

# *The* **NORTH CAROLINA REGISTER**

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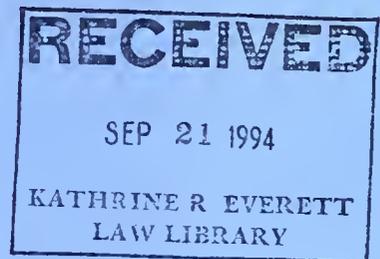
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**ISSUE DATE: September 15, 1994**

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## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### **NORTH CAROLINA REGISTER**

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

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

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

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

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

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

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

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

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

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

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

### **TEMPORARY RULES**

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

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 3 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% 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*

*(April 1994 - January 1995)*

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
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9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.*

*\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

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

**EXECUTIVE ORDER NO. 60  
NORTH CAROLINA STATE  
DEFENSE MILITIA**

This Order is effective immediately, and shall remain in effect until rescinded by further Executive Order or other law. The provisions of N.C.G.S. 147-16.2 shall not apply to this Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 22nd day of August, 1994.

WHEREAS, pursuant to Article 5, Chapter 127A of the General Statutes of North Carolina, provisions are made for the creation of the North Carolina State Defense Militia; and

WHEREAS, the militia may serve the citizens of North Carolina through volunteer efforts in time of natural disaster, catastrophe or in the protection of lives and property as directed by the Governor;

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

**Section 1. Establishment.**

Pursuant to Article 5 of Chapter 127A of the General Statutes, I hereby establish and organize the North Carolina State Defense Militia. The purpose of this Militia is to assume duties so assigned by the Governor or his designee, consistent with the laws of the United States and North Carolina.

**Section 2. Meetings.**

The North Carolina State Defense Militia is established within the Department of Crime Control and Public Safety. The Militia shall be responsible to and subject to the discretion and supervision of the Adjutant General of the North Carolina National Guard. I hereby delegate to the Secretary of Crime Control and Public Safety the authority to prescribe rules and regulations concerning the North Carolina State Defense Militia in accordance with N.C.G.S. 127A-80(c).

**Section 3. Commander.**

The Commander of the State Defense Militia shall be appointed by the Secretary of the Department of Crime Control and Public Safety to the rank of General Officer of the North Carolina State Defense Militia and shall serve at the pleasure of the Secretary. All officers and soldiers shall be appointed in accordance with the rules and regulations established under Section 2 above and shall serve at the pleasure of the Secretary of Crime Control and Public Safety.

**Section 4. Effect on other Executive Orders.**

Executive Order No. 65 of the Martin Administration is hereby rescinded.

TITLE 1 - DEPARTMENT OF  
ADMINISTRATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Employees Combined Campaign intends to amend rules cited as 1 NCAC 35 .0101, .0103, .0202 - .0203, .0302, .0305 - .0307; and adopt rule cited as 1 NCAC 35 .0205.*

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

*The public hearing will be conducted at 9:00 a.m. on October 18, 1994 at the N.C. Department of Revenue, Hearing Room - 1st Floor, 501 N. Wilmington Street, Raleigh, N.C.*

*Reason for Proposed Action: To clarify the rights and responsibilities of the Statewide Campaign Manager, Local Managers and participating organizations.*

*Comment Procedures: Written comments should be mailed to:*

*The Honorable Janice Faulkner  
Secretary  
N.C. Department of Revenue  
501 N. Wilmington Street  
Raleigh, N.C. 27604-8001*

*Written comments will be accepted until the close of the public hearing on October 18, 1994.*

CHAPTER 35 - STATE EMPLOYEES  
COMBINED CAMPAIGN

SECTION .0100 - PURPOSE AND  
ORGANIZATION

.0101 DEFINITIONS

For purposes of this Chapter, the following definitions apply:

- (1) "Charitable organization." A non-partisan organization that is tax-exempt for both the IRS and N.C. tax purposes. The organization must receive contributions that are tax deductible by the donor.
- (2) "Audit" or "audited financial statement." An examination of financial statements of an organization by a CPA, conducted in accordance with generally accepted audit-

ing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

- (3) "State Employees Combined Campaign" or "SECC." The official name of the state employees charitable fund-raising drive.
- (4) "Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising, administrative, and management services to its constituent members.
- (5) "Fund-raising expenses" (supporting activities) means expenses of all activities that constitute, or are an integral and inseparable part of, an appeal for financial support. Fund-raising expenses represent the total expenses incurred in soliciting contributions, gifts, grants, etc.; participating in federated fund-raising campaigns; maintaining donor mailing lists; preparing and distributing fund-raising manuals, instructions and other materials; and conducting other activities involved with soliciting contributions.
- (6) "Administrative expenses" (supporting activities) means expenses for reporting and informational activities related to business management and administrative activities which are neither educational, nor direct conduct of program services, nor fund-raising services.
- (7) "Program service expenses" means expenses for those activities that the reporting organization was created to conduct which fulfill the purpose or mission for which the organization exists; exclusive of fund-raising and administrative expenses, and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.
- (8) "Fund-raising consultant" means any person who meets all of the following:
  - (a) Is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, consult, or prepare material for the solicitation of contributions in this State;
  - (b) Does not solicit contributions or employ, procure, or engage any person to

- solicit contributions; and
- (c) Does not at any time have custody or control of contributions.
  - (9) "Fund-raising solicitor" means any person who, for compensation, does not qualify as a fund-raising consultant and does either of the following:
    - (a) Performs any service, including the employment or engagement of other persons or services, to solicit contributions for a charitable organization or sponsor; or
    - (b) Plans, conducts, manages, consults, whether directly or indirectly, in connection with the solicitation of contributions for a charitable organization or sponsor.

- Code.
- (e) The organization must be willing and able, if required, to provide a bond in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and donors.
  - (2) SECC Advisory Committee. This ongoing committee serves as a central application point for all charitable organizations applying to participate in the SECC. The committee recommends overall policy for the campaign to the Governor, the Statewide Campaign Chair, and necessary state agencies and recommends the criteria for participation by charitable organizations. The committee reviews the recommendations made by the Statewide Campaign Manager and accepts or rejects its recommendations. The committee may, in its discretion, require the Statewide Campaign Manager to provide a bond, as provided in Item (1)(e) of this Rule. The committee is composed of at least 10 state employee members appointed by the Statewide Campaign Chair. Members serve three-year staggered terms at the pleasure of the Statewide Campaign Chair. If a vacancy occurs, the Statewide Campaign Chair shall appoint a replacement to fill the unexpired term. Any member may be reappointed at the end of his or her term.
  - (3) Statewide Campaign Manager. The Statewide Campaign Manager shall be selected by the Statewide Campaign Chair. The duties of the Statewide Campaign Manager include, but are not limited to, the following:
    - (a) serving as the financial administrator of the SECC;
    - (b) determining if the applicant agencies meet the requirements of Rule .0202 of this Chapter;
    - (c) submitting to the Statewide Campaign Chair the name of an organization to serve as Local Campaign Manager;
    - (d) providing the necessary supervision of data processing services in order to process all payroll deduction pledge forms of state employees;
    - (e) receiving reports from the Local Campaign Manager;
    - (f) transmitting to each Local Campaign Manager its share of the state employees payroll deduction funds;

Statutory Authority G.S. 143-3.3; 143B-10.

**.0103 ORGANIZATION OF THE CAMPAIGN**

The State Employees Combined Campaign Organization is as follows:

- (1) Chair. Each year the Governor may appoint a Statewide Combined Campaign Chair from one of the Executive Cabinet, Council of State, System of Community Colleges, or University Administration agencies. The Campaign Chair or the Campaign Chair's designee shall serve as director of the campaign. The responsibilities of the Chair include setting the dates and approving the published materials for the Combined Campaign, contracting for the Statewide Campaign Manager, and appointing and serving as chair of the SECC Advisory Committee. For the purposes of selecting a Statewide Campaign Manager, the Statewide Combined Campaign Chair will consider the following criteria:
  - (a) The organization must have demonstrated ability to manage large-scale fund-raising campaigns.
  - (b) The organization must have the ability and willingness to work with a state-wide system of local organizations capable of effectively managing local combined campaigns and relating to the Statewide Campaign Manager.
  - (c) The organization must have an acceptable record of financial accountability.
  - (d) The organization must be a tax-exempt organization under the Internal Revenue

- (g) printing and distributing the pledge form, the campaign report form and collection envelopes to the Local Campaign Manager;
- (h) maintaining an accounting of all funds raised and submitting an interim unaudited end-of-campaign report of the following:
  - (i) amounts contributed and pledged;
  - (ii) number of contributions; and
  - (iii) amounts distributed to each participating agency;
- (i) Once applications for acceptance into the campaign have been recommended to the SECC Advisory Committee by the Statewide Campaign Manager, preparing a list of all accepted organizations and distributing them to all applicants.
- (4) Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted into the Combined Campaign, may appoint an area representative from either state government or the University of North Carolina system to serve as the Local Chair. This person will be responsible for forming a Local Advisory Committee for recruitment of volunteer state employees. The Local Advisory Committee is responsible for the approval of local campaign literature, the establishment of local goals as needed, and the distribution of any undesignated funds made available for distribution.
- (5) The Campaign Chair shall approve or reject the State Campaign Manager's recommendation for Local Campaign Manager and name an agency as the Local Campaign Manager. The Local Campaign Manager must identify itself on all printed materials as the local manager of the SECC rather than of any other organization.
  - (a) For the purpose of selecting a Local Campaign Manager, the Statewide Campaign Chair and Statewide Campaign Manager will consider the following criteria:
    - (i) whether the local organization is willing to conduct a local SECC;
    - (ii) whether the organization agrees to comply with the terms of the State/Local Managers contract;
    - (iii) whether the organization has a broad base of community and state employee support and volunteer involvement;
  - (iv) whether the organization has a demonstrated ability and successful history of managing fund-raising campaigns that include:
    - (A) development of campaign strategy;
    - (B) development of campaign materials;
    - (C) development of volunteer campaign structures;
    - (D) training of volunteer solicitors;
    - (E) a financial structure and resources that can efficiently manage, account for, and disburse funds;
    - (F) being a participant organization of the campaign;
    - (G) ability to develop financial relationships with a network of statewide organizations so as to ensure the orderly transmittal, disbursement, accounting of, and reporting of donations and pledges; ;
  - (v) whether the organization is willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and donors.
- (b) The Local Campaign Manager shall assist the Local Campaign Chair and Local Campaign Advisory Committee in the printing and distribution of campaign literature, the collection of pledge reports and envelopes from the state agency volunteers, the development of campaign reports, and the forwarding of one copy of each payroll deduction pledge to the Statewide Campaign Manager. In addition, an end of campaign report shall be sent to the Statewide Campaign Manager by February 1 following the close of the campaign on December 31 for inclusion in the required fiscal reports.
- (c) The Local Campaign Manager shall:
  - (i) establish an interest-bearing account with a bank in order to receive deposits of collected funds. Interest earnings shall be disbursed to each participating federation and independent agency based on its proportionate share of the campaign's

- total gross contributions; and
- (ii) distribute the funds from the contributions in accordance with designations made by state employees. Undesignated funds shall be distributed in accordance with the rules in this Chapter. Each Local Campaign Manager shall disburse contributions, at least four times a year, to participating federations and independent agencies;
- (iii) be permitted to deduct, before any disbursements are made, direct costs of operating the campaign from the gross contributions, and shall charge each federation or independent agency its proportionate share of the campaign's operational cost. The Local Campaign Manager shall justify the actual costs of the campaign, which should not exceed 10% of gross receipts; and
- (iv) notify the federations and independent agencies no later than March 1 following the close of the campaign on December 31 of the amounts designated them and their member agencies and of the amounts of the undesignated funds allocated to them.

the Chair shall give the manager an opportunity to respond to any allegations of failure to perform its responsibilities. The manager must submit its response to the Chair within 10 days from notification postmark date. The Chair shall issue a written determination based on a review of all of the information submitted.

Statutory Authority G.S. 143-3.3; 143B-10.

## SECTION .0200 - APPLICATION PROCESS AND SCHEDULE

### .0202 CONTENT OF APPLICATIONS

(a) All organizations seeking inclusion in the State Employees Combined Campaign must submit an application to the state campaign. The application must include a completed State Employees Combined Campaign Certificate of Compliance, provided by the Statewide Campaign Manager. Included in or attached to the Certificate of Compliance must be:

- (1) A letter from the board of directors requesting inclusion in the campaign.
- (2) A complete description of services provided, the service area of the organization, and ~~fund-raising/administrative~~ costs the percentage of its total support and revenue that is allocated to administration and fund-raising.
- (3) The most recent audited financial statement prepared by a CPA within the past two years. The year end of such audited financial statement must be no earlier than two years prior to the current year's campaign date. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of State's Office since March 1 of the preceding year of the current campaign.
- (4) A copy of the organization's IRS 990 form or sufficient documentation to indicate program services, administrative and fund-raising expenses.
- (5) ~~(4)~~ A board statement of assurance of non-discrimination of employment, board membership and client services.
- (6) ~~(5)~~ A description of the origin, purpose and structure of the organization.
- (7) ~~(6)~~ A list of the current members of

**Note:** A contract between the state and the Statewide Campaign Manager, and the Statewide and Local Campaign Managers, will be executed in order to develop an acceptable audit trail. The contracts will allow a reasonable charge for campaign expenses to be claimed by the Statewide Campaign Manager and the Local Manager. All terms and conditions of these contracts are subject to review and approval by the Statewide Campaign Chair.

The Statewide Campaign Manager and Local Campaign Managers shall recover from gross receipts of the campaign their expenses which should reflect the actual costs of administering the campaign. Actual costs of the campaign must be justified and should not exceed 10% of gross receipts. The campaign expenses shall be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

The failure of the Statewide Campaign Manager or the Local Campaign Manager to perform any of its respective responsibilities listed in this Section may be grounds for removal and disqualification by the Chair to serve in its capacity for one year. Before deciding on removing or disqualifying a manager,

(8) the board, including their addresses.  
 (7) A letter from the board of directors certifying compliance with the eligibility standards listed in Paragraph (b) of this Rule.

(9) (8) When a federated fund-raising organization submits an application, they may submit the credentials of the federation only, not each member agency. By the submission of such, the federations certify that all of their member agencies comply with all the SECC regulations, unless there are exceptions. If there are exceptions to the requirements, the federations must disclose such and explain to the satisfaction of the Statewide Combined Campaign Advisory Committee the reasons for the exception.

The SECC Advisory Committee may elect to review, accept or reject the certifications of the eligibility of the member agencies of the federations. If the Committee requests information supporting a certification of eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 days of the notification postmark date constitutes grounds for the denial of eligibility of that member agency.

(10) The SECC Advisory Committee may elect to decertify a federation or independent agency which makes a false certification, subject to the requirement that any federation or independent agency that the Committee proposes to decertify shall be notified by the Statewide Campaign Manager of the Committee's decision stating the grounds for decertification.

The federation or independent agency may file an appeal to the Committee within 10 days of the notification postmark date. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the appeal hearing.

(b) Organizations must meet the following criteria to be accepted as participants in the Combined Campaign:

(1) Must be licensed to solicit funds in North Carolina if a license is required by law.

(2) Must provide written proof of tax exempt status for both federal and N.C. tax purposes. Organizations must certify that contributions from state employees are tax deductible by the donor under N.C. and federal law.

(3) Must prepare and make available to the general public an audited financial statement. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of State's Office since March 1 of the preceding year of the current campaign.

(4) If fund-raising and administrative expenses are in excess of 25 percent of total revenue, must demonstrate to the satisfaction of the SECC that those expenses for this purpose are reasonable under all the circumstances of the case. The SECC may reject any application from an agency with fund-raising and administrative expenses in excess of 25 percent of total revenue, unless the agency demonstrates to the satisfaction of the Committee that its actual expenses for those purposes are reasonable under all the circumstances in its case.

(5) Must certify that all publicity and promotional activities are truthful and non-deceptive and that all material provided to the SECC is truthful, and non-deceptive, includes all material facts, and makes no exaggerated or misleading claims.

(6) Must agree to maintain the confidentiality of the contributor list.

(7) Must permit no payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising, and permit no paid solicitations of the public by a fund-raising consultant or solicitor.

(8) Must have a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin or physical or mental disability for clients of the agency, employees of the agency and members of the governing board.

(9) Must provide benefits or services within the local community, meaning that employees in the solicitation area or

their families should be able to receive benefits or services from the agency within a reasonable distance. Examples of services include:

- (A) research and education in the health and welfare or education fields;
- (B) family and child care services;
- (C) protective services for children and adults;
- (D) services for children and adults in foster care;
- (E) services related to the management and maintenance of the home;
- (F) day care services for adults and children;
- (G) transportation services, information referral and counseling services;
- (H) the preparation and delivery of meals;
- (I) adoption services;
- (J) emergency shelter care and relief services;
- (K) safety services;
- (L) neighborhood and community organization services;
- (M) recreation services;
- (N) social adjustment and rehabilitation services;
- (O) health support services; or
- (P) a combination of services designed to meet the needs of special groups such as the elderly or disabled.

However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet other eligibility criteria, may be accepted for participation in the campaign.

*Statutory Authority G.S. 143-3.3; 143B-10.*

### .0203 REVIEW AND SCHEDULE

Complete applications must be submitted to the Statewide Combined Campaign Advisory Committee Campaign Manager by February 15 annually to be included in the fall campaign. Incomplete applications may not be considered by the Committee. ~~The Chair will forward all application materials to the Statewide Campaign Manager within three working days after the closing deadline.~~ The Statewide Campaign Manager will report to the Committee its recommendation on each application within three weeks of the closing deadline. The Committee shall affirm or reject each recommendation by the Statewide Campaign Manager and ~~will~~ shall inform the Statewide Campaign Manager of its decisions.

The Statewide Campaign Manager and the Committee shall review the application materials for accuracy, completeness and compliance with these regulations. The Committee may reject an application for failing to meet any of the criteria outlined in Rule .0202 of this Section or for violating the rules of the SECC. Failure to supply any of the information required by the application may be judged a failure to comply with the requirements of public accountability, and the applicant may be ruled ineligible for inclusion.

The Statewide Campaign Manager or the Committee may request such additional information as they deem necessary to complete these reviews. An organization that fails to comply with such requests within 10 days of the notification postmark date may be judged ineligible.

*Statutory Authority G.S. 143-3.3; 143B-10.*

### .0205 AGREEMENTS

(a) Following acceptance into the SECC, federations and independent agencies shall execute a contract with the State. The parties shall agree to abide by the terms and conditions of the regulations. The contract shall be signed by the State Chair, the Statewide Campaign Manager, the organization's board chair and the organization's chief executive officer.

(b) Each federation shall accept responsibility for the accuracy of the distribution amount to their member agencies. Each federation must be able to justify amounts deducted from their disbursements to participating agencies. These deductions should not exceed 10% of gross receipts. Each federation must be willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and donors.

*Statutory Authority G.S. 143-3.3; 143B-10.*

## SECTION .0300 - GENERAL PROVISIONS

### .0302 COERCIVE ACTIVITIES PROHIBITED

(a) In order to insure that donations are made on a voluntary basis, actions that do not allow free choice or that create an impression of required giving are prohibited. Peer solicitation is encouraged. Employee gifts shall be kept confidential, except that employees may opt to have their designated contributions acknowledged by the recipient organizations.

- (b) The following activities are not permitted:
- (1) The providing and using of contributor lists for purposes other than the routine collection, forwarding, and acknowledgement of contributions. Recipient organizations that receive the names and addresses of state employees must segregate this information from all other lists of contributors and only use the lists for acknowledgement purposes. This segregated list may not be sold or in any way released to anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to expulsion from the campaign.
  - (2) The establishment of personal dollar goals or quotas.
  - (3) The developing and using of lists of non-contributors.

(c) Violations of these Rules by a participant organization may result in the decertification of the organization. The organization shall be given notice of an opportunity to be heard prior to any action being taken by the Committee. Any organization who is dissatisfied with the determination of its decertification may file an appeal to the Committee within 10 days of the notification postmark date. An organization who is dissatisfied with either the Committee's decision or the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

Statutory Authority G.S. 143-3.3; 143B-10.

#### .0305 CAMPAIGN LITERATURE

Each charitable organization accepted as a part of the campaign:

- (1) ~~must~~ Shall provide adequate information about its services including administrative/fund-raising costs, to the Local Campaign Manager for use in the local campaign; and
- (2) Shall not be listed more than one time in the campaign literature.

Statutory Authority G.S. 143-3.3; 143B-10.

#### .0306 DESIGNATION CAMPAIGN

(a) Each employee shall be given the opportunity to designate which agency or group of agencies shall benefit from his or her contribution to the State Employees Combined Campaign. Each

employee will be given a list of the approved agencies in the campaign in order to help them make the decision. The state employee may only designate the federations and agencies that are listed. Write-ins are prohibited.

(b) Designations made to organizations not listed are not invalid, but will be treated as undesignated funds and distributed accordingly.

(c) Contributions designated to a federation will be shared in accordance with the federation's policy.

Statutory Authority G.S. 143-3.3; 143B-10.

#### .0307 DISTRIBUTION OF UNDESIGNATED FUNDS

Any monies not designated to a particular recipient shall be deemed as undesignated funds. ~~Undesignated funds shall be allocated by the SECC to the local SECC committees. The local SECC shall distribute these funds within their communities.~~ The local SECC shall communicate in campaign literature how the undesignated funds will be allocated in their local campaigns and shall distribute these funds to approved agencies and federations.

Statutory Authority G.S. 143-3.3; 143B-10.

### TITLE 4 - DEPARTMENT OF COMMERCE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to adopt rules cited as 4 NCAC 3K .0101, .0201-.0206, .0301-.0302, .0401-.0405, .0501-.0502, .0601, .0701-.0703.*

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

*The public hearing will be conducted at 9:00 a.m. on October 13, 1994 at the Dobbs Building, 430 North Salisbury Street, Room #6227, Raleigh, North Carolina.*

#### *Reason for Proposed Action:*

*4 NCAC 3K .0101 - Provides definitions for terminology used in the reverse mortgage rules.*

*4 NCAC 3K .0201 - Provides persons interested in making reverse mortgage loans more specific guidance on the application process to become an*

authorized reverse mortgage lender.

4 NCAC 3K .0202 - Provides the notification process for those persons not required to obtain authorization as a reverse mortgage lender.

4 NCAC 3K .0203 - Provides the process by which the applicant will notify the Commission of any material changes to his or her application to be a reverse mortgage lender.

4 NCAC 3K .0204 - Responds to the requirement that the Commission set by rule fees for annual registration.

4 NCAC 3K .0205 - Provides for the issuance of a certificate of authorization upon the approval by the Commissioner to be a reverse mortgage lender.

4 NCAC 3K .0206 - Details the effects of a change in organization in entities authorization to be a reverse mortgage lender.

4 NCAC 3K .0301 - Provides for a minimum net worth requirement in order to insure that the authorized lenders are adequately capitalized.

4 NCAC 3K .0302 - Provides that authorized lenders post a surety bond in order to protect potential borrowers.

4 NCAC 3K .0401 - .0405 - Responds to the requirement that the Commission adopt rules in order to protect the public interest and insure that statutory requirements are being met.

4 NCAC 3K .0501 - Consistent with federal regulation, this rule requires that authorized lenders disclose to borrowers all terms and conditions of reverse mortgage loans.

4 NCAC 3K .0502 - Clarifies the types of fees that a reverse mortgage lender can charge to a potential borrower as an application fee.

4 NCAC 3K .0601 - Provides that a potential borrower receive counseling on reverse mortgage lending prior to receiving a loan.

4 NCAC 3K .0701 - .0703 - Responds to the requirement that the Commission adopt rules in order to implement and enforce the Reverse Mortgage Act and protect the public interest.

**Comment Procedures:** Comments must be submitted in writing not later than Monday, October 17, 1994. Written comments should be directed to:

Garistine M. Davis, Counsel  
North Carolina Banking Commission  
P.O. Box 29512  
Raleigh, NC 27626-0512

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3K - REVERSE MORTGAGES

SECTION .0100 - ADMINISTRATIVE

.0101 DEFINITIONS; FILINGS

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

- (1) Terms defined in G.S. 53-257 shall have the same meaning as set forth therein;
- (2) "Accounting period" shall mean either a period of 12 months (or less in the first year of operation) ending December 31 or a fiscal year of not more than 12 months (or less in the first year of operation) ending on the last day of any month except December;
- (3) "Application fee" shall mean any fee accepted by an authorized lender or lender in connection with an application for a reverse mortgage loan including any charge for soliciting, processing, placing or negotiating a reverse mortgage loan. The term does not include a third-party fee as such term is defined in Paragraph (a) of this Rule;
- (4) "Certified Financial Statements" shall mean the Statement of Financial Position, Income Statement, Statement of Cash Flows, and Statement of Retained Earnings which have been attested by a certified public accountant.
- (5) "Person" shall mean an individual, corporation, partnership, trust, association, other entity;
- (6) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, et seq.;
- (7) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et seq.;
- (8) "Third-Party fee" shall mean the fees or charges paid by the borrower for a mortgage loan to the lender for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fee, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges;
- (9) "Truth In Lending Act" shall mean

Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, et seq..

(b) Any application for authorization to make reverse mortgage loans, or any report, annual statement, amendment to application, notice or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

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

*Statutory Authority G.S. 53-257; 53-259; 53-271(a).*

**SECTION .0200 - AUTHORIZATION OF REVERSE MORTGAGE LENDERS**

**.0201 APPLICATION FOR AUTHORIZATION AS A REVERSE MORTGAGE LENDER**

(a) No person shall make reverse mortgage loans pursuant to the Reverse Mortgage Act without first obtaining authorization from the Commissioner. An application for authorization to make reverse mortgage loans shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.

(b) The following fees shall be submitted with the application for authorization to make reverse mortgage loans:

- (1) A non-refundable application fee made payable to the Commissioner in the amount set forth in G.S. 53-258(b);
- (2) An annual fee made payable to the Commissioner as set forth in G.S. 53-258(d).

(c) The application shall be in writing and verified by the oath of the applicant.

(d) The Commissioner may require information as deemed necessary to make the determination required by G.S. 53-258(d).

(e) In the event of denial of an application, the Commissioner shall refund in full any annual fee paid pursuant to G.S. 53-258(d).

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

*Statutory Authority G.S. 53-258; 53-259; 53-264; 53-271(a).*

**.0202 NOTIFICATION OF INTENT TO ENGAGE IN REVERSE MORTGAGE LENDING**

Any person not required to obtain authorization as a reverse mortgage lender pursuant to G.S. 53-258(c) must notify the Commissioner of its intent to engage in reverse mortgage lending. Notification shall be made on a form obtained from the Commissioner and shall be filed pursuant to Rule .0101 of this Subchapter.

*Statutory Authority G.S. 53-258(a)(c); 53-259; 53-271(a).*

**.0203 CURRENT AUTHORIZED LENDER INFORMATION**

(a) An authorized lender shall notify the Commissioner within 30 days of the effective date of any material changes to the information on file with the Commissioner.

(b) Notification to the Commissioner of all material changes shall be made on the authorized lender's letterhead and filed pursuant to Rule .0101(b) of this Subchapter.

(c) For the purposes of this Rule, the term "material" shall mean any information which would be likely to influence the granting of authorization to engage in reverse mortgage lending. The term "material" shall also include but not be limited to information concerning changes in the address of the authorized lenders, directors, corporate officers, partners, or the business structure. It shall also include changes in the address of the authorized lender's main or branch offices and any names under which the applicant operates.

*Statutory Authority G.S. 53-258(d); 53-259; 53-271(a).*

**.0204 ANNUAL REGISTRATION FEE**

(a) On or before December 31 of each year, each authorized lender shall pay the annual fee set forth in G.S. 53-258(d).

(b) Failure of an authorized lender to pay the annual fee as of the date specified in Paragraph (a) of this Rule shall be grounds for revocation of its authorization pursuant to G.S. 53-271(a).

*Statutory Authority G.S. 53-258(d); 53-259; 53-271(a).*

**.0205 CERTIFICATE OF AUTHORIZATION**

(a) Upon receipt of a completed application and compliance with Sections .0200 and .0300 of this Subchapter, and payment of the fees, the Commis-

sioner shall investigate the applicant pursuant to G.S. 53-258. If the Commissioner finds the applicant has met the provisions of G.S. 53-258, the Commissioner shall authorize the applicant as a reverse mortgage lender.

(b) An authorized lender shall post its Certificate of Authorization in plain view of its customers at its principal office, each of its branch offices in this State and any branch offices outside of this State at which reverse mortgage loans are to be originated or made on residential real property located in North Carolina.

(c) An authorized lender shall notify the Commissioner of a change in the name under which it operates or the address of its principal office and any branch office as set forth in Paragraph (a) of this Rule. Notification shall be made at least 30 days prior to the effective date of such change, and shall consist of:

- (1) the new name or address; and
- (2) a reissuance fee of twenty-five dollars (\$25.00) per certificate issued payable to the Commissioner.

(d) Upon receipt of a Certificate of Authorization which contains the new address, an authorized lender shall surrender its former Certificate of Authorization to the Commissioner.

(e) Failure to surrender the former Certificate of Authorization may result in suspension of authorization as a reverse mortgage lender pursuant to Rule .0702 of this Subchapter.

Statutory Authority G.S. 53-257(6), 53-258; 53-259; 53-271(a).

**.0206 NONTRANSFERABILITY OF CERTIFICATE OF AUTHORIZATION**

(a) A Certificate of Authorization shall be neither transferrable nor assignable.

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

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

lender's general partners;

(B) The conversion of the general partnership into a limited partnership, corporation or sole proprietorship;

(C) The conversion of the limited partnership into a general partnership, corporation or sole proprietorship.

(3) If the authorized lender is a sole proprietor:

(A) The conversion of the sole proprietorship into a general or limited partnership or corporation;

(B) The sale of all of the assets of the authorized lender's business to another person.

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

(d) Temporary authorization may be granted at the discretion of the Commissioner for a transferee or assignee to make reverse mortgage loans, while waiting for authorization pursuant to Rule .0201 of this Section.

Statutory Authority G.S. 53-258(d); 53-259; 53-271(a).

**SECTION .0300 - REQUIREMENTS FOR AUTHORIZATION**

**.0301 MINIMUM NET WORTH REQUIREMENT FOR AUTHORIZED LENDER OR LENDERS**

(a) All authorized lenders shall have, at all times, a net worth of at least five hundred thousand dollars (\$500,000).

(b) For any year in which a lender seeks to rely on the capital of its parent to satisfy the requirements of Paragraph (a) of this Rule, it shall provide to the Commissioner:

- (1) Certified financial statements of the parent showing a net worth of at least one million dollars (\$1,000,000) as of the close of its most recent fiscal year; and
- (2) A binding written commitment from the parent to the lender to make a minimum

of one million dollars (\$1,000,000) available to the lender as a capital contribution in connection with its reverse mortgage lending program.

*Statutory Authority G.S. 53-258(b); 53-259; 53-271(a).*

**.0302 SURETY BONDS**

(a) All authorized lenders shall post a surety bond in the amount of one hundred thousand dollars (\$100,000) with the Commissioner which shall run to the benefit of the Commissioner. The bond shall be executed by an insurance company authorized to do business in North Carolina and not affiliated with the lender. The bond shall be conditioned upon the authorized lender's compliance with the provisions of G.S. 53-255 et. seq. and all rules adopted thereunder.

(b) All authorized lenders which are approved by the Commissioner on or after the effective date of this rule shall meet the requirements of this Rule upon approval. Authorized lenders which were approved by the Commissioner before the effective date of this Rule shall have until March 31, 1995 to comply with this Rule.

*Statutory Authority G.S. 53-258(b); 53-259; 53-271(a).*

**SECTION .0400 - OPERATIONS, NOTIFICATIONS, AND REPORTING**

**.0401 CERTIFIED FINANCIAL STATEMENTS**

(a) No later than 90 days after the end of the authorized lender's accounting period, certified financial statements shall be filed with the Commissioner, and shall be filed pursuant to Rule .0101 of this Subchapter.

(b) Failure of an authorized lender to submit certified financial statements in the manner required by this Rule shall be grounds for revocation of its authorization pursuant to G.S. 53-271(a).

*Statutory Authority G.S. 53-259; 53-271(a).*

**.0402 RECORD AND BOOKKEEPING REQUIREMENTS**

(a) All lenders shall maintain their books and records relating to the making of reverse mortgage loans for a period of three years after payment of the debt in a manner permitting inspection by the Commissioner.

(b) All financial records required by Paragraph

(a) of this Rule shall be prepared in accordance with generally accepted accounting principles.

(c) An authorized lender shall notify the Commissioner of any change in the location of its books and records.

(d) In the case of an out-of-state lender, the lender shall designate the Commissioner as agent for service of process in connection with any reverse mortgage loan transaction.

*Statutory Authority G.S. 53-259; 53-270; 53-271.*

**.0403 EXAMINATIONS**

The Commissioner may make such examination of the books, records and affairs of authorized lenders under this act at such times as he may deem necessary or desirable.

*Statutory Authority G.S. 53-259; 53-270; 53-271.*

**.0404 WITHDRAWAL/ TERMINATION OF AUTHORIZATION AS REVERSE MORTGAGE LENDER**

(a) An authorized lender shall notify the Commissioner in writing of its decision to cease operations as a reverse mortgage lender in this State within 30 days of such decision.

(b) An authorized lender shall surrender its Certificate of Authorization to the Commissioner no later than 30 days after it has ceased operations in this State or upon revocation, temporarily or permanently, of the reverse mortgage lender's authorization.

(c) Failure to comply may result in a fine to the principal officers, partners, directors, controlling persons, pursuant to G.S. 53-271.

*Statutory Authority G.S. 53-259; 53-271(a).*

**.0405 IMPAIRMENT OF MINIMUM NET WORTH, AND SURETY BOND**

(a) An applicant shall notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth requirements of Rule .0301 of this Subchapter.

(b) An applicant shall immediately notify the Commissioner in writing of any cancellation or suspension of the surety bond required by Rule .0302 of this Subchapter.

(c) For the purposes of this Rule, immediately means within three business days of discovery of the failure to meet the minimum net worth, and bonding requirements of Section .0300 of this Subchapter.

(d) If an applicant fails to meet the minimum net

worth, and surety bond requirements, the Commissioner may revoke or suspend authorization of an authorized lender or lender to engage in reverse mortgages.

Statutory Authority G.S. 53-258(b); 53-259; 53-271(a).

**SECTION .0500 - DISCLOSURE REQUIREMENTS**

**.0501 REVERSE MORTGAGE LENDER APPLICATION DISCLOSURE**

(a) Authorized lenders shall disclose to the borrower all terms and conditions of the reverse mortgage loan in accordance with the Truth In Lending Act, RESPA, and Regulation Z, and any other applicable federal or state laws and regulations.

(b) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into one or more forms required by State or Federal law, rules or regulations, or such items may be contained on a separate form.

Statutory Authority G.S. 53-259; 53-260; 53-261; 53-262; 53-264; 53-265(a); 53-267; 53-270; 53-271(a).

**.0502 PERMITTED FEES**

Prior to the closing of a reverse mortgage loan, the only charge a lender may collect from a borrower is an application fee which must be designated as such and which may not be a percentage of the principal amount of the loan or amount financed. The fee shall be reasonable and related to the services to be performed.

Statutory Authority G.S. 53-259; 53-270; 53-271(a).

**SECTION - .0600 COUNSELING**

**.0601 COUNSELING**

(a) An authorized lender shall provide to the prospective borrower at the time of the initial contact a list of names and addresses of counselors who are approved by the North Carolina Housing Finance Agency as responsible and able to provide information concerning reverse mortgages.

(b) The counselor shall provide the authorized lender or lender and borrower with a certificate stating that the borrower has received counseling.

Statutory Authority G.S. 53-259; 53-264; 53-

271(a).

**SECTION .0700 - PROHIBITED ACTS AND PRACTICES; ENFORCEMENT ACTIONS**

**.0701 PROHIBITED ACTS**

(a) For the purposes of G.S. §53-270, the term "material facts" shall mean any term, fact, factor or condition which is likely to influence, persuade or induce a borrower for a reverse mortgage loan to take a particular action.

(b) All lenders shall be prohibited from using or attaching any property or asset of the borrower, except the real property securing the reverse mortgage loan, in satisfaction of the reverse mortgage obligation.

Statutory Authority G.S. 53-259; 53-270; 53-271(a).

**.0702 ENFORCEMENT ACTIONS**

The grounds upon which the Commissioner may either revoke or suspend authorization of a lender to engage in reverse mortgage loans shall include, but not be limited to the following:

- (1) The making of any false statement in an application for authorization, if the false statement would have been grounds for denial of the application; or
- (2) The making of any false statement on any form or document requested by the Commissioner; or
- (3) One or more violations of the Reverse Mortgage Act or provisions of this Subchapter; or
- (4) The conviction of any crime which would have a bearing upon the fitness or ability of the authorized lender to conduct its business; or
- (5) The commission of any action which involves dishonesty, fraud, or misrepresentation. This Subparagraph shall not be construed to apply to bona fide errors.
- (6) The failure to pay the annual fee pursuant to Rule .0204 of this Subchapter.

Statutory Authority G.S. 53-259; 53-270; 53-271(a).

**.0703 HEARINGS**

All hearings conducted pursuant to this Subchapter or the Reverse Mortgage Act shall proceed in accordance with G.S. 150B and 4 NCAC 3B .0200, et seq.. The Commissioner may subpoena

witnesses at all such hearings.

Statutory Authority G.S. 53-259; 53-270; 53-271.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to repeal rule cited as 10 NCAC 3R .0320 and amend 3R .2002.

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

The public hearing will be conducted at 10:30 a.m. on October 17, 1994 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, NC.

Reason for Proposed Action: The State Medical Facilities Plan no longer projects need for home health services based on groupings of contiguous counties. Various opposition exists to 10 NCAC 3R .2002 and there is no consensus on how to revise the rule to assure all home health providers have equal opportunities for expansion of existing home health services.

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530 no later than October 17, 1994. Oral comments may be made at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0300 - APPLICATION AND REVIEW PROCESS

.0320 HOME HEALTH AGENCIES

(a) For those home health agencies for which no certificate of need was issued, the home health agency's geographic service area shall be only those counties in which patients were served as shown on the existing home health agency's licensure renewal form on file with the Licensure Section of the Division of Facility Services as of January 1, 1991.

(b) For those home health agencies for which a certificate of need was issued, the home health agency's geographic service area shall be as follows:

- (1) Where the service area is identified on the certificate of need issued to the home health agency, the agency's geographic service area shall be the service area identified on the certificate of need.
(2) Where the service area is not identified on the certificate of need issued to the home health agency, the agency's geographic service area shall be the proposed geographic service area which was identified in the application for a certificate of need and approved by the Certificate of Need Section.

Statutory Authority G. S. 131E-177(1); 131E-181; 131E-185.

SECTION .2000 - CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

.2002 DEFINITIONS

The following definitions in this Rule will apply to all rules in this Section:

- (1) "Home Health Agency" means an agency as defined in G.S. 131E-176 (12).
(2) "Home Health Services" means services as defined in G.S. 131E-176 (12).
(3) " Proposed Geographic Service Area" means:
(a) Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a single county, the single county in which the home health agency will be established; or to meet the need projected for a single county in the applicable State Medical Facilities Plan.
(b) Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a grouping of contiguous counties, those contiguous counties defined in the State Medical Facilities Plan in effect at the beginning of the review period for the application and in which the proponent will provide home health services.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

Statutory Authority G.S. 58-2-40; 150B-21.

TITLE 11 - DEPARTMENT OF INSURANCE

SECTION .0400 - ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 1 .0201, .0403; repeal 11 NCAC 1 .0431; 11 NCAC 2 .0101 and 11 NCAC 11E .0303.

.0403 REQUEST FOR HEARING

(a) A request for an administrative hearing under 11 NCAC 1 .0401 must be in writing and must contain the following information:

- (1) name and address of the person requesting the hearing,
(2) a concise statement of the departmental action being challenged,
(3) a concise statement of the manner in which the petitioner is aggrieved, and
(4) a clear and specific demand for a public hearing.

(b) The request for hearing shall be filed with: Commissioner of Insurance, ATTENTION: Deputy Commissioner, Hearings Division, Office, N.C. Department of Insurance, Post Office Box 26387, Raleigh, North Carolina 27611.

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

The public hearing will be conducted at 10:00 a.m. on October 7, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Statutory Authority G.S. 58-2-40; 150B-38.

Reason for Proposed Action:

11 NCAC 1 .0201 & .0403 - Technical changes.
11 NCAC 1 .0431 & 11E .0303 - Needed to comply with changes made during the 1994 Session of the General Assembly.
11 NCAC 2 .0101 - Rule is outdated.

.0431 RATEMAKING PROCEDURES FOR RATE BUREAU FILINGS

Hearing procedures for rate filings made by the North Carolina Rate Bureau shall be governed by the provisions of Article 36 of G.S. 58 and G.S. 150B-39 through 150B-41.

Comment Procedures: Written comments may be sent to Ellen Sprenkel at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ellen Sprenkel at (919) 733-4529.

Statutory Authority G.S. 58-2-40(1); 58-36-1; 58-36-10; 58-36-15; 58-36-20; 58-36-70; 150B-38.

CHAPTER 1 - DEPARTMENTAL RULES

CHAPTER 2 - SUPPORT SERVICES DIVISION

SECTION .0200 - DEPARTMENTAL RULES

SECTION .0100 - GENERAL PROVISIONS

.0201 LOCATION OF AND INSPECTION OF DEPARTMENTAL RULES

.0101 PURPOSE OF DIVISION

(a) Location of Departmental Rules. All rules for the Department and all codes, standards and rules adopted by reference are located in the Hearings Division Office of the Department of Insurance.

The support services division of the North Carolina Department of Insurance is established to provide an accurate accounting of all departmental expenditures under the provisions of the Executive Budget Act. In addition, the support services division is responsible for all departmental personnel, in compliance with the rules and regulations of the State Personnel Board, and provides other miscellaneous services for the department, including, but not limited to, auditing and accounting for the State Fireman's Relief Fund, and licensing and accounting for lightning rod salespersons and companies in the state.

(b) Inspection of Rules. Any person desiring to inspect the rules of the Department shall so notify the Deputy Commissioner of the North Carolina Department of Insurance in charge of the Hearings Division Office.

Statutory Authority G.S. 58-9; 143-1 to 143-34.4; 128-1 to 128-4; 105-59.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11E - TAX AND STATISTICAL

SECTION .0300 - LIFE: GENERAL NATURE

.0303 PREMIUM TAXES ON ANNUITIES

Every life insurer, in computing its premium taxes on gross premiums, after giving due consideration to the exemptions as specified in G.S. 105-228.5, may pay premium taxes on premiums for the purchase of annuities at such time as the contract holder elects to commence annuity benefits.

Statutory Authority G.S. 105-228.5.

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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 10 .0313.

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

The public hearing will be conducted at 10:00 a.m. on October 7, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: To comply with changes made during the 1994 Session of the General Assembly.

Comment Procedures: Written comments may be sent to Charles Swindell at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Charles Swindell at (919) 733-3368, or Ellen Sprenkel at (919) 733-4529.

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0300 - RULES AND INTERPRETATIONS

.0313 ENDORSEMENTS TO BUREAU RESIDENTIAL PROGRAMS

(a) For the purposes of G.S. 58-41-10(a), a "residential risk" is a risk covered under any of the following North Carolina Rate Bureau residential programs: Homeowners Program, Dwelling Fire and Extended Coverage Program, Mobile Home Owner (C) Program, and Mobile-Homeowners (F) Program.

(b) When an insurance company, joint underwriting association, advisory organization, or rating organization files an endorsement to attach to a North Carolina Rate Bureau residential program, which endorsement provides coverage that is not subject to the jurisdiction of the Bureau and is exempt from Article 41 of Chapter 58 of the General Statutes by virtue of G.S. 58-41-10(a), the filing entity shall:

- (1) provide a copy of the filing to the North Carolina Rate Bureau;
(2) utilize a statistical code for reporting premiums and losses and advise on what line on page 14 of the annual statement this data will be reported;
(3) complete a forms questionnaire; and
(4) submit the rates separately without a rate questionnaire.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-40-30.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 11F .0301 - .0308.

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

The public hearing will be conducted at 10:00 a.m. on October 7, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: To acquire state accreditation and assure that a company's assets match their liabilities.

*Comment Procedures: Written comments may be sent to Walter James at 430 N. Salisbury St., Raleigh, N. C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284 or Ellen Sprenkel at (919) 733-4529.*

CHAPTER 11 - FINANCIAL EVALUATION  
DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0300 - ACTUARIAL OPINION  
AND MEMORANDUM

.0301 APPLICABILITY AND SCOPE

(a) This Section applies to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities, or accident and health insurance business in this State. All cross references to rule numbers are to rules within this Section.

(b) This Section applies to all annual statements filed with the Commissioner after December 31, 1994. Except for companies that are exempt under Rule .0304 of this Section, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule .0306 of this Section and a supporting memorandum in accordance with Rule .0307 of this Section are required each year. Any company so exempted must file an opinion under Rule .0305 of this Section.

(c) The Commissioner may require any company otherwise exempt under this Section to submit an opinion and to prepare a supporting memorandum in accordance with Rules .0306 and .0307 of this Section if an asset adequacy analysis for the company is necessary because of the financial condition of the company.

*Statutory Authority G.S.58-2-40; 58-24-120; 58-58-50(i); 58-58-50(j).*

.0302 DEFINITIONS

(a) "Annual statement" means that statement required to be filed each year under G.S. 58-2-165.

(b) "Appointed actuary" means any individual who is appointed or retained in accordance with Rule .0303(c) of this Section to provide the actuarial opinion and supporting memorandum as

required by G.S. 58-58-50(i) and this Section.

(c) "Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in Rule .0303(d) of this Section; and includes cash flow testing, sensitivity testing, or applications of risk theory.

(d) "Board" means the Actuarial Standards Board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice; and its successors.

(e) "Company" means a life insurance company, fraternal benefit society, or reinsurer subject to this Section.

(f) "Non-investment grade bonds" are those designated as medium to lower quality by the NAIC Securities Valuation Office.

(g) "Opinion" means:

(1) For Rules .0306, .0307, or .0308 of this Section, the statement of actuarial opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Rule .0306 of this Section and with presently accepted actuarial standards;

(2) For Rule .0305 of this Section, the statement of actuarial opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with Rule .0305 of this Section and with those presently accepted actuarial standards that specifically relate to this opinion.

(h) "Qualified actuary" means any individual who meets the requirements set forth in Rule .0303(b) of this Section.

*Statutory Authority G.S.58-2-40; 58-24-120; 58-58-50(i); 58-58-50(j).*

.0303 GENERAL REQUIREMENTS

(a) Submission of Opinion:

(1) There shall be included on or attached to page 1 of the annual statement for each year beginning with calendar year 1994, the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Rule .0306 of this Section; provided, however, that any company exempted under Rule .0304 of this Section from submitting an opinion in accordance with Rule

.0306 of this Section shall include on or attach to page 1 of the annual statement an opinion rendered by an appointed actuary in accordance with Rule .0305 of this Section.

- (2) If in the previous year a company provided an opinion in accordance with Rule .0305 of this Section, and in the current year fails the exemption criteria of Rules .0304(c)(1), .0304(c)(2), or .0305(c)(5) of this Section to again provide an opinion in accordance with Rule .0305 of this Section, the opinion in accordance with Rule .0306 of this Section shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide an opinion in accordance with Rule .0305 of this Section with appropriate qualification noting the intent to subsequently provide an opinion in accordance with Rule .0306 of this Section.

- (3) Upon written request by the company, the Commissioner may grant a 45-day extension of the date for submission of the opinion.

- (b) A "qualified actuary" is an individual who:
- (1) Is a member in good standing of the American Academy of Actuaries;
  - (2) Is qualified to sign opinions for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such opinions;
  - (3) Is familiar with the valuation requirements applicable to life and health insurance companies;
  - (4) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), to have:
    - (A) Violated any provision of, or any obligation imposed by, any law or rule in the course of his or her dealings as a qualified actuary;
    - (B) Been found by a court of competent jurisdiction to be guilty of a fraudulent or dishonest practice;
    - (C) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;
    - (D) Submitted to the Commissioner during

the past five years, under this Section, an opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this Section, including standards set by the Board; or

- (E) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on an examination or as a result of failure to adhere to generally acceptable actuarial standards; and

- (5) Has not failed to notify the Commissioner of any action taken by any insurance regulator of any other state similar to that under Subparagraph (b)(4) of this Rule.

(c) An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the opinion required by this Section; either directly by or by the authority of the board of directors through an executive officer of the company. The company shall, within 45 days after the date of the appointment, give the Commissioner written notice of the name, title (and, in the case of a consulting actuary, the name of the firm), and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements of Paragraph (b) of this Rule. Once notice is furnished, no further notice is required for the actuary, provided that the company gives the Commissioner written notice if the actuary ceases to be appointed or retained as an appointed actuary or no longer meets the requirements of Paragraph (b) of this Rule. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(d) The asset adequacy analysis required by this Section:

- (1) Shall conform to the standards of practice as promulgated from time to time by the Board and on any additional standards under this Section, which standards are to form the basis of the opinion in accordance with Rule .0306 of this Section; and
- (2) Shall be based on methods of analysis that are deemed to be appropriate for such purposes by the Board.

(e) Liabilities to be Covered:

- (1) The opinion shall apply to all in force business on the annual statement date

- regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part 1 and equivalent items in the separate account statement or statements.
- (2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in G.S. 58-58-50(d), 58-58-50(d-1), 58-58-50(g), 58-58-50(h), and 58-58-50(k), the company shall establish such additional reserve.
- (3) For years ending before December 31, 1996, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:
- (A) December 31, 1994, the additional reserve divided by three.
- (B) December 31, 1995, two times the additional reserve divided by three.
- (4) Additional reserves established under Subparagraph (e)(2) or (e)(3) of this Rule and deemed to be unnecessary in later years may be released. Any amounts released must be disclosed in the opinion for the applicable year. The release of such reserves are not deemed to be an adoption of a lower standard of valuation.
- (3) Category C comprises companies whose admitted assets exceed one hundred million dollars (\$100,000,000) but do not exceed five hundred million dollars (\$500,000,000).
- (4) Category D comprises companies whose admitted assets exceed five hundred million dollars (\$500,000,000).
- (c) Exemption Eligibility Tests:
- (1) Any Category A company that, for any year beginning with calendar year 1994, meets all of the following criteria is eligible for exemption from submission of an opinion in accordance with Rule .0306 of this Section for the year in which these criteria are met. The ratios in Parts (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this Rule shall be calculated based on amounts as of the end of the calendar year for which the opinion is applicable.
- (A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.
- (B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.
- (C) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.
- (D) The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the opinion is applicable; or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the company's state of domicile and that regulator has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

Statutory Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).

#### .0304 REQUIRED OPINIONS

(a) The opinion submitted under G.S. 58-58-50(i) shall be in accordance with the applicable provisions in this Rule.

(b) For purposes of this Rule, companies are classified as follows, based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

- (1) Category A comprises companies whose admitted assets do not exceed twenty million dollars (\$20,000,000).
- (2) Category B comprises companies whose admitted assets exceed twenty million dollars (\$20,000,000) but do not exceed one hundred million dollars (\$100,000,000).
- (2) Any Category B company that, for any year beginning with calendar year 1994, meets all of the following criteria shall be eligible for exemption from submission of an opinion in accordance with Rule .0306 of this Section for the

year in which the criteria are met. The ratios in Parts (c)(2)(A), (c)(2)(B), and (c)(2)(C) of this Rule shall be calculated based on amounts as of the end of the calendar year for which the opinion is applicable.

- (A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.
  - (B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.
  - (C) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.
  - (D) The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the opinion is applicable; or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the company's state of domicile and that regulator has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.
- (3) Any Category A or Category B company that meets all of the criteria set forth in Subparagraphs (c)(1) and (c)(2) of this Rule, whichever is applicable, is exempt from having to submit an opinion under Rule .0306 of this Section unless the Commissioner specifically indicates to the company that the exemption is not to be taken.
- (4) Any Category A or Category B company that, for any year beginning with calendar year 1994, is not exempt under Subparagraph (c)(3) of this Rule shall submit an opinion in accordance with Rule .0306 of this Section for the year for which it is not exempt.
- (5) Any Category C company that, after submitting an opinion in accordance with Rule .0306 of this Section, meets all of the following criteria, shall not be required, unless required in accordance

with Subparagraph (c)(6) of this Rule, to submit an opinion in accordance with Rule .0306 of this Section more frequently than every third year. Any Category C company that fails to meet all of the following criteria for any year shall submit an opinion in accordance with Rule .0306 of this Section for that year. The ratios in Parts (c)(5)(A), (c)(5)(B), and (c)(5)(C) of this Rule shall be calculated based on amounts as of the end of the calendar year for which the opinion is applicable.

- (A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.
  - (B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.
  - (C) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.
  - (D) The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the company's state of domicile and that regulator has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.
- (6) Any company that is not required by this Rule to submit an opinion in accordance with Rule .0306 of this Section for any year shall submit an opinion in accordance with Rule .0305 of this Section for that year unless, as provided for by Rule .0301 of this Section, the Commissioner requires an opinion in accordance with Rule .0306 of this Section.
- (d) Every Category D company shall submit an opinion in accordance with Rule .0306 of this Section for each year, beginning with calendar year 1994.

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Statutory Authority G.S. 58-2-40; 58-58-50(i);  
58-58-50(j).

**.0305 OPINION WITHOUT ASSET ADEQUACY ANALYSIS**

(a) The opinion required by G.S. 58-58-50(i) shall comprise:

- (1) a paragraph identifying the appointed actuary and his or her qualifications.
- (2) a regulatory authority paragraph stating that the company is exempt under this Section from submitting an opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with this Rule.
- (3) a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work.
- (4) an opinion paragraph expressing the appointed actuary's opinion as required by G.S. 58-58-50(i).

(b) The following language provided is that which in typical circumstances would be included in an opinion in accordance with this Section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language that clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this Rule.

(1) The opening paragraph shall indicate the appointed actuary's relationship to the company.

(A) For a company actuary, the opening paragraph of the actuarial opinion shall read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of the insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

(B) For a consulting actuary, the opening paragraph of the actuarial opinion shall contain a sentence such as:

"I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The regulatory authority paragraph shall include a statement such as the following:

"Said company is exempt under Rule [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with 11 NCAC 11F .0305."

(3) The scope paragraph shall contain a sentence such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [year]."

The scope paragraph shall list items and amounts with respect to which the appointed actuary is expressing an opinion. The list shall include:

(A) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8;

(B) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9;

(C) Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10; and

(D) Policy and contract claims-liability end of current year included in Exhibit 11, Part 1.

(4) If the appointed actuary has examined the underlying records, the scope paragraph shall also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph shall

include a sentence such as one of the following:

- (A) "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary." or
- (B) "I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying shall follow the form indicated by Subparagraph (b)(10) of this Rule.

- (6) The opinion paragraph shall include the following:
  - "In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:
    1. Are computed in accordance with those presently accepted actuarial standards that specifically relate to the opinion required under this Section;
    2. Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
    3. Meet the requirements of the Insurance Law and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.
    4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and
    5. Include provision for all actuarial reserves and related statement items that ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate compliance guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

- (7) The concluding paragraph shall document the eligibility for the company to provide an opinion as provided by this Rule. It shall include the following:
  - "This opinion is provided in accordance with 11 NCAC 11F .0305. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets that support them. Eligibility of 11 NCAC 11F .0305 is confirmed as follows:
    1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is [amount], which equals or exceeds the applicable criteria based on the admitted assets of the company (11 NCAC 11F .0304(c)).
    2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [amount], which is less than the applicable criteria based on the admitted assets of the company (11 NCAC 11F .0304(c)).
    3. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [amount], which is less than the applicable criteria of .50.
    4. To my knowledge, no NAIC Examiner Team has designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the state of the company's domicile.
    5. To my knowledge there is not a specific request from any insurance regulator requiring an asset adequacy analysis opinion.

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Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

- (8) If there has been any change in the actuarial assumptions from those previously employed, that change shall be described in the annual statement or in a paragraph of the opinion, and the reference in Part (b)(6)(D) of this Rule to consistency should read as follows:  
" ... with the exception of the change described on Page [number] of the annual statement (or in the preceding paragraph)."  
The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Paragraph.
- (9) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue an opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason or reasons for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.
- (10) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following: "I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [year], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company  
or Accounting Firm

Address of the Officer of the Company  
or Accounting Firm

Telephone Number of the Officer of the  
Company or Accounting Firm"

*Statutory Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).*

**.0306 OPINION BASED ON ASSET ADEQUACY ANALYSIS**

- (a) The opinion submitted in accordance with this Rule shall comprise:
- (1) A paragraph identifying the appointed actuary and his or her qualifications as prescribed by Subparagraph (b)(1) of this Rule;
  - (2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, as prescribed by Subparagraph (b)(2) of this Rule and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;
  - (3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from

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currently owned assets, including variation in cash flows according to economic scenarios as prescribed by Subparagraph (b)(3) of this Rule, supported by a statement of each such expert in the form prescribed by Paragraph (e) of this Rule; and

- (4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities as prescribed by Subparagraph (b)(6) of this Rule;
- (5) One or more additional paragraphs will be needed in individual company cases if the appointed actuary:
  - (A) Considers it necessary to state a qualification of his or her opinion;
  - (B) Must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;
  - (C) Must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis.
  - (D) Must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.
  - (E) Must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.
  - (F) Chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(b) The following paragraphs are to be included in the opinion in accordance with this Rule. Language is that which in typical circumstances shall be included in an opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language that clearly expresses his or her professional judgement. However, in any event the opinion shall retain all pertinent aspects of the language provided in this Section.

- (1) The opening paragraph shall generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.
  - (A) For a company actuary, the opening paragraph of the actuarial opinion shall read as follows: "I [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of the insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."
  - (B) For a consulting actuary, the opening paragraph shall contain a sentence such as: "I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."
- (2) The scope paragraph shall include a statement such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [year]. Tabulated below are those reserves and related actuarial items that have been subjected to asset adequacy analysis.

(Include the Asset Adequacy Tested Amounts Reserve and Liability Table listed in the NAIC Model Regulation titled, "Actuarial Opinion and Memorandum Regulation," and any subsequent amendments and editions. A copy of the Table may be obtained from the North Carolina Department of Insurance at a cost prescribed in G.S. 58-6-5(3)).
- (3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as one of the following:
  - (A) "I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement,...", or
  - (B) "I have relied on personnel as cited in the supporting memorandum for certain critical

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aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts shall be accompanied by a statement by each of such experts of the form prescribed by Paragraph (e) of this Rule.

- (4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

- (5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, the reliance paragraph shall include a sentence such as one of the following:

(A) "I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.", or

(B) "I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

Such a sentence must be accompanied by a statement by each person relied upon of the form prescribed by Paragraph (e) of this Rule.

- (6) The opinion paragraph shall include the following:

(A) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
2. Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
3. Meet the requirements of the insurance laws and rules of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);
5. Include provision for all actuarial reserves and related statement items that ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investments earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

- (B) Select one of the following two paragraphs:

(i) This opinion is updated annually as required by law. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion that should be considered in reviewing this opinion. or

(ii) The following material change(s) that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion. (Describe the change or changes.)

PROPOSED RULES

The effect of unanticipated events after the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

\_\_\_\_\_  
Signature of Appointed Actuary

\_\_\_\_\_  
Address of Appointed Actuary

\_\_\_\_\_  
Telephone Number of Appointed Actuary"

(c) The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Rule.

(d) If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue an opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified opinion explicitly stating the reason or reasons for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(e) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm officer who prepared such underlying data similar to the following:

"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [year], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

\_\_\_\_\_  
Signature of the officer of the Company or Accounting Firm

\_\_\_\_\_  
Address of the Officer of the Company or Accounting Firm

\_\_\_\_\_  
Telephone Number of the officer of the Company or Accounting Firm"

or

"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

\_\_\_\_\_  
Signature of the Officer of the Company, Accounting Firm or the Security Analyst

Address of the Officer of the Company,  
Accounting Firm or the Security Analyst

Telephone Number of the Officer of the  
Company, Accounting Firm or the  
Security Analyst"

Statutory Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).

**.0307 ACTUARIAL MEMORANDUM WITH  
ASSET ADEQUACY ANALYSIS**

**(a) General:**

- (1) In accordance with G.S. 58-58-50(i) and (j), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an opinion prescribed by Rule .0306 of this Section. The memorandum shall be made available for examination by the Commissioner upon request and shall be returned to the company after the examination and shall not be subject to automatic filing with the Commissioner.
- (2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule .0303(b) of this Section, with respect to the areas covered in such memoranda, and so state in their memoranda.
- (3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Board or the standards and requirements of this Section, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review.
- (4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing

actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner under G.S. 58-58-50(j). The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the company under this Section for any one of the current year or the preceding three years.

(b) When an actuarial opinion under Rule .0306 of this Section is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Rule .0303(d) of this Section and any additional standards under this Section. It shall specify:

- (1) For reserves:
  - (A) Product descriptions, including market description, underwriting, and other aspects of a risk profile, and the specific risks the appointed actuary deems to be significant;
  - (B) Source of liability in force;
  - (C) Reserve method and basis;
  - (D) Investment reserves;
  - (E) Reinsurance arrangements.
- (2) For assets:
  - (A) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;
  - (B) Investment and disinvestment assumptions;
  - (C) Source of asset data;
  - (D) Asset valuation bases.
- (3) Analysis basis:
  - (A) Methodology;
  - (B) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

- (C) Rationale for degree of rigor in analyzing different blocks of business;
- (D) Criteria for determining asset adequacy;
- (E) Effect of federal income taxes, reinsurance, and other actuarially or financially relevant factors.
- (4) Summary of results.
- (5) Conclusion(s).
- (c) The memorandum shall include a statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

Statutory Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).

**.0308 ADDITIONAL CONSIDERATIONS FOR ANALYSIS**

(a) For the asset adequacy analysis for the opinion provided in accordance with Rule .0306 of this Section, reserves and assets may be aggregated by either of the following methods:

- (1) Aggregate the reserves and related actuarial items and the supporting assets for different products or lines of business before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.
- (2) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:
  - (A) Are developed using consistent

- economic scenarios, or
- (B) Are subject to mutually independent risks, i.e., the likelihood of events affecting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events affecting the adequacy of the assets supporting the deficient reserves.

In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of the methods described in Subparagraphs (a)(1), (a)(2)(A), or (a)(2)(B) of this Rule, whichever is applicable, and describe the aggregation in the supporting memorandum.

(b) The appointed actuary shall analyze only those assets held in support of the reserves that are the subject for specific analysis, hereinafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Paragraph (c) of this Rule. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency shall be described in the supporting memorandum.

(c) An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

(d) For the purpose of performing the asset adequacy analysis required by this Section, the qualified actuary shall follow standards adopted by the Board; provided, however, that the appointed

actuary must consider in the analysis the effect of at least the following interest rate scenarios:

- (1) Level with no deviation;
- (2) Uniformly increasing over 10 years at one-half of one percent per year and then level;
- (3) Uniformly increasing at one percent per year over five years and then uniformly decreasing at one percent per year to the original level at the end of 10 years and then level;
- (4) An immediate increase of three percent and then level;
- (5) Uniformly decreasing over 10 years at one-half of one percent per year and then level;
- (6) Uniformly decreasing at one percent per year over five years and then uniformly increasing at one percent per year to the original level at the end of 10 years and then level; and
- (7) An immediate decrease of three percent and then level.

For these and other scenarios that may be used, projected interest rates for a five-year U.S. Treasury Note need not be reduced beyond the point where the five-year U.S. Treasury Note yield would be at 50 percent of its initial level.

The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as U.S. Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whichever method is used to determine the beginning yield curve and associated interest rates shall be specifically defined. The beginning yield curve and associated interest rates shall be consistent for all interest rate scenarios.

(e) The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

Statutory Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 12 .1004 and adopt .1023.*

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

*The public hearing will be conducted at 10:00 a.m. on October 7, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: 11 NCAC 12 .1004 & .1023 - To comport with NAIC model act.*

*Comment Procedures: Written comments may be sent to Teresa Shackelford at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Teresa Shackelford at (919) 733-5050, or Ellen Sprenkel at (919) 733-4529.*

**CHAPTER 12 - LIFE AND HEALTH DIVISION**

**SECTION .1000 - LONG-TERM CARE INSURANCE**

**.1004 POLICY PRACTICES AND PROVISIONS**

(a) The terms "guaranteed renewable" or "non-cancellable" may not be used in any individual policy without further explanatory language in accordance with the disclosure requirements of 11 NCAC 12 .1006. No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no unilateral right to make any change in any provision of the policy while the policy is in force and can not refuse to renew: Provided that rates may be revised by the insurer on a class basis.

(c) The word "noncancellable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no right to unilaterally make any change in any provision of

the policy or in the premium rate.

(d) No policy may limit or exclude coverage by type of illness, treatment, medical condition, or accident, except as follows:

- (1) preexisting conditions as specified in G.S. 58-55-30;
- (2) mental or nervous disorders, except for Alzheimer's Disease;
- (3) alcoholism and drug addiction;
- (4) illness, treatment, or medical condition arising out of:
  - (A) war or act of war (whether declared or undeclared);
  - (B) participation in a felony, riot, or insurrection;
  - (C) service in the armed forces or units auxiliary thereto;
  - (D) suicide, attempted suicide, or intentionally self-inflicted injury; or
  - (E) aviation activity as a nonfare-paying passenger;
- (5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare, under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by a member of the insured's immediate family; and services for which no charge is normally made in the absence of insurance;
- (6) exclusions and limitations for payment for services provided outside the United States; and
- (7) legitimate variations in benefit levels to reflect differences in provider rates.

(e) Termination of a policy shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the policy was in force and continues without interruption after termination. Such extension of benefits beyond the period during which the policy was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits; and may be subject to any policy waiting period and all other applicable provisions of the policy.

(f) No insurer may increase the rate or premium charged to an insured for a policy because of:

- (1) the increasing age of the insured at ages beyond 65; or
- (2) the amount of time the insured has been covered under a policy.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

### .1023 INCONTESTABILITY PERIOD

(a) For a policy that has been in force for less than six months, an insurer may rescind the policy or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation by the insured that is material to the acceptance for coverage.

(b) For a policy that has been in force for at least six months but less than two years, an insurer may rescind the policy or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation by the insured that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.

(c) After a policy has been in force for two years, the policy is not contestable upon the grounds of misrepresentation alone; that policy may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(d) No policy may be field issued based on medical or health status. For purposes of this Paragraph, "field issued" means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer.

(e) If an insurer has paid benefits under a policy, the benefit payments may not be recovered by the insurer if the policy is rescinded.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

## TITLE 13 - DEPARTMENT OF LABOR

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor/Occupational Safety & Health intends to amend rule cited as 13 NCAC 07F .0101, with changes from the proposed text noticed in the Register, Volume 9, Issue 2, pages 77 - 80.*

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

*Reason for Proposed Action: Revisions were made to the proposed text based on written comments received and based on comments received at the May 4, 1994 public hearing. G.S. 95-131 requires the Commissioner of Labor to adopt*

PROPOSED RULES

federal OSHA standards or standards that are as effective as federal standards.

Comment Procedures: Written comments will be accepted through October 17, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on

August 29, 1994, OSBM on August 29, 1994, N. C. League of Municipalities on August 29, 1994, and N. C. Association of County Commissioners on August 29, 1994.

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

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are incorporated by reference except as follows:

(1) Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, §1910.120(q)(6) is amended by adding a new level of training:

"(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
(B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
(C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
(D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
(E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

(2) Subpart Z -- Toxic and Hazardous Substances, 29 CFR 1910.1000, Air Contaminants: Re-adoption of revised permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2496 -2533 and pages 2668 - 2695 as follows:

"RESPIRATORY EFFECTS

Table with 3 columns: Chemical Name, CAS No., PEL. Rows include Aluminum, Bismuth telluride, Undoped, and Chlorine dioxide with their respective CAS numbers and PEL values.

**PROPOSED RULES**

Chromium metal (as Cr)	7440-47-3	0.3 ppm STEL 1 mg/m <sup>3</sup> TWA
Coal Dust (<5% quartz) Resp. fraction	None	2 mg/m <sup>3</sup> TWA
Coal Dust (>5% quartz) Respirable quartz fraction	None	0.1 mg/m <sup>3</sup> TWA
Ethyl acrylate	140-88-5	5ppm TWA 25 ppm STEL, Skin
Ferrovandium dust	12604-58-9	1 mg/m <sup>3</sup> TWA 3 mg/m <sup>3</sup> STEL
Grain Dust (oat, wheat, barley)	None	10 mg/m <sup>3</sup> TWA
Graphite, natural, Resp. Dust	7782-42-5	2.5 mg/m <sup>3</sup> TWA
Indium & compounds (as In)	7440-74-6	0.1 mg/m <sup>3</sup> TWA
Iron oxide (dust & fume)	1309-37-1	10 mg/m <sup>3</sup> TWA
Methylene bis (4-Cychlohexylisocyanate)	5124-30-1	0.01 ppm Ceiling, Skin
Mica, Respirable Dust	12001-26-2	3 mg/m <sup>3</sup> TWA
Nitrogen dioxide	10102-44-0	1 ppm STEL
Oxygen difluoride	7783-41-7	0.05 ppm Ceiling
Ozone	10028-15-6	0.1 ppm TWA 0.3 ppm STEL
Paraquat, Respirable Dust	4685-14-7	0.1 mg/m <sup>3</sup> TWA, Skin
Silica, crystalline cristobalite, Respirable Dust	14464-46-1	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline quartz, Respirable Dust	14808-60-7	0.1 mg/m <sup>3</sup> TWA
Silica, crystalline tridymite, Respirable Dust	15468-32-3	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline tripoli (as quartz) Respirable Dust	1317-95-9	0.1 mg/m <sup>3</sup> TWA
Silica, fused Respirable Dust	60676-86-0	0.1 mg/m <sup>3</sup> TWA
Soapstone, total dust	None	6 mg/m <sup>3</sup> TWA
Soapstone, Respirable Dust	None	3 mg/m <sup>3</sup> TWA
Sulfur dioxide	7446-09-5	2 ppm TWA 5 ppm STEL
Sulfur tetrafluoride	7783-60-0	0.1 ppm Ceiling
Talc (containing no asbestos) Respirable Dust	14807-96-6	2 mg/m <sup>3</sup> TWA
Tin oxide (as Sn)	7440-31-5	2 mg/m <sup>3</sup> TWA
Trimellitic anhydride	552-30-7	0.005 ppm TWA
Wood dust, hard	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, soft	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, allergenic (Western Red Cedar)	None	2.5 mg/m <sup>3</sup> TWA

**AVOIDANCE OF CANCER**

Chemical Name	CAS No.	PEL
Acrylamide	79-06-1	0.03mg/m <sup>3</sup> TWA, Skin
Amitrole	61-82-5	0.2 mg/m <sup>3</sup> TWA

**PROPOSED RULES**

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Carbon tetrachloride	56-23-5	2 ppm TWA
Chloroform	67-66-3	2 ppm TWA
Chromic acid	1333-82-0	0.1 mg/m <sup>3</sup> Ceiling
Dimethyl sulfate	77-78-1	0.1 ppm TWA, Skin
2-Nitropropane	79-46-9	10 ppm TWA
Perchloroethylene	127-18-4	25 ppm TWA
o-Toluidine	95-53-4	5 ppm TWA, Skin
p-Toluidine	106-49-0	2 ppm TWA, Skin
Vinyl bromide	593-60-2	5 ppm TWA
Vinyl cyclohexene dioxide	106-87-6	10 ppm TWA, Skin."

- (3) Subpart R -- Special Industries -- incorporation by reference of final rule for 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, including Appendices A through E, published in 59 FR (January 31, 1994) pages 4437 - 4475, and all typographical and grammatical corrections to 1910.269 as published in 59 FR (June 30, 1994) pages 33660 - 33664, except that 29 CFR 1910.269(g)(2)(v) is amended to read:

"(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers or similar structures if other fall protection has not been provided. A fall protection system as defined in Subpart M - Fall Protection of 29 CFR 1926 is required to be used by all employees when ascending, descending or changing locations on poles, towers or similar structures. However, the use of non-locking snap hooks with any fall protection system is prohibited as of the effective date of this rule. Qualified employees may free climb wood poles if the employer can insure (1) that the employee is able to comfortably and safely grip the pole with both hands while climbing, (2) that the pole is free from attachments or any configurations of attachments that will materially impair the ability of a qualified employee to safely free climb the pole, (3) that the pole is otherwise free from impediments, contaminants or conditions of any type, including but not limited to ice, chemical treatments which harden the poles, or high winds, and (4) that the employee is able to climb such structures without material physical impairments including over-exertion, lack of sleep or other physical stresses."

29 CFR 1910.269 as amended above is effective December 1, 1994, except 29 CFR 1910.269(a)(2) Training is effective January 31, 1995, and 29 CFR 1910.269(v)(11)(xii) is effective February 1, 1996.

- (4) Subpart Z -- Toxic and Hazardous Substances -- incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1910.1200(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"
- (b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:
- (1) Subpart H -- Hazardous Materials:
- (A) Technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and adopted by the North Carolina Department of Labor on December 31, 1993.
- (B) Technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and adopted by the North Carolina Department of Labor on December 31, 1993.
- (2) Subpart I -- Personal Protective Equipment -- addition of paragraphs (d), (e) and (f) to 1910.132 - *General requirements*; revisions to 1910.133 - *Eye and face protection*, 1910.135 - *Head protection*, 1910.136 - *Foot protection*; and addition of 1910.138 - *Hand protection*, including non-mandatory Appendices A and B, published in 59 FR (April 6, 1994) pages 16360 - 16364 and adopted by the North Carolina Department of Labor on September 1, 1994; addition of paragraph (g) to 1910.132 - *General requirements*; technical and clarifying amendments to 1910.133 - *Eye and face protection*, 1910.136 - *Foot protection*, and 1910.138 - *Hand protection*, as published in

- 59 FR (July 1, 1994) pages 33910 - 33911 and effective on September 1, 1994;
- (3) Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit-Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and adopted by the North Carolina Department of Labor on September 24, 1993; a metric equivalent addition of "1.52 m" to 1910.146 (k) (3) (ii) and revisions to "Atmospheric monitoring" section of Appendix E as published in 59 FR (May 19, 1994) pages 26114 - 26116 and adopted by the North Carolina Department of Labor on September 1, 1994; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993);
  - (4) Subpart Z -- Toxic and Hazardous Substances:
    - (A) Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and adopted by the North Carolina Department of Labor on September 24, 1993.
    - (B) Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants, published in 58 FR (July 27, 1993) page 40191 and adopted by the North Carolina Department of Labor on December 31, 1993.
    - (C) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A.0302 for the costs involved and from whom copies may be obtained.

*Statutory Authority G.S. 95-131; 95-133; 150B-21.6.*

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

*written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0103 and adopt 10G .0206.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

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

**SECTION .0100 - MOTORBOAT REGISTRATION**

*The public hearing will be conducted at 10:00 a.m. on September 30, 1994 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**.0103 TRANSFER OF OWNERSHIP**

(a) Transfer Direct from One Individual Owner to Another Individual Owner

*Reason for Proposed Action: 15A NCAC 10F .0103 & 10G .0206 - To define authority of boat registration agents and state source of information regarding procedures.*

- (1) If the ownership of a registered motorboat is changed during the registration period, the owner shall complete the statement of transfer on the reverse side of the certificate of number, date as of the day of the transaction, sign, and deliver to the new owner.
- (2) The new owner shall apply for a new certificate of number on an official application form. The original number must be retained when a vessel numbered is again registered as a motorboat.
- (3) For 60 days following the transfer of

*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 September 15, 1994 to October 17, 1994. Such*

ownership of a registered motorboat during the registration period, the new owner may use the certificate of number of the prior owner as a temporary certificate of number pending receipt of his own certificate; provided, the certificate is endorsed in accordance with Subparagraph (a)(1) of this Rule. In the event the transfer occurs during the 60 days prior to expiration of the registration period, the original certificate will still be honored up to the full period of 60 days as a temporary certificate even though it would otherwise have expired. Where transfer of ownership from one individual to another occurs after the expiration of the registration period, the certificate of number may not be used by the new owner.

(b) Transfer of a Previously-Registered Motorboat Through a Dealer

- (1) The owner transferring his motorboat to a dealer during the registration period shall give the certificate of number to the dealer after dating and signing the statement of transfer on the reverse side of the certificate on the day of the transaction.
- (2) When the motorboat is sold by the dealer, he shall date and sign the certificate of number on the reverse side on the day of the transaction and deliver it to the new owner.
- (3) For a period of 60 days following the transfer of ownership of a registered motorboat from or through a dealer to a new owner, the new owner may use the certificate of the prior individual owner as a temporary certificate of number pending receipt of his own certificate; provided:
  - (A) The certificate is endorsed in accordance with Subparagraphs (1) and (2) of this Paragraph.
  - (B) The original owner endorsed the certificate to the boat dealer while it was still in force, and
  - (C) The boat dealer's sale and endorsement occurs while the registration certificate is still in force.
- (4) Except as permitted above, a certificate of number may not be used after the expiration of the registration period.

(c) Transfer of an Individually-Registered Motorboat by a Dealer or Manufacturer. Motor-

boats individually numbered by dealers or manufacturers shall upon transfer of ownership be governed by the provisions of Paragraph (a) of this Rule.

(d) Temporary Certificate of Number

- (1) Upon acquisition of a motorboat not previously numbered or a motorboat the registration of which has expired, the new owner may transmit with his application for the regular certificate of number a request for a temporary certificate of number. The request must state the date the vessel was acquired by the applicant. For a period not exceeding 60 days following the date of acquisition, the motorboat may be operated on the temporary certificate of number pending receipt of the regular certificate from the Wildlife Resources Commission.
- (2) In order to make temporary certificates of number available locally within the State, boat dealers and manufacturers who conduct business from established locations in North Carolina may be designated agents of the Wildlife Resources Commission for the purpose of issuing temporary certificates of motorboat number. To qualify as an agent for this purpose, such dealer or manufacturer must enter into a written agreement with the Wildlife Resources Commission by which he assumes responsibility for conducting the boat registration agency as a public service and in strict compliance with these regulations. Upon approval and ratification of such agreement by the Executive Director or his designee, the agent will be furnished with a supply of the temporary certificate forms together with forms for use in applying for the regular certificate of motorboat number. The forms for temporary certificate of number are serially numbered and are prepared in triplicate so as to provide an original (Part 1) and two copies (Parts 2 and 3).
- (3) A boat registration agency issuing temporary certificates of motorboat number shall be conducted in accordance with the following requirements and restrictions:
  - (A) The temporary certificates of number shall be issued without charge.

- (B) There shall be no substitute for the printed form of certificate supplied by the Wildlife Resources Commission. No agent shall issue any other writing purporting to authorize the use of an unregistered motorboat.
- (C) The certificates shall be issued consecutively in the order in which they are serially numbered, beginning with the lowest number.
- (D) When the vessel has been acquired from a source other than the agent, a temporary certificate of number shall not be issued unless and until the owner produces a bill of sale or other memorandum of transfer which identifies the vessel and which has been dated, signed and acknowledged by the transferor before a notary public or other officer authorized to take acknowledgements.
- (E) All information called for on the temporary certificate of number shall be properly entered in the spaces provided, including the date of expiration of the certificate which shall be the 60th day following the date of acquisition of the vessel by the owner.
- (F) The temporary certificate must be signed by the owner. The agent shall deliver to the owner Part 1 of the certificate and a form with which to apply for the regular certificate of number.
- (G) Within 30 days following the issuance of a temporary certificate of number, the agent shall transmit Part 2 thereof to the Wildlife Resources Commission at the address indicated in Rule .0102(a)(5) of this Section. If a bill of sale or other memorandum of transfer has been required, the original or a copy thereof shall be attached to the Commission's copy of the temporary certificate of number.
- (H) The agent shall retain Part 3 of the temporary certificate of number for a period of at least one year and shall permit inspection thereof during business hours by any law enforcement officer or authorized personnel of the Commission.
- (I) No agent shall knowingly issue more than one temporary certificate of number for the same vessel during any calendar year.
- ~~(J) No agent shall assume responsibility for making application for a regular certificate of motorboat number on behalf of any owner.~~
- (J) An agent may make application for a certificate of number or for a registration on behalf of a new owner to whom a temporary certificate of number has been issued provided the application and fee is submitted to the Wildlife Resources Commission within 10 days of the date of issuance of the temporary certificate.
- (K) Upon termination of a boat registration agency which issues temporary certificates of motorboat number, all copies (Parts 3) of such certificates theretofore issued and all unused forms for temporary certificates of number then remaining in possession of the terminated agency shall be delivered to the Wildlife Resources Commission or to a Commission employee.
- (4) A boat registration agency which issues temporary certificates of motorboat number, being a mutual and voluntary undertaking, may be terminated at any time, with or without cause, by either party thereto by giving a notice of such termination to the other party.
- ~~(5) Every owner of a motorboat who obtains a temporary certificate of number from a local agent as provided by this Section shall, not later than 24 hours thereafter, transmit his application for the regular certificate of motorboat number, together with the appropriate fee, to the Wildlife Resources Commission at the address indicated in Rule .0102(a)(5) of this Section.~~
- (5) If the agent who issues a temporary certificate of number does not submit the application for certificate of number of registration on behalf of the new owner, the new owner must submit the application and fee to the Wildlife Resources Commission within 10 days of the date of issuance of the temporary certificate.
- (6) In order to be valid, the temporary certificate of boat number must contain the following:

- (A) full name and address of issuing agent;
  - (B) full name and address of purchaser, including zip code;
  - (C) previous registration number, if any (if none, so state);
  - (D) state of principal use of vessel;
  - (E) make of vessel;
  - (F) length in feet;
  - (G) hull material;
  - (H) kind of propulsion;
  - (I) date of purchase of boat;
  - (J) date of application for regular certificate of number;
  - (K) expiration date of temporary certificate;
  - (L) signature of purchaser.
- (7) Temporary certificates of number can be issued by boat registration agents when certificates of number requiring corrections other than address or name changes are presented for renewal or when the agent finds that an error has been made in validating the certificate of number.

(e) Demonstration and Use of Vessels Held by Dealers

- (1) Demonstration of registered motorboats held by dealers for sale may be with the use of the certificate of number endorsed by the original owner so long as the registration is in force. Any dealer or any permittee of a dealer demonstrating a motorboat must utilize a set of dealer's numbers and the corresponding dealer's certificate of number on such vessel after the original certificate of number has expired. The dealer's numbers and certificate of number may, however, be used during demonstrations before the end of the registration period at the option of the dealer. In any event, where a set of dealer's numbers is used upon a previously-numbered vessel, the original numbers must be covered in accordance with Rule .0106(c) of this Section.
- (2) Dealers who have bought or otherwise possess motorboats for resale and who wish to operate or lend out such motorboats for more general uses than for demonstration only must have the individual motorboat registrations transferred to their names.

Authority G.S. 75A-3; 75A-5; 75A-19; 33 C.F.R. 174.21.

SUBCHAPTER 10G - DISTRIBUTION AND SALE OF HUNTING: FISHING: AND TRAPPING LICENSE

SECTION .0200 - BOAT REGISTRATION AGENTS

.0206 AUTHORITY OF BOAT REGISTRATION AGENTS

(a) When it will aid public convenience and efficiency in boat registration, boat registration agents may be:

- (1) Consigned an allotment of certificates of boat number for use in issuing numbers and three-year registrations for previously unnumbered boats in accordance with procedures governing operations of agents as a public service as set forth in the Wildlife Service Agent Manual insuring security of public funds, and prescribing requirements for reporting sales and remitting funds.
- (2) Authorized to certify the transfer of ownership of boars from one owner to another and to register boats for a three-year period in the new owner's name.
- (3) Authorized to renew registrations for boat owners when a renewal notice or boat registration card is presented.

(b) Procedures governing the operations of boat registration agents are established by the Wildlife Resources Commission and set forth in the Wildlife Service Agent Manual which is provided to each agent in current form.

Statutory Authority G.S. 75A-3; 75A-5.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 16A .1102.*

*The proposed effective date of this action is January 1, 1995.*

*The public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Ground Floor*

Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

SECTION .1100 - CANCER DIAGNOSTIC AND TREATMENT PROGRAM

Reason for Proposed Action: Current rules allow the "year" for cancer patients to begin with the first date of service. Therefore, the year is different for each patient. This results in confusion and administrative difficulty. The proposed rule standardizes the "year" to the State fiscal year (July 1 - June 30). This will make the Cancer Control Program definition consistent with other programs and will increase administrative efficiency and provider understanding.

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 Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine 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).

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

.1102 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Cervical intraepithelial neoplasia (CIN)" means any condition suggestive of pre-invasive cervical cancer which for the purpose of these Rules means mild, moderate, or severe dysplasia or carcinoma in-situ.
(2) "Day of Service" means all covered services provided in one calendar day.
(3) "Program" means the Cancer Diagnosis and Treatment Program.
(4) "Year" means ~~one year beginning with the day the patient receives the first diagnostic or treatment services reimbursed by the Program.~~ the state fiscal year, July 1 - June 30.

Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .3101 - .3102, .3105 and adopt 18A .3106.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To provide for consistency with current recommendations from the Centers for Disease Control and Prevention regarding the definition for "elevated Blood lead level". To allow laboratory reporting by computer generated report. To provide for separate rules regarding notification and abatement requirements. To provide consistency with current recommendations from the US Environmental Protection Agency and the US Department of Housing and Urban

*Developmental regarding environmental standards for lead hazard abatement.*

**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 Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine 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.*

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**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .3100 - LEAD POISONING PREVENTION IN CHILDREN PROGRAM**

**.3101 DEFINITIONS**

As used in this article, unless the context requires otherwise:

- (1) "Abatement" means the elimination or control of a lead hazard by methods approved by the Department.
- (2) "Day care facility" means a structure used as a school, nursery, child care

center, clinic, treatment center or other facility serving the needs of children under six years of age including any outbuilding or other structure or surrounding land that may have been contaminated from such outbuildings or structures, accessible to children under six years of age.

- (3) "Department" means the Department of Environment, Health, and Natural Resources or its authorized agent.
- (4) "Dwelling" means a structure, all or part of which is designed for human habitation, including any outbuildings or other structures, or surrounding land that may have been contaminated from such outbuildings or structures, accessible to children under six years of age.
- (5) "Elevated blood lead level" means a blood lead of ~~25~~ 20 ug/dl or greater.
- (6) "Frequently visited" means presence at a dwelling, school or day care facility for eight hours or more a week for three or more weeks, or for 80 hours within a period of 10 consecutive days.
- (7) "Lead hazard" means the presence of readily accessible, lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence analyzer or 0.5 percent or greater by chemical analyses (AAS); or ~~500~~ 400 parts per million or greater in soil; or ~~50~~ 15 parts per billion or greater in drinking water.
- (8) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.
- (9) "Readily accessible" means capable of being chewed, ingested, or inhaled by a child under six years of age.

*Statutory Authority G.S. 130A-131.5.*

**.3102 REPORTS OF ELEVATED BLOOD LEVELS IN CHILDREN**

All laboratories that perform blood lead tests shall report to the Department elevated blood lead levels for children less than six years of age and for individuals where the age is unknown at the time of testing. Reports shall be made within five working days after test completion on forms provided by the Department or on self-generated reports containing the equivalent information.

Statutory Authority G.S. 130A-131.5.

**.3105 NOTIFICATION**

(a) Upon determination that a lead hazard exists, the Department shall give written notice of the lead hazard to the owner or managing agent of the dwelling, dwelling unit, school or day care facility and to all persons residing in or attending the unit or facility. The written notice to the owner or managing agent shall include recommended methods of abatement of the lead hazard.

(b) ~~The owner or managing agent shall submit a written lead hazard abatement plan to the Department within 14 days of lead hazard notification and shall obtain written approval of the plan prior to initiating abatement. If the owner or managing agent does not submit an abatement plan within 14 days, the Department shall issue an abatement order. The lead hazard abatement plan or order shall comply with Paragraphs (c), (d) and (e) of this Rule. Abatement shall be completed within 60 days of the Department's approval of the abatement plan. The owner or managing agent shall notify the Department and occupants of the dates of abatement activities.~~

(c) ~~The following methods of abatement of lead hazards in paint are prohibited:~~

- (1) ~~stripping paint on-site with methylene chloride-based solutions;~~
- (2) ~~torch or flame burning;~~
- (3) ~~heating paint with a heat gun above 800 degrees Fahrenheit;~~
- (4) ~~covering with new paint, contact paper, or non-vinyl wallpaper unless all readily accessible lead-based paint has been removed;~~
- (5) ~~sandblasting; or~~
- (6) ~~waterblasting when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.~~

(d) ~~All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, state, and local laws and rules.~~

(e) ~~All abatement plans shall require that the lead hazard be reduced to at least the following levels:~~

- (1) ~~Floor lead dust levels are less than 200 micrograms per square foot;~~
- (2) ~~Window sill lead dust levels are less than 500 micrograms per square foot;~~
- (3) ~~Window well lead dust levels are less~~

~~than 800 micrograms per square foot;~~

- (4) ~~Soil lead levels are less than 500 parts per million; and~~
- (5) ~~Drinking water lead levels less than 50 parts per billion.~~

(f) ~~The Department shall verify by visual inspection that the approved abatement plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.~~

Statutory Authority G.S. 130A-131.5.

**.3106 ABATEMENT**

(a) Upon determination that a child less than six years of age has an elevated blood lead level and resides in, attends or frequently visits a dwelling, dwelling unit, school or day care facility containing lead hazards, the Department shall require abatement of the lead hazard.

(b) The owner or managing agent shall submit a written lead hazard abatement plan to the Department within 14 days of lead hazard notification and shall obtain written approval of the plan prior to initiating abatement. If the owner or managing agent does not submit an abatement plan within 14 days, the Department shall issue an abatement order. The lead hazard abatement plan or order shall comply with Paragraphs (c), (d) and (e) of this Rule. Abatement shall be completed within 60 days of the Department's approval of the abatement plan. The owner or managing agent shall notify the Department and occupants of the dates of abatement activities.

(c) The following methods of abatement of lead hazards in paint are prohibited:

- (1) stripping paint on-site with methylene chloride-based solutions;
- (2) torch or flame burning;
- (3) heating paint with a heat gun above 800 degrees Fahrenheit;
- (4) covering with new paint, contact paper, or non-vinyl wallpaper unless all readily accessible lead-based paint has been removed;
- (5) abrasive blasting; or
- (6) waterblasting when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

(d) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, state, and local

laws and rules.

(e) All abatement plans shall require that the lead hazard be reduced to at least the following levels:

- (1) Floor lead dust levels are less than 100 micrograms per square foot;
- (2) Window sill lead dust levels are less than 500 micrograms per square foot;
- (3) Window well lead dust levels are less than 800 micrograms per square foot;
- (4) Soil lead levels are less than 400 parts per million; and
- (5) Drinking water lead levels less than 15 parts per billion.

(f) The Department shall verify by visual inspection that the approved abatement plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

Statutory Authority G.S. 130A-131.5.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 19B .0101, .0503 and repeal 19B .0310, .0314 - .0315, .0318 and .0319.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Amendments made to simulator solution which allows the Division of Laboratory Services to prepare control samples in a practical manner and better define the rule. Repeals are due to new infrared technology now used in the State. Breathalyzer and intoximeter breath test instruments have been taken out of service and are no longer used in DWI arrest.

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 Grady L. Balentine, Department of Justice, PO Box 629,

Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine 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.

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CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19B - INJURY CONTROL

SECTION .0100 - GENERAL POLICIES

.0101 DEFINITIONS

The definitions in G.S. 18B-101, G.S. 20-4.01, G.S. 130A-3 and the following shall apply throughout this Subchapter:

- (1) "Alcoholic Breath Simulator" shall mean a specially designed constant temperature water-alcohol solution bath instrument devised for the purpose of providing a standard alcohol-air mixture;
- (2) ~~"Ampul" means a small bulbous glass vessel hermetically sealed containing an alcohol sensitive reagent consisting of at least 3 ml. of a solution containing, within plus or minus 10 percent, 0.025 percent weight per volume (w/v) potassium dichromate plus 0.025 percent~~

~~w/v silver nitrate in 50 percent volume per volume (v/v) sulfuric acid and distilled water;~~

- (3) (2) "Breath-testing Instrument" shall mean an instrument for making a chemical analysis of breath and giving the resultant alcohol concentration in grams of alcohol per 210 liters of breath; ~~or an instrument that reports an alcohol concentration as percent blood alcohol, which shall mean grams of alcohol per 210 liters of breath;~~
- (4) (3) "Controlled Drinking Program" shall mean a bona fide scientific, experimental, educational, or demonstration program in which tests of a person's breath or blood are made for the purpose of determining his alcohol concentration when such person has consumed controlled amounts of alcohol;
- (5) (4) "Director" shall mean the Director of the Division of Epidemiology of the Department;
- (6) (5) "Handling Alcoholic Beverages" shall mean the acquisition, transportation, keeping in possession or custody, storage, administration, and disposition of alcoholic beverages done in connection with a controlled-drinking program;
- (7) (6) "Observation Period" means a period during which a chemical analyst observes the person to be tested to determine that he has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen; the chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument; ~~and if a chemical analyst other than the one conducting the analysis is the observer, both chemical analysts must sign the operational checklist;~~
- (8) (7) "Permittee" shall mean a chemical analyst currently possessing a valid permit from the Department to perform chemical analyses, of the type set forth within the permit;
- (9) (8) "Simulator Solution" shall mean a water-alcohol solution made by preparing a stock solution of distilled water and either 60.5 or 48.4 grams of alcohol per liter of solution, ~~(77.0 ml. of absolute alcohol diluted to one liter with distilled water, or equivalent ratio) and then preparing the solution for simulator use~~

~~as a control sample by using either Each 10 ml. or 8 ml. of this stock solution and is further diluting diluted the solution to 500 ml. with by adding distilled water, which then The resulting simulator solution corresponds to the equivalent alcohol concentration of 0.10 or 0.08 respectively.~~

- (10) (9) ~~"Verification of Instrumental~~ "Verify Instrument Calibration" shall mean verification of instrumental accuracy of an approved breath testing instrument or approved alcohol screening test device by employment of a control sample from an alcoholic breath simulator using simulator solution and obtaining the expected result or 0.01 less than the expected result as specified in Item (9) (8) of this Rule, ~~and obtaining a result of 0.10 or 0.09 alcohol concentration when using 10 ml. of stock solution or a result of 0.08 or 0.07 when using 8 ml. of stock solution.~~ When the procedures set forth for approved breath testing instruments in Section .0300 of this Subchapter and for approved alcohol screening test devices in Section .0500 of this Subchapter are followed and the result specified herein is obtained, the instrument shall be deemed properly calibrated.

*Statutory Authority G.S. 20-139.1(b); 20-139.1(g).*

### SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

#### .0310 AMPUL CERTIFICATION

~~Ampuls from each manufacturer's control batch (batch containing different control numbers) shall be randomly tested by a chemist who shall certify the content of the alcohol sensitive reagent in the ampuls tested.~~

*Statutory Authority G.S. 20-139.1(b).*

#### .0314 BREATHALYZER: MODELS 900 AND 900A

~~The operational procedures to be followed in using the Breathalyzer, Models 900 and 900A, are:~~

- (1) ~~Verify instrumental calibration by procedures a through k:~~
  - (a) ~~Insure instrument thermometer shows 50 degrees plus or minus 3 degrees C;~~
  - (b) ~~Gauge and place standard ampul in left ampul holder;~~

- (e) ~~Gauge test ampul, open, insert bubbler, place in right ampul holder, and connect bubbler to outlet;~~
- (d) ~~Turn to take, flush, turn to analyze;~~
- (e) ~~When empty light appears, wait one and one half minutes and balance;~~
- (f) ~~Set scale pointer on start line;~~
- (g) ~~Insure alcoholic breath simulator thermometer shows proper operating temperature;~~
- (h) ~~Turn to take, collect alcoholic breath simulator sample, and turn to analyze;~~
- (i) ~~Record time;~~
- (j) ~~When empty light appears, wait one and one half minutes and balance;~~
- (k) ~~Record results;~~
- (2) ~~Insure instrument thermometer shows 50 degrees plus or minus 3 degrees C;~~
- (3) ~~Turn to take, flush, turn to analyze;~~
- (4) ~~When empty light appears, wait one and one half minutes, and balance;~~
- (5) ~~Set scale pointer on start line;~~
- (6) ~~Insure observation period requirements have been met;~~
- (7) ~~Turn to take, collect breath sample, and turn to analyze;~~
- (8) ~~Record time;~~
- (9) ~~When empty light appears, wait one and one half minutes and balance;~~
- (10) ~~Record alcohol concentration.~~

If the alcohol concentration is 0.19 or less, repeat steps (2) through (10) as soon as feasible. If the alcohol concentration is 0.20 or more, repeat steps (1) through (10) as soon as feasible. If the alcohol concentrations differ by more than 0.02, a third or subsequent test shall be administered as soon as feasible by repeating steps (1) through (10).

Statutory Authority G.S. 20-139.1(b).

**.0315 PREVENTIVE MAINTENANCE:  
BREATHALYZER: MODELS  
900 and 900A**

The preventive maintenance procedures for Breathalyzer Models 900 and 900A to be followed at least once during every 30 days are:

- (1) ~~Verify appropriate sample chamber output;~~
- (2) ~~Verify appropriate delivery time;~~
- (3) ~~Verify appropriate timer cycle (Model 900A only);~~
- (4) ~~Verify that optical system is functioning properly;~~
- (5) ~~Verify instrument thermometer shows 50 degrees plus or minus 3 degrees C;~~

- (6) ~~Verify alcoholic breath simulator thermometer shows proper operating temperature;~~
- (7) ~~Verify instrumental calibration by conducting two consecutive alcoholic breath simulator tests and record results;~~
- (8) ~~Verify alcoholic breath simulator solution is being changed every 15 days or after 25 tests; whichever occurs first.~~

A signed original of the preventive maintenance checklist shall be kept on file for at least three years.

Statutory Authority G.S. 20-139.1(b).

**.0318 INTOXIMETER: MODEL 3000**

The operational procedures to be followed in using the Intoximeter, Model 3000 are:

- (1) ~~Insure observation period requirements have been met;~~
- (2) ~~Insure alcoholic breath simulator thermometer shows proper operating temperature and insure simulator is properly connected to instrument;~~
- (3) ~~Insure instrument displays proper time and date;~~
- (4) ~~Press "START" key and enter appropriate information;~~
- (5) ~~Insure instrument displays expected results from the alcoholic breath simulator;~~
- (6) ~~When "SUBJECT BLOW" appears, collect breath sample;~~
- (7) ~~When "SUBJECT BLOW" appears, collect breath sample;~~
- (8) ~~When test record ejects, remove and record times and results.~~

If the alcohol concentrations differ by more than 0.02, a third or subsequent test shall be administered as soon as feasible by repeating steps (1) through (8).

Statutory Authority G.S. 20-139.1(b).

**.0319 PREVENTIVE MAINTENANCE:  
INTOXIMETER: MODEL 3000**

The preventive maintenance procedures for the Intoximeter, Model 3000 to be followed at least once during every 30 days are:

- (1) ~~Verify alcoholic breath simulator thermometer shows proper operating temperature and insure simulator is properly connected to instrument;~~
- (2) ~~Verify instrument displays proper time and date;~~
- (3) ~~Press "START" key and enter appropri-~~

- ate information;
- (4) ~~Verify instrument displays expected results from the alcoholic breath simulator;~~
  - (5) ~~When "SUBJECT BLOW" appears, collect breath sample;~~
  - (6) ~~When "SUBJECT BLOW" appears, collect breath sample;~~
  - (7) ~~When test record ejects, remove and record simulator results;~~
  - (8) ~~Repeat steps (1) through (7);~~
  - (9) ~~Verify alcoholic breath simulator solution is being changed every 15 days or after 25 tests, whichever occurs first.~~

~~A signed original of the preventive maintenance checklist shall be kept on file for at least three years.~~

*Statutory Authority G.S. 20-139.1(b).*

**SECTION .0500 - ALCOHOL SCREENING TEST DEVICES**

**.0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION**

(a) The following breath alcohol screening test devices are approved as to type and make:

- (1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.
- (3) BREATH-ALCOHOL TESTER MODEL BT-3, made by RepCo., Ltd.
- (4) ALCOTEC BREATH-TESTER, made by RepCo., Ltd.
- (5) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
- (6) PBA 3000, manufactured by Life Loc, Inc.
- (7) SD-2, manufactured by CMI, Inc.

~~(b) Calibration of alcohol screening test devices shall be verified. The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use, ~~by employment of a control sample from an alcoholic breath simulator or an ethanol gas standard. The device shall be deemed properly calibrated when a result of 0.10 or 0.09 is obtained using 10 ml. of stock solution or when a result of 0.08 or 0.07 is obtained using 8 ml. of stock solution. The verification shall be performed by employment of an alcoholic breath simulator using simulator solution in accordance with these Rules or an ethanol gas canister.~~~~

- (1) Alcoholic breath simulators used exclu-

sively to verify instrument calibration for calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

- (2) Requirements of Paragraph (b) and Subparagraph (b)(1) of this Rule shall be recorded on an alcoholic breath simulator log designed by the Injury Control Section and maintained by the user agency.

*Statutory Authority G.S. 20-16.3.*

**TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule cited as 16 NCAC 6C .0310.*

*The proposed effective date of this action is January 1, 1995.*

*The public hearing will be conducted at 9:30 a.m. on October 10, 1994 at the Education Building, 301 N. Wilmington Street, Room 224, Raleigh, NC 27601-2825.*

*Reason for Proposed Action: Amendment incorporates latest tests for specified content areas.*

*Comment Procedures: Any interested person may present views orally at the hearing or in writing through October 17, 1994.*

**CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION**

**SUBCHAPTER 6C - PERSONNEL**

**SECTION .0300 - CERTIFICATION**

**.0310 STANDARD EXAMINATIONS**

(a) ~~The NTE are the standard examinations required for initial certification~~ are the PRAXIS tests for each area in which a PRAXIS test is available. The NTE are the standard examinations for all other areas. During the 1994-95 school year, persons may optionally take the PRAXIS tests at state expense and use those scores for certification. The PRAXIS tests are required for

**PROPOSED RULES**

persons who take tests after July 1, 1995. Persons who add an area to their certification must meet the test score requirement for that area.

- (1) For formal admission into an approved teacher education program, a person must score at least 646 on the Communication Skills Test and 645 on the General Knowledge Test. These requirements apply to person who have not passed these tests by January 1, 1990. These requirements do not apply to persons whose specialty area is school social work, school counseling or school psychology. The PRAXIS I

tests are given in two versions, PPST or CBT(computer-based). Passing scores for those tests are:

- (A) Reading: 176 PPST; 323 CBT  
 (B) Writing: 174 PPST; 320 CBT  
 (C) Mathematics: 173 PPST; 318 CBT
- (2) All applicants for initial certification must score at least 649 on the Professional Knowledge Test.
- (3) Effective July 1, 1994, in addition to the Professional Knowledge Test, each applicant for initial certification must meet minimum teaching area scores as follows:

Specialty Area

(A) Agriculture	530
(B) Art Education	530
(C) Audiology	590
(D) Biology	540
(E) Biology and General Science	570
(F) Business Education	580
(G) Chemistry	490
(H) Chemistry, Physics and General Science	550
(I) Early Childhood Education	530
(J) Earth/Space Science	530
(K) Education in the Elementary School	540
(L) Education of the Mentally Retarded	580
(M) Educational Leadership: Administration and Supervision	590
(N) English Language and Literature	520
(O) English Language and Literature (Middle Grades Language Arts)	460
(P) French	540
(Q) German	540
(R) Health Education	640
(S) Home Economics Education	540
(T) Technology Education	580
(U) Introduction to the Teaching of Reading	540
(V) Library Media Specialist	610
(W) Marketing Education	690
(X) Mathematics	540
(Y) Mathematics (Middle Grades Mathematics)	530
(Z) Music Education	550
(AA)Physical Education	570
(BB) Physics	510
(CC) Reading Specialist	570
(DD)School Guidance and Counseling	570
(EE) School Psychologist	620
(FF) Social Studies	540
(GG)Social Studies (Middle Grades Social Studies)	500
(HH)Spanish	520
(II) Special Education (Cross Categorical)	510
(JJ) Speech Communication	560
(KK) Speech-Language Pathology	550
(LL) Teaching Emotionally Disturbed Students	680
(MM)Teaching English as a Second Language	520

**PROPOSED RULES**

(NN)Teaching Hearing Impaired Students	650
(OO)Teaching Learning Disabled Students	610
(PP) Teaching Visually Handicapped Students	550

- (4) If no teaching area score is possible under Paragraph (a)(3) of this Rule, the Professional Knowledge score satisfies the NTE requirement.
- (5) Based on the special nature of the preparation for certification. School Social Workers are excluded from NTE regulations and School Psychologists are required to take only the Area examination for School Psychologists.

(b) Instead of the NTE scores an applicant, except a North Carolina approved program graduate at the Class A level, may be certified on the basis of the Graduate Record Examinations with minimum scores of 380 on the Verbal Ability, 410 on the Quantitative Ability, and 380 on the Analytical Ability examinations.

(c) PRAXIS scores consist of two or more modules for each test area, the scores of which are added to yield a total score. The SBE uses a compensatory score model, by which a person may score two standard errors of measure (SEM) below the validated score on individual modules. In this case, the person must score higher than the validated score on another module to achieve the total required score.

	<u>Minimum Module Score</u>	<u>Total Required Area Score</u>
(1) <u>Biology (9-12)</u>		
(A) <u>Content knowledge, part 1</u>	<u>154</u>	
(B) <u>Content essays</u>	<u>139</u>	
(C) <u>Pedagogy</u>	<u>135</u>	<u>475</u>
(2) <u>Chemistry (9-12)</u>		
(A) <u>Chemistry: Content knowledge</u>	<u>150</u>	
(B) <u>Physical science: pedagogy</u>	<u>139</u>	
(C) <u>Chemistry: Content essays</u>	<u>135</u>	<u>476</u>
(3) <u>English Language, Literature and Composition (9-12)</u>		
(A) <u>Content Knowledge</u>	<u>154</u>	
(B) <u>Essays</u>	<u>135</u>	
(C) <u>Pedagogy</u>	<u>145</u>	<u>485</u>
(4) <u>Language Arts (6-8)</u>		
(A) <u>Content knowledge</u>	<u>152</u>	
(B) <u>Pedagogy</u>	<u>135</u>	<u>319</u>
(5) <u>Mathematics (9-12)</u>		
(A) <u>Content knowledge</u>	<u>133</u>	
(B) <u>Pedagogy</u>	<u>135</u>	<u>308</u>
(6) <u>Physical Education (K-12)</u>		
(A) <u>Content Knowledge</u>	<u>155</u>	
(B) <u>Movement forms, analysis and design</u>	<u>144</u>	
(C) <u>Pedagogy</u>	<u>None</u>	<u>324</u>
(7) <u>Science (6-8)</u>		
(A) <u>General science: content essays</u>	<u>130</u>	
(B) <u>Physical science: pedagogy</u>	<u>139</u>	<u>311</u>
(8) <u>Science (9-12)</u>		
(A) <u>General science: content essays</u>	<u>130</u>	
(B) <u>Content knowledge, Part 1</u>	<u>143</u>	
(C) <u>Content knowledge, Part 2</u>	<u>145</u>	<u>481</u>
(9) <u>Social Studies (6-8)</u>		
(A) <u>Content knowledge</u>	<u>158</u>	
(B) <u>Analytical essays</u>	<u>135</u>	<u>319</u>
(10) <u>Social Studies (9-12)</u>		
(A) <u>Content knowledge</u>	<u>158</u>	
(B) <u>Interpretation of materials</u>	<u>167</u>	
(C) <u>Analytical essays</u>	<u>145</u>	<u>509</u>

(11)	Spanish (K-12)		
	(A) Content knowledge	148	
	(B) Productive Language Skills	156	330

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

**TITLE 19A - DEPARTMENT OF  
TRANSPORTATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2B .0603.*

*The proposed effective date of this action is January 1, 1995.*

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.*

*Reason for Proposed Action: The proposed amendment will change the review period required by DOT for commercial driveway permits from 60 days to four weeks.*

*Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611 within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.*

**CHAPTER 2 - DIVISION OF  
HIGHWAYS**

**SUBCHAPTER 2B - HIGHWAY  
PLANNING**

**SECTION .0600 - DRIVEWAY  
ENTRANCES**

**.0603 DRIVEWAY PERMITS FOR  
SPECIAL COMMERCIAL PROPERTY**

(a) Property use designated as special commercial in Rule .0602 of this Section shall require study to a greater depth than other commercial

property uses due to the possibility of greater traffic generation. As a result, a ~~minimum of 60 days for review~~ four-week review period shall be required by the Department. The permit shall be submitted sufficiently in advance of the planned construction date to allow for this review period. The different types of property uses that come under this heading are:

- (1) Shopping centers with one or more adjoining commercial or service establishments planned or constructed;
- (2) Large residential developments;
- (3) Major recreational facilities;
- (4) Large office buildings or complexes containing more than 200 parking spaces;
- (5) Hospitals or large medical facilities;
- (6) Large industrial developments;
- (7) Airports;
- (8) Civic Centers;
- (9) Other uses which can be expected to attract large amounts of traffic (Average Daily Traffic greater than 1,000 vehicles per day); and
- (10) Any development located at high volume or high accident locations, which are locations having a history of accidents.

(b) In addition to the items required on the permit application as specified in Rule .0602 of this Section, the following items of information, with the exceptions noted, must be shown on the site plans before the application can be considered:

- (1) a complete plot plan showing the buildings and parking space layouts (not necessary for new public streets);
- (2) the proposed driveway locations and widths;
- (3) the approximate distances between the following items:
  - (A) driveway centerline to centerline of nearest crossroad;
  - (B) driveway centerline to existing or proposed crossovers;
  - (C) driveway centerline to adjacent streams or bridges;
  - (D) pavement edge of road to right of way; and
  - (E) width of adjacent roads.

(c) In the absence of local zoning or subdivision ordinances, the developer shall present four copies of the site plans to the District Engineer at least ~~60~~ days four weeks prior to the planned construction date.

(d) Where local zoning or subdivision ordinances exist, the developer shall submit five copies of the site plans to the local planning body. The local planning body, after tentative approval of the plan, shall forward four copies of the plans to the Division Engineer. The Division Engineer shall take the necessary action and inform the developer and the local planning body of the results of the investigation conducted by the Department.

*Statutory Authority G.S. 136-18(5); 136-89.50; 136-89.51.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARD**

**CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Registration for Professional Engineers & Land Surveyors intends to amend rule cited as 21 NCAC 56 .0502.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Jerry T. Carter, Executive Secretary, N.C. Board of Registration, 3620 Six Forks Rd., Ste. 300, Raleigh, NC 27609-7197. The demand must be received within 15 days of this notice.*

*Reason for Proposed Action: To reflect the accurate costs of the Fundamentals of Engineering Examination as administered by the North Carolina Board of Registration.*

*Comment Procedures: Any interested party may submit written comments on the proposed amendment by mailing the comments to Jerry T. Carter, Executive Secretary, N.C. State Board of Registra-*

*tion, 3620 Six Forks Rd., Ste. 300, Raleigh, NC 27609-7197, within 30 days of publication of the proposed amendment or until the date of any public hearing, whichever is longer.*

**SECTION .0500 - PROFESSIONAL ENGINEER**

**.0502 APPLICATION PROCEDURE: INDIVIDUAL**

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made at the Board address.

(c) Applicable Forms:

(1) Student Form. This form requires the applicant to set forth his personal history, his educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:

- (A) Students graduating in the same semester or quarter in which the fundamentals of engineering examination is administered.
- (B) Graduates with less than two years since graduation.

(2) Professional Engineer Form:

- (A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for registration by using the Professional Engineer form. The submission of this form will signify that the applicant seeks registration, and will result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth his personal and educational background, his engineering experience and his character references. A passport-type photograph for identification purposes is required.
- (B) Persons who have previously completed the fundamentals examination by use of the Student Form will submit

the Professional Engineer Form to request registration when qualified to take the final eight-hour examination.

- (3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement their initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

(4) Reference Forms:

- (A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. One of these individuals must be registered as a Professional Engineer. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be registered Professional Engineers.

- (B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed are required to submit to the Board their evaluation of the applicant on forms supplied them by the applicant. Such information is considered confidential and will not be released by the Board.

- (C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, his knowledge of the applicant and to state other information concerning the applicant's engineering experience, character and reputation.

- (D) The reference forms will be received by the applicant when he receives his application. The reference forms are then to be distributed by the applicant to the persons listed by him on his application as references. It is the

applicant's responsibility to see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

- (1) Student Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the student form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the registration fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of engineering examination is payable with the applicant's subsequent application for registration as a Professional Engineer using the Professional Engineer form.

- (2) Professional Engineer Form. The registration fee of one hundred dollars (\$100.00) and appropriate examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form is payable with the filing of the application.

- (3) Comity. The registration fee of one hundred dollars (\$100.00) for applicants for comity registration is payable with the filing of the application.

- (4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with the following schedule:

- (A) Engineering Fundamentals - ~~\$30.00~~  
40.00  
(B) Engineering Principles & Practice - \$70.00

- (e) The Board will accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of registration in another state.

*Statutory Authority G.S. 89C-10; 89C-13; 89C-14.*

**LIST OF RULES CODIFIED**

*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**

**AUGUST 94**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>TITLE</b>	<b>DEPARTMENT</b>
4	Commerce	19A	Transportation
10	Human Resources	21	Occupational Licensing Boards
11	Insurance		10 - Chiropractic Examiners
12	Justice		32 - Medical Examiners
13	Labor		42 - Examiners in Optometry
15A	Environment, Health, and Natural Resources		50 - Plumbing and Heating Contractors
			58 - Real Estate
			65 - Therapeutic Recreation Certification

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4 NCAC 12C .0007		✓				08/16/94	
10 NCAC 3R .0305		✓				08/12/94	180 DAYS
3U .1717					✓		
14K .0365		✓		✓		09/01/94	
18F .0312		✓				09/01/94	
.0313		✓		✓		09/01/94	
.0314		✓				09/01/94	
.0315		✓		✓		09/01/94	
.0316 - .0317		✓				09/01/94	
.0318		✓		✓		09/01/94	
.0319 - .0320		✓				09/01/94	
.0321	✓			✓		09/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	18F	.0322 - .0323	✓					09/01/94	
		42R	.0201		✓				07/27/94	180 DAYS
		50B	.0313		✓				09/01/94	
			.0314	✓					09/01/94	
			.0407		✓				09/01/94	
11	NCAC	12	.0436		✓				09/01/94	
12	NCAC	9B	.0208		✓		✓		01/01/95	
13	NCAC	7F	.0201					✓		
15A	NCAC	1J	.0601		✓				09/01/94	
		2B	.0306		✓		✓		09/01/94	
			.0309		✓		✓		09/01/94	
			.0311		✓		✓		09/01/94	
		2D	.0518		✓		✓		09/01/94	
		2E	.0107		✓				09/01/94	
			.0301		✓		✓		09/01/94	
			.0401	✓			✓		09/01/94	
			.0402	✓					09/01/94	
		3O	.0301 - .0310	✓					08/09/94	180 DAYS
		10D	.0003		✓		✓		09/01/94	
		10H	.0403 - .0407			✓			09/01/94	
		11	.0104		✓				08/20/94	180 DAYS
			.0117		✓				08/20/94	180 DAYS
			.0343		✓				08/20/94	180 DAYS
			.0350 - .0351		✓				08/20/94	180 DAYS
			.0356 - .0357	✓					08/20/94	180 DAYS
			.0502 - .0515		✓				08/20/94	180 DAYS
			.0517 - .0520		✓				08/20/94	180 DAYS
			.0521 - .0523	✓					08/20/94	180 DAYS
			.1625		✓				08/20/94	180 DAYS
		18A	.2645					✓		
		18C	.0502					✓		
			.0715					✓		
			.0805					✓		

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	18C	.1406					✓		
		19A	.0502		✓				10/01/94	180 DAYS
19A	NCAC	2B	.0221		✓				09/01/94	
		2D	.0607		✓		✓		10/01/94	
		2E	.0218		✓				09/01/94	
21	NCAC	10	.0303	✓			✓		09/01/94	
		32M	.0006		✓				09/01/94	
		42A	.0001		✓				10/01/94	
		42C	.0002		✓				10/01/94	
			.0004		✓				10/01/94	
			.0005		✓				10/01/94	
		42J	.0001		✓				10/01/94	
		50	.0306		✓		✓		09/01/94	
			.1104	✓					09/01/94	
		58A	.0104		✓		✓		07/01/95	
			.0112		✓		✓		07/01/95	
		65	.0002		✓				09/01/94	

## RRC OBJECTIONS

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*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).*

### COMMERCE

#### Energy

4 NCAC 12C .0007- Institutional Conservation Program  
Rule Returned to Agency  
Agency Filed Rule for Codification Over RRC Objection  
RRC Objection 06/16/94  
07/14/94  
Eff. 08/16/94

### CRIME CONTROL AND PUBLIC SAFETY

#### State Highway Patrol

14A NCAC 9H .0305 - Rotation, Zone, Contract, and Deviation from System  
Agency Revised Rule  
RRC Objection 07/14/94  
Obj. Removed 07/14/94

### ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

#### Departmental Rules

15A NCAC 1J .0303 - Filing of Required Supplemental Information  
Agency Revised Rule  
RRC Objection 06/16/94  
Obj. Removed 06/16/94  
15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare  
Agency Revised Rule  
RRC Objection 06/16/94  
Agency Revised Rule  
RRC Objection 06/16/94  
Obj. Removed 07/14/94

#### Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions and Procedures  
RRC Objection 08/18/94

### HUMAN RESOURCES

#### Childrens Services

10 NCAC 41I .0306 - When Abuse, Neglect or Dependency is Found  
Agency Revised Rule  
RRC Objection 07/14/94  
Obj. Removed 07/14/94  
10 NCAC 41J .0501 - When to Complete a Risk Assessment  
Agency Revised Rule  
RRC Objection 07/14/94  
Obj. Removed 07/14/94

#### Facility Services

10 NCAC 3D .0913 - Permit  
Agency Revised Rule  
RRC Objection 07/14/94  
Obj. Removed 07/14/94

### JUSTICE

#### Criminal Information

12 NCAC 4E .0402 - Certification and Recertification of DCI Operators  
RRC Objection 07/14/94

## RRC OBJECTIONS

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*Agency Revised Rule*

*Obj. Removed 07/14/94*

### **Criminal Justice Education and Training Standards**

*12 NCAC 9B .0203 - Admission of Trainees*

*RRC Objection 07/14/94*

*Agency Revised Rule*

*Obj. Removed 07/14/94*

*12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers*

*RRC Objection 07/14/94*

### **LICENSING BOARDS AND COMMISSIONS**

#### **Acupuncture Licensing Board**

*21 NCAC 1 .0102 - Req./Waiver/Qualifications/Licensure Detailed/G.S. 90-455*

*RRC Objection 07/14/94*

*Agency Revised Rule*

*Obj. Removed 07/14/94*

#### **Therapeutic Recreation Certification**

*21 NCAC 65 .0004 - Academic - TRS Examination*

*RRC Objection 08/18/94*

### **TRANSPORTATION**

#### **Division of Motor Vehicles**

*19A NCAC 3B .0703 - Requirements for Third Party Testers*

*RRC Objection 07/14/94*

*Agency Revised Rule*

*Obj. Removed 07/14/94*

*19A NCAC 31 .0501 - Requirements*

*Rule Withdrawn by Agency*

*06/16/94*

*Agency Re-Submits Rule*

*RRC Objection 07/14/94*

*Agency Revised Rule*

*Obj. Removed 07/14/94*

*19A NCAC 3J .0501 - Requirements*

*RRC Objection 07/14/94*

*Agency Revised Rule*

*Obj. Removed 07/14/94*

**CONTESTED CASE DECISIONS**

*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>
<b>ADMINISTRATION</b>				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
<b>COMMERCE</b>				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
<b>CORRECTION</b>				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	
<i>Crime Victims Compensation Commission</i>				
Mac H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407

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Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
<b>EMPLOYMENT SECURITY COMMISSION</b>				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenbug Cty	93 EHR 1017	Becton	05/31/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenbug County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
<i>Coastal Management</i>				
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378*	Gray	04/07/94	
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017*	Gray	04/07/94	
John R. Hooper v. EHNR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
<i>Environmental Health</i>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
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Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	

\* Consolidated Cases.

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<b>Environmental Management</b>				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
<b>Land Resources</b>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
<b>Marine Fisheries</b>				
Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 <sup>ab</sup>	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 <sup>ab</sup>	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<b>Solid Waste Management</b>				
Roger Sessoms v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
Bohly Benton v. EHNR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
<b>HUMAN RESOURCES</b>				
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
<b>Distribution Child Support</b>				
Mona L. Stanback v. DHR, Div/Social Svcs, Child Support Enf. Section	93 DCS 0969	Morgan	08/02/94	
Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
<b>Division of Child Development</b>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
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Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	94 DHR 0106	Nesnow	06/29/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0119	Reilly	06/30/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
<b>Facility Services</b>				
Laura Harvey Williams v. DHR, Division of Facility Services	93 DHR 0391	Morgan	08/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Judy Hoben Wallace v. Department of Human Resources	93 DHR 0935	Gray	05/23/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
Mr. & Mrs. Alvin Wilson v. DHR, Division of Facility Services	94 DHR 0559	Chess	08/25/94	

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<i>Certificate of Need Section</i>				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Department of Human Resources, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Cape Fear Memorial Hospital v. Department of Human Resources	93 DHR 1552	Reilly	08/15/94	
The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0197*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR				
The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0198*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR				
<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
Lu Ann Leidy, MD/Dorothea Dix Hosp. Child & Youth v. Medical Assis.	94 DHR 0448	Chess	06/21/94	
<i>Division of Social Services</i>				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	
Nathaniel Harrell, Annie Harrell v. Department of Social Services	94 DHR 0440	Gray	06/27/94	
<i>Child Support Enforcement Section</i>				
Alfred Bennett v. Department of Human Resources	90 CSE 1146	Morgan	08/11/94	
Shelton Staples v. Department of Human Resources	91 CSE 0660	Morgan	08/11/94	
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Dalton Felton Sr. v. Department of Human Resources	92 CSE 0532	Morgan	07/13/94	
Colby S. Hughes v. Department of Human Resources	92 CSE 1199	Morgan	08/10/94	
Gary Eugene Honeycutt v. Department of Human Resources	92 CSE 1207	Morgan	08/10/94	
Vicki C. Conn v. Department of Human Resources	92 CSE 1268	Morgan	08/10/94	
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Darryl D. Leedy v. Department of Human Resources	93 CSE 0591	Morgan	08/11/94	
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Luther Hatcher v. Department of Human Resources	93 CSE 1082	Mann	05/24/94	
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Anthony E. Bullard v. Department of Human Resources	93 CSE 1094	Nesnow	06/13/94	
Donald E. Height v. Department of Human Resources	93 CSE 1110	Morgan	08/11/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
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Thomas M. Birdwell III v. Department of Human Resources	93 CSE 1155	Morgan	08/02/94	
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Ernest N. Pruitt Jr. v. Department of Human Resources	93 CSE 1197	Nesnow	06/28/94	
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Bobby Lee McCullers Jr. v. Department of Human Resources	93 CSE 1215	Reilly	06/17/94	
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Glen Nelson Washington v. Department of Human Resources	93 CSE 1221	Morgan	08/02/94	
Michael V. Dockery v. Department of Human Resources	93 CSE 1222	Morgan	07/15/94	
Floyd E. Bailey v. Department of Human Resources	93 CSE 1227	Mann	07/07/94	
Dennis W. Nolan v. Department of Human Resources	93 CSE 1254	Morrison	04/27/94	
Robert Calvin Coanor v. Department of Human Resources	93 CSE 1258	West	04/19/94	
James D. Williams v. Department of Human Resources	93 CSE 1259	West	04/19/94	
Mahalon Eugene White v. Department of Human Resources	93 CSE 1261	Nesnow	08/22/94	
Marty Franzen v. Department of Human Resources	93 CSE 1264	Morgan	07/15/94	
Vaughn D. Pearsall v. Department of Human Resources	93 CSE 1267	Becton	04/20/94	
Gerald L. Murrell v. Department of Human Resources	93 CSE 1271	Gray	08/26/94	
Larry D. Dawson v. Department of Human Resources	93 CSE 1273	Morrison	07/07/94	
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Anthony Curry v. Department of Human Resources	93 CSE 1371	Chess	08/18/94	
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<i>Division of Marine Fisheries</i>				
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Rose Mary Taylor v. Department of Human Resources, Murdoch Center	93 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
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<i>Craven County Department of Social Services</i>				
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<i>Durham County Department of Social Services</i>				
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<i>Lee County Health Department</i>				
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Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500*	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
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<i>Wake County School System</i>				
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<i>The Whitaker School</i>				
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<b>STATE TREASURER</b>				
<i>Retirement Systems Division</i>				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
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Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
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Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768
<b>TRANSPORTATION</b>				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	
<b>UNIVERSITY OF NORTH CAROLINA</b>				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
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3. Prior to January 1, 1986, Agents were covered by the Federal Civil Service Retirement System (hereinafter CSRS). Employees covered by the CSRS, including Petitioner, were not eligible to contribute to Federal Social Security System, or to receive Federal Social Security benefits.
4. Because Agents covered by the CSRS were not permitted to participate in Social Security and because the salaries of the Agents were derived from State and local sources, Agents were permitted to participate in the Teachers' and State Employees' Retirement System of North Carolina (hereinafter TSERS) and North Carolina Local Governmental Employees' Retirement System (hereinafter LGERS).
5. After January 1, 1986, Agents became eligible to transfer from CSRS to the newly created Federal Employees' Retirement System (hereinafter FERS) and became eligible to contribute to Social Security. Agents covered by the new FERS are not permitted to participate in TSERS or LGERS. Petitioner did not transfer from CSRS to FERS.
6. In September, 1988, Petitioner became disabled; and, as a result of this disability, Petitioner was unable to continue to perform the duties of his usual employment.
7. Effective December 1, 1988, Petitioner was approved for disability retirement from LGERS.
8. Effective November 22, 1989, Petitioner was approved for the receipt of long-term disability benefits from Disability Income Plan of North Carolina (hereinafter DIPNC), a disability plan for members of TSERS.
9. During this same period, Petitioner was also approved for disability retirement from CSRS.
10. At the time that he became disabled, Petitioner's annual salary was \$30,474. Of this amount, \$20,712 came from the State sources and \$9,762 came from local sources.
11. Petitioner applied for/inquired about disability benefits from the Social Security Administration (hereinafter SSA). He was informed by the SSA that he was not eligible to receive Social Security benefits because he had not contributed to Social Security. The parties specifically stipulate that the Petitioner is not eligible to receive Social Security benefits because he was not permitted by law during his employment to contribute to the Social Security System.
12. In 1992, Petitioner received \$13,733.74 in benefits from DIPNC and \$16,220 in benefits from LGERS and CSRS combined.
13. In 1993, Petitioner received \$13,911.08 in benefits from DIPNC (after the Social Security offset), \$4,140.00 in benefits from LGERS, and \$12,600.00 in benefits from CSRS.
14. By letter dated December 11, 1992, and December 28, 1992, Petitioner was notified by Respondent that his monthly benefits from DIPNC were being reduced \$941.00 effective December 1, 1992. Respondent arrived at this amount based on calculations made by its consulting actuary. Petitioner was further informed by Respondent that this reduction was being made pursuant to G.S. 135-106(b), which states in part that:

"Upon the completion of four years from the conclusion of (60 days from the last actual day of service), the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits."
15. Pursuant to G.S. 135-108, the current amount of the reduction is \$965.00 per month. The amounts of the reductions will vary from time to time due to adjustments in Social Security benefits.

16. Respondent has taken the position that this statute must be applied to Petitioner regardless of the fact that Petitioner was not eligible for Social Security disability benefits. Petitioner has taken the position that this statute should not be applied to him because he never could have been eligible for Social Security disability benefits.
17. The parties further stipulate and agree that:
  - a. we believe that this contested case does not involve any issues or dispute of material fact;
  - b. we believe that this contested case presents only questions of law of statutory construction, and should be decided upon these stipulated facts; and
  - c. we believe that this contested case does not raise any issues raised in Faulkenbury v. TSERS, et. al., Wake County, 90 CVS 12090; Woodard v. LGERS, et. al., Wake County 91 CVS 368; or Peele v. TSERS, et al., Wake County 92 CVS 11978; or other cases raising issues that are contained in these cases, and should not be construed to affect Petitioner's status as a possible member in any of those class actions.
18. The Petition for a contested case filed by Petitioner in the Office of Administrative Hearings was timely filed after the agency action giving rise to this contested case.
19. The parties agree that the amounts of any alleged underpayments to Petitioner cannot be presently ascertained because they will be continuous until the conclusion of this contested case, and the parties therefore stipulate that, should Petitioner ultimately prevail on the merits of this contested case, the amounts of any underpayments due him will be calculated at that time.
20. The parties agree that these stipulated facts may be amended or supplemented and that additional relevant exhibits may be introduced as appropriate in the interests of justice.
21. Petitioner is seeking the following relief:
  - a. payment of all disability benefits due him from DIPNC without any offset or reduction for Social Security disability benefits, past or future; and
  - b. attorney fees.

Upon consideration of the above Stipulated Facts, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. N.C. Gen. Stat. 135-106(b) states in pertinent part, that after four years of State disability benefits those benefits "shall" be reduced by an amount equal to social security disability benefits "... to which the beneficiary might be entitled had the beneficiary been awarded social security disability benefits."

This statute, it appears, would encourage State employees who are on State disability to pursue their social security benefits.

Interestingly, N.C. Gen. Stat. 135-106(b) also provides that if social security benefits are denied, the State employee's disability benefits will be reduced nonetheless by the amount social security might have paid. This statute does not address the threshold disability test for State employees to receive disability benefits as compared to the threshold disability test for federal social security disability benefits.

The case at hand however does not involve an employee who has been rejected for social security disability benefits. It rather involves an employee who under no circumstances or conditions would ever be eligible to receive social security benefits.

The instant case involves a State employee who, because of his eligibility in SCRS, was not permitted to contribute to social security during the time of his employment and who was therefore not eligible to receive social security benefits under any circumstances.

2. It is the opinion of the undersigned that the statute cannot reasonably be construed to provide that an employee who, under no circumstances, could receive social security benefits, would nonetheless have his State benefits reduced by the amount social security would have paid had he or she been eligible for those benefits.
3. It is therefore concluded that the Petitioner's State disability benefits should not have been reduced and that the Respondent erred when it so reduced Petitioner's benefits.

Based upon the above Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

1. That the Petitioner receive payment of all disability benefits due him from DIPNC without any offset or reduction for social security disability benefits past or future, and
2. That reasonable attorney fees be awarded.

**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 Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 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 and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System.

This the 4th day of August, 1994.

\_\_\_\_\_  
Dolores O. Nesnow  
Administrative Law Judge

**CONTESTED CASE DECISIONS**

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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 INS 0345

COUNTY OF STANLY

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P.H.B.	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>RECOMMENDED DECISION</b>
	)	
N.C. TEACHERS' AND STATE EMPLOYEES'	)	
COMPREHENSIVE MAJOR MEDICAL PLAN	)	
Respondent.	)	
	)	

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The above-captioned hearing was heard before Administrative Law Judge Beecher R. Gray, on July 6, 1994, in Charlotte, North Carolina.

**APPEARANCES**

**For Petitioner:**                    Thomas E. Cone  
   Turner Enochs & Lloyd, P.A.  
   P.O. Box 160  
   Greensboro, NC 27402-0160  
   **Attorney for Petitioner**

**For Respondent:**                Evelyn B. Terry  
   General Counsel  
   N.C. Teachers' and State Employees' Comprehensive Major Medical Plan  
   4509 Creedmoor Road  
   Raleigh, NC 27612  
   **Attorney for Respondent**

**ISSUE**

Did the Respondent err in denying continued certification for admission of patient "R.B." for her continued stay at Carolinas Medical Center - Center for Mental Health from February 28 through her discharge on May 20, 1993, for acute psychiatric care?

**STATUTES AND RULES IN ISSUE**

N.C. Gen. Stat. § 135-39.8  
N.C. Gen. Stat. § 135-40(b)  
N.C. Gen. Stat. § 135-40.7B  
N.C. Gen. Stat. § 135-40.7(5)  
    N.C. Gen. Stat. § 150B-1  
N.C. Gen. Stat. § 150B-2(8a)

**BURDEN OF PROOF**

Petitioner has the burden of showing by the greater weight of the substantial evidence admitted that the Respondent erred as stated in the issue.

EXHIBITS

**For Petitioner:**

- Exhibit A Medical Records from Carolinas Medical Center - Center for Mental Health for R.B., Admitted February 19, 1993, Discharged May 10, 1993
- Exhibit B Curriculum Vitae for Pleas Rogers Geyer, M.D., Treating Physician for R.B.
- Exhibit C Pages 24 and 25 from the State of North Carolina Teachers' and State Employees' Major Medical Plan describing mental health benefits coverage
- Exhibit D North Carolina General Statutes § 135-40.7B Special Provisions for Mental Health Benefits. Section of the North Carolina General Statutes describing mental health benefits under the Teachers' and State Employees' Comprehensive Medical Plan

**For Respondent:**

- Exhibit 1 North Carolina General Statutes 135-40.7B Special Provisions for Mental Health Benefits
- Exhibit 2 Medical Policy on Mental Health Case Management ADO430:00
- Exhibit 3 Medical Policy on Mental Health Case Management ADO450:00
- Exhibit 4 Curriculum Vitae of Mental Health Case Manager Michael S. Lancaster, M.D.
- Exhibit 5 Case history screen for Mental Health Case Manager Administrative Documentation
- Exhibit 6 Case history screen for Mental Health Case Manager Justification for treatment
- Exhibit 7 Blue Cross and Blue Shield Certification Form
- Exhibit 8 Letter from Mental Health Case Manager dated February 28, 1993 to Center for Mental Health denying certification for continued acute inpatient treatment
- Exhibit 9 Reconsideration Review by second psychiatrist at Mental Health Case Manager upholding original denial
- Exhibit 10 Letter to Center for Mental Health informing provider of reconsideration review
- Exhibit 11 Letter to Petitioner informing her of reconsideration review
- Exhibit 12 Review by independent arbiter from the American College of Medical Quality [Admitted for procedural purposes and not for its substantive description of patient's condition]
- Exhibit 13 Letter to Petitioner informing her of findings of independent arbiter
- Exhibit 14 Letter to Center for Mental Health informing provider of findings of independent arbiter
- Exhibit 15 Discharge Summary from Center for Mental Health
- Exhibit 16 Medical records from Center for Mental Health

WITNESSES

**For Petitioner:**

P.H.B., Albemarle, North Carolina  
Pleas R. Geyer, M.D. - Charlotte, North Carolina

**For Respondent:**

Harold Wright, Deputy Administrator of the State of North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan  
Michael Lancaster, M.D., Raleigh, North Carolina

FINDINGS OF FACT

1. P.H.B., Petitioner in this matter, is employed by the State of North Carolina and is a participant in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter "the Plan"). Petitioner has a daughter, R.B., who is also a Plan beneficiary as a family member of P.H.B.

2. R.B. was born on June 2, 1976 and was 16 years old at the time of her admission to Carolinas Medical Center - Center for Mental Health ("CMC").

3. She was admitted to CMC from February 19, 1993 through May 10, 1993 with a diagnosis of major depression and oppositional defiant disorder with eating disorder.

4. R.B. maintained a reasonable adjustment to her school and home life until approximately January of 1992. As reported by her mother, at this time she began to withdraw from previous acquaintances. She began to have explosive tantrums which were accompanied by repeated episodes of property destruction. She began to run away repeatedly, remaining away from home for weeks at a time. During these periods, she also missed school and other activities. Her grades deteriorated to failing and she had a number of disciplinary problems at school.

5. With the onset of this behavior, her mother found her behavior to be unmanageable and she was sent to live with her father and step-mother. Her negative behaviors escalated despite counseling and out-of-home placement trials.

6. During the year prior to her admission she began to eat compulsively and gained over 100 pounds. Sixty pounds of that gain were in the 3 months prior to the admission to CMC, at which time she weighed 260 pounds.

7. This patient has a history of a prior inpatient acute psychiatric care admission to Presbyterian Hospital from May 17 through June 29, 1992. Her admitting diagnosis was major depression. She was discharged on June 29 in part because of a termination of insurance coverage. Although she was begun on a trial of Prozac, she refused to continue to take the Prozac.

8. The admission to Presbyterian Hospital was precipitated in part by the petitioner's violent attack on her mother including the use of a knife. Since January of 1992, she has increasingly demonstrated violent and aggressive behavior toward her mother and others. On one occasion in September of 1992 the petitioner held a party at her mother's home in her mother's absence. She and her friends vandalized the home, causing extensive property damage.

9. The patient has routinely threatened her mother, and has physically attacked her on at least one occasion.

10. On many occasions the petitioner threatened to stab her mother and to kill herself as well. On many occasions she inflicted superficial cuts on her wrists. She also stole and hid knives on several occasions.

11. Since her admission at Presbyterian Hospital, her mother and father attempted to have her participate in outpatient therapy through the Stanley County Mental Health Department. However, because of her extensive runaway behavior, she did not consistently attend this therapy.

12. Her mother also made extensive attempts to find a group therapeutic home which could work with her daughter. However, after contacting approximately 40 homes, she was unable to find one that would take and treat her daughter.

13. On many of her runs, the patient ended up at The Relatives, a shelter for children. On her last run prior to her admission to CMC, the staff at The Relatives told her mother that they could not continue to hold her there because they could not provide appropriate treatment.

14. Following her departure from The Relatives, the Mills Homes, a children's longterm care residential treatment center, agreed to interview the petitioner, but refused to admit her after she became violent and threatening during the interview.

15. The Mills Home did not have the ability to handle her symptoms, particularly including her rage, violence, and self-destructive tendencies. Upon returning home from the Mills Home, the patient became violent, breaking many items in her mother's home and threatening to stab her mother during the night. Because of her daughter's past history of violence toward her, including at least one prior attack with a knife, the mother took these threats seriously. She contacted the police, but was told that since her daughter was over 16 there was nothing they could do. Shortly after this, the patient ran away. Her mother found her two weeks later in 20° weather with no place to stay and in bad physical condition. She brought her to the CMC emergency room at this time.

16. Following a 24-hour observation period at CMC she was described as follows:

Symptoms escalated with self cutting, recurrent runaway, school avoidance, increasingly violent tantrums with extensive property damage in the home. Patient in treatment at Stanley County Mental Health where mother lives but has continued decline. In past 3 months 40-pound weight gain to 260 pounds. Over past 2 months, increasingly persistent and detailed suicidal ideation. Superficial self-cutting on wrists. Attempt to stabilize in group home failed to halt deterioration.

Mental status - tearful, disheveled, psychomotor retarded. Twelve years old was last time she remembered enjoying herself. Detailed suicidal ideation (cutting wrists, taking pills) . . . Forty-pound weight gain last 3 months.

Impression: Major depression; eating disorder NOS; morbid obesity.

17. Dr. Geyer testified that at the time of admission she was psychomotor retarded, meaning that she was lethargic most of the time. She was minimally responsive to those around her. Any issues related to adult influence led to irritability and explosive behavior. She expressed no concern as to whether she lived or died. She interpreted all emotions as hunger and ate compulsively. In Dr. Geyer's opinion, she was clearly depressed.

18. Dr. Geyer further testified that she had never engaged in any observable treatment alliance during any of her prior treatments, whether inpatient or outpatient. In general she would take the option of running away rather than engaging in therapy. Dr. Geyer testified, and it is found as fact, that any treatment facility less restrictive than an acute care facility with a locked ward would not have been adequate to contain the petitioner because of her strong tendency to run away.

19. Dr. Geyer testified, and it is so found, that the petitioner met the diagnostic criteria for major depression as found in the Diagnostic and Statistical Manual - III-R.

20. Because of the lack of either length of time or intensity, none of petitioner's prior treatment programs had been sufficient to engage her in a treatment alliance.

21. Dr. Geyer testified, and it is found as fact, that at the time of her admission on February 19, 1993, the petitioner required evaluation and hospitalization for intensive, broad-based treatment to determine the underlying issues, engage her in therapy, and give her the ability to recognize and deal with the issues underlying her psychiatric problems.

22. Patient also required the intensive level of treatment available only in an acute inpatient facility. This setting allows the treating team to work with the patient within various settings including her own peer group, a school setting, family counseling, individual therapy, and other therapeutic settings. This can all be carried out under the direct supervision of a Board-certified child psychiatrist who oversees and orchestrates the diagnostic and treatment formulations.

23. Dr. Geyer testified, and it is found as fact, that it was medically necessary that petitioner receive acute psychiatric treatment on a short term, inpatient basis under the care of a physician.

24. During the course of R.B.'s treatment, Dr. Geyer and the treating team established discharge criteria to be used to determine the petitioner's progress and to establish an appropriate time for discharge. These included the following:

A. She should be engaged in productive psychotherapy so that she can recognize her symptoms (such as diet, violent tantrums, etc.) and begin to learn to deal with them;

B. The engagement in therapy must be demonstrated by a mitigation of her behavioral symptoms, thus indicating that she has begun to develop some internal ability to control her behavior;

C. She must be able to comply with the routine in the hospital as a marker of her ability not to run away once she has been discharged; and

D. She must demonstrate the ability to modulate her impulse to compulsively eat.

25. Dr. Geyer testified, and it is found as fact, that these are appropriate discharge criteria for the petitioner given her condition and history at that time.

26. Early in the patient's treatment her ability to comply with a weight loss program was seen as an important marker of her ability to recognize and face her problems. By March 11, it was noted that she still showed significant symptoms of sadness, anger and pessimism with any discussion of significant issues, such as a relationship with her mother. Her eating was noted to be clearly in reaction to her sadness or anger. By March 18, she continued to evade her diet. The treating team recognized that she mislabeled her feelings of loneliness, ugliness and so on as hunger. This was seen as a clear marker that she had not been able to address any of her primary symptoms by March 18. On March 25 it was noted that her behavior continued to be consistently oppositional but that she was unable to relate this behavior to any issues related to her relationship with her family or behavioral problems. By April 1, she was beginning to admit to feelings of loneliness and self-disgust, but had not made progress on relating her urge to eat with other relationships in her life. Over the course of the next week, she was allowed to go on several passes in order to gauge her progress and her ability to deal with her parents. All of these ended early, following oppositional and challenging behavior. This behavior was echoed on the unit as indicated in the physician's note of April 9. Over the course of the next week, she began to show some compliance with her dietary regimen. She was beginning to recognize that bad feelings should not necessarily be labeled as hunger. She was allowed to go on additional passes with her mother in order to bring to a head the family issues which these engendered. This allowed for these issues to be brought out and addressed directly during therapeutic sessions in the

hospital. See physician's notes, April 15. At about this time, her behavior on passes began to improve and the focus of her treatment began to switch to preparing her for the transition out of the hospital. This phase of treatment focuses on consolidating the gains made and preparing the child to continue to exercise appropriate self control outside the hospital setting and to continue a treatment course in an outpatient setting. By May 10, 1993, the date of discharge, she had met the discharge criteria which had been established for her near the time of her admission and which are described in more detail above.

27. Dr. Geyer also testified, and it is found as fact, that there was a substantial likelihood of improvement. The treating team believed that the patient could be engaged in therapy and that she could begin to address the underlying problems behind her violent and aggressive behavior and her compulsive overeating.

28. Dr. Geyer testified that the services rendered were required for the medically necessary treatment of the patient's mental disorder.

29. As described by Dr. Geyer, this patient's admission to the hospital, her treatment during her stay, and the discharge criteria which were established for her were all consistent with appropriate community practice standards. These practice standards are also consistent with those established by the American Association of Child and Adolescent Psychiatry. Both the admitting criteria and the discharge criteria were well-defined and within appropriate standards of practice.

30. It is found, based upon all of the testimony, that Carolinas Medical Center was the only facility in the community which could offer R.B. the appropriate diagnostic and therapeutic services in a confined setting adequate to contain both her behavioral outbursts and her propensity to run away.

31. Mr. Harold Wright, Deputy Administrator of the Plan, testified that the criteria applied for this patient's review were developed by the Mental Health Manager, not the State agency. He further testified that these criteria were not publicized to Plan beneficiaries and they were not adopted as a party of any agency rulemaking, nor were they included in the benefits booklet distributed to State employees and Plan beneficiaries.

32. Dr. Michael Lancaster, Medical Director of Value Behavior Health, the managed care subcontractor for the State Plan, testified that he reviewed this case using criteria which were not the same as the criteria listed in the State Plan benefits booklet nor the "medical policy" contained in the Respondent's Exhibit 3.

33. N.C. Gen. Stat. § 135-40(b) allows the State to contract with a "Claims Processor" to "administer the Plan benefits." The statute authorizes the Claims Processor to "determine benefits and other questions arising thereunder."

34. N.C. Gen. Stat. § 135-40.7B(d) provides as follows:

Benefits provided under this section shall be subject to a managed, individualized care component consisting of (i) inpatient utilization review through preadmission and length-of-stay certification for scheduled inpatient admissions and length-of-stay certification for unscheduled inpatient admissions . . . .

35. The rulemaking procedures of the Administrative Procedures Act ("APA") apply to all state agencies which are not specifically exempt therefrom. N.C. Gen. Stat. § 150B-1(c).

36. N.C. Gen. Stat. 150B-2(8a) provides, in pertinent part, that:

(8a) "Rule means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule.

37. In a 1986 Attorney General's opinion it was determined that:

When 150B-2(8a) and 150B-11(1) are read together, it is apparent that any procedures, whether formal or informal, that directly or substantially affect the rights or procedures of non-agency persons must be adopted as rules. See Opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 NCAG 25 (1986). (Emphasis added)

38. N.C. Gen. Stat. 150B-11(1) (repealed in 1991) was part of Article 2 of the APA, all of which was repealed in 1991 and replaced by Article 2A. To a great extent, Article 2A recodified the procedures for rulemaking which had previously been codified in Article 2.

39. Article 2A also enumerated the long-standing tenet that a rule should not repeat the content of a law, rule, or federal regulation. N.C. Gen. Stat. 150B-19(4).

40. In Administrative Law and Practice (Koch, Charles H., West Publishing Co. 1985), statements of policy, i.e. non-rules are discussed at Section 3.24. That provides, in pertinent part, that a statement of policy should (a) not purport to establish a "binding norm" and (b) must apply prospectively.

41. The criteria under which the respondent has purported to review this patient's admission and continued stay for psychiatric treatment has never been proposed or promulgated as a rule and is not currently a part of the North Carolina Administrative Code.

42. The Executive Administrator and Board of Trustees of the Plan have issued no rules or regulations to implement the Plan.

Based on the foregoing Findings of Fact, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. N.C. Gen. Stat. § 135-39.8 gives the Executive Administrator and Board of Trustees of the State Plan the authority to issue rules and regulations to implement the Plan.

2. The Plan is not exempt from the APA, either under the terms of the APA itself, N.C. Gen. Stat. § 150B-1(d), or by virtue of the statutes establishing the Plan, N.C. Gen. Stat. § 135-1 *et seq.* Vass v. NC Teachers' and State Employees' Comprehensive Major Medical Plan, 324 N.C. 402, 379 S.E.2d 26 (1989).

3. The undersigned concludes as a matter of law that the Plan criteria clearly applied in this case to the continuing stay review fall under the definition of "rule" in the Administrative Procedure Act, N.C. Gen. Stat. 150B and that they have not been promulgated as rules.

4. As a non-rule or a statement of policy, the criteria have no binding effect on the Petitioner.

5. N.C. Gen. Stat. § 135-40(b) allows the Plan to enter into contracts with third parties as claims processors to administer the Plan and determine benefits and other questions arising under the Plan. These statutory provisions do not allow the state to abdicate its responsibility to develop the Plan itself.

## CONTESTED CASE DECISIONS

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6. While § 135-40(b) allows the State to subcontract out the administration of the Plan, it does not authorize the State to allow third parties to develop the Plan criteria. This is the responsibility of the State, and it cannot subcontract out this responsibility.

7. The criteria applied by the Plan in this case are invalid as having been developed by a third party contractor and not by the Plan, nor have the criteria been adopted as rules under state law.

8. Neither § 135-40.7B(d) nor § 135-40(b) authorize the state to implement review criteria developed by a third party and not adopted as rules when those criteria are inconsistent with existing standards of care.

9. N.C. Gen. Stat. § 135-40.7(5) allows coverage for services:

which are certified by a physician who is attending the individual as being required for the medically necessary treatment of the injury or disease.

10. The medical care provided to the patient was medically necessary and appropriate care for her psychiatric illness.

11. The care provided to the patient during her admission to CMC met appropriate community standards of care in the practice of psychiatric medicine.

12. It is concluded that the patient met all valid criteria for coverage under the state Plan during her admission to CMC.

Based on the above Conclusion of Law, the undersigned makes the following:

### RECOMMENDATION

That the Respondent certify the admission of R.B. to the Carolinas Medical Center - Center for Mental Health for the balance of her stay from February 28, 1993 through May 10, 1993.

### 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 Statute 150B-36(b).

### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 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 and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 23rd day of August, 1994.

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Beecher R. Gray  
Administrative Law Judge



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# NORTH CAROLINA ADMINISTRATIVE CODE

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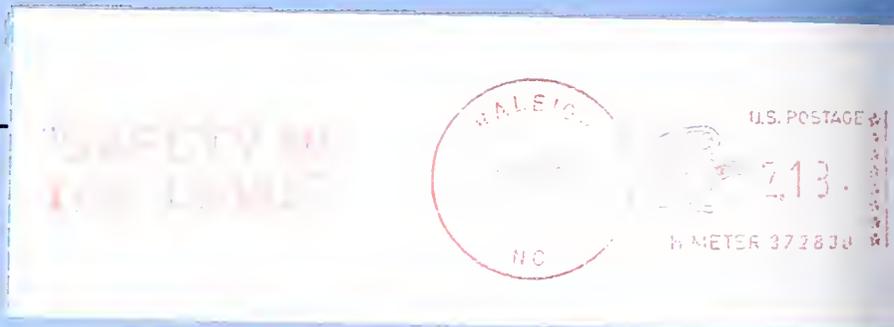
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