violation that has been cited during the previous 12 months; or is a Type B violation as provided in Paragraph (i) of this Rule but is not accepted by the administrator, the Internal Review Committee shall forward to the Penalty Review Committee the penalty recommendation, the rationale for the recommendation and all information reviewed by the Internal Review Committee.

(l) The Penalty Review Committee may agree with or recommend changes to the Internal Review Committee's recommendations. If the recommendations are different from those of the Internal Review Committee, the Division shall attempt to notify the administrator the day of the Penalty Review Committee meeting.

(m) Recommendations by the Penalty Review Committee shall be forwarded to the Chief of Licensure the Domiciliary and Group Care Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation as provided by G.S. 131D-34 and notify the administrator by certified mail.

(n) The administrator shall have 60 days from receipt of the notification to pay the assessment or 30 days to appeal the decision as provided by G.S. 131D-34. The Division shall notify the Attorney General's Office of any outstanding assessments.

Statutory Authority G.S. 131D-2; 131D-34; 143B-153.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1800 - REMAINING POLICIES AND REGULATIONS

.1826 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

10 NCAC 42C .3601 shall control for this Subchapter.

Statutory Authority G.S. 131D-2; 131D-34; 143B-153.

CHAPTER 49 - AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

SUBCHAPTER 49E - UNEMPLOYED PARENT PROGRAM

.0002 COVERAGE AND PARTICIPATION

(a) For purposes of the Unemployed Parent Program, a dependent child is a needy child who is living with his mother and father ~~who are legally married to each other, as required by G.S. 108A-28,~~ in a place of residence maintained by them as their own home; and who is under age 18 or under age 19 and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age 19, he may reasonably be expected to complete the program of such secondary school (or such training).

(b) Assistance shall not be continued for a temporary period when the principal earner returns to work.

(c) Assistance shall not be provided for an assistance unit when the principal wage earner is unemployed by reason of conduct or circumstances which result in disqualification for unemployment compensation under the state's unemployment compensation law.

Statutory Authority G.S. 108A-28; 143B-153; Chapter 738, 1987 Session Laws.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 15 .0011.

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

The public hearing will be conducted at 2:00 p.m. on August 18, 1993 at the Medical Database Commission, 112 Cox Avenue, Raleigh, N.C. 27611.

Reason for Proposed Action: To establish fees for the distribution of data as required by statute.

Comment Procedures: Written comments may be sent to Jim Hazelrigs, Medical Database Commission, 112 Cox Avenue, Raleigh, N.C. 27605. Anyone having questions should call Jim Hazelrigs at (919) 733-7141, or Ellen Sprengel at (919) 733-4529.

CHAPTER 15 - MEDICAL DATABASE COMMISSION

.0011 FEES AND CHARGES FOR DATA

(a) The fees for the following reports generated by the Commission are as follows:

| | |
|-------|---|
| \$ 15 | State and County Profiles of Hospital Inpatient Utilization |
| \$ 30 | DRG Utilization and Charges by Hospital: A Reference Book |
| \$ 15 | A Summary Guide to Hospital Utilization and Charges |
| \$ 10 | Primary Payer Summary Statistics by Hospital |
| \$ 20 | Patient Origin Report |
| \$ 20 | Hospital Inpatient Surgical Procedures Report |
| \$100 | Complete set of the six reports named in this Paragraph |

(b) The fees for the following personal computer (PC) products generated by the Commission are as follows:

| | |
|-------|--|
| \$375 | PC1A: Diskette File of DRG Utilization and Charges by Hospital |
| \$750 | PC1B: Diskette File of DRG Utilization and Charges by Hospital by Payer Category |
| \$375 | PC2: Diskette File of Zip Code Patient Origin by Hospital |

(c) Special data requests may be performed by commission staff based upon specifications developed for each project. The charges for special data requests are as follows:

- (1) The full costs charged to the Commission by others involved in completing the request:
 - (A) data processing contractor or the State Data Center;
 - (B) any consultant or other contractor involved in the process.
- (2) Twenty-five dollars (\$25.00) per hour time of a research analyst or other

member of the Commission staff working on the project.

- (3) A charge for the use of the medium on which the product will be delivered, paper at ten cents (\$0.10) per page, diskettes at two dollars (\$2.00) each, and tape at the current cost to the Commission.
- (4) A charge for the cost of delivering the product to the requestor:
 - (A) Business envelopes at ten cents (\$0.10) each, 8" x 11" envelopes at seventy-five cents (\$0.75) each, and boxes for mail of bulk materials at two dollars (\$2.00) each.
 - (B) U.S. Postal Service actual postage charges.
 - (C) Express type mail services may be used, provided the Commission obtains the account number of the requestor and charges the special delivery to the requestor's account. The Commission will not include this as part of the invoice for the product.

(d) Materials may be transmitted via facsimile for one dollar (\$1.00) per page for faxing with a minimum fax charge of ten dollars (\$10.00). This includes faxing to a long distance number in the continental United States. Faxing to Alaska, Hawaii, U.S. territories, and foreign countries shall not be done by the Commission. The Commission will not fax more than 30 pages of data.

(e) The Commission shall charge twenty-five dollars (\$25.00) for the standard mailing list and thirty dollars (\$30.00) if the mailing list is formatted to other than standard format at the request of the purchaser of the list.

(f) The Commission shall charge the proper sales tax on all materials sold under this Rule.

Statutory Authority G.S. 131E-211(k); 131E-212(b)(7).

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rules cited as 12 NCAC 10B .0103, .0105, .0201, .0204 - .0205, .0301, .0305, .0402 - .0403, .0406, .0408 - .0409, .0503, .0505, .0602, .0606, .0704, .0901, .0904, .0906, .0909, .1003, .1005,

.1205, .2104; and repeal rule cited as 12 NCAC 10B .0902.

The proposed effective date of this action is January 1, 1994.

The public hearing will be conducted at 9:00 a.m. on September 14, 1993 at the FOP Lodge, Test Farm Road, Waynesville, North Carolina.

Reason for Proposed Action:

12 NCAC 10B .0103, .0105, .0201, .0204 - .0205, .0301, .0305, .0402 - .0403, .0406, .0408 - .0409, .0503, .0505, .0602, .0606, .0704, .0901, .0904, .0906, .0909, .1003, .1005, .1205, .2104 - To make various technical changes for purposes of updating and clarifying existing rules.

12 NCAC 10B .0902 - The North Carolina Sheriffs' Education and Training Standards Commission has adopted, by reference, in Rule .0901 the Criminal Justice Education and Training Standards Commission's rule for physical fitness instructor. Therefore, this Rule is no longer needed by the North Carolina Sheriffs' Education and Training Standards Commission.

Comment Procedures: Any person interested in these Rules may present oral or written comments relevant to the proposed action at the public rule making hearing. Written statements can be submitted beginning August 2, 1993 through September 14, 1993 and must be directed to the Sheriffs' Standards Division. The proposed rules are available for public inspection and copies may be obtained at the following address: Dept. of Justice, Sheriffs' Standards Division, P.O. Box 629, Raleigh, NC 27602-0629.

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

.0103 DEFINITIONS

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout

this Chapter, unless the context clearly requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered, and as it applies to a jailer means either the date the jailer's oath of office was administered, if applicable, or the jailer's actual date of employment as reported on the Report of Appointment (Form F-4) by the employing agency, whichever is earlier.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict of finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Department Head" means the chief administrator of any criminal justice agency. Department head includes the sheriff or a designee formally appointed in writing by the Department head.
- (4) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) "Division" means the Sheriffs' Standards Division.
- (6) "High School" means a school accredited as a high school by:
 - (a) the Department or Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the high school is located.
- (7) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires.
- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) "Lateral Transfer" means certification of a justice officer when the applicant for certification has previously held general or grandfather certification ~~and has been~~

~~separated by an agency or transferred to another agency as a justice officer or a criminal justice officer as defined in G.S. 17C-2(c), excluding state correctional officers, state probation/parole officers, and state youth services officers,~~ provided the applicant has been separated from a certified sworn law enforcement position for no more than one year, or has had no break in service.

(10) "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred or its political subdivisions includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "class A misdemeanor" criminal offenses are motor vehicle or traffic offenses designated as misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina, similar laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which is expressly included herein as a class A misdemeanor, if the defendant was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)];

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws and statutes of

the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "class B misdemeanor" criminal offenses are motor vehicles or traffic offenses designated as being misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions with the following exceptions. Class B misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (duty to stop in event of accident). This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense and shall also include a violation of G.S. 20-28(b) (driving while license permanently revoked or suspended).

(11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.

(12) "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification as both a deputy sheriff and a jailer with the same employing agency.

(13) "Jailer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which include but are not limited to the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff.

(14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to exercise the powers of arrest in accordance with the laws of North Carolina.

(15) "Commission" as it pertains to criminal offenses shall mean a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of Chapter 150B of the North

Carolina General Statutes, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

- (16) "Sworn Law Enforcement Position" means a position with a criminal justice agency of the United States, any state, or a political subdivision of any state which, by law, has general power of arrest held by a person who has successfully completed the North Carolina Basic Law Enforcement Training Course.

Statutory Authority G.S. 17E-7.

.0105 ADMINISTRATIVE HEARING PROCEDURES

(a) Administrative hearings in contested cases conducted by the Commission or an administrative law judge (as authorized in G.S. 150B-40) ~~should~~ shall be governed by:

- (1) procedures set out in Article 3A of G.S. Chapter 150B;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

~~The Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts (as described in this Rule) are hereby adopted by reference for contested cases for which the Commission has authority to adopt rules under G.S. 150B-38(h). Such adoptions by reference shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(e).~~

(b) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials as provided by G.S. 150B-21.6.

(c) Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code.

(d) An applicant for certification or a certified

officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request an administrative hearing.

Statutory Authority G.S. 150B-20; 150B-21.6; 150B-38(h); 150B-40.

SECTION .0200 - ENFORCEMENT RULES

.0201 INVESTIGATION OF VIOLATION OF RULES

(a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of these Rules, the Commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Division shall investigate the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.

(c) The Commission Probable Cause Committee may convene prior to each regular meeting of the Commission to consider these investigative reports and make a determination as to whether or not probable cause exists that the Commission's rules have been violated; or may delegate authority to the Director for further action.

(d) The Commission Probable Cause Committee may:

- (1) direct the Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation of the violation by the State Bureau of Investigation;
- (3) direct the Division to conduct an administrative hearing in the matter; or
- (4) impose determine the appropriate sanctions against the violator pursuant to this Section the Commission's Rules.

Statutory Authority G.S. 17E-4; 17E-7.

.0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony unless pardoned by the

Governor; or
(2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a time period specified by the Commission; or
- (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
- (2) has knowingly and designedly by any means of false pretense, deception, fraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or

the North Carolina Criminal Justice Education and Training Standards Commission; or

- (3) has aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission by means of deceit, fraud or misrepresentation. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

(4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A

misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of Chapter 17E of the General Statutes of North Carolina, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of Chapter 17E of the General Statutes of North Carolina, a person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

Statutory Authority G.S. 17E-7.

**.0205 PERIOD OF SUSPENSION:
REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
 - (a) commission or conviction of a felony; or
 - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
 - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Subparagraph (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
 - (a) commission or conviction of a ~~crime other than those listed in Subparagraph (1) of this Rule~~ offenses as specified in 12 NCAC 10B .0204(d)(4); or
 - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or

- (d) the North Carolina Criminal Justice Education and Training Standards Commission; or
- (d) aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission by means of deceit, fraud or misrepresentation. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or
- (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (g) a positive result on a drug screen, or a refusal to submit to drug testing both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 9A .0103(6).
- (h) the Commission may either reduce or suspend the periods of sanction under this Subparagraph or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
 - (a) failure to meet or satisfy relevant basic training requirements; or
 - (b) failure to meet or maintain the minimum standards of employment or certification; or
 - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2100; or
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1), (2), (3), (5), and (6).

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .0300 - MINIMUM STANDARDS
FOR EMPLOYMENT AND
CERTIFICATION AS A JUSTICE OFFICER**

**.0301 MINIMUM STANDARDS FOR
JUSTICE OFFICERS**

(a) Every Justice Officer employed or certified as a Deputy Sheriff or Jailer in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) have produced a negative result on a drug screen administered according to the following specifications:

- (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
- (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time

- of adoption of this Rule; and
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and
- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Rule;
- (G) every agency head shall be responsible for making adequate arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician.

- (7) immediately notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged; ~~pleads no contest to, pleads guilty to or is found guilty of ;~~ and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of

adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing ~~executive officer~~ department head within 20 days of the date the case was disposed of in court. The ~~executive officer~~ department head, provided he has knowledge of the officer's charge(s), shall also notify the Division within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, of the initial offenses charged and of adjudication of those offenses, from either the officer or the ~~executive officer~~ department head, is sufficient notice for compliance with this Subparagraph;

- (8) be of good moral character;
- (9) have a thorough background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

Statutory Authority G.S. 17E-7.

.0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the opportunity to update the F-3 prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character. The investigator shall summarize the results of the investigation on a commission-approved form which shall be signed and dated by the investigator.

(e) Each applicant shall provide to the employing agency a certified copy of a check of the applicant's criminal history record from the Clerk of Court in each county where the applicant has resided within the preceding six months. The employing agency shall perform a criminal history records check of the agency's own files for each applicant. A certified copy of the results of all required criminal history records checks shall be forwarded with the applicant's Report of Appointment form (F-4) to the Division. Additionally, a photocopy of the results of all required criminal history records shall be retained by the agency in the applicant's personnel file.

(f) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History Statement (F-3) or both. This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

Statutory Authority G.S. 17E-7.

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

.0402 PROBATIONARY CERTIFICATION

All justice officers, except those transferred or reinstated pursuant to Rule .0406 shall serve a

probationary certification period of one year; provided that the one year probationary period has not been extended for cause pursuant to 12 NCAC 10B .0303(c); .0503(a); or .0602(a). For certification as a deputy sheriff the probationary period begins on the date the officer took the Oath of Office. For certification as a jailer, the probationary period begins on the date the officer was appointed as a jailer.

Statutory Authority G.S. 17E-4; 17E-7.

.0403 PROBATIONARY CERTIFICATION REQUIREMENT

(a) For certification as a deputy sheriff or a jailer, a Report of Appointment Deputy Sheriff/Jailer (F-4) must be submitted to the Division. ~~For certification as a jailer, a Report of Appointment Jailer (F-4A) must be submitted to the Division. For certification as both a deputy sheriff and a jailer, both forms (F-4 and F-4A) must be submitted to the Division.~~ Report of Appointment forms must be submitted to the Division by the sheriff's department no later than ten days after the deputy sheriff has taken the Oath of Office or the jailer has been appointed. The Division shall forward the justice officer's certification to the Department.

(b) No justice officer probationary certification will be issued by the Division prior to the applicant meeting the conditions set forth in this Paragraph. As an additional requirement for probationary certification, the applicant shall meet the following requirements:

- (1) If the applicant for probationary certification is authorized to carry a firearm pursuant to the provisions of 12 NCAC 10B .2104, the employing agency shall submit evidence of satisfactory completion of the employing agency's in-service firearms training and requalification program pursuant to 12 NCAC 10B .2000 and .2100; or
- (2) If the applicant for probationary certification is not authorized to carry a firearm pursuant to the provisions of 12 NCAC 10B .2104, the employing agency shall notify the Division, in writing, that the applicant is not authorized to carry a firearm.

Statutory Authority G.S. 17E-4; 17E-7.

.0406 LATERAL TRANSFER/

REINSTATEMENTS

(a) ~~An officer with general or grandfather certification who: meeting the requirements of 12 NCAC 10B .0103(9) may laterally transfer to an agency and be certified upon compliance with this Rule.~~

- ~~(1) is currently certified; or~~
- ~~(2) has been separated but has not been out of service for more than one year or who has had no break in service, may laterally transfer to an agency and be certified upon compliance with this Rule.~~

(b) The employing agency shall verify the applicant's certification status with the Division prior to submission of the application for certification as a justice officer.

(c) In order for an officer to be certified pursuant to this Rule, the employing agency shall submit to the Division, along with the Report of Appointment (F-4), the following documents:

- (1) fingerprint cards and criminal history records checks as specified in 12 NCAC 10B .0303;
- (2) the applicant's Medical History Statement (F-1) and Medical Examination Report (F-2) as specified in 12 NCAC 10B .0304;
- (3) evidence of a negative result on a drug screen administered according to the specifications as outlined in 12 NCAC 10B .0301(6);
- (4) a copy of the Oath of Office for applicants requesting certification as a deputy sheriff;
- (5) evidence of satisfactory completion of the employing agency's in-service firearms training and requalification program pursuant to 12 NCAC 10B .2000 and .2100;
- (6) documentary evidence of high school, college or university graduation to the employing agency. Documentary evidence consists of diplomas from recognized public schools or approved private schools, colleges or universities which meet approval guidelines of the North Carolina Department of Public Instruction or a comparable out of state agency; or documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination will be acceptable as verified by a true copy of the veteran's DD214.

(d) An officer whose certification has been suspended pursuant to 12 NCAC 10B .0204(b)(1) may have that certification reinstated provided that:

- (1) the period of suspension has been one year or less; and
- (2) the officer has successfully completed the basic training requirements as prescribed in 12 NCAC 10B .0500 or .0600.

(e) Requirements of Paragraph (c) of this Rule are waived for officers whose certifications are reinstated pursuant to Paragraph (d) of this Rule.

(f) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Statutory Authority G.S. 17E-4; 17E-7.

.0408 VERIFICATION OF RECORDS TO DIVISION

(a) Prior to the probationary certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the Division, along with the Report of Appointment (F-4), copies of the following documents:

- (1) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);
- (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (3) the applicant's Medical History Statement (F-1);
- (4) the applicant's Medical Examination Report (F-2 and F-2A);
- (5) the applicant's notarized Personal History Statement (F-3);
- (6) a summary of the applicant's background investigation;
- (7) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6); and
- (8) certified copies of criminal charges and dispositions as required in 12 NCAC 10B .0305(e) and (f); and
- (9) verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b).

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0408(a)(9), for officers applying for dual

certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Statutory Authority G.S. 17E-4; 17E-7.

.0409 EMPLOYING AGENCY RETENTION OF CERTIFICATION RECORDS

(a) Each employing agency shall place in the appropriate justice officer's personnel file the official notification of either probationary or general certification. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. Each personnel file shall also contain:

- (1) a copy of the applicant's Report of Appointment (F-4);
- (2) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);
- (3) a certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (4) the results of the applicant's fingerprint records check and the criminal history records check;
- (5) the applicant's Medical History Statement (F-1);
- (6) the applicant's Medical Examination Report (F-2 and F-2A);
- (7) the applicant's Personal History Statement (F-3);
- (8) a summary of the applicant's background investigation;
- (9) a copy of a commission-approved Firearms Requalification Record Form;
- (10) documentation of negative results on drug screen pursuant to 12 NCAC 10B .0301(a)(6); and
- (11) verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b).

(b) Compliance with this Rule is waived, with

the exception of the requirements of 12 NCAC 10B .0409(11), for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Statutory Authority G.S. 17E-4.

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

.0503 TIME REQ/COMPLETION/BASIC LAW ENFORCEMENT TRAINING COURSE

(a) Each deputy sheriff holding temporary or probationary certification shall satisfactorily complete a commission-accredited basic training course. The deputy shall complete such course within one year from the date of his/her Oath of Office. Any deputy sheriff who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a deputy sheriff and shall not be authorized to exercise the power of arrest. If, however, an officer has enrolled in a commission-accredited basic law enforcement training program that concludes later than the end of the officer's probationary period, the Commission may extend, for good cause shown, the probationary period for a period not to exceed 12 months.

(b) Persons having completed a commission-accredited basic law enforcement training program and not having been duly appointed as in a sworn deputy sheriff law enforcement position as defined in 12 NCAC 10B .0103(16) within one year of completion of the basic law enforcement training course shall complete a subsequent commission-accredited basic recruit training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0402, unless the Director determines that a delay in applying for certification was due to simple

negligence on the part of the applicant or employing agency, in which case the Director may accept a commission-accredited basic training program which is over one year old. Such extension of the one year period shall not exceed 30 days from the expiration date of a commission-accredited basic training program.

Statutory Authority G.S. 17E-4; 17E-7.

.0505 EVALUATION FOR TRAINING WAIVER

(a) The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in 12 NCAC 10B .0504(a). Applicants for certification with prior law enforcement experience shall have been employed in a sworn law enforcement position in order to be considered for training evaluation under this Rule. The following rules shall be used by Division staff in evaluating a deputy's training and experience to determine eligibility for a waiver of training.

~~(1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for more than one year shall complete a subsequent commission accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).~~

(1) (2) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.

(2) (3) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(3) (4) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees:

- (A) shall have a minimum of two years full-time sworn law enforcement experience;
- (B) shall not have a break in service exceeding two years; and
- (C) shall have successfully completed the Basic Law Enforcement Training Course accredited by the state from which he/she is transferring. Out-of-state transferees meeting these requirements shall successfully complete a commission-accredited Basic Law Enforcement Training Course which includes the following topics of North Carolina law and procedure and successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|---|----------|
| (i) Laws of Arrest, Search and Seizure | 16 hours |
| (ii) Elements of Criminal Law | 24 hours |
| (iii) Juvenile Laws and Procedures | 8 hours |
| (iv) Controlled Substances | 6 hours |
| (v) ABC Laws and Procedures | 4 hours |
| (vi) Motor Vehicle Laws | 20 hours |
| (vii) Civil Process | 24 hours |
| (viii) Supplemental Custody Procedures | 8 hours |
| (ix) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(4) (5) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for more than one year and who have not previously completed a minimum Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(5) (6) Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have

been separated from a sworn law enforcement position for more than one year but no more than two years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Juvenile Law and Procedures | 8 hours |
| (B) Laws of Arrest, Search and Seizure | 16 hours |
| (C) Elements of Criminal Law | 24 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Law Enforcement Driver Training | 16 hours |
| (H) Civil Process | 24 hours |
| (I) Supplemental Custody Procedures | 8 hours |
| (J) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 126 hours

(6) ~~(7)~~ Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than two years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(7) ~~(8)~~ Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(8) ~~(9)~~ Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for more than three years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of prior training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(9) ~~(10)~~ Persons who have completed a minimum 381 hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and ending December 31, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law

Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(10) ~~(44)~~ Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a commission-accredited Basic Law Enforcement Training Course beginning on or after October 1, 1984 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law Enforcement Training Course and successfully pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).

| | |
|-------------------------------------|----------|
| (A) Civil Process | 24 hours |
| (B) Supplemental Custody Procedures | 8 hours |

TOTAL HOURS 32 hours

(11) ~~(42)~~ Persons who have completed a minimum 369-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Commission under guidelines beginning October 1, 1984 and ending July 1, 1989 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(12) ~~(43)~~ Persons who have completed a minimum 422-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriff's Education and Training Standards Commission under the guidelines administered beginning January 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |

| | |
|--|----------|
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(13) ~~(14)~~ Persons who have previously completed a minimum 410-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(14) ~~(15)~~ Persons who have completed a minimum 444-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under the guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS 110 hours

(15) ~~(16)~~ Persons who have previously completed a minimum 432-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |

| | |
|--|----------|
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS

110 hours

(16) ~~(17)~~ Persons who have completed training as a federal law enforcement officer and are appointed as a deputy sheriff in North Carolina shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of previous federal training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(17) ~~(18)~~ Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(18) ~~(19)~~ Wildlife Enforcement Officers who completed the Basic Law Enforcement Training Course prior to September 30, 1985 and are sworn as justice officers shall be subject to the evaluation rules as stated in 12 NCAC 10B .0505(a)(1) and (a)(4) through (11).

(19) ~~(20)~~ Wildlife Enforcement Officers who separate from employment with the Wildlife Enforcement Division and have less than one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training after September 30, 1985 shall complete the following blocs of instruction and pass the state exam in its entirety within one year of their date of appointment as defined in 12 NCAC 10B .0103(1).

| | |
|--|----------|
| (A) Crime Prevention Techniques | 4 hours |
| (B) Mechanics of Arrest: Custody Procedure | 2 hours |
| (C) Mechanics of Arrest: Processing Arrestee | 4 hours |
| (D) Special Populations | 12 hours |
| (E) Techniques of Traffic Law Enforcement | 6 hours |
| (F) Dealing with Victims and the Public | 8 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS

68 hours

(20) ~~(21)~~ Wildlife Enforcement Officers who completed Basic Law Enforcement Training on or after September 30, 1985 and have been out of a sworn position over one year but no more than three years, and are sworn as a justice officer must complete the following blocs of instructions and pass the state exam in its entirety during their probationary period as prescribed in 12 NCAC 10B .0503(a).

| | |
|--|----------|
| (A) Laws of Arrest Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Crime Prevention Techniques | 4 hours |
| (H) Mechanics of Arrest: Custody Procedures | 2 hours |
| (I) Mechanics of Arrest: Processing Arrestees | 4 hours |
| (J) Special Populations | 12 hours |
| (K) Techniques of Traffic Law Enforcement | 6 hours |
| (L) Dealing with Victims and the Public | 8 hours |
| (M) Civil Process | 24 hours |
| (N) Supplemental Custody Procedures | 8 hours |
| (O) Firearms Qualification (Handgun and Shotgun Courses) | |

| | TOTAL HOURS | 146 hours |
|--|-------------|-----------|
| (21) (22) Alcohol Law Enforcement Officers who completed the Basic Law Enforcement Training Course prior to April 1, 1983 <u>or after November 1, 1993</u> , and are sworn as a justice officer shall be subject to the evaluation rules as prescribed in 12 NCAC 10B .0505(a)(1) and (a)(4) through (9) <u>.0505 (a)(3) through (8) and (a)(14) and (15)</u> . | | |
| (22) (23) Alcohol Law Enforcement Officers who separate from employment with the Alcohol Law Enforcement Division and have less than a one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training <u>after administered beginning April 1, 1983 and ending November 1, 1993</u> shall complete the following blocs of instruction and pass the state comprehensive exam in its entirety within one year of their date of appointment as defined in 12 NCAC 10B .0103(1). | | |
| (A) Law Enforcement Communication and Information Systems | | 4 hours |
| (B) Patrol Techniques | | 16 hours |
| (C) Crime Prevention Techniques | | 4 hours |
| (D) Mechanics of Arrest: Vehicle Stops | | 6 hours |
| (E) Mechanics of Arrest: Custody Procedures | | 2 hours |
| (F) Mechanics of Arrest: Processing Arrestee | | 4 hours |
| (G) Special Populations | | 12 hours |
| (H) Interviews: Field and In-Custody | | 8 hours |
| (I) Motor Vehicle Law | | 20 hours |
| (J) Techniques of Traffic Law Enforcement | | 6 hours |
| (K) Dealing with Victims and the Public | | 8 hours |
| (L) Civil Process | | 24 hours |
| (M) Supplemental Custody Procedures | | 8 hours |
| (N) Firearms Qualification (Handgun and Shotgun Course) | | |

| | TOTAL HOURS | 122 hours |
|--|-------------|-----------|
| (23) (24) Alcohol Law Enforcement Officers who completed their Basic Training <u>after administered beginning April 1, 1983 and ending November 1, 1993</u> and are sworn as a justice officer and who have been out of a sworn position for over one year but no more than three years shall complete the following blocs of instruction and pass the state examination in its entirety during their one year probationary period as prescribed in 12 NCAC 10B .0503(a). | | |
| (A) Laws of Arrest, Search and Seizure | | 16 hours |
| (B) Elements of Criminal Law | | 24 hours |
| (C) Juvenile Laws and Procedures | | 8 hours |
| (D) Controlled Substances | | 6 hours |
| (E) ABC Laws and Procedures | | 4 hours |
| (F) Law Enforcement Communication and Information Systems | | 4 hours |
| (G) Patrol Techniques | | 16 hours |
| (H) Crime Prevention Techniques | | 4 hours |
| (I) Mechanics of Arrest: Vehicle Stops | | 6 hours |
| (J) Mechanics of Arrest: Custody Procedures | | 2 hours |
| (K) Mechanics of Arrest: Processing Arrestee | | 4 hours |
| (L) Special Populations | | 12 hours |
| (M) Interviews: Field and In-Custody | | 8 hours |
| (N) Motor Vehicle Law | | 20 hours |
| (O) Techniques of Traffic Law Enforcement | | 6 hours |
| (P) Dealing with Victims and the Public | | 8 hours |
| (Q) Civil Process | | 24 hours |
| (R) Supplemental Custody Procedures | | 8 hours |
| (S) Firearms Qualification (Handgun and Shotgun Course) | | |

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the director is authorized to exercise his/her discretion

in determining the amount of training those persons shall complete during their probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR JAILERS

.0602 TIME REQ/COMPLETION//JAILER CERT TRAINING COURSE

(a) Each individual employed by a sheriff's department as a jailer holding probationary certification shall satisfactorily complete a commission-accredited jailer training course. The individual shall complete such course within one year from the date of his original appointment as a jailer as determined by the date of the probationary certification. Any individual employed as a jailer who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a jailer. If, however, an individual has enrolled in a commission-accredited jailer course that concludes later than the end of the individual's probationary period, the Commission may extend, for good cause shown, the probationary period for a period not to exceed six months.

(b) Persons having completed a commission-accredited jailer training course and not having been duly appointed as a jailer within one year of completion of the course shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a), unless the Director determines that a delay in applying for certification was due to simple negligence on the part of the applicant or employing agency, in which case the Director may accept the commission-accredited jailer training program which is over one year old. Such extension of the one year period shall not exceed 30 days from the expiration date of a commission-accredited jailer training program.

Statutory Authority G.S. 17E-4.

.0606 COMP WRITTEN EXAM - JAILER CERTIFICATION COURSE

(a) At the conclusion of a school's offering of the "Jailer Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time

as all course work is successfully completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as described in 12 NCAC 10B .0601(b).

(c) The Commission's representative shall submit to the school director within ten days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within ~~90~~ 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a jailer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Jailer Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .0700 - MINIMUM STANDARDS
FOR JUSTICE OFFICER SCHOOLS AND
TRAINING PROGRAMS OR COURSES
OF INSTRUCTION**

**.0704 RESPONSIBILITIES: SCHOOL
DIRECTORS**

(a) In planning, developing, coordinating, and delivering each commission accredited Jailer Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the Commission.
 - (A) The Jailer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the Director may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule qualified instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
 - (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery except as set forth in (2)(B).
 - (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Division may grant written approval for the expansion of the individual instructional limitation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition

and duplication of subject matter.

- (5) Shall permanently maintain records of all Jailer Certification Courses sponsored or delivered by the school, reflecting:
 - (A) Course title;
 - (B) Delivery hours of course;
 - (C) Course delivery dates;
 - (D) Names and addresses of instructors utilized within designated subject-matter areas;
 - (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful including individual test scores and methods or instruments;
 - (F) Copies of all rules, regulations and guidelines developed by the school director;
 - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
 - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods or instruments.
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
- (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) Effective course delivery;
 - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.
- (8) If appropriate, recommend housing and

- dining facilities for trainees.
- (9) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for ~~Professional Lecturer Certification~~ certification of instructors.
 - (C) The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission mandated rules and regulations; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.
 - (10) Administer the course delivery in accordance with commission-approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.
 - (11) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall have the added responsibility for recommending approval or denial of requests for General Jail Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification.
 - (12) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare formal written

evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.

- (13) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught.
- (14) ~~(13)~~ Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (15) ~~(14)~~ Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (16) ~~(15)~~ During a delivery of the Jailer Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (17) ~~(16)~~ Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B).

Statutory Authority G.S. 17E-4.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

.0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative

Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of instructors for the Jailer Certification Course and instructors for the Physical Fitness topical area of the Basic Law Enforcement Training Course. Copies of the publication may be obtained from the Office of Administrative Hearings, Capehart-Crocker House, 424 North Blount Street, Raleigh, North Carolina 27601. The cost per copy is two dollars and fifty cents (\$2.50) for the first 10 pages and fifteen cents (\$.15) for each page thereafter at the time of adoption of this Rule.

Statutory Authority G.S. 17E-4.

.0902 PHYS FITNESS INSTRS//BASIC LAW ENFORCEMENT TRAINING COURSE

~~Only instructors holding Specific Instructor Certification in the Physical Fitness topical area who were certified by the North Carolina Criminal Justice Education and Training Standards Commission under the following requirements shall be authorized to instruct the mandated Physical Fitness topical area:~~

- ~~(1) Hold current General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission; and~~
- ~~(2) Successfully completed the pertinent Physical Fitness Specific Instructor Training Course as approved by the North Carolina Criminal Justice Education and Training Standards Commission; and~~
- ~~(3) Obtain the recommendation of a school director certified by the North Carolina Criminal Justice Education and Training Standards Commission.~~

Statutory Authority G.S. 17E-4.

.0904 GENERAL JAILER INSTRUCTOR CERTIFICATION

An applicant for General Jailer Instructor Certification shall meet the following requirements:

- (1) Present documentary evidence demonstrating that the applicant:
 - (a) has attended and successfully completed

the North Carolina Sheriffs' Education and Training Standards Commission-approved Jail Training Course; or holds a valid certification as a jailer or correctional officer or ~~demonstrates prior experience as an instructor in the jail or correctional field; and~~

- ~~(b) has at least two years of experience as a jailer, correctional officer or instructor in the field of jails or correction;~~

- ~~(b)~~ (e) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.

- (2) Persons holding ~~only~~ General Jailer Instructor Certification may teach any topical areas of instruction in the Commission-mandated course with the exception of those outlined in ~~Rules .0906(e) and 12 NCAC 10B .0908(a)(1) through (7).~~

Statutory Authority G.S. 17E-4.

.0906 PROFESSIONAL LECTURER CERTIFICATION

(a) The Commission may issue Professional Lecturer Certification to a ~~person in a formally recognized profession, i.e., medicine, law, psychology, who by virtue of their formal academic degree(s) have developed special expertise.~~ licensed attorney-at-law or a person with a law degree to teach the following topics in the Jailer Certification Course:

- (1) Civil Liability in the Jail;
- (2) Legal Rights and Responsibilities;
- (3) Legal Aspects of Criminal Investigation.

(b) To be eligible for such certification an applicant shall present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school, ~~medical school or other school accredited for conferring degrees in formally recognized professions acceptable to the Commission;~~

- (2) ~~obtain~~ obtained the endorsement of a commission recognized school director who shall:

- (A) recommend the applicant for certification as a professional lecturer; and
- (B) describe the applicant's expected

participation, topical areas, duties and responsibilities.

~~(e) Only licensed attorneys at law holding Professional Lecturer Certification may teach the following topics:~~

- ~~(1) Civil Liability in the Jail;~~
- ~~(2) Legal Rights and Responsibilities;~~
- ~~(3) Legal Aspects of Criminal Investigation.~~

Statutory Authority G.S. 17E-4.

.0909 TERMS AND CONDITIONS OF A LIMITED LECTURER CERTIFICATION

(a) An applicant meeting the requirements for certification as a Limited Lecturer shall, for the first 12 months of certification, be in a probationary status. The Limited Lecturer Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the Commission:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor taught at least four hours in one or more of the topics for which Limited Lecturer Certification, Probationary Status was granted. Such instruction must have occurred in a commission-accredited jailer training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or
- (2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited jailer training course. Such evaluation must be certified on a commission-approved Instructor Evaluation Form completed for one or more of the topics where the probationary instructor taught a minimum of four hours; and
- (3) documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(c) Full Limited Lecturer Certification shall be continuous ~~so long as all other certifications required in 12 NCAC 10B .0908 remain valid, and~~ so long as the lecturer submits to the Division every two years:

- (1) a favorable written recommendation from a school director accompanied by certification on a commission-approved instructor evaluation form that the lecturer successfully taught at least four hours in one or more of the topics for which Limited Lecturer Certification was granted during the previous two-year period; or
- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom observation of the lecturer while teaching a minimum of four hours in one or more of the topics for which Limited Lecturer Certification was granted; and
- (3) a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(d) The date Full Limited Lecturer Certification is originally issued is the anniversary date from which each two-year period is figured.

(e) If a lecturer does not teach a minimum of four hours during each two-year period following the awarding of Full Limited Lecturer Certification, his/her certification automatically expires, and the lecturer must then apply for probationary limited lecturer certification and must meet all applicable requirements.

Statutory Authority G.S. 17E-4.

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS

.1003 BASIC LAW ENFORCEMENT CERTIFICATE

In addition to the qualifications set forth in Rule .1002, an applicant for the Basic Law Enforcement Certificate shall:

- (1) have no less than one year of service; and
- (2) have successfully completed a commission-accredited basic law enforcement training course and any remedial training as required by the Commission; or

- (3) have completed a minimum of 160 hours of training in the field of law enforcement.

Statutory Authority G.S. 17E-4.

.1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience:

| Educational Degrees | <u>AA/AS</u> | | | AB/BS | GRAD./PRO. |
|---|--------------|----|----|-------|------------|
| Years of Law Enforcement Experience | 12 | 9 | 9 | 6 | 4 |
| Minimum Law Enforcement Training Points | 35 | 50 | 33 | 27 | 23 |
| Minimum Total Education and Training Points | 69 | 99 | 33 | 27 | 23 |

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

SECTION .1200 - PROFESSIONAL CERTIFICATE PROGRAM FOR JAILERS

.1205 ADVANCED JAILER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202, applicants for the Advanced Jailer Professional Certificate shall possess or be eligible to possess the Intermediate Jailer Professional Certificate and shall have acquired the following combination of educational points or degrees, jail or corrections training points and years of jailer experience:

| Educational Degrees | <u>AA/AS</u> | | | AB/BS | GRAD./PRO. |
|---|--------------|----|----|-------|------------|
| Years of Jailer Experience | 12 | 9 | 9 | 6 | 4 |
| Minimum Jailer Training Points | 12 | 16 | 27 | 26 | 26 |
| Minimum Total Education and Training Points | 23 | 33 | 27 | 26 | 26 |

(b) Educational points claimed shall have been earned at a technical institute, technical college, community

college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

SECTION .2100 - JUSTICE OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

.2104 IN-SERVICE FIREARMS REQUALIFICATION SPECIFICATIONS

(a) All justice officers who are authorized by the sheriff to carry a handgun shall qualify a minimum of once each year with ~~each handgun that the officer is authorized to carry while on duty on a commission approved day and night course~~ their individual and department-approved service handgun. The course of fire shall not be less stringent than the "Basic Law Enforcement Training Course" requirements for firearms qualification.

(b) All justice officers who are issued, or otherwise authorized by the sheriff to carry a shotgun, rifle, or automatic weapon shall be required to qualify with each weapon respectively a minimum of once each year ~~on a commission approved course of fire~~.

(c) Qualifications conducted pursuant to Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or duty-type ammunition meeting the specifications of the duty ammunition as to type projectile, weight and velocity.

(d) All justice officers who are authorized by the sheriff to carry off duty handguns shall qualify with their off duty handgun a minimum of once each year pursuant to 12 NCAC 10B .2103 and .2104(a) and (b) with each handgun the officer carries off duty using ammunition approved by the sheriff.

(e) All justice officers who are issued or have access to any weapons not stated in this Rule must qualify with these weapons once each year using ammunition approved by the sheriff.

(f) In cases where reduced-sized targets are used to simulate actual distances, a modified course of fire may be used.

(g) To satisfy the minimum training requirements for all in-service firearms requalifications, a justice officer shall attain a minimum qualification score of 70 percent accuracy with each weapon once in three attempts with no more than three attempts on each course of fire per day.

(h) The "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments or editions of the referenced materials to apply as a minimum guide for conducting the annual in-service firearms qualification. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Statutory Authority G.S. 17E-4; 17E-7.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to adopt rule cited as 12 NCAC 11 .0209.

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

The public hearing will be conducted at 2:00 p.m. on August 17, 1993 at the State Bureau of Investigations, Conference Room, 3320 Old Garner Rd., Raleigh, NC 27626.

Reason for Proposed Action: Requires a firm, association, or corporation which is engaged in or will be engaged in the alarm systems business profession to obtain a corporate business license.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments through September 1, 1993. Written comments may be delivered to: James Kirk, Administrator, 3320 Old Garner Rd., P.O. Box 29500, Raleigh, NC 27626.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR
LICENSEES

.0209 CORPORATE BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall submit an application for a corporate business license on a form provided by the Board. This application for license shall call for such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any corporate director, or officer; information concerning the past revocation, suspension or denial of a business or professional license to any director, or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, a foreign corporation shall further qualify by filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State in accordance with G.S. 55-131 and a consent to service of process and pleadings which shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a completed written application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors, or officers have the requisite good moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this Section, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered

in open court by a judge or jury.

(d) Upon satisfactory completion of the background investigation, a corporate business license may be issued. This license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

(e) The corporate business license shall be issued only to the corporation and shall not be construed to extend to the licensing of its directors, officers, or employees.

(f) The issuance of the corporate business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which has been issued the corporate business license shall be responsible for assuring compliance with G.S. 74D.

Statutory Authority G.S. 74D-2(a); 74D-5.

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 adopt rule cited as 15A NCAC 19A .0406.

The proposed effective date of this action is January 4, 1994.

The public hearing will be conducted at 1:30 p.m. on September 13, 1993 at the Norton Board Room, 6th Floor, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, N.C.

Reason for Proposed Action: Pursuant to the 6/7/93 passage of HB 452, "An Act to Clarify the Requirements of the General Statutes Pertaining to Immunizations", rules are required to specify the immunization information that can be provided to schools, day-cares, Head Start and colleges and universities that are due to resume in September 1993.

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 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).

Note: NOTICE OF INTENT TO ADOPT A TEMPORARY RULE

Notice is hereby given that the EHNRC-Commission for Health Services intends to adopt this Rule in a temporary action, Eff. August 9, 1993, For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner.

The Commission for Health Services will decide on the proposed adoption of the temporary rule at its regularly scheduled meeting on August 4, 1993. This meeting starts at 10:00 a.m. and will be held in the Norton Board Room, Cooper Memorial Health Building-6th Floor, 225 N. McDowell St., Raleigh, N.C.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0400 - IMMUNIZATION

.0406 ACCESS TO IMMUNIZATION INFORMATION

(a) Immunization information may be released in whole or in part with the written consent of the person identified or their guardian.

(b) Immunization information specified in Paragraph (c) of this Rule may also be obtained from a physician or local health department upon request by:

- (1) schools K-12, whether public, private or religious;
- (2) licensed and registered daycare facilities as defined in G.S. 110-86(3) and G.S. 110-102;
- (3) Head Start; and
- (4) colleges and universities, whether public, private or religious.

(c) Upon request, persons specified in Paragraph (b) of this Rule may obtain the following information about each individual for whom a certificate of immunization is required by G.S. 130A-155 and 155.1:

- (1) name and address;
- (2) name of the parent, guardian, or person in loco parentis;
- (3) date of birth;
- (4) gender;
- (5) vaccine type, date and dose administered;
- (6) the name and address of the physician or health department that administered each dose; and
- (7) certification of medical and religious exemptions pursuant to G.S. 130A-156 and 157 and 15A NCAC 19A .0204.

Statutory Authority G.S. 130A-153.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend rules cited as 21 NCAC 16B .0304; 16C .0203, .0304; 16D .0101 - .0102; 16H .0104, .0203, .0205 and 16Q .0204, .0301, .0303, .0403.

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

The public hearing will be conducted at 2:00 p.m. on August 20, 1993 at the Highway Building, One South Wilmington Street, 1st Floor Auditorium, Raleigh, NC 27611.

Reason for Proposed Action:

21 NCAC 16B .0304 - To require applicants for dental licensure, who are licensed in other states, to furnish verification of licensure from the secretary of the dental board of each state in which they are licensed and to change the language in the rule to conform to a change on the application.

21 NCAC 16C .0203 - To delete requirement that applicants for dental hygiene licensure furnish transcripts of high school credits or a copy of an equivalency certificate.

21 NCAC 16C .0304 - To require applicants for dental hygiene licensure, who are licensed in other states, to furnish verification of licensure from the secretary of the dental board of each state in which they are licensed.

21 NCAC 16D .0101 - To require an applicant for provisional licensure to present to the Board documentary evidence satisfactory to the Board that he is in good standing with the dental licensing agencies of all jurisdictions in which he is currently licensed to practice dentistry.

21 NCAC 16D .0102 - To allow the Board to require that a provisional licensee be supervised by a dentist licensed in North Carolina.

21 NCAC 16H .0104 - To delete requirement that Dental Assistants must be currently certified by the Dental Assisting National Board.

21 NCAC 16H .0203 - To allow a Dental Assistant II to polish supragingival surfaces of natural and restored teeth by means of a rotary rubber cup or brush.

21 NCAC 16H .0205 - To delete prohibition that neither a Dental Assistant I nor a Dental Assistant II shall perform a prophylaxis or remove stains, accretions or deposits from the teeth.

21 NCAC 16Q .0204 - To allow that inspections only involving a facility and equipment check may be accomplished by one or more evaluators.

21 NCAC 16Q .0301 - To allow a dentist applying for a permit to administer sedation to utilize a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

21 NCAC 16Q .0303 - To allow evaluations of dentists applying for sedation permits to be conducted by dentists who have been issued sedation permits by the Board and have administered sedation for at least three years.

21 NCAC 16Q .0403 - To add that on-site inspections shall also be conducted in accordance with Rule 16Q .0303.

Comment Procedures: Any person desiring to present oral data, views, or arguments on a proposed rule must, at least 10 days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or a failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to 5 minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The Board's address is P.O. Box 32270, Raleigh, NC 27622-2270. Any person may file written submission of comments or argument at any time up to and including September 1, 1993.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

SUBCHAPTER 16B - LICENSURE EXAMINATION: DENTISTS

SECTION .0300 - APPLICATION

.0304 OTHER REQUIREMENTS

Applicants who are licensed in other states are required to furnish verification of licensure from the secretary of the dental board of each state in which they are licensed. Letters of recommendation ~~which are substituted for the character references in the application~~ must be received in the Board's office before the application is considered complete. A photograph, taken within six months prior to the date of the application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application to be used as part of the identification badge.

Statutory Authority G.S. 90-28; 90-30; 90-48.

SUBCHAPTER 16C - LICENSURE EXAMINATION: DENTAL HYGIENIST

SECTION .0200 - QUALIFICATIONS

.0203 TRANSCRIPTS REQUIRED

Applicants are required to furnish transcripts of ~~high school credits or a copy of an equivalency certificate duly issued by a governmental agency or unit authorized to issue the same together with~~ dental hygiene school or college credits. These transcripts are to accompany the application, or

may be mailed to the Board's office from the record department of each school attended.

Statutory Authority G.S. 90-223; 90-224.

SECTION .0300 - APPLICATION

.0304 OTHER REQUIREMENTS

Applicants who ~~have been in practice~~ are licensed in other states are required to furnish verification of licensure from the secretary of the dental board of ~~the each~~ state in which they ~~last practiced~~ are licensed, together with two letters of recommendation, preferably written by dentists. A photograph, taken within six months prior to the date of application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application, to be used as a part of the identification badge.

Statutory Authority G.S. 90-223; 90-224.

SUBCHAPTER 16D - PROVISIONAL LICENSURE: DENTISTS

SECTION .0100 - GENERAL PROVISIONS

.0101 ELIGIBILITY REQUIREMENTS

(a) ~~No person~~ Persons shall be eligible for provisional licensure under the provisions of G.S. 90-29.3 ~~who has not if they have~~ been licensed to practice dentistry in another jurisdiction for a period of ~~not less than at least~~ two years immediately preceding the date of application for provisional licensure.

(b) An applicant for provisional licensure must present to the Board documentary evidence satisfactory to the Board that he is in good standing with the dental licensing ~~agency~~ agencies of the all jurisdictions wherein he is ~~then~~ currently licensed to practice dentistry.

(c) No person shall be eligible for provisional licensure who has been censured, disciplined, or punished by any dental licensing agency or dental organization for violation of professional ethics or the laws of any jurisdiction.

Statutory Authority G.S. 90-28; 90-29.3; 90-48.

.0102 RESTRICTIONS ON PRACTICE

(a) Any provisional license issued to a member of the faculty of an educational institution shall limit the practice of such provisional licensee to the confines of the facilities provided by the educational institution of which he is a faculty

member.

(b) In those instances in which the Board deems such restriction appropriate, the dental practice of a provisional licensee may be restricted to a geographic location or to a specialized field of dentistry, or both. Supervision by a dentist licensed in North Carolina may also be required.

Statutory Authority G.S. 90-29.3.

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0100 - CLASSIFICATION AND TRAINING

.0104 APPROVED EDUCATION AND TRAINING PROGRAMS

Education and training programs approved by the North Carolina State Board of Dental Examiners and experience requirements qualifying Dental Assistants as Dental Assistant II include:

- (1) satisfactory completion of one academic year or longer in a Dental Assistant or Dental Hygiene program approved by the Commission on Dental Accreditation of the American Dental Association;
- (2) full-time employment as a chairside assistant (Dental Assistant I) by a dentist licensed in North Carolina for three consecutive years of the preceding five, completion of a Board-approved course in intraoral radiography, and completion of didactic training in a dental assisting course approved by the Board that must include asepsis and dental emergencies;
- (3) ~~a currently certified dental assistant (certified by the Dental Assisting National Board)~~ successful completion of the certification examination administered by the Dental Assisting National Board; and
- (4) completion of equivalent training and experience as approved by the Board.

Statutory Authority G.S. 90-29(c)(9).

SECTION .0200 - PERMITTED FUNCTIONS OF DENTAL ASSISTANT

.0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

A Dental Assistant II may do and perform any and all acts or functions which may be done or performed by a Dental Assistant I. Additionally, a Dental Assistant II, after adequate training and

qualification, may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions. A Dental Assistant II may:

- (1) Take impressions for study models and opposing casts which will not be used for construction of dental appliances;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided a dentist has examined the patient and prescribed the procedure; and
- (3) Polish supragingival surfaces of natural and restored teeth by means of a rotary rubber cup or brush and appropriate polish agents.

Statutory Authority G.S. 90-29(c)(9); 90-48.

.0205 SPECIFIC PROHIBITED FUNCTIONS OF DENTAL ASSISTANTS I AND II

Those specific functions which shall not be delegated to either a Dental Assistant I or a Dental Assistant II include those procedures prohibited in 21 NCAC 16G, Rule .0003 for Dental Hygienists. ~~In addition, neither a Dental Assistant I nor a Dental Assistant II shall perform a prophylaxis or remove stains, accretions or deposits from the teeth.~~

Statutory Authority G.S. 90-29(c)(9); 90-48.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0200 - GENERAL ANESTHESIA

.0204 PROCEDURE FOR EVALUATION OR INSPECTION

(a) When an evaluation or on-site inspection is required, the Board will designate two or more persons, each of whom is qualified to administer general anesthesia and has so administered such for a minimum of three years preceding the inspection, exclusive of his training in general anesthesia. At least one of the evaluators must have had experience in the evaluation of dentists using general anesthesia. When an on-site inspection involves only a facility and equipment check and not an evaluation of the dentist, such inspection

may be accomplished by one or more evaluators.

(b) Any dentist-member of the Board may observe or consult in any evaluation.

(c) The inspection team shall determine compliance with the requirements of these rules, as applicable, by assigning a grade of "pass" or "fail".

(d) Each evaluator shall report his recommendation to the Board, setting forth the details supporting his conclusion. The Board is not bound by these recommendations. The Board will make the final determination as to whether or not the applicant has passed the evaluation/inspection and will so notify the applicant, in writing.

(e) At least a 15-day notice will be given prior to an evaluation or inspection. The entire inspection fee of two hundred seventy-five dollars (\$275.00) will be due ten days from the date of receipt of such notice.

Statutory Authority G.S. 90-28; 90-30.1.

SECTION .0300 - SEDATION

.0301 SEDATION CREDENTIALS AND PERMIT

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00).

(b) A dentist applying for a permit to administer sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of ten patients, under supervision, using intravenous sedation in a training program approved by the Board; or
- (2) Satisfactory completion of an undergraduate or postgraduation program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or

- (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
- (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a sedation permit, a dentist must be operating within a properly equipped facility, which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(d) The dentist seeking a permit must be trained and capable of administering basic life support.

(e) The Board may, based upon formal application, grant a permit authorizing the use of sedation to a dentist who has been utilizing sedation in a competent and effective manner for the past five years, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

Statutory Authority G.S. 90-28; 90-30.1.

.0303 TEMPORARY APPROVAL PRIOR TO SITE EVALUATION

(a) If a dentist meets the requirements of Rule .0301 of this Section, he shall be granted temporary approval to continue to administer sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed 12 months. An on-site evaluation of the facilities, equipment, procedures and personnel will be required. The evaluation will be conducted in accordance with Rules .0202-.0205 of this Subchapter, ~~and fees required by those rules will apply except that~~ evaluations of dentists applying for sedation permits may be conducted by dentists who have been issued sedation permits by the Board and who have administered sedation for at least three years. Fees required by Rules .0202 - .0205 of this Subchapter will apply.

(b) An evaluation may be made any time it is deemed necessary by the Board.

Statutory Authority G.S. 90-28; 90-30.1.

SECTION .0400 - RENEWAL OF PERMITS

.0403 INSPECTION AUTHORIZED

Incident to the renewal of an anesthesia or sedation permit, the Board may, in its discretion, require an on-site inspection of the dentist's facility, equipment, personnel and procedures. Such inspection shall be conducted in accordance with Rules .0204, ~~and~~ .0205, and .0303 of this Subchapter.

Statutory Authority G.S. 90-28; 90-30.1.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Physical Therapy Examiners intends to amend rules cited as 21 NCAC 48D .0009; 21 NCAC 48E .0101.

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

The public hearing will be conducted at 2:00 p.m. on August 26, 1993 at the NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, North Carolina 27705.

Reason for Proposed Action: To change filing deadline to comply with testing service requirements for ordering examinations.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 2, 1993 to 5:00 p.m. on September 3, 1993. Such written comments must be delivered or mailed to Constance W. Peake, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, NC 27705.

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

SUBCHAPTER 48D - EXAMINATIONS

.0009 RETAKING EXAMINATION

(a) Arrangements for Retake. To retake the examination, the applicant must notify the executive secretary at least 45 60 days in advance of the examination date and pay the retake fee and the examination cost at that time.

(b) Retake Examination. The Board will admin-

ister a particular form of the examination to an applicant only one time.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.33.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

.0101 FILING APPLICATION

(a) It is the responsibility of the applicant to ascertain that his credentials are filed properly with the executive secretary.

(b) To be certain an applicant will be considered for the desired examination date, ~~the he desires, he~~ must submit his application must be submitted to the executive secretary at least ~~45~~ 60 days prior to the examination.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.31(b).

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

JUNE 93

| TITLE | DEPARTMENT | TITLE | DEPARTMENT |
|-------|---|-------|-------------------------------|
| 1 | Administration | 21 | Occupational Licensing Boards |
| 2 | Agriculture | 2 | Architecture |
| 10 | Human Resources | 8 | CPA Examiners |
| 12 | Justice | 14 | Cosmetic Art Examiners |
| 13 | Labor | 26 | Landscape Architects |
| 15A | Environment, Health, and Natural Resources | 32 | Medical Examiners |
| 16 | Public Education | 34 | Mortuary Science |
| 17 | Revenue | 36 | Nursing |
| 19A | Transportation | 48 | Physical Therapy Examiners |
| | | 58 | Real Estate Commission |

| Citation | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|---------------------------|----|----|----|-----------|------|-----------|---------------|
| 1 NCAC 26C .0001 - .0004 | ✓ | | | | | 07/01/93 | |
| .0005 | ✓ | | | ✓ | | 07/01/93 | |
| .0006 - .0008 | ✓ | | | | | 07/01/93 | |
| 30D .0302 | | ✓ | | | | 07/01/93 | |
| 39 .0201 | ✓ | | | ✓ | | 07/01/93 | |
| 2 NCAC 9L .1801 - .1804 | | | ✓ | | | 07/01/93 | |
| .1805 | ✓ | | | | | 07/01/93 | |
| 10 NCAC 14B .0501 - .0502 | | ✓ | | | | 07/01/93 | |
| .0503 | | ✓ | | ✓ | | 07/01/93 | |
| .0504 | | | ✓ | | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|-----|---------------|----|----|----|--------------|------|--------------|------------------|
| 10 | NCAC | 14B | .0505 | | ✓ | | | | 07/01/93 | |
| | | | .0506 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0507 - .0508 | | ✓ | | | | 07/01/93 | |
| | | | .0509 | ✓ | | | | | 07/01/93 | |
| | 14K | | .0103 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0315 | | ✓ | | ✓ | | 07/01/93 | |
| | 18D | | .0208 | | ✓ | | | | 07/01/93 | |
| | 18H | | .0109 - .0110 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0111 - .0112 | | ✓ | | | | 07/01/93 | |
| | | | .0114 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0115 | | | ✓ | | | 07/01/93 | |
| | | | .0116 | | ✓ | | ✓ | | 07/01/93 | |
| | 18L | | .1515 | | ✓ | | | | 07/01/93 | |
| | 18M | | .1404 | | | ✓ | | | 07/01/93 | |
| | 41Q | | .0201 | | ✓ | | | | 07/02/93 | |
| | 45H | | .0202 | | ✓ | | | | 07/01/93 | |
| | | | .0205 | | ✓ | | | | 07/01/93 | |
| 12 | NCAC | 2A | .0203 | | ✓ | | | | 07/01/93 | |
| | 11 | | .0301 | | ✓ | | ✓ | | 07/01/93 | |
| 13 | NCAC | 7C | .0101 | | ✓ | | | | 07/14/93 | |
| 15A | NCAC | 2D | .0903 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0912 | | ✓ | | | | 07/01/93 | |
| | | | .1002 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1004 | | ✓ | | | | 07/01/93 | |
| | 3I | | .0001 | | ✓ | | ✓ | | 07/01/93 | |
| | 3J | | .0103 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0401 | ✓ | | | ✓ | | 07/01/93 | |
| | 3K | | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0304 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0506 | | ✓ | | ✓ | | 07/01/93 | |
| | 3L | | .0201 | | ✓ | | | | 07/01/93 | |
| | 3M | | .0103 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .0508 | | ✓ | | | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|-----------------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 3M | .0510 | ✓ | | | ✓ | | 07/01/93 | |
| | | 3Q | .0107 | | ✓ | | | | 07/01/93 | |
| | | | .0202 | | ✓ | | | | 07/01/93 | |
| | | 3R | .0002 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0007 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0008 | | ✓ | | | | 07/01/93 | |
| | 8A | | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0102 | | | ✓ | | | 07/01/93 | |
| | | | .0202 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0301 | | ✓ | | | | 07/01/93 | |
| | | | .0302 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0303 | ✓ | | | | | 07/01/93 | |
| | 8B | | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0102 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0108 - .0109 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0201 - .0202 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0205 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .0206 | | | ✓ | | | 07/01/93 | |
| | | | .0207 - .0212 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .0213 | ✓ | | | | | 07/01/93 | |
| recodified from | | | .0214 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0205 | | | | | | | |
| | | | .0301 - .0303 | | ✓ | | | | 07/01/93 | |
| | | | .0402 | | ✓ | | | | 07/01/93 | |
| | | | .0404 | | * | | | | 07/01/93 | |
| | | | .0406 | ✓ | | | | | 07/01/93 | |
| | | | .0502 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0506 | ✓ | | | ✓ | | 07/01/93 | |
| | 8C | | .0002 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0004 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0005 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .0006 - .0008 | ✓ | | | | | 07/01/93 | |
| | 8D | | .0002 | | ✓ | | | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 8D | .0004 - .0005 | | ✓ | | | | 07/01/93 | |
| | | | .0006 | | ✓ | | ✓ | | 07/01/93 | |
| | 10A | | .0401 - .0402 | | ✓ | | | | 07/01/93 | |
| | 10B | | .0113 | | ✓ | | | | 07/01/93 | |
| | | | .0115 | | ✓ | | | | 07/01/93 | |
| | | | .0203 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0209 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0219 | ✓ | | | | | 07/01/93 | |
| | 10C | | .0107 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0108 | | ✓ | | | | 07/01/93 | |
| | | | .0205 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0206 | | ✓ | | | | 07/01/93 | |
| | | | .0208 | | ✓ | | | | 07/01/93 | |
| | | | .0302 | | ✓ | | | | 07/01/93 | |
| | | | .0305 | | ✓ | | | | 07/01/93 | |
| | | | .0401 - .0402 | | ✓ | | | | 07/01/93 | |
| | | | .0404 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0503 | | ✓ | | | | 07/01/93 | |
| | 10D | | .0002 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0003 - .0004 | | ✓ | | | | 07/01/93 | |
| | 10F | | .0305 | | ✓ | | | | 07/01/93 | |
| | | | .0314 | | ✓ | | | | 07/01/93 | |
| | | | .0320 - .0321 | | ✓ | | | | 07/01/93 | |
| | | | .0330 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0340 | | ✓ | | | | 07/01/93 | |
| | 13C | | .0201 - .0204 | | ✓ | | | | 07/01/93 | |
| | 18A | | .0911 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1601 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1603 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1606 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1609 | | ✓ | | | | 07/01/93 | |
| | | | .1720 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1721 | ✓ | | | | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|-----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 18A | .1722 - .1723 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .1724 | ✓ | | | | | 07/01/93 | |
| | | | .1725 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .1726 | ✓ | | | | | 07/01/93 | |
| | | | .1727 | ✓ | | | ✓ | | 07/01/93 | |
| | | | .1728 | ✓ | | | | | 07/01/93 | |
| | | | .2601 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .2606 | | ✓ | | | | 07/01/93 | |
| | | | .2607 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .2618 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .2644 | | ✓ | | | | 07/01/93 | |
| | | | .2812 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .3008 | | ✓ | | ✓ | | 07/01/93 | |
| | 18C | | .0308 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .1402 | | ✓ | | | | 07/01/93 | |
| | | | .1608 | | ✓ | | | | 07/01/93 | |
| | | | .2101 - .2102 | | ✓ | | | | 07/01/93 | |
| | 19A | | .0204 | | ✓ | | | | 07/01/93 | |
| | 19G | | .0103 | | ✓ | | | | 07/01/93 | |
| | 25 | | .0213 | | ✓ | | | | 07/01/93 | |
| 16 | NCAC | 1A | .0006 | ✓ | | | ✓ | | 07/01/93 | |
| | | 6C | .0202 | | ✓ | | | | 07/01/93 | |
| | | | .0310 | | ✓ | | ✓ | | 07/01/93 | |
| 17 | NCAC | 10 | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0102 - .0103 | | | ✓ | | | 07/01/93 | |
| | | | .0201 | | ✓ | | | | 07/01/93 | |
| | | | .0203 | | | ✓ | | | 07/01/93 | |
| | | | .0401 - .0402 | | | ✓ | | | 07/01/93 | |
| | | | .0403 - .0406 | | ✓ | | | | 07/01/93 | |
| | | | .0407 - .0408 | | | ✓ | | | 07/01/93 | |
| | | | .0501 - .0502 | | | ✓ | | | 07/01/93 | |
| | | | .0504 - .0505 | | ✓ | | | | 07/01/93 | |
| | | | .0507 | | ✓ | | | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 17 | NCAC | 10 | .0509 - .0510 | | ✓ | | | | 07/01/93 | |
| | | | .0511 | | | ✓ | | | 07/01/93 | |
| | | 11 | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0103 | | | ✓ | | | 07/01/93 | |
| | | | .0211 | | | ✓ | | | 07/01/93 | |
| | | | .0214 | | ✓ | | | | 07/01/93 | |
| | | | .0215 | | | ✓ | | | 07/01/93 | |
| | | | .0216 - .0218 | | ✓ | | | | 07/01/93 | |
| 19A | NCAC | 2B | .0300 | | | | | ✓ | | |
| | | 2D | .0600 | | | | | ✓ | | |
| 21 | NCAC | 2 | .0206 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0214 | | ✓ | | | | 07/01/93 | |
| | | | .0215 | | ✓ | | ✓ | | 07/01/93 | |
| | 8G | | .0205 | | ✓ | | ✓ | | 09/01/93 | |
| | 14C | | .0202 | | ✓ | | | | 07/01/93 | |
| | 14G | | .0002 | | ✓ | | | | 07/01/93 | |
| | 14M | | .0014 - .0015 | | ✓ | | | | 07/01/93 | |
| | 14N | | .0113 | | | | | ✓ | | |
| | 26 | | .0203 | | | ✓ | | | 07/01/93 | |
| | | | .0206 | ✓ | | | ✓ | | 07/01/93 | |
| | 32A | | .0001 | | ✓ | | | | 07/01/93 | |
| | 32B | | .0101 | | ✓ | | | | 07/01/93 | |
| | | | .0209 - .0214 | | ✓ | | | | 07/01/93 | |
| | | | .0215 | ✓ | | | | | 07/01/93 | |
| | | | .0305 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0309 | | ✓ | | | | 07/01/93 | |
| | | | .0314 | | ✓ | | | | 07/01/93 | |
| | | | .0315 | | ✓ | | ✓ | | 07/01/93 | |
| | 32C | | .0002 - .0003 | | ✓ | | | | 07/01/93 | |
| | | | .0006 | | ✓ | | | | 07/01/93 | |
| | 34D | | .0101 | ✓ | | | | | 07/01/93 | |
| | | | .0202 | ✓ | | | | | 07/01/93 | |
| | 36 | | .0226 | ✓ | | | ✓ | | 07/01/93 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|-----|---------------|----|----|----|--------------|------|--------------|------------------|
| 21 | NCAC | 48D | .0005 | | ✓ | | | | 07/01/93 | |
| | | 58A | .0104 | | ✓ | | | | 07/01/93 | |
| | | | .0107 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0110 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0304 | ✓ | | | | | 07/01/93 | |
| | | | .0506 | | ✓ | | ✓ | | 07/01/93 | |
| | | 58C | .0207 | | ✓ | | | | 07/01/93 | |
| | | | .0219 | ✓ | | | | | 07/01/93 | |
| | | | .0305 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0403 | | ✓ | | | | 07/01/93 | |
| | | 58D | .0203 - .0204 | | ✓ | | ✓ | | 07/01/93 | |
| | | | .0210 | | ✓ | | | | 07/01/93 | |

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

Department of Administration's Minimum Criteria

| | | |
|---|----------------------|-----------------|
| <i>1 NCAC 39 .0101 - Purpose</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>1 NCAC 39 .0301 - Exceptions to Minimum Criteria</i> | <i>RRC Objection</i> | <i>06/17/93</i> |

N.C. Low-Level Radioactive Waste Management Authority

| | | |
|---|----------------------|-----------------|
| <i>1 NCAC 37 .0306 - Preferred Site</i> | <i>RRC Objection</i> | <i>07/15/93</i> |
|---|----------------------|-----------------|

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

| | | |
|--|----------------------|-----------------|
| <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> |
| <i>Agency Filed Rule for Codification Over RRC Objection</i> | <i>Eff.</i> | <i>04/23/93</i> |

Environmental Health

| | | |
|--|----------------------|-----------------|
| <i>15A NCAC 18A .0911 - Marinas: Docking Facilities: Other Mooring Areas</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 18A .1601 - Definitions</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 18A .1725 - Water Quality</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 18A .2618 - Cleaning of Equipment and Utensils</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |

Environmental Management

| | | |
|---|----------------------|-----------------|
| <i>15A NCAC 2D .0903 - Recordkeeping: Reporting: Monitoring</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</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> |
| <i>Agency Responded</i> | <i>Obj. Cont'd</i> | <i>05/19/93</i> |
| <i>Agency Responded</i> | <i>Obj. Cont'd</i> | <i>06/17/93</i> |

WTP Operators Certification Commission

| | | |
|--|----------------------|-----------------|
| <i>15A NCAC 8A .0102 - Creation</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Repealed Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8A .0202 - Duties and Requirements</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0102 - Applying for Examination</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0109 - Requirement for Notification of Change in Address</i> | <i>RRC Objection</i> | <i>06/17/93</i> |

| | | |
|--|----------------------|-----------------|
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0201 - Grade I Wastewater Treatment Plant Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0205 - Definitions</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0207 - Grade II Collection System Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0208 - Grade III Collection System Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0209 - Grade IV Collection System Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0210 - Subsurface System Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0211 - Land Application/Residuals Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0212 - Spray Irrigation Operator</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8B .0502 - Refunding of Fees</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>15A NCAC 8C .0002 - Rating Scale/Classification/Wastewater Trtmt Facilities</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |

HUMAN RESOURCES

Children's Services

| | | |
|--|----------------------|-----------------|
| <i>10 NCAC 41Q .0201 - Personnel</i> | <i>RRC Objection</i> | <i>04/15/93</i> |
| <i>Agency Responded</i> | <i>Obj. Cont'd</i> | <i>05/19/93</i> |
| <i>Rule Returned to Agency</i> | | <i>06/17/93</i> |
| <i>Agency Filed Rule for Codification Over RRC Objection</i> | <i>Eff.</i> | <i>07/02/93</i> |
| <i>10 NCAC 41R .0002 - Administration and Organization</i> | <i>RRC Objection</i> | <i>07/15/93</i> |

Mental Health: General

| | | |
|--|----------------------|-----------------|
| <i>10 NCAC 14K .0315 - Treatment/Habilitation Planning and Documentation</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |

LICENSING BOARDS AND COMMISSIONS

Landscape Architects

| | | |
|--|----------------------|-----------------|
| <i>21 NCAC 26 .0203 - General Obligations of Practice: Mandatory Standards</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Repealed Rule</i> | <i>Obj. Removed</i> | <i>06/17/93</i> |
| <i>21 NCAC 26 .0205 - Forms of Practice</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Rule Returned to Agency</i> | | <i>07/15/93</i> |
| <i>21 NCAC 26 .0207 - Application of Professional Seal</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Rule Returned to Agency</i> | | <i>07/15/93</i> |
| <i>21 NCAC 26 .0208 - Improper Conduct</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Rule Returned to Agency</i> | | <i>07/15/93</i> |
| <i>21 NCAC 26 .0209 - Unprofessional Conduct</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>07/15/93</i> |
| <i>21 NCAC 26 .0210 - Dishonest Practice</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>07/15/93</i> |
| <i>21 NCAC 26 .0211 - Incompetence</i> | <i>RRC Objection</i> | <i>06/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>07/15/93</i> |

21 NCAC 26 .0301 - Examination
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 07/15/93

Medical Examiners

21 NCAC 32B .0315 - Ten Year Qualification
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93

Real Estate Commission

21 NCAC 58A .0110 - Broker-in-Charge
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93

21 NCAC 58A .0506 - Salesman to be Supervised by Broker
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93

21 NCAC 58C .0305 - Course Scheduling
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93

REVENUE

Ad Valorem Tax Division

17 NCAC 10 .0506 - Certification Requirements for County Appraisers
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 07/15/93

17 NCAC 10 .0508 - Certification Requirements for Private Firm Appraisers
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 07/15/93

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.

I 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).

10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Brithaven, Inc. d/b/a Brithaven of Morganton, Petitioner v. N. C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdeese Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

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 | | | | |
| LMS Express, Inc. v. Administration, Div of Purchase & Contract | 92 DOA 0735 | Morgan | 06/04/93 | |
| Stauffer Information Systems v. Community Colleges & Administration | 92 DOA 0803 | West | 06/10/93 | 8:7 NCR 613 |
| 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 | |
| Curtis Ray Lynch v. Alcoholic Beverage Control Comm. | 92 ABC 0288 | Gray | 05/18/93 | |
| Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward | 92 ABC 0978 | Gray | 05/28/93 | |
| 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. Gloria Black McDuffie | 92 ABC 1476 | West | 05/26/93 | |
| Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock | 92 ABC 1483 | Reilly | 04/07/93 | |
| Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr. | 92 ABC 1690 | Morgan | 06/29/93 | |
| Johnnie L. Baker v. Alcoholic Beverage Control Commission | 92 ABC 1735 | Chess | 05/07/93 | |
| RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm. | 93 ABC 0002 | Morrison | 07/02/93 | |
| Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace | 93 ABC 0047 | Gray | 05/28/93 | |
| Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan | 93 ABC 0087 | Becton | 07/06/93 | 8:9 NCR 785 |
| 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 | |
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| Lester Moore v. Weatherization Assistance Program | 93 COM 0105 | Gray | 03/08/93 | |
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| George W. Paylor v. Crime Victims Compensation Comm. | 91 CPS 1286 | Morgan | 04/27/93 | |
| Steven A. Barner v. Crime Victims Compensation Comm. | 92 CPS 0453 | Nesnow | 06/01/93 | |
| 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 | |
| Isabelle Hyman v. Crime Victims Compensation Comm. | 92 CPS 1807 | Morrison | 05/24/93 | |
| James G. Pellom v. Crime Control & Public Safety | 93 CPS 0034 | Gray | 05/05/93 | |
| Norman E. Brown v. Victims Compensation Commission | 93 CPS 0141 | West | 07/07/93 | |
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| Phillip Edward Moore v. Crime Control & Public Safety | 93 CPS 0169 | Nesnow | 05/20/93 | |
| John Willie Leach v. Crime Victims Compensation Comm. | 93 CPS 0263 | Morrison | 05/20/93 | |
| Nellie R. Mangum v. Crime Victims Compensation Comm. | 93 CPS 0303 | Morrison | 06/08/93 | |
| Constance Brown v. Crime Victims Compensation Comm. | 93 CPS 0351 | Reilly | 05/24/93 | |
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| Charles L. Wilson v. Environment, Health, & Natural Resources | 91 EHR 0664 | Morgan | 03/23/93 | |
| J. Bruce Mulligan v. Environment, Health, & Natural Resources | 91 EHR 0773 | West | 07/13/93 | |
| Michael D. Barnes v. Onslow Cty Hlth & Environment and EHR | 91 EHR 0825 | Morgan | 06/21/93 | |
| William E. Finck v. Environment, Health, & Natural Resources | 92 EHR 0040 | Gray | 06/14/93 | |
| Uteley 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 | |
| Service Oil Company v. Environment, Health, & Natural Resources | 92 EHR 1205 | Reilly | 05/27/93 | |
| 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 | |
| Standard Speciality Contractors, Inc. v. EHNH | 92 EHR 1660 | Reilly | 05/21/93 | |

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| Shawqi A. Jaber v. Environment, Health, & Natural Resources | 92 EHR 1784 | Becton | 07/07/93 | |
| Angela Power, Albert Power v. Children's Special Health Svcs. | 93 EHR 0008 | Becton | 03/24/93 | |
| Erby Lamar Grainger v. Environment, Health, & Natural Resources | 93 EHR 0071 | Reilly | 06/21/93 | |
| Mustafa E. Essa v. Environment, Health, & Natural Resources | 93 EHR 0146 | Gray | 03/29/93 | |
| Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County | 93 EHR 0206 | Nesnow | 05/20/93 | |
| O.C. Stafford/Larry Haney v. Montgomery Cty. Health Dept. | 93 EHR 0224 | Gray | 06/07/93 | |
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| Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res | 93 EHR 0477 | Reilly | 06/29/93 | |

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| 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 | |
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| Jefferson D. Boylen v. Human Resources | 91 CSE 1217 | Morgan | 05/17/93 | |
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| Samuel E. Massenberg Jr. v. Human Resources | 91 CSE 1249 | Morgan | 05/17/93 | |
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| 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 | |
| Tyrone Aiken v. Human Resources | 92 CSE 1217 | Gray | 06/17/93 | |
| 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 | |
| John Henry Byrd v. Human Resources | 92 CSE 1250 | Reilly | 06/04/93 | |
| 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 | |
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| Eric Stanley Stokes v. Human Resources | 92 CSE 1316* ³ | 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 | |
| Jack Dulq v. Human Resources | 92 CSE 1374 | Gray | 07/16/93 | |
| 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 | |
| Ocie C. Williams v. Human Resources | 92 CSE 1405 | Mann | 06/25/93 | |
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| 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 | |
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| William E. Ingram v. Human Resources | 92 CSE 1450 | Reilly | 04/15/93 | |
| Harold R. Pledger v. Human Resources | 92 CSE 1455 | Morrison | 05/20/93 | |
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| 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 | |

* Consolidated cases.

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| 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 | |
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| Charles Wayne Pierce v. Human Resources | 92 CSE 1596 | Morrison | 07/14/93 | |
| Donna G. Knotts v. Human Resources | 92 CSE 1611 | Morrison | 07/16/93 | |
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| Marvin Holley v. Human Resources | 92 CSE 1713 | Mann | 06/08/93 | |
| Eddie Short v. Human Resources | 92 CSE 1714 | West | 07/15/93 | |
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| Ronald Dean Lowery v. Human Resources | 92 CSE 1771 | West | 07/15/93 | |
| James E. Blakney v. Human Resources | 92 CSE 1779 | Nesnow | 05/13/93 | |
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| 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 |
| Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb- Lohavichan Rentals | 92 DHR 1109 ^{*6} | Morgan | 06/22/93 | 8:8 NCR 687 |
| Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb- Lohavichan Rentals | 92 DHR 1110 ^{*6} | Morgan | 06/22/93 | 8:8 NCR 687 |
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| James H. Hunt Jr. v. Division of Medical Assistance | 92 DHR 1145 | Becton | 05/13/93 | 8:5 NCR 443 |

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| 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 | |
| Snoopy Day Care, Diane Hamby v. Child Day Care Licensing | 92 DHR 1320 | Morgan | 05/21/93 | |
| Cynthia Reed v. Human Resources | 92 DHR 1329 | Chess | 05/10/93 | |
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| Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc. | 92 DHR 1612 | Chess | 03/08/93 | |
| Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc. | 92 DHR 1613 | Chess | 03/08/93 | |
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| Samuel Benson v. Office of Admin. Hearings for Medicaid | 93 DHR 0010 | Becton | 03/11/93 | |
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| Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm. | 92 DOJ 0656*7 | West | 06/22/93 | |
| Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm. | 92 DOJ 0761 | Morrison | 05/10/93 | |
| Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm. | 92 DOJ 0829*7 | West | 06/22/93 | |
| George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm. | 92 DOJ 1081*9 | Morgan | 07/09/93 | |
| Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm. | 92 DOJ 1088 | Morrison | 03/16/93 | |
| Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm. | 92 DOJ 1367 | Chess | 04/01/93 | |
| Richard Zander Frink v. Criminal Justice Ed. & Traning Stds. Comm. | 92 DOJ 1465 | Nesnow | 05/28/93 | |
| Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm. | 92 DOJ 1756 | Gray | 03/23/93 | |
| Mark Thomas v. Sheriffs' Ed. & Training Standards Commission | 93 DOJ 0151 | West | 04/21/93 | |
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| N.C. Alarm Systems Licensing Bd. v. Eric Hoover | 93 DOJ 0201 | Becton | 07/12/93 | |
| N.C. Alarm Systems Licensing Bd. v. Vivian Darlene Gaither | 93 DOJ 0202 | Chess | 05/10/93 | |
| William B. Lipscomb v. Private Protective Services Board | 93 DOJ 0458 | Morrison | 06/01/93 | |
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| Greensboro Golf Center, Inc. v. Labor | 92 DOL 0204 | Nesnow | 04/15/93 | |
| Ronald Dennis Hunt v. Labor | 92 DOL 1319 | Morgan | 06/17/93 | |
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| Board of Mortuary Science v. Triangle Funeral Chapel, Inc. | 92 BMS 1169 | Reilly | 04/29/93 | 8:4 NCR 396 |
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| Frances K. Pate v. Transportation | 88 OSP 0340 | Morrison | 05/03/93 | |
| Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice | 90 OSP 1064*4 | Mann | 05/04/93 | |
| Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice | 90 OSP 1065*4 | Mann | 05/04/93 | |
| Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice | 90 OSP 1066*4 | Mann | 05/04/93 | |
| Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice | 90 OSP 1067*4 | Mann | 05/04/93 | |
| Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice | 90 OSP 1068*4 | Mann | 05/04/93 | |
| Bernie B. Kelly v. Correction | 91 OSP 0344 | Morrison | 05/27/93 | |
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| Clayton Brewer v. North Carolina State University | 91 OSP 0941 | West | 04/02/93 | 8:3 NCR 306 |
| Sherman Daye v. Transportation | 91 OSP 0951 | West | 05/07/93 | |
| Donnie M. White v. Correction | 91 OSP 1236 | Morgan | 04/05/93 | |
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| Rence E. Shepherd v. Winston-Salem State University | 91 OSP 1391 | Morgan | 04/28/93 | |
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| Gregory Samuel Parker v. Environment, Health, & Natural Resources | 92 OSP 0188*6 | Chess | 05/20/93 | |
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| James B. Price v. Transportation | 92 OSP 0375 | Gray | 04/13/93 | |

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| I. Cary Nailling v. UNC-CH | 92 OSP 0394 | Becton | 04/20/93 | |
| Deborah Barber v. Correction | 92 OSP 0396 | Chess | 03/04/93 | |
| Laverne B. Hill v. Transportation | 92 OSP 0431* | West | 03/08/93 | |
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| Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS | 92 OSP 0455 | West | 05/26/93 | 8:6 NCR 484 |
| Herman James Goldstein v. UNC-Chapel Hill et al. | 92 OSP 0634 | Morrison | 05/04/93 | |
| Glinda C. Smith v. Wildlife Resources Commission | 92 OSP 0653 | Morrison | 03/12/93 | |
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| Larry O. Nobles v. Human Resources | 92 OSP 0732 | Mann | 04/23/93 | |
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| David Scales v. Correction | 92 OSP 0989 | Chess | 06/24/93 | |
| Suzanne Ransley Hill v. Environment, Health, & Nat. Res. | 92 OSP 0992 | Reilly | 03/18/93 | 8:2 NCR 224 |
| Herman James Goldstein v. UNC-Chapel Hill et al. | 92 OSP 1047 | Morrison | 05/04/93 | |
| John B. Sauls v. Wake County Health Department | 92 OSP 1142 | Reilly | 03/08/93 | 8:1 NCR 88 |
| Gilbert Jaeger v. Wake County Alcoholism Treatment Center | 92 OSP 1204 | Reilly | 05/10/93 | |
| Joseph Henry Bishop v. Environment, Health, & Natural Res. | 92 OSP 1243 | Reilly | 03/05/93 | |
| Willie L. Hudson v. Correction | 92 OSP 1468 | Becton | 05/26/93 | |
| Brenda K. Campbell v. Employment Security Commission | 92 OSP 1505 | Morrison | 03/17/93 | |
| Christie L. Guthrie v. Environment, Health, & Natural Resources | 92 OSP 1555 | Becton | 05/31/93 | |
| James B. Price v. Transportation | 92 OSP 1657 | Mann | 03/19/93 | |
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| Betty Bradsher v. UNC-CH | 92 OSP 1733 | Becton | 03/30/93 | |
| Jamal Al Bakkat-Morris v. Glenn Sexton (DSS) | 92 OSP 1741 | Becton | 03/24/93 | |
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| Karen Canter v. Appalachian State University | 93 OSP 0079 | Reilly | 06/15/93 | |
| Barbara A. Johnson v. Human Resources | 93 OSP 0103 | Morrison | 03/17/93 | |
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| George W. Allen v. Human Resources, Correction, Agri & EHN | 93 OSP 0111 | Reilly | 04/16/93 | |
| William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed | 93 OSP 0134 | Becton | 04/20/93 | |
| Grace Jean Washington v. Caswell Center | 93 OSP 0153 | Morgan | 06/03/93 | |
| Clifton E. Simmons v. Correction | 93 OSP 0159 | Morrison | 04/21/93 | |
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| Irving S. Rodgers v. C.A. Dillon, Division of Youth Services | 93 OSP 0177 | West | 04/21/93 | |
| Michael L. Pegram v. Correction | 93 OSP 0275* | Reilly | 06/28/93 | |
| Jerry D. Doss Sr. v. Correction | 93 OSP 0287 | Gray | 05/17/93 | |
| Debbie Renee Robinson v. Correction | 93 OSP 0383 | Nesnow | 06/07/93 | |
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STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 ABC 0087

N.C. ALCOHOLIC BEVERAGE CONTROL
COMMISSION,

Petitioner,

v.

MAJDI KHALID WAHDAN,
T/A PRESTO FOOD STORE #6,
Respondent.

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on May 19, 1993, in Williamston, North Carolina.

APPEARANCES

Petitioner: Larry S. Height, Chief Agency Legal
Specialist, N.C. ABC Commission, Raleigh, North Carolina.

Respondent: Jesse Matthewson Baker, Attorney, Tarboro,
North Carolina.

ISSUES

1. Whether the Respondent violated the ABC laws by:

Permittee knowingly selling alcoholic beverages to an intoxicated person on the licensed premises on or about October 9, 1992 at 11:11 p.m., in violation of section 18B-305(a) of the North Carolina General Statutes.

2. What penalty, if any, should be imposed under section 18B-104 of the North Carolina General Statutes?

EXHIBITS

The exhibits listing was omitted from this publication. You may obtain a copy by contacting this office.

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. Majdi Khalid Wahdan owns and operates Presto Food Store #6 which is located in Edgecombe County, North Carolina.
2. The Respondent holds on premises beer and off-premises fortified and unfortified wine permits.

3. On October 11, 1992, at approximately 11:00 p.m. John J. Simmons, an ALE agent, went to Presto Food Store #6 to conduct a surveillance of its operation.
4. Presto Food Store #6 is located in shopping strip that contains several other businesses, including two barbershops and an ABC outlet.
5. Agent Simmons parked in the parking lot near the ABC outlet, approximately fifteen feet away from the entrance to the Presto Food Store. The store was well lighted both inside and outside and Simmons observed Mr. Wahdan performing several work related tasks.
6. Agent Simmons observed a small passenger car with three black male occupants situated about twenty feet from the store and five feet away from where he was parked.
7. Agent Simmons saw one of car's occupants get out and recognized him as being Vinson Pender.
8. Mr. Pender's eyes were bloodshot and his clothes were disarranged. He exited the car very slowly and had difficulty maintaining his balance as he walked toward the store.
9. Mr. Pender entered the Presto Food Store and walked to the beer cooler where he stood swaying for a few moments before he opened the cooler and selected two 40 ounce bottles of St. Ives.
10. Agent Simmons watched as Mr. Pender and Mr. Wahdan appeared to have a conversation and then money was exchanged. Mr. Wahdan placed Mr. Pender's purchase in a brown bag.
11. At the time that Mr. Pender entered the Presto Food Store, Mr. Wahdan was busy cleaning up in preparation for closing the store for the night.
12. There are several rows of shelves between the counter where Mr. Wahdan was working and the beer cooler.
13. Mr. Wahdan did not see Mr. Pender swaying back and forth in front of the beer cooler.
14. Mr. Pender is a regular customer at the Presto Food Store and Mr. Wahdan testified that Mr. Pender's eyes are always red.
15. When Mr. Pender brought his selection to the checkout counter he said "good evening" to Mr. Wahdan.
16. The checkout counter in the Presto Food Store is approximately two feet wide.
17. Mr. Wahdan watched Mr. Pender search through his wallet for the smallest denomination of money to pay for the beer which cost \$1.89 for each bottle.
18. Mr. Wahdan testified that he did not detect any odor of alcohol emanating from Mr. Pender.
19. After Mr. Pender left, Mr. Wahdan closed the store.
20. When Mr. Pender returned to the car in the parking lot, Agent Simmons asked him for some identification. At that time, Simmons observed that Mr. Pender's speech was slurred, making it difficult to understand him, and he detected the odor of alcohol.
21. When Mr. Wahdan came out of the store, Agent Simmons approached him and had him observe while he asked Mr. Pender to touch his nose with his left index finger several times; Mr. Pender touched his left cheek. Simmons repeated the request with respect to Mr. Pender's right index finger, and Mr. Pender touched his right cheek.

22. Mr. Pender refused to blow into a Alco-Sensor.
23. Agent Simmons was of the opinion that Mr. Pender was extremely intoxicated.
24. There was no testimony that Agent Simmons observed Mr. Wahdan watching Mr. Pender as he staggered and swayed about the store.
25. There is no evidence regarding how close Agent Simmons was to Mr. Pender when he was first able to detect the odor of alcohol.

CONCLUSIONS OF LAW

1. The Petitioner has the burden of proof in this contested case, and one of the elements that the Petitioner must prove is that the Respondent knowingly sold alcohol to an intoxicated person. In order to meet this burden, the Petitioner must establish by the greater weight of the evidence that Mr. Pender was intoxicated and that the Respondent knew or should have known that Mr. Pender was intoxicated. See, Hutchens v. Hankins, 63 N.C. App. 1, 303 S.E.2d 584 (1983).
2. Vinson Pender was intoxicated within the meaning of the term as it is used in Chapter 18B of the North Carolina General Statutes at and after 11:09 p.m. on October 9, 1992 when he entered the Respondent's store, Presto Food Store.
3. In order to establish that Mr. Wahdan knew or should have known that Mr. Pender was intoxicated, the Petitioner must present evidence that Mr. Wahdan observed Mr. Pender at a time when Mr. Pender's conduct or appearance was such that he was obviously intoxicated. The only evidence on this point is that Agent Simmons observed Mr. Wahdan and Mr. Pender apparently having some conversation while the beer sale was being consummated. There is no evidence that Mr. Pender was close enough to Mr. Wahdan for him to have detected an odor of alcohol. There is no evidence that Mr. Pender's speech was slurred, if and when he said anything to Mr. Wahdan while he was paying for the beer. There is no evidence that Mr. Pender was swaying back and forth while he was at the checkout counter. And finally, there is no evidence that Mr. Wahdan was looking at Mr. Pender at the times that Agent observed that Mr. Pender was having difficulty maintaining his balance.
4. The Petitioner has failed to prove by the greater weight of the evidence that the Respondent violated North Carolina General Statutes section 18B-305(a) by knowingly selling alcohol to an intoxicated person.

RECOMMENDED DECISION

The N.C. Alcoholic Beverage Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and that the Commission not take action against the permittee in this contested case.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 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 section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 6th day of July, 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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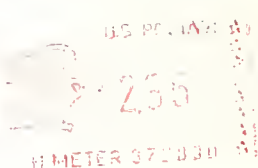
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