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NORTH CAROLINA REGISTER

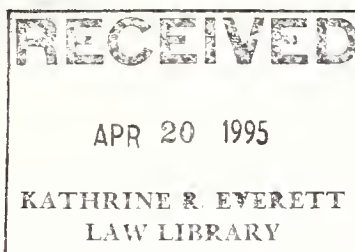
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April 17, 1995**

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Acupuncture Licensing Board
Environment, Health, and Natural Resources
Human Resources
Justice
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Medical Examiners
Real Estate Commission
RRC Objections
Contested Case Decisions

PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
PO Drawer 27447
Raleigh, NC 27611-7447
Telephone (919) 733-2678
Fax (919) 733-3462*



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 twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 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 40 occupational licensing boards. 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. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

NORTH CAROLINA REGISTER



**Volume 10, Issue 2
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This issue contains documents officially
filed through March 31, 1995.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
PO Drawer 27447
Raleigh, NC 27611-7447
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
James R. Scarcella Sr., Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Teresa Kilpatrick, Editorial Assistant
Jean Shirley, Editorial Assistant

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NORTH CAROLINA REGISTER
Publication Schedule
 (November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
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
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
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10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
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10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

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 day of the next calendar month.*

**EXECUTIVE ORDER NO. 73
SUSPENSION OF RULES
DURING LOCAL EMERGENCIES**

WHEREAS, electric service is one of the most essential services required by modern society, and the public welfare is immediately threatened by any occurrences, natural or manmade, which interrupt the delivery of electricity and electrical services; and

WHEREAS, state and federal regulations prohibit electric supplier vehicles and commercial motor vehicle drivers from working extended hours to assist in the repair of damage and restoration of the delivery of electricity and electrical services; and

WHEREAS, federal law, specifically 49 C.F.R. Section 390.23, allows a Governor to suspend these rules and regulations if the Governor determines that an emergency condition exists.

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

Section 1.

Electric supplier vehicles and commercial motor vehicle drivers are exempt from the rules and regulations restricting their participation in emergency relief efforts during a "local emergency." A "local emergency" shall be considered to be any power outage or interruption of electric service that occurs within the State of North Carolina, including a near term threat or occurrence of a meteorological condition or other condition reasonably likely to result in power outages or electric service interruption. A "local emergency" begins when the affected electric supplier receives notice of the power outage or interruption of electric service or receives notice of the existence of conditions reasonably likely to result in power outages or electric service interruption. The "local emergency" continues until the necessary maintenance or repair work is completed and personnel utilized to perform necessary maintenance or repair work have returned to their respective normal work routines.

This Executive Order is effective immediately.

Done in the City of Raleigh this the 15th day of March, 1995.

**EXECUTIVE ORDER NO. 74
DESIGNATING THE YEAR OF THE
MOUNTAINS AND CREATING THE YEAR
OF THE MOUNTAINS COMMISSION**

WHEREAS, North Carolina's mountains are among the state's most valuable and unique assets; and

WHEREAS, North Carolina's mountains merit widespread appreciation and understanding; and

WHEREAS, growth and change have brought new sets of opportunities and challenges to people of the mountains; and

WHEREAS, regional efforts and partnerships with the State are needed to address challenges facing mountain communities today and in the future; and

WHEREAS, new initiatives for Western North Carolina can honor and share the culture and history of the mountains and enhance respect for the natural beauty and environment of the region while fostering quality growth and development; and

WHEREAS, the people of North Carolina's mountains are pursuing a new vision for the mountains that integrates the needs of young people, education, technology, industry, and recreation while protecting the region's resources and quality of life; and

WHEREAS, the people of North Carolina's mountains seek to enhance Regional Identity and Recognition, to cultivate Sustainable Communities, and to promote and support Mountain Stewardship.

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

Section 1. Year of the Mountains.

The Year of the Mountains is hereby designated July 1, 1995 through June 30, 1996.

Section 2. Establishment.

The Year of the Mountains Commission is hereby established.

Section 3. Membership and Terms.

The Governor shall appoint 15 persons to serve on the Commission and shall designate one of its members to serve as Chair. The Commission shall meet regularly to carry out its duties at the call of the Chair.

Section 4. Powers and Duties of the Commission.

- A. To develop a set of recommendations to effectuate the purposes of this Order through such activities as meetings, fact-finding tours, educational events, and reports.
- B. To focus statewide media and public attention on the mountains to enhance quality growth and development, protect the natural beauty, and preserve the culture of the region.
- C. To coordinate its efforts with local officials and to help promote mountain events.
- D. To perform and exercise such other duties and

powers as may be necessary to accomplish the purposes of this Executive Order.

Section 5. Administration.

The Governor shall designate an Executive Coordinator to provide professional assistance and background information to the Commission, and coordinate its activities. The Executive Coordinator shall maintain the official minutes and other records of the Commission, and shall work in partnership with local and state governmental agencies, the community college and university system, and the private nonprofit sector to furnish additional staff assistance, educational and research materials, and any other administrative support which the Commission may require.

The Executive Coordinator shall report directly to the Commission and shall carry out its goals as set forth in the Commission's mission statement. Members of the Commission shall receive necessary travel and subsistence expenses pursuant to N.C.G.S. 138-5. Funding for the Executive Coordinator and the Commission shall be provided by DEHNR, the Department of Commerce, the Department of Cultural Resources, and monies appropriated by the General

Assembly.

The Commission is authorized to accept donations of in-kind services and funds, subject to the Executive Budget Act. Western North Carolina Tomorrow (WNCT), a 501(c)(3) nonprofit, has agreed to administer the funds, including those previously appropriated to it by the General Assembly.

The Commission shall be considered a "public body" and its meetings shall be open to the public pursuant to General Statutes Chapter 143, Article 33C. The Commission, for administrative purposes only, shall be located in the Governor's Office.

This Executive Order shall be effective immediately and expire June 30, 1996.

Done in the Capital City of Raleigh, North Carolina, this the 27th day of March, 1995.

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

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMITS

Public notice of intent to modify State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater associated with the application requirements and clarifications of the visual monitoring requirements in :

NPDES No. NCG010000 governing the discharge of stormwater associated with construction activities including clearing, grading and excavation activities resulting in the disturbance land areas.

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

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Bill Mills
Water Quality Section
N.C. Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535

Telephone (919) 733-5083 ext. 548

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than May 26, 1995. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 925-C, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Number, NCG010000.

Date: March 29, 1995

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

North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391
Charles R. Fullwood, Executive Director

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §113-292 (cl) and authority duly delegated by the Wildlife Resources Commission, hereby declares that the season for harvesting striped bass by hook-and-line shall close in all waters of the Roanoke River Striped Bass Management Area downstream of the Edwards Ferry Boating Access Area at US 258 bridge on the Roanoke River in Halifax County at 12:00 midnight on Sunday April 9, 1995.

In the Roanoke River and its tributaries upstream of the Edwards Ferry Boating Access Area at US 258 bridge striped bass may be harvested from 12:01 a.m. on Saturdays through 12:00 midnight on Sundays, and from 12:01 a.m. through 12:00 midnight on Wednesdays. On all other days all striped bass caught, regardless of condition, shall be immediately returned to the waters where taken and no striped bass may be possessed.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River and its tributaries, extending from its mouth to Roanoke Rapids Dam, including the Cashie, Middle, and Eastmost rivers and their tributaries.

This proclamation shall be effective at 12:00 midnight on April 9, 1995 and shall remain in effect until a new proclamation closing described waters or portions thereof for striped bass fishing is issued.

This proclamation supercedes and replaces all prior proclamations.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) All striped bass regardless of condition caught during the closed season shall be immediately returned to the waters where taken and no striped bass may be possessed.
- c) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

By: Charles R. Fullwood
Executive Director

Date: 4/3/95

TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to repeal rules cited as 10 NCAC 3H .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807; and adopt rules cited as 10 NCAC 3H .2001, .2101 - .2110, .2201 - .2212, .2301 - .2308, .2401 - .2402, .2501 - .2506, .2601 - .2607, .2701, .2801 - .2802, .2901 - .2902, .3001 - .3005, .3011 - .3016, .3021 - .3032, .3101 - .3104, .3201 - .3202, .3301 - .3302, .3401 - .3404.

Proposed Effective Date: September 1, 1995.

A Public Hearing will be conducted at 9:30 a.m. on June 9, 1995 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To update state regulations for nursing homes to be compatible with federal regulations.

Comment Procedures: In order to allow the Commission sufficient time to review and evaluate your written comments prior to the hearing, please submit your comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by May 31, 1995, but in no case later than the hearing on June 9, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 3 - DIVISION OF FACILITY
SERVICES

SUBCHAPTER 3H - RULES FOR THE
LICENSING OF NURSING HOMES

SECTION .0100 - GENERAL INFORMATION

.0108 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Abuse" means the willful infliction of physical pain, injury, mental anguish or unreasonable confinement which may cause or result in temporary or permanent mental or physical injury, pain, harm, or death. Abuse includes, but is not limited to, the following:
 - (a) Verbal abuse any use of oral, written or ges-

tered language which a reasonable person would view as disparaging and derogatory terms to a patient regardless of his or her age, ability to comprehend or disability;

- (b) Sexual abuse sexual harassment, sexual coercion or sexual assault of a patient;
- (c) Physical abuse hitting, slapping, kicking or corporal punishment of a patient;
- (d) Mental abuse language or treatment which would be viewed by a reasonable person as involving humiliation, harassment, threats of punishment or deprivation of a patient;
- (e) Unreasonable confinement the separation of a patient from other persons, or from his or her room, against the patient's will or the will of the patient's legal representative. Unreasonable confinement does not include emergency or short term monitored separation used as therapeutic intervention to reduce agitation until a plan of care is developed to meet the patient's needs.
- (2) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (3) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (4) "Administrator" means the person who has authority for and is responsible for the overall operation of a facility.
- (5) "Appropriate" means right for the specified use or purpose, suitable or proper when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (6) "Brain injury long term care" is defined as an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.
- (7) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (8) "Combination facility" means a combination home as defined in G.S. 131E 101.
- (9) "Convalescent care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (10) "Department" means the North Carolina Depart-

ment of Human Resources.

- ~~(11) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.~~
- ~~(12) "Drug" means substances:~~
 - ~~(a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;~~
 - ~~(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;~~
 - ~~(c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and~~
 - ~~(d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph.~~
- ~~(13) "Duly licensed" means holding a current and valid license as required under the General Statutes of North Carolina.~~
- ~~(14) "Existing facility" means a facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the preliminary working drawings state prior to the effective date of this Rule.~~
- ~~(15) "Exit conference" means the conference held at the end of a survey, or investigation between the Department's representatives and the facility administration representative.~~
- ~~(16) "Finding" means a determination by the Department that an allegation of patient abuse or neglect, or misappropriation of patient property has been substantiated.~~
- ~~(17) "HIV Unit" means designated areas dedicated to patients or residents known to have Human Immunodeficiency Virus disease.~~
- ~~(18) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.~~
- ~~(19) "Interdisciplinary" means an integrated process involving a representative from each discipline of the health care team.~~
- ~~(20) "Licensed practical nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.~~
- ~~(21) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.~~
- ~~(22) "Medication" means drug as defined in (11) of this Rule.~~
- ~~(23) "Misappropriation of property" means the criminal taking, use, exploitation of, destruction of, or damage to, a patient's belongings or money. The Department must prove the misappropriation of property by a preponderance of the evidence.~~

Conviction of the criminal act is not a prerequisite to placing a finding concerning the misappropriation of property on the North Carolina Nurse Aide Registry.

- ~~(24) "Neglect" means a failure through a lack of attention, carelessness, or omission, to provide timely and consistent services, treatment or care to a patient or patients which are necessary to obtain or maintain the patient's or patients' health, safety or comfort.~~
- ~~(25) "New facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.~~
- ~~(26) "Nurse Aide" means any individual providing nursing or nursing related services to patients in a facility who is not a licensed health professional, a qualified dietitian, or someone who volunteers to provide such services without pay, and listed in a nurse aide registry approved by the Department.~~
- ~~(27) "Nurse Aide Trainee" means an individual who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.~~
- ~~(28) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.~~
- ~~(29) "Nurse in charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.~~
- ~~(30) "On duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.~~
- ~~(31) "Operator" means the owner of the nursing home business.~~
- ~~(32) "Patient" means any person admitted for nursing care.~~
- ~~(33) "Person" means an individual, trust, estate, part-~~

- nership or corporation including associations, joint stock companies and insurance companies.
- (34) "Proposal" means a Negative Action Proposal containing documentation of findings that may ultimately be classified as violations and penalized accordingly.
- (35) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.
- (36) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (37) "Qualified Activities Director" means a person who has the authority and responsibility for the direction of all therapeutic activities in the nursing facility and who meets the qualifications set forth under 10 NCAC 3H .1204.
- (38) "Qualified Dietitian" means a person who meets the standards and qualification established by the Commission on Dietetic Registration of the American Dietetic Association included in "Standards of Practice" seven dollars and twenty five cents (\$7.25) or "Code of Ethics for the Profession of Dietetics" two dollars and fifteen cents (\$2.15), American Dietetic Association, 216 W. Jackson Blvd., Chicago, IL 60606-6995.
- (39) "Qualified Pharmacist" means a person who is licensed to practice pharmacy in North Carolina and who meets the qualifications set forth under 10 NCAC 3H .0903.
- (40) "Qualified Social Services Director" means a person who has the authority and responsibility for the provision of social services in the nursing home and who meets the qualification set forth under 10 NCAC 3H .1306.
- (41) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (42) "Resident" means any person admitted for care to a domiciliary home part of a combination home as defined in G.S. 131E-101.
- (43) "Sitter" means an individual employed to provide companionship and social interaction to a particular patient, usually on a private duty basis.
- (44) "Supervisor in Charge (domiciliary home)" means any employee to whom supervisory duties for the domiciliary home portion of a combination home have been delegated by either the Administrator or Director of Nursing.
- (45) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.

- (46) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (47) "Violation" means a finding which directly relates to a patient's health, safety or welfare or which creates a substantial risk that death or serious physical harm will occur and is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable state and federal laws, rules and regulations.

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

.0109 EXEMPTIONS AND WAIVERS

- (a) Facilities exempt from rules for licensure contained in this Subchapter are:
- (1) facilities operated by the federal government;
 - (2) facilities licensed as a part of a hospital subject to licensure under G.S. 131E, Article 5, and G.S. 122C, Article 2, and
 - (3) facilities operated by the State of North Carolina.
- (b) Waivers of rules in this Subchapter are not authorized by the Nursing Home Licensure Act.

Statutory Authority G.S. 131E-104.

SECTION .0200 - LICENSURE

.0206 LICENSE REQUIRED

No person defined in G.S. 131E-1(2) shall operate a nursing home except as provided for in G.S. 131E-102. These referenced statutes are adopted in accordance with G.S. 150B-14(e).

Statutory Authority G.S. 131E-104; 150B-14(c).

.0207 APPLICATION REQUIRED

- (a) An application for licensure shall be submitted to the Department prior to a license being issued.
- (b) The Department shall be notified in writing prior to the occurrence of any of the following circumstances:
- (1) final site selection, which must be approved by the Department prior to construction;
 - (2) construction of a new facility or any renovation of an existing facility;
 - (3) increase or decrease in bed capacity for any level of care;
 - (4) the acquisition of a nursing home or any change in ownership including any change in a partnership; or
 - (5) change of name or location.

Statutory Authority G.S. 131E-104.

.0208 CONTENTS OF APPLICATION

The application shall contain the following:

- ~~(1) name and address of applicant;~~
- ~~(2) name and current license number of the Administrator;~~
- ~~(3) type of facility to be operated;~~
- ~~(4) location of the facility;~~
- ~~(5) the name and principal business address of each partner, if applicant is a partnership;~~
- ~~(6) the name and principal business address of each and all officers and directors as well as the name and principal business address of each stockholder owning (directly or indirectly) Ten percent or more of the stock; and~~
- ~~(7) such other documents or information as necessary to determine compliance with applicable rules and statutes as well as the magnitude and scope of services to be offered.~~

Statutory Authority G.S. 131E-104.

.0209 ISSUANCE OF LICENSE

~~Only one license shall be issued to each facility. The Department shall issue a license to the operator of the nursing home business upon verification of compliance with applicable laws and rules.~~

Statutory Authority G.S. 131E-104.

.0210 EXPIRATION

~~Each license shall expire at midnight on the expiration date of the license except as otherwise provided in G.S. 150B-3.~~

Statutory Authority G.S. 131E-104.

.0211 RENEWAL

~~Each licensee shall file an application for renewal of license with the Department at least 30 days prior to the date of expiration on forms furnished by the Department. Failure to file a renewal application shall result in expiration of the license to operate.~~

Statutory Authority G.S. 131E-104.

.0212 TYPES OF LICENSE

~~A license shall be issued for a 12 month period; however, a provisional license may be issued for a period of less than 12 months in cases where the facility has not fully complied with G.S. Chapter 131E, Article 6, Part A and rules contained in this Subchapter, and such noncompliance does not pose an immediate hazard to the life or safety of the persons served.~~

Statutory Authority G.S. 131E-104.

.0213 POSTING OF LICENSE

~~The license shall be posted in a prominent location, accessible to public view, within the licensed premises.~~

Statutory Authority G.S. 131E-104.

.0214 EXCEEDING LICENSED CAPACITY

~~(a) A life care center having an agreements to care for all residents regardless of level of care needs may temporarily increase bed capacity by ten percent or ten beds, whichever is less, over the licensed bed capacity for a period up to 30 days following notification of and approval by the Department, provided such increase is not associated with a capital expenditure.~~

~~(b) A facility other than a life care center shall accept no more patients than the number for which it is licensed in each level of care except in an emergency situation approved in advance and confirmed in writing by the Department. Emergency authorizations shall not exceed seven calendar days and shall not exceed the total licensed bed capacity for the facility.~~

Statutory Authority G.S. 131E-104.

.0215 TRANSFERABILITY

~~Licenses are not transferable. A licensee shall notify the Department in writing of any proposed change in ownership at least 30 days prior to the effective date of the change. The new owner shall be responsible for submitting an application for license at least 30 days prior to assuming ownership.~~

Statutory Authority G.S. 131E-104.

.0216 DENIAL, AMENDMENT, OR REVOCATION OF LICENSE

~~(a) The Department shall deny any licensure application upon becoming aware that the applicant is not in compliance with any applicable provision of the Certificate of Need law located in Article 9 of Chapter 131E of the General Statutes and the rules adopted under that law.~~

~~(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:~~

- ~~(1) the licensee has substantially failed to comply with the provisions of Part A of Article 6 of Chapter 131E of the General Statutes and the rules promulgated under that Part; and~~
- ~~(2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and~~
- ~~(3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the nursing home licensure rules for the foreseeable future.~~

~~The Department shall give the licensee written notice of the amendment of his license. This notice shall be given by registered or certified mail or by personal service and shall set forth the reasons for the action.~~

~~(c) The provisional license shall be effective immediately upon its receipt by the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises in lieu of the full license. The provisional~~

license shall remain in effect until:

- ~~(1) the Department restores the licensee to full licensure status; or~~
- ~~(2) the Department revokes the licensee's license; or~~
- ~~(3) the end of the licensee's licensure year.~~

If a licensee has a provisional license at the time that the licensee submits a renewal application, the license, if renewed, shall also be a provisional license unless the Department determines that the licensee can be returned to full licensure status. A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display its full license during the appeal.

~~(d) The Department may revoke a license whenever:~~

- ~~(1) The Department finds that:~~
 - ~~(A) the licensee has substantially failed to comply with the provisions of Parts A and B of Article 6 of Chapter 131E of the General Statutes and the rules promulgated under those parts; and~~
 - ~~(B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or~~
- ~~(2) The Department finds that:~~
 - ~~(A) the licensee has substantially failed to comply with the provisions of Parts A and B of Article 6 of Chapter 131E of the General Statutes; and~~
 - ~~(B) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with nursing home licensure rules for the foreseeable future; or~~
- ~~(3) The Department finds that there has been any failure to comply with the provisions of Parts A and B of Article 6 of Chapter 131E of the General Statutes and the rules promulgated under those parts that endangers the health, safety or welfare of the patients in the facility.~~

The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Subparagraphs (d)(1), (2) and (3) of this Rule.

Statutory Authority G.S. 131E-104.

.0217 SUSPENSION OF ADMISSIONS

~~(a) The Department may suspend the admission of any new patient to any nursing home when warranted under the provisions of G.S. 131E-109(e).~~

~~(b) The Department shall notify the nursing home by certified mail of the decision to suspend admissions. Such notice will include:~~

- ~~(1) the period of the suspension;~~
- ~~(2) factual allegations;~~
- ~~(3) citation of statutes and rules alleged to be violated; and~~
- ~~(4) notice of the facility's right to contested case hearing on the suspension.~~

~~(c) The suspension will be effective when the notice is served or on the date specified in the notice of suspension, whichever is later. The suspension will remain effective for the period specified in the notice or until the facility demonstrates to the Department that conditions are no longer detrimental to the health and safety of the patient.~~

~~(d) The nursing home shall not admit new patients during the effective period of the suspension.~~

Statutory Authority G.S. 131E-104.

.0218 PROCEDURE FOR APPEAL

~~A nursing home may appeal any decision of the Department to deny, revoke or alter a license or any decision to suspend admissions by making such an appeal in accordance with G.S. Chapter 150B and 10 NCAC 1B .0200.~~

Statutory Authority G.S. 131E-104.

.0219 INSPECTIONS

~~(a) Any nursing home licensed by the Department may be inspected by any authorized representative of the Department at any time. Generally, inspections will be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. However, complaint investigations shall be conducted at the most appropriate time for investigating allegations of the complaint.~~

~~(b) At the time of inspection, any authorized representative of the Department shall make his presence known to the Administrator or other person in charge who shall cooperate with the representative(s) and facilitate the inspection.~~

~~(c) Inspections of medical records will be carried out in accordance with G.S. 131E-105.~~

~~(d) The facility Administrator shall provide and make available to representatives of the Department financial and statistical records required to verify compliance with all rules contained in this Subchapter.~~

~~(e) The Department shall mail a written report of the licensure survey or complaint investigation which shall include statements of any deficiencies cited to the facility within 10 working days from the date of the licensure survey or complaint investigation exit conference.~~

~~(f) The facility Administrator shall prepare a written plan of correction and mail it to the Department within 10 working days following receipt of any statement of deficiencies. The plan of correction shall be reviewed and accepted or rejected with written notice given to the Administrator within 10 working days of receipt by the Department.~~

Statutory Authority G.S. 131E-104.

.0220 PUBLIC ACCESS TO DEPARTMENT LICENSURE RECORDS

~~(a) Except for documents containing the information listed in Paragraph (b) of this Rule, Department files pertaining to the licensure of any facility under this Subchapter shall be open to inspection by any member of the public during~~

normal business hours, after the Department has had a reasonable opportunity to ensure that none of the information identified in Paragraph (b) will be disclosed during the inspection. Except for information identified in Paragraph (b), any member of the public may obtain copies of any information contained in the Department licensure files, subject to the following conditions:

- (1) — Appropriate fees for the copying may be charged in advance; and
- (2) — Delivery of the copies may be delayed for a reasonable time if the Department staff is engaged in other duties at the time of the request.
- (b) Unless disclosure is ordered by a court of competent jurisdiction, the following classes of information shall not be disclosed to members of the public:
 - (1) — information about the diagnosis, prognosis, treatment, or any other confidential medical information under G.S. 8-53, regarding a named person, unless that person consents in writing to the disclosure;
 - (2) — the name of any person who provided information concerning a facility licensed under this Subchapter, or registered a complaint about the treatment of a patient or resident, unless that person consents to the disclosure;
 - (3) — information identifying any person as a recipient of public assistance or social services, unless that person consents to the disclosure; and
 - (4) — any confidential communication between the attorney for the Department and the Department.
- (e) When documents in the file contain only confidential information of the types identified in Paragraph (b), then they will be removed from the file before inspection. If a document contains both information of those types identified in Paragraph (b) and non-confidential information, then the Department will provide for inspection a copy of the document from which the confidential information is deleted, in lieu of the original document. No charge will be made for this copying if the person inspecting the files does not wish to retain the copies made.

Statutory Authority G.S. 8-53; 108A-80; 131E-104; 131E-124(c); 132-1.1.

SECTION .0300 - GENERAL STANDARDS OF ADMINISTRATION

.0306 LICENSED ADMINISTRATOR

- (a) Each facility shall be under the direct management control of one person who is currently licensed by the North Carolina State Board of Examiners for Nursing Home Administrators in accordance with G.S. 90, Article 20. An Administrator so licensed shall not be subject to domiciliary home or other facility Administrator licensure requirements established by any other agency. The Administrator shall not serve simultaneously as the Director of Nursing.
- (b) If an Administrator is not the sole owner of a facility, his authority and responsibility shall be clearly defined in a

written agreement or in a facility's governing bylaws.

- (c) The Administrator shall be responsible for the operation of a facility and all services offered and for compliance with all applicable state and federal laws and regulations.

Statutory Authority G.S. 90-284; 131E-104.

.0307 VACANCY IN ADMINISTRATOR POSITION

- (a) If the position of Administrator becomes vacant, the Department shall be notified by the owner, licensee, or Chairman of the Board of the nursing home on the first working day following such vacancy. The notice of a vacancy shall contain the name and license number of the replacement or the name of the person responsible for operation of the facility during the absence of a licensed Administrator.
- (b) A vacancy in the Administrator's position shall be reviewed by the Department every 30 days for licensure action.

Statutory Authority G.S. 131E-104.

.0308 NUMBER OF FACILITIES SERVED

- If an Administrator serves two or more facilities located 51 or more miles apart or having a combined bed capacity of more than 120 beds, each facility must have an Assistant Administrator who is duly licensed and has written authority to act in the Administrator's absence. The Assistant Administrator shall not serve as the Director of Nursing.

Statutory Authority G.S. 131E-104.

.0309 FISCAL MANAGEMENT

- The Administrator of a facility shall establish and maintain records relative to operating costs and statistical records of the operation of the facility which provide a viable audit trail. These records shall include, but not be limited to, detailed information indicating the time worked by and salary paid to all employees, food invoices, and daily census information, including admissions and discharges. All records shall be maintained for at least two years.

Statutory Authority G.S. 131E-104.

.0310 STATISTICAL DATA FOR STATE USE

- The Administrator of a facility shall maintain and make available to the Department such statistical data as required by statute or rules contained in this Subchapter, for the state's medical facilities plan and/or proper review for certificate of need determination.

Statutory Authority G.S. 131E-104.

.0311 ADMISSIONS

- (a) No patient shall be admitted except under the orders of a duly licensed physician.

~~(b) The Administrator shall assure tuberculosis and other communicable disease screening on admission and tuberculosis screening annually thereafter until final discharge. Identification of a communicable disease does not, in all cases, in and of itself, preclude admission to the facility. The facility shall provide appropriate care and treatment.~~

~~(c) The facility shall acquire prior to or at the time of admission orders from the attending physician for the immediate care of the patient or resident.~~

~~(d) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnosis, rehabilitation potential, a summary of the hospital stay if the patient is being transferred from a hospital, and orders for the ongoing care of the patient.~~

~~(e) If a patient is admitted from somewhere other than a hospital, a physical examination shall be performed either within 5 days prior to admission or within 48 hours following admission.~~

~~(f) New facilities must prepare a plan of admission which, at a minimum, assures available staff time and plans for individual patient assessment, initiation of health care or nursing care plans, and implementation of physician and nursing treatment plans. This plan must be available for inspection during the initial licensure survey prior to issuance of a license.~~

~~(g) Only persons who are 18 years of age or older shall be admitted to the domiciliary home portion of a combination facility.~~

Statutory Authority G.S. 131E-104.

.0312 PATIENTS AND RESIDENTS NOT TO BE ADMITTED

~~Patients or residents who require health, habilitative, or rehabilitative care or training beyond those for which the facility is licensed and is capable of providing shall not be admitted.~~

Statutory Authority G.S. 131E-104.

.0313 DISCHARGE OF PATIENTS

~~A record shall be maintained of all discharges of patients indicating the reasons for discharge, the physician's order for or other authorization for discharge, and the condition of the patient at the time of discharge.~~

~~A patient known to have Human Immunodeficiency Virus disease may not be discharged solely on the basis of the diagnosis of Human Immunodeficiency Virus disease except as authorized by the provisions of N.C. General Statute 131E-117 (15) or other provisions of the N.C. General Statutes or regulations promulgated thereunder or provisions of applicable federal laws and regulations.~~

Statutory Authority G.S. 131E-104.

.0314 POLICIES AND PROCEDURES

The facility Administrator shall assure written policies and procedures which are available to and implemented by staff. These policies and procedures shall cover at least the following areas:

- ~~(1) admissions;~~
- ~~(2) dietary;~~
- ~~(3) discharges with physician orders and/or patients or residents leaving against physician advice;~~
- ~~(4) gratuities and solicitation which at a minimum shall provide that no owner, operator, agent or employee of a facility nor any member of his family shall accept a gratuity directly or indirectly from any patient or resident in the facility or solicit for any type of contribution;~~
- ~~(5) housekeeping;~~
- ~~(6) infection control which must include, but is not limited to, requirements for sterile and aseptic techniques; universal and isolation precautions and communicable disease screening including annual tuberculosis screening for all staff and inpatients of the facility;~~
- ~~(7) maintenance of patient medical or health care records including charting or record keeping;~~
- ~~(8) orientation of all facility personnel;~~
- ~~(9) patient or resident care plans, treatment and other health care or nursing care, including but not limited to all policies and procedures required by rules contained in this Subchapter;~~
- ~~(10) patients' or residents' rights;~~
- ~~(11) physical evaluation for residents and patients at least annually;~~
- ~~(12) physician services and utilization of the individual's private physician;~~
- ~~(13) procurement of supplies and equipment to meet individual patient care needs;~~
- ~~(14) protection of patients from abuse and neglect;~~
- ~~(15) range of services provided;~~
- ~~(16) recording and reporting to the Department of accidents or incidents occurring to patients in any part of the facility and maintenance of such reports or records;~~
- ~~(17) rehabilitation services;~~
- ~~(18) release of medical record information;~~
- ~~(19) screening and reporting communicable disease to the Department (Division of Health Services) and local health Department;~~
- ~~(20) transfers.~~

Statutory Authority G.S. 131E-104.

.0315 NURSING HOME PATIENT RIGHTS

~~(a) Written policies and procedures shall be developed and enforced to implement requirements in G.S. 131E-115 et seq. (Nursing Home Patients' Bill of Rights) concerning the rights of patients. The Administrator shall make these policies and procedures known to staff, patients and families of patients and shall ensure their availability to the public by~~

placing them in a conspicuous place.

~~(b) In matters of patient abuse, neglect or misappropriation the definitions shall have the meaning defined in Rule .0108 of this Subchapter.~~

Authority G.S. 131E-104; 131E-111; 131E-124; 131E-129; 42 U.S.C. 1396 r (e)(2)(B).

.0316 SAFETY AND ENVIRONMENTAL CONTROL

~~(a) A licensed facility shall have policies and procedures for patient safety and for environmental control which at a minimum shall include infection control.~~

~~(b) A facility with a licensed capacity of 51 beds or more shall have a safety and environmental control committee which includes representation from administration; medical and nursing staff; pharmacy; maintenance, engineering or housekeeping; and dietary services.~~

~~(c) A facility with a licensed capacity of 50 beds or less shall have a safety and environmental control committee which at a minimum includes the Administrator and Director of Nursing.~~

~~(d) All committee members shall be designated in writing.~~

~~(e) Responsibilities and duties of any safety and environmental committee shall include, but not be limited to, the following:~~

~~(1) meet at least quarterly, maintain minutes insufficient detail to document committee proceedings and actions, and submit reports to the Administrator;~~

~~(2) establish an incident and accident reporting system in accordance with facility policies which includes a mechanism for reviewing, investigating and evaluating all incidents and accidents reported. The committee shall document all reviews and action(s) taken;~~

~~(3) conduct hazard surveillance program;~~

~~(4) conduct fire protection program which includes:~~

~~(A) development and adoption of a comprehensive fire and disaster plan;~~

~~(B) instruction and fire drills for all employees in the following:~~

~~(i) use of all alarms and signals;~~

~~(ii) methods of fire containment;~~

~~(iii) location and use of fire fighting equipment;~~

~~(iv) where, when and how to shut off oxygen and air conditioning;~~

~~(v) evacuation routes and procedures; and~~

~~(vi) transmission of an alarm to the fire Department or other responsible emergency services;~~

~~(C) assignment of specific responsibilities and tasks to all personnel in response to an alarm; and a fire drill for each shift of employees at least quarterly;~~

~~(5) conduct water temperature surveillance program which assures compliance with Rule .1807(d) of~~

this Subchapter;

~~(6) annually review policies and procedures for infection and communicable disease control;~~

~~(A) handling food;~~

~~(B) processing laundry;~~

~~(C) disposing of environmental or other wastes and patient or resident surgical or wound dressings, personal care pads or other wastes;~~

~~(D) controlling pests and reporting infections and diseases;~~

~~(7) monitor overall environmental/infection control and implementation of safety policies and procedures;~~

~~(8) monitor staff development to assure active ongoing inservice training at least annually which shall include universal precautions and other areas of safety and environmental/infection control for all personnel; and~~

~~(9) acting on requirements from the Occupational Safety and Health Administration.~~

Statutory Authority G.S. 131E-104.

.0317 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

~~(a) The facility shall take reasonable measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including but not limited to orientation and instruction of facility staff on patients' rights, and the requesting of references for all prospective employees.~~

~~(b) The Administrator shall assure that the Department is notified of all alleged incidents which appear to a reasonable person to be related to patient abuse, neglect or misappropriation of patient property.~~

~~(c) The incident report shall be printed or typed and postmarked within 48 hours of the alleged incident. The report shall be conducted as specified in 42 CFR subsection 483.13 and shall consist of a simple statement of the patient's full name; room number; type of injury, date and time of the alleged incident of abuse, neglect or misappropriation of property; names of persons involved; and immediate action taken by the facility.~~

~~(d) The facility shall thoroughly investigate and document according to 42 CFR subsection 483.13, which is incorporated by reference, including subsequent amendments, all alleged incidents which appear to a reasonable person to be incidents of patient abuse, patient neglect, or misappropriation of patient property and shall take whatever steps are necessary to prevent further incidents of abuse, neglect or misappropriation of property while the investigation is in progress.~~

Authority G.S. 131E-104; 131E-111; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396; 42 C.F.R. 483.

.0318 PERSONNEL STANDARDS

~~(a) The Administrator shall provide for the following:~~

~~(1) numbers and types of qualified personnel and~~

ancillary services as necessary to assure the health, safety and proper care of patients and residents;

- ~~— (2) — on duty personnel who for health or other reasons present no threat to the health and safety of patients and residents; and~~
- ~~— (3) — an individual personnel record for each employee regardless of job assignment. Such record shall be kept current and shall include certificate and licensure numbers, when applicable; the original application with verification of credentials; periodic performance evaluations; and a signed and dated certification that the employee has read and understood the facility's policies governing conditions of employment, including but not limited to on duty dress, personal hygiene, sleeping on duty, ingestion of alcohol or other drugs, conduct towards patients and residents, and the wearing of identification pins.~~

~~— (b) — Each employee shall be assigned duties consistent with his job description and with his level of education and training, which includes documented on the job training and experience and in service education.~~

Statutory Authority G.S. 131E-104.

SECTION .0400 - PATIENT OR RESIDENT CARE ASSESSMENT AND PLANNING

.0407 GENERAL

The Administrator shall assure that policies and procedures are available and implemented for assessing each patient's or resident's health care needs and planning for meeting identified health care needs. There shall be a system for evaluating the effectiveness of the assessment, planning and implementation (delivery of care processes) for each patient or resident.

Statutory Authority G.S. 131E-104.

.0408 FREQUENCY, METHOD AND CONTENT OF ASSESSMENT AND PLANNING

~~Each patient's and resident's condition must be assessed on a regular, periodic basis, at least quarterly, with appropriate notation and updating of the health care plan. Health care planning for each patient and resident shall be an on-going process and must include but may not be limited to the following:~~

- ~~— (1) — data which is systematically and continuously collected about health status; The data shall be recorded so as to be accessible and communicated to all staff involved in the patient's or resident's care;~~
- ~~— (2) — current problems and needs identified and prioritized from a completed assessment relevant to the patient's or resident's response to aging, illness~~

and his/her general health status; and

- ~~— (3) — a current plan of care developed in conjunction with the patient or resident and/or legal guardian that includes measurable time related goals and approaches, or measures to be employed by various disciplines in order to achieve the identified goals.~~

Statutory Authority G.S. 131E-104.

.0409 IMPLEMENTATION OF HEALTH CARE PLAN

~~All parts of the plan of care shall be assigned to specific disciplines or staff as indicated in the plan of care to assure that health care and rehabilitative services are performed daily and documented for those patients and residents who required such services.~~

Statutory Authority G.S. 131E-104.

SECTION .0500 - NURSING SERVICES

.0505 NURSING/HEALTH CARE ADMINISTRATION AND SUPERVISION

~~— (a) — A licensed facility shall have a Director of Nursing service who shall be responsible for the overall organization and management of all nursing services and shall be currently licensed to practice as a registered nurse by the North Carolina Board of Nursing in accordance with G.S. 90, Article 9A.~~

~~— (b) — The Director of Nursing shall not serve as Administrator or Assistant Administrator.~~

~~— (c) — A licensed facility, with nursing facilities or combination facilities shall provide a full-time Director of Nursing on duty at least eight hours per day, five days a week. A registered nurse shall relieve the Director of Nursing (be in charge of nursing) during the Director's absence.~~

~~— (d) — A licensed facility shall employ and assign registered nurse, licensed practical nurses and nurse aides for duties in accordance with G.S. 90, Article 9A.~~

~~— (e) — The Director of Nursing shall cause the following to be accomplished:~~

- ~~— (1) — establishment and implementation of nursing policies and procedures which shall include but not be limited to the following:~~
 - ~~— (A) — assessment of the planning for patients' nursing care or health care needs, and implementation of nursing/health care plans;~~
 - ~~— (B) — daily charting of any unusual occurrences of acute episodes related to patient care, and progress notes written monthly reporting each patient's performance in accordance with identified goals and objectives and each patient's progress toward rehabilitative nursing goals;~~
 - ~~— (C) — assurance of the delivery of nursing services in accordance with physicians' orders, nursing~~

care plans and the facility's policies and procedures;

- ~~(D) notification of emergency physicians or on-call physicians;~~
- ~~(E) infection control to prevent cross infection among patients and staff shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 or may be purchased with a credit card by telephone to the Government Printing Office at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service which is incorporated by reference including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 for \$15.95.~~
- ~~(F) reporting of deaths;~~
- ~~(G) emergency reporting of fire, patient or staff accidents or incidents, or other emergency situations;~~
- ~~(H) use of protective devices or restraints to assure that each patient or resident is restrained in accordance with physician orders and the facility's policies, and that the restrained patient or resident is appropriately evaluated and released at a minimum of every 2 hours;~~
- ~~(I) special skin care and decubiti care;~~
- ~~(J) bowel and bladder training;~~
- ~~(K) maintenance of proper body alignment and restorative nursing care;~~
- ~~(L) supervision of and assisting patients with feeding;~~
- ~~(M) intake and output observation and reporting for those patients whose condition warrants monitoring of their fluid balance. This will include those patients on intravenous fluids or tube feedings, and patients with kidney failure and temperatures elevated to 102 degrees F. or above;~~
- ~~(N) catheter care; and~~
- ~~(O) procedures used in caring for patients in the facility.~~
- ~~(2) development of written job descriptions for nursing personnel;~~
- ~~(3) periodic assessment of the nursing department with identification of personnel requirements as they relate to patient care needs and reporting~~

same to the Administrator;

- ~~(4) a planned orientation and continuing inservice education program for nursing employees and documentation of staff attendance and subject matter covered during inservice education programs;~~
- ~~(5) obtaining and provision of appropriate reference materials for the nursing Department, which include a Physician's Desk Reference or comparable drug reference, policy and procedure manual, and medical dictionary for each nursing station; and~~
- ~~(6) establishment of operational procedures to assure that appropriate supplies and equipment are available to nursing staff as determined by individual patient care needs.~~

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

.0506 VACANT DIRECTOR OF NURSING POSITION

- ~~(a) The Administrator shall notify the Department within 72 hours when the Director of Nursing position becomes vacant and shall provide the name and license number of the individual who is acting Director or the replacement for the Director of Nursing.~~
- ~~(b) A facility shall not operate without either a Director of Nursing or acting Director of Nursing.~~
- ~~(c) The Administrator shall employ a Director of Nursing within 30 days after a position becomes vacant. A vacancy which exceeds 30 days shall be reviewed by the Department for action relative to licensure status of the facility.~~

Statutory Authority G.S. 131E-104.

.0507 NURSE STAFFING REQUIREMENTS

- ~~(a) A licensed facility shall provide licensed nursing personnel sufficient to accomplish the following:~~
 - ~~(1) patient needs assessment;~~
 - ~~(2) patient care planning; and~~
 - ~~(3) supervisory functions in accordance with the levels of patient or resident care advertised or offered by the facility.~~

The facility also shall provide other nursing personnel sufficient to assure that at least activities of daily living, personal grooming, restorative nursing actions and other health care needs as identified in each patient's or resident's plan of care are met.

- ~~(b) A licensed multi storied facility (one having more than one story) shall provide at least one person on duty on each patient care floor at all times.~~
- ~~(c) Daily direct patient care nursing staff, licensed and unlicensed, shall equal or exceed 2.1 nursing hours per patient. (This is sometimes referred to as nursing hours per patient day or NHPPD or NH/PD.)~~
 - ~~(1) Inclusive in these figures is the requirement that at least one licensed nurse is on duty for direct patient care at all times; and~~

- ~~—(2) Nursing care shall include the services of a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists. The Director of Nursing may be counted as meeting the requirements for both the Director of Nursing and patient and resident staffing for facilities of a total census of 60 beds or less.~~
- ~~—(3) Nursing support personnel including ward clerks, secretaries, nurse educators and persons in primarily administrative management positions and not actively involved in direct patient care shall not be counted toward compliance with minimum daily requirements for direct care staffing.~~
- ~~—(d) All exceptions to meeting the minimum staffing requirements shall be reported to the Department at the end of each month. Staffing waivers granted by the federal government for Medicare and Medicaid-certified beds shall be accepted for licensure purposes.~~
- ~~—(e) The ratio of male to female nurse aides will be determined by the needs of the patients, particularly the numbers of male patients requiring assistance with personal care.~~

Authority G.S. 131E-104; 42 U.S.C. 1396 r (b)(4)(c).

.0510 DOMICILIARY HOME PERSONNEL REQUIREMENTS

- ~~—(a) The Administrator shall designate a person to be in charge of the domiciliary home residents at all times. The nurse in charge of the nursing facility may also serve as supervisor in charge of the domiciliary home or beds.~~
- ~~—(b) If domiciliary home beds are located in a separate building or a separate level of the same building, there must be a person on duty in the domiciliary home at all times.~~
- ~~—(c) A licensed facility shall provide sufficient staff to assure that activities of daily living, personal grooming, and assistance with eating are provided to each resident. Medication administration as indicated by each resident's condition or physician's orders shall be carried out as identified in each resident's plan of care.~~
- ~~—(d) Domiciliary home facilities (Home for the Aged beds) licensed as a part of a combination facility shall comply with the staffing requirements of 10 NCAC 42D .1407 as adopted by the Social Services Commission for freestanding domiciliary homes.~~

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

.0511 REHABILITATIVE NURSING AND DECUBITUS CARE

- ~~—Each patient or resident shall be given care to prevent contractures, deformities, and decubiti, including but not limited to:~~
- ~~—(1) changing positions of bedfast and chairfast patients~~

~~or residents every two hours and administering simple preventive care; Documentation of such care and outcome must be included in routine summaries or progress notes;~~

- ~~—(2) maintaining proper alignment and joint movement to prevent contractures and deformities, which must be documented in routine summaries or progress notes;~~
- ~~—(3) implementing an individualized bowel and bladder training program except for patients or residents whose records are documented that such training is not effective; a monthly summary for patients and quarterly summaries for domiciliary residents shall be written relative to each patient's or resident's performance in the bowel and bladder training program.~~

Authority G.S. 131E-104; 42 U.S.C. 1396.

.0512 MEDICATION ADMINISTRATION

- ~~—(a) A licensed facility shall have policies and procedures governing the administration of medications which shall be enforced and implemented by administration and staff. Policies and procedures shall include but not be limited to:~~
- ~~—(1) automatic stop orders for treatment and drugs;~~
- ~~—(2) accountability of controlled substances as defined by the North Carolina Controlled Substances Act, G.S. 90, Article 5;~~
- ~~—(3) dispensing and administering behavior modifying drugs, such as hypnotics, sedatives, tranquilizers, antidepressants and other psychotherapeutic agents; insulin; intravenous fluids and medications; cardiovascular regulating drugs; and antibiotics.~~
- ~~—(b) All medications or drugs and treatments shall be administered and discontinued in accordance with signed physician's orders which are recorded in the patient's or resident's medical record.~~
- ~~—(1) Only physicians, registered nurses, licensed practical nurses or physician assistants, if in accordance with the assistant's approved practice, shall administer medications.~~
- ~~—(2) To ensure accountability, any medication shall be administered by the same licensed personnel who prepared the dose for administration.~~
- ~~—(3) Medications shall be administered within a half hour prior to or half hour after the prescribed time for administration unless precluded by emergency situations.~~
- ~~—(4) The person administering medications shall identify each patient or resident in accordance with the facility's policies and procedures prior to administering any medication.~~
- ~~—(5) Medication(s) administered to a patient or resident shall be recorded in the patient's or resident's medication administration record immediately after administration in accordance with the~~

~~facility's policies and procedures.~~

~~(6) Omission of medications and the reason for the omission shall be indicated in the patient's or resident's medical record.~~

~~(7) The person administering medications which are ordered to be given as needed (PRN) shall justify the need for the same in the patient's or resident's medical record.~~

~~(8) Medication administration records shall provide identification of the drug and strength of drug, quantity of drug administered, name of administering employee, title of employee and time of administration.~~

~~(e) Self administration of medications shall be permitted only if prescribed by a physician and directions are printed on the container.~~

~~(d) The administration of one patient's or resident's medications to another patient or resident is prohibited except in the case of an emergency. In the event of such an emergency, steps shall be taken to assure that the borrowed medications shall be replaced promptly and so documented.~~

Statutory Authority G.S. 131E-104.

.0513 ORIENTATION AND STAFF DEVELOPMENT

~~(a) A licensed facility shall provide for all patient or resident care employees a planned orientation and continuing education program emphasizing patient or resident assessment and planning, activities of daily living, personal grooming, rehabilitative nursing or restorative care, other patient or resident care policies and procedures, patients' rights, and staff performance expectations. Attendance and subject matter covered shall be documented for each session and available for licensure inspections.~~

~~(b) The Administrator shall assure that each employee is oriented within the first week of employment to the facility's philosophy and goals.~~

~~(c) Each employee shall have specific on-the-job training as necessary for the employee to properly perform his individual job assignment.~~

Statutory Authority G.S. 131E-104.

.0514 NURSE AIDE QUALIFICATIONS

~~(a) Effective October 1, 1989 a facility shall not use as a nurse aide, any individual not qualifying under the provisions of Rule .0515 unless the individual is within the first four months after being hired.~~

~~(b) Nurse aides qualified under the provisions of Rule .0515 who experience a period of 24 consecutive months or more of not being actively employed in delivering nursing services shall be considered unqualified. Qualification may be reestablished by successfully passing an approved competency evaluation. Any individual, nursing home, or education facility may offer Department approved vocational education for nursing home nurse aides.~~

~~(c) An accurate record of nurse aide qualifications shall~~

~~be maintained for each nurse aide used by a facility and shall be retained in the general personnel files of the facility.~~

Statutory Authority G.S. 131E-104; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396.

.0515 APPROVED NURSE AIDE EDUCATION

~~Effective October 1, 1989 the curriculum content required for nurse aide education programs shall be subject to approval by the Division of Facility Services and shall include, as a minimum, basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and patients' rights. Successful course completion shall be determined by passing a competency evaluation test. The minimum number of course hours shall be 75 of which at least 20 hours shall be classroom and at least 40 hours of supervised practical experience. The initial orientation to the facility shall be exclusive of the 75 hour training program. Competency evaluation shall be conducted in each of the following areas:~~

~~(1) Observation and documentation,~~

~~(2) Basic nursing skills,~~

~~(3) Personal care skills,~~

~~(4) Mental health and social service needs,~~

~~(5) Basic restorative services,~~

~~(6) Residents' Rights.~~

Statutory Authority G.S. 131E-104; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396.

.0516 COMPETENCY EVALUATION

~~(a) Successful course completion and skill competency shall be determined by competency evaluation approved by the Department.~~

~~(b) Commencing July 1, 1989, nurse aides who had formerly been fully qualified under nurse aide training requirements may re establish their qualifications by successfully passing a competency evaluation test.~~

Statutory Authority G.S. 131E-104; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396.

.0517 NORTH CAROLINA NURSE AIDE REGISTRY

~~The function of the North Carolina Nurse Aide Registry is to maintain a central listing of registered nurse aides. Effective January 1, 1990, a facility shall not permit an individual to work as a nurse aide for a period longer than four months without verifying the person's registry or successful completion of an approved training program.~~

Statutory Authority G.S. 131E-104; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396.

SECTION .0600 - MEDICAL RECORDS

.0605 POLICIES AND PROCEDURES

~~Each licensed facility shall have policies and procedures~~

which shall be implemented to provide for at least the following:

- ~~(1) maintenance of complete and accurate medical records for each patient admitted to the facility;~~
- ~~(2) filing of medical records to ensure accessibility for compiling or retrieving information;~~
- ~~(3) supervision of medical records;~~
- ~~(4) confidentiality of records;~~
- ~~(5) accessibility or non accessibility of medical record information to the patient or legal guardian, facility staff and non employees of the facility;~~
- ~~(6) retention of records;~~
- ~~(7) disposition of records; and~~
- ~~(8) charting and indexing of records.~~

Statutory Authority G.S. 131E-104.

.0606 SUPERVISION AND SPACE

~~(a) An employee who works fulltime in the facility shall be designated to be responsible for the medical record services. If that employee is not qualified by training or experience in medical record science, he shall receive consultation from a registered record administrator or an accredited record technician as determined by needs of the facility and to assure compliance with rules contained in this Subchapter.~~

~~(b) Medical record work space shall be so located to assure that records are protected from unauthorized disclosure. All medical records shall be stored in a protected or supervised environment.~~

Statutory Authority G.S. 131E-104.

.0607 CONTROL AND RETENTION

~~(a) Medical records shall not be removed from the facility except by court order.~~

~~(b) The facility's policy relative to retention of medical records shall assure that either the original or a copy of each patient's or resident's medical record is retained in the facility regardless of change of ownership or Administrator in accordance with North Carolina statutes of limitations for both adults and minors (G.S. 1-15, 1-17).~~

~~(c) A plan for destruction of medical records shall identify information to be retained and the manner of destruction to ensure confidentiality of all material.~~

~~(d) Provisions shall be made for a patient or resident or his legal guardian to have access to the information contained in his medical record unless ordered otherwise by the patient's or resident's physician.~~

~~(e) Signed authorization forms concerning approval or disapproval of release of medical information for licensure inspections shall be a part of each patient's and resident's medical record. Representatives of the Department shall be notified at the time of inspection of the name and record number of any patient or resident who has denied medical record access to the Department.~~

Statutory Authority G.S. 131E-104.

.0608 PATIENT INDEX

~~The Administrator shall assure that a master patient index is maintained listing patients alphabetically by name, identifying information, dates of admission and discharge and case number.~~

Statutory Authority G.S. 131E-104.

.0609 CONTENT OF MEDICAL RECORD

~~(a) All entries in the record shall be dated, legible and signed by the individual making the entry with signature and title. If initials are used the record must carry a record of each employee's full official signature and signature initials used in lieu of full signature.~~

~~(b) The patient's or resident's name and case number must be recorded on each page of the record.~~

~~(c) The medical record shall contain at least the following information when applicable:~~

- ~~(1) identification data [name, address, age, sex, marital status, (name, address, and telephone number of next of kin, legal guardian or both)];~~
- ~~(2) admission data, including medical history and physical examination; hospital discharge summary (if the patient or resident is admitted from the hospital); admission diagnosis; and rehabilitation potential, all of which must be signed by a physician;~~
- ~~(3) transfer form;~~
- ~~(4) diagnostic reports;~~
- ~~(5) consultation reports;~~
- ~~(6) physician's orders which are signed by the physician;~~
- ~~(7) physician's progress notes;~~
- ~~(8) medical and treatment records, which include laboratory, x ray, dental examination, physical therapy reports, etc.;~~
- ~~(9) graphic sheet;~~
- ~~(10) medication administration sheet;~~
- ~~(11) diabetic sheets;~~
- ~~(12) patient assessment and progress notes by various disciplines;~~
- ~~(13) miscellaneous such as consent and release forms, copy of transfer forms to the receiving institution, discharge order or release of liability for the facility if the patient or resident leaves against doctor's orders; and~~
- ~~(14) discharge summary including admitting and final diagnosis and/or prognosis or cause of death.~~

Statutory Authority G.S. 131E-104.

SECTION .0700 - PHYSICIAN SERVICES

.0705 POLICIES AND PROCEDURES

~~(a) Each licensed facility shall have policies and proce-~~

~~dures which are implemented to assure that the medical or health care of each patient or resident is under the continuing supervision of a physician. Physician services shall include at least those physician services required in Section .0300 of this Subchapter.~~

~~(b) Medical orders for all medications and treatments administered to any patient or resident shall be signed and dated by the attending physician. All current orders shall be signed and dated by the physician at least every 60 days.~~

~~(c) A physician's oral orders (including telephone orders) shall be given only to a licensed nurse or other licensed professionals who by law are allowed to accept physician's orders, except orders for therapeutic diets which shall be given either to a qualified dietitian or licensed nurse. The record of each telephone order shall include the name of physician giving the order, date and time of order, content of order and name of person receiving the order. The physician who gives oral orders shall sign the orders within five days and in accordance with the facility's written policies.~~

~~(d) Standing orders shall be identified for each patient and signed by the physician.~~

~~(e) All discharge orders and instructions shall be signed by a physician.~~

Statutory Authority G.S. 131E-104.

.0706 ADMITTING PHYSICIAN

~~The admitting physician shall be responsible for the patient's medical care until such time as orders are received from the patient's attending physician.~~

Statutory Authority G.S. 131E-104.

.0707 EMERGENCY PHYSICIAN

~~A facility shall designate a physician or physician group practice to provide emergency services to patients whenever the regular physician cannot be reached. The name and telephone number of the designated emergency service physician or group shall be posted at each nursing station.~~

Statutory Authority G.S. 131E-104.

.0708 PRIVATE PHYSICIAN

~~Each patient or legal guardian shall be allowed to select his private physician except in those facilities affiliated with medical teaching programs and having written policies requiring all patients to participate in the medical teaching program.~~

Statutory Authority G.S. 131E-104.

.0709 DOCUMENTATION

~~(a) The physician shall see the patient every 60 days in the nursing facility. A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.~~

~~(b) Every physician's visit shall be documented with an~~

~~entry in the physician's notes.~~

~~(c) Physicians shall review and sign all discharge summaries as required by Rule .0609 of this Subchapter.~~

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

.0710 USE OF PHYSICIAN EXTENDERS

~~The Administrator shall have on file a current agreement between the Board of Medical Examiners and a sponsoring physician concerning each physician assistant or nurse practitioner visiting patients. The physician assistant's or nurse practitioner's privileges in the nursing home must be clearly defined by the facility's policies and procedures and must be limited to those privileges granted by the Board of Medical Examiners.~~

Statutory Authority G.S. 131E-104.

.0711 BRAIN INJURY LONG-TERM CARE PHYSICIAN SERVICES

~~(a) For nursing facility patients located in designated brain injury long-term care units, there shall be an attending physician who is responsible for the patient's specialized care program. The intensity of the program requires that there shall be direct patient contact by a physician at least once per week and more often as the patient's condition warrants. Each patient's interdisciplinary, rehabilitation program shall be developed and implemented under the supervision of a physiatrist (a physician trained in Physical Medicine and Rehabilitation) or a physician of equivalent training and experience.~~

~~(b) If a physiatrist or physician of equivalent training or experience is not available on a weekly basis to the facility, the facility shall provide for weekly medical management of the patient by another physician. In addition, oversight for the patient's interdisciplinary, long term care program shall be provided by a qualified consultant physician who visits patients monthly, makes recommendations for and approves the interdisciplinary care plan, and provides consultation as requested to the physician who is managing the patient on a weekly basis.~~

~~(c) The attending physician shall actively participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records within 15 days of a patient discharge. When patients are to be discharged to either another health care facility or a residential setting, the attending physician shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.~~

Statutory Authority G.S. 131E-104.

.0712 PHYSICIAN SERVICES FOR VENTILATOR DEPENDENT PATIENTS

~~Nursing facilities with ventilator dependent care patients shall contract with a physician who is licensed to practice in North Carolina with Board Certification and who has~~

specialized training in pulmonary medicine. This physician shall be responsible for respiratory services and shall:

- ~~(1) establish, with the respiratory therapist and nursing staff, appropriate ventilator policies and procedures, including emergency procedures;~~
- ~~(2) assess each ventilator patient's status at least monthly with corresponding progress notes;~~
- ~~(3) be available on an emergency basis; and~~
- ~~(4) participate in individual patient care planning.~~

Statutory Authority G.S. 131E-104.

SECTION .0800 - DENTAL SERVICES

.0810 DENTAL EXAMINATION

A dental examination shall be performed at the time of admission with the following information being placed in the patient's or resident's medical or health care record:

- ~~(1) type of diet which the patient or resident can best manage (such as normal, soft or pureed);~~
- ~~(2) the presence of infection of gums, teeth, or jaws;~~
- ~~(3) brief descriptions of any removable dental appliances and a statement of their condition; and~~
- ~~(4) indications for dental treatment at the time of admission.~~

Statutory Authority G.S. 131E-104.

.0811 EMERGENCY DENTAL CARE

Names of dentists who have agreed to render emergency dental care shall be maintained at each nursing station and at the supervisor's station in a domiciliary home.

Statutory Authority G.S. 131E-104.

.0812 GOOD PRACTICES OF ORAL HYGIENE

Staff of the facility shall ensure that:

- ~~(1) necessary daily dental care is provided;~~
- ~~(2) each patient or resident possesses appropriate toothbrushes and is encouraged and, when necessary, assisted in their use; and~~
- ~~(3) each patient or resident having a removable dentures is furnished a receptacle in which to immerse the dentures in water overnight.~~

Statutory Authority G.S. 131E-104.

SECTION .0900 - PHARMACEUTICAL SERVICES

.0903 AVAILABILITY OF PHARMACEUTICAL SERVICES

~~(a) A licensed facility shall provide pharmaceutical services under the supervision of a pharmacist currently licensed to practice pharmacy in North Carolina.~~

~~(b) A facility shall be responsible for obtaining drugs, therapeutic nutrients and related products prescribed or ordered by a physician for patients or residents in the~~

~~facility.~~

~~(c) Services shall include documented on-site pharmaceutical reviews accomplished at least every 31 calendar days for all patients and residents.~~

Statutory Authority G.S. 131E-104.

.0904 PHARMACEUTICAL SERVICES PROVIDED THROUGH OTHER MEANS

~~If pharmaceutical services are provided through means other than by an employee of the facility, there shall be a written agreement between the facility and the pharmacist which shall include the following:~~

- ~~(1) a statement of the responsibilities of each party;~~
- ~~(2) a requirement for the pharmacist to submit to the Administrator and the patient's attending physician written reports of any discrepancies in drug accountability or administration.~~

Statutory Authority G.S. 131E-104.

.0905 ADMINISTRATIVE RESPONSIBILITIES

~~(a) The Administrator shall maintain reports of discrepancies in drug accountability or drug administration submitted by the pharmacist and shall make these reports available for the Director of Nursing and the Department's representative for licensure inspection.~~

~~(b) The Administrator shall provide documentation of action taken relative to discrepancies identified by the pharmacist which shall be available for licensure inspections.~~

Statutory Authority G.S. 131E-104.

.0906 PHARMACEUTICAL SERVICES COMMITTEE

~~(a) The Administrator shall appoint a pharmaceutical services committee which shall be composed of at least the pharmacist and designated representatives of administration, nursing and physician services.~~

~~(b) A pharmaceutical services committee shall:~~

- ~~(1) establish items and quantities for emergency drug kit;~~
- ~~(2) meet at least annually and more often as change in conditions may dictate for reviewing pharmaceutical services; there shall be written documentation of these reviews including dates, attendance, business discussed, action taken, and other relevant matters; these minutes shall be available in the facility for at least two years;~~
- ~~(3) develop and/or approve and annually revise pharmaceutical policies and procedures;~~
- ~~(4) approve staff inservice training designed to improve staff skills and/or correct identified problems; and~~
- ~~(5) approve non legend drugs maintained in the facility and a written formulary for same.~~

~~—(c) The pharmacist shall be a member of the pharmaceutical services committee and shall participate in drug utilization review and report to the committee at least annually on the status of the facility's pharmaceutical services and staff performance.~~

Statutory Authority G.S. 131E-104.

.0907 DRUG PROCUREMENT

~~—(a) Nursing homes shall not be permitted to possess a stock of prescription legend drugs for general or common use except as permitted by the North Carolina Board of Pharmacy and as follows:~~

- ~~—(1) for all intravenous and irrigation solutions in single unit quantities exceeding 49 ml. and related equipment for the use and administration of such;~~
- ~~—(2) diagnostic agents;~~
- ~~—(3) vaccines;~~
- ~~—(4) drugs designated for inclusion in an approved emergency kit;~~
- ~~—(5) water for injection; and~~
- ~~—(6) normal saline for injection.~~

~~—(b) Patient Drugs.~~

- ~~—(1) The contents of all prescriptions shall be kept in the original container bearing the original label as described in (b)(2) of this Rule.~~
- ~~—(2) Except in unit dose systems, each individual patient's or resident's prescription or legend drugs shall be labeled with the following information:~~
 - ~~—(A) the name of the patient for whom the drug is intended;~~
 - ~~—(B) the most recent date of issue;~~
 - ~~—(C) the name of the prescriber;~~
 - ~~—(D) the name, concentration of the drug, quantity dispensed, and prescription serial number;~~
 - ~~—(E) a statement of generic equivalency which shall be indicated if a brand other than the brand prescribed is dispensed;~~
 - ~~—(F) the expiration date and other auxiliary statements as required of the drug;~~
 - ~~—(G) the name, address and telephone number of the dispensing pharmacy; and~~
 - ~~—(H) the name of the dispensing pharmacist.~~

Statutory Authority G.S. 131E-104.

.0908 DRUG STORAGE

~~—(a) Except for emergency drug kit and properly secured medication carts, all prescription or legend drugs shall be stored in a locked room or locked wall cabinets except when the drugs are under the immediate, direct physical supervision of a licensed nurse or pharmacist. Non legend or non-prescription drugs shall be stored in an area which is locked when not in use and accessible only by authorized individuals.~~

~~—(b) Emergency drug kit shall be stored in a reasonably~~

~~secure area out of the sight of patients and the general public.~~

~~—(c) Drugs requiring refrigeration shall be stored in a thermometer equipped refrigerator capable of maintaining a temperature range of 2°C. to 8°C. (36°F. to 45°F.). Drugs shall not be stored in a refrigerator containing non drugs and non drug related items, except when stored in a separate locked container.~~

~~—(d) Drugs intended for topical use shall be stored in a designated area separate from drugs intended for oral and injectable use.~~

~~—(e) The pharmacist shall remove outdated and deteriorated drugs from the facility within 30 days after their period of effectiveness has lapsed.~~

Statutory Authority G.S. 131E-104.

.0909 PHARMACEUTICAL RECORDS

~~—The pharmacist shall assure that accurate records of the receipt, use and/or other disposition of drugs are maintained and readily available.~~

Statutory Authority G.S. 131E-104.

.0910 EMERGENCY DRUGS

~~—(a) The facility shall maintain a supply of emergency drugs.~~

~~—(b) Emergency drugs shall be stored in a portable container sealed with an easily breakable closure which cannot be resealed and shall be readily accessible for use.~~

~~—(c) All emergency drugs and quantity to be maintained shall be approved by the pharmaceutical services committee.~~

~~—(d) If emergency drug items require refrigerated storage, they shall be stored in a separate sealed container within the medication refrigerator. The container shall be labeled to indicate the emergency status of the enclosed drug(s) and sealed as indicated in Paragraph (b) of this Rule.~~

~~—(e) An accurate inventory of emergency drugs and supplies shall be maintained with each emergency drug kit.~~

~~—(f) The pharmacist shall personally examine the refrigerated and non refrigerated emergency drug supply at least every 90 days and make any necessary changes at that time.~~

~~—(g) The facility shall have written policies and procedures which are enforced to assure that in the event the sealed emergency drug container is opened and contents utilized, immediate steps are taken to replace the items used.~~

~~—(h) The availability of a controlled substance in an emergency drug kit shall be in compliance with current state and federal laws.~~

Statutory Authority G.S. 131E-104.

.0911 DRUG DISPOSITION

~~—(a) Upon discharge of a patient or resident, the remainder of his drug supply shall be disposed of promptly unless it is reasonably expected that the patient or resident shall return to the facility and in such case, the remaining drug supply may be held for not more than 30 calendar days after the~~

date of discharge.

~~(b) The disposition of drugs shall be in accordance with written policies and procedures established by the pharmaceutical services committee.~~

~~(c) Accurate records of drug destruction shall be maintained and authenticated by the pharmacist and Director of Nursing.~~

~~(d) Controlled substances shall be destroyed in accordance with provisions of the North Carolina Controlled Substances Act, G.S. 90, Article 5.~~

Statutory Authority G.S. 131E-104.

SECTION .1000 - DIETARY SERVICES

.1003 ORGANIZATION

~~(a) The Administrator shall designate a person to be known as the food service supervisor who shall be responsible for the nursing home's dietary service and dietary service personnel. If this person is not a qualified dietitian, he must have successfully completed a course which would qualify him for membership in the Dietary Managers Association. If the course has not been completed, this person must be enrolled in a course and making satisfactory progress for completion within the time limit specified by course requirements.~~

~~(b) If the food service supervisor is not a qualified dietitian, the Administrator shall provide for a minimum of eight hours per month consultation from a qualified dietitian or sufficient time to assure that therapeutic diets are planned and served in accordance with the physician's orders. The consultant shall submit written reports to the Administrator and food service supervisor. The reports will be kept on file in the facility for at least two years.~~

~~(c) The food service supervisor shall be responsible for the total operation of the dietary Department. This responsibility shall include coordinating dietary services with other facility services; developing written job descriptions; food purchasing; dietary staff orientation, training and supervision of dietary employees; participation in patient care conferences; implementing current policies and procedures; and maintaining a current record of diet order for each patient or resident who shall be identified by name, room and bed number and diet order.~~

~~(d) Dietary personnel shall be employed and scheduled to meet the nutritional needs of all patients and residents.~~

~~(e) The kitchen shall be staffed by at least one person for twelve consecutive hours, breakfast through supper.~~

~~(f) Duty assignments of dietary personnel shall be posted and shall be available to staff at all times.~~

~~(g) Dietary employees shall participate in in-service education which shall include but not be limited to therapeutic diets, food preparation requirements, and principles of sanitation.~~

Statutory Authority G.S. 131E-104.

.1004 DIETS

~~(a) All diets shall be prescribed by the patient's physician and served as ordered. The medical record shall contain nutritional assessments and progress notes that include:~~

~~(1) diet history and observation of food intake;~~
~~(2) assessment of body weight and form and dietary requirements; and~~

~~(3) notes of counseling of patients and family.~~

~~(b) Documentation of menus served shall reflect that:~~

~~(1) regular diet plans meet nutritional needs of the patients in accordance with current recommended dietary allowances of the Food and Nutrition Board, National Research Council and are adjusted to age, sex and activity; and~~

~~(2) therapeutic diet plans meet nutritional standards as stated in (b)(1) of this Rule to the extent that is medically possible.~~

~~(c) At least three meals shall be served daily to all patients and residents.~~

~~(d) No more than 14 hours shall elapse between an evening meal containing a protein food and a morning meal containing a protein food.~~

~~(e) Between meal nourishments shall be available and offered to all patients and residents.~~

~~(f) If a therapeutic diet requires a specific between meal nourishment, documentation shall assure the same was served or offered and refused by the patient or resident.~~

~~(g) An up to date manual approved by the dietitian, medical staff, and the Administrator shall be used in the planning of regular and therapeutic diets.~~

~~(h) Menus shall be dated and planned at least three weeks in advance for both regular and therapeutic diets. They shall be posted in the kitchen and accessible to kitchen staff. All menus shall be corrected as served and kept on file in the facility for a minimum of one year from the date served.~~

~~(i) Food must be prepared to conserve its nutritive value and appearance.~~

~~(j) Unless medically contra-indicated, foods shall be served at the temperature or temperature range specified in the diet manual, recipe, or package instructions, and in a consistency and texture to meet individual needs. Hot food shall be served hot and cold foods served cold and in a consistency to meet individual needs. If patients or residents require assistance in eating, food shall be maintained at serving temperature until assistance is provided.~~

~~(k) Patients' and residents' food preferences must be considered. However, when food is substituted it must be of a similar nutritive value as that for which it is substituted.~~

Statutory Authority G.S. 131E-104.

.1005 FOOD SUPPLIES

~~The following supplies must be available in the facility at all times and sufficient to meet nutritional needs of the patients and residents:~~

~~(1) non perishable food sufficient for a 3 day period; and~~

- ~~—(2)— perishable food sufficient for a 24 hour period.~~

Statutory Authority G.S. 131E-104.

.1006 RECORDS

~~The Administrator shall maintain the following records for at least one year:~~

- ~~—(1)— a record of all food and supplies purchases showing quantities and total cost of all items purchased;~~
- ~~—(2)— daily meal census (staff as well as patients and residents); and~~
- ~~—(3)— labor costs for providing dietary services.~~

Statutory Authority G.S. 131E-104.

.1007 DINING FACILITIES

~~Patients, including wheelchair patients, shall be encouraged to eat at the tables in the dining area and assisted when necessary by non-dietary staff. An overbed table shall be provided for patients who eat in bed. A sturdy tray stand shall be provided for those patients who eat out of bed but are unable to go to the dining area. (An overbed table which can be lowered to chair height may substitute for the tray stand.)~~

Statutory Authority G.S. 131E-104.

.1008 SANITATION

~~—(a) Food services shall comply with the most current rules for sanitation as promulgated by the Commission for Health Services.~~

~~—(b) All facilities shall maintain a "Grade A" sanitation rating. If the grade falls below an "A", the Administrator shall notify the Department within Ten days. This notification shall include a copy of the sanitation inspection report with a plan for corrective action which the facility shall accomplish within 90 days.~~

~~—(c) Reports of sanitation inspections and a record of corrective action for any deficiencies noted shall be on file in the dietary Department and maintained for at least two years.~~

~~—(d) Policies and procedures shall be developed and implemented to assure that dishes and utensils from patients with communicable diseases are isolated until sterilized or destroyed.~~

~~—(e) Cleaning schedules and instructions for cleaning all equipment and work and storage areas shall be posted in the dietary area and accessible to all dietary staff.~~

~~—(f) Employees with infectious or communicable diseases shall not work in dietary services.~~

~~—(g) A licensed facility must have a written plan for sanitizing dishes, such as chemical washing, in case of disasters, or malfunctioning of equipment.~~

Statutory Authority G.S. 131E-104.

SECTION .1100 - SPECIALLY DESIGNATED UNITS

.1105 REQUIREMENTS FOR SERVICES

~~Specialized rehabilitative and habilitative services, such as physical therapy, occupational therapy and speech therapy, are not required as a condition of licensure. However, patients requiring such services shall not be admitted to nor retained in a facility unless the facility is capable of furnishing the needed service through facility staff and equipment or through contractual arrangement. If physical therapy, occupational therapy, or speech therapy are provided:~~

- ~~—(1)— A physician's order for services shall be recorded in the patient's or resident's record.~~
- ~~—(2)— The facility shall provide adequate space and appropriate equipment for rendering physical therapy or occupational therapy services required by patients or residents in the facility.~~
- ~~—(3)— The services shall be supervised by a therapist duly licensed or certified to practice in the area supervised.~~
- ~~—(4)— The therapist shall incorporate his notes pertaining to treatment in the patient's or resident's medical or health care record.~~
- ~~—(5)— The therapist's notes shall be available for physician review.~~

Statutory Authority G.S. 131E-104.

.1106 QUALITY OF SPECIALIZED REHABILITATION SERVICES

~~—(a) While the person supervising specialized rehabilitative and habilitative services shall be a duly licensed or certified professional therapist, all other support personnel shall be trained in the area of assignment and directly supervised by the therapist in the area of assignment.~~

~~—(b) Services provided through outside resources shall be carried out through and in accordance with written agreements.~~

~~—(c) Services shall be designed to maintain and improve the patient's or resident's ability to function independently, prevent as much as possible the advancement of progressive disabilities, and restore maximum function.~~

~~—(d) If nursing staff carry out selected therapy procedures, they shall do so under the supervision of the physical or occupational therapist and only after documented training and approval by the therapist. This is not to prohibit simple restorative measures by the nursing staff.~~

Statutory Authority G.S. 131E-104.

.1107 VENTILATOR DEPENDENCE

~~The general requirements in this Subchapter shall apply when applicable. In addition, facilities having patients requiring the use of ventilators for more than eight hours a day must meet the following requirements:~~

- ~~—(1)— The facility must be located within 30 minutes of an acute care facility.~~
- ~~—(2)— Respiratory therapy shall be provided and supervised by a respiratory therapist currently regis-~~

tered by the National Board for Respiratory Care. The respiratory therapist shall:

- ~~(a) make, as a minimum, weekly on-site assessments of each patient receiving ventilator support with corresponding progress notes;~~
- ~~(b) be on call 24 hours daily; and~~
- ~~(c) assist the pulmonologist and nursing staff in establishing ventilator policies and procedures, including emergency policies and procedures.~~
- ~~(3) Direct nursing care staffing shall be in accordance with 10 NCAC 3H .1109.~~

Statutory Authority G.S. 131E-104.

.1108 BRAIN INJURY LONG-TERM CARE

~~(a) The general requirements in this Subchapter shall apply when applicable, but brain injury long-term care units shall meet the supplement requirements in Rules .1108 and .1109 of this Section. Brain injury long-term care is an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process as provided in Rule .0711 of this subchapter and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functioning. Following are the minimum requirements for specific services that may be necessary to maintaining the individual at optimum level:~~

- ~~(1) Overall supervisory responsibility for brain injury long-term care services shall be assigned to a registered nurse with one-year experience in caring for brain-injured patients.~~
- ~~(2) Physical therapy shall be provided by a physical therapist with a current valid North Carolina license. Occupational therapy shall be provided by an occupational therapist with a current valid North Carolina License. The services of a physical therapist and occupational therapist shall be combined to provide one full-time equivalent position for each 20 patients. The assistance of a physical therapy aide and occupational therapy aide, with appropriate supervision, shall be combined to provide one full-time equivalent position for each 20 patients. A proportionate number of hours shall be provided for a census less than 20 patients.~~
- ~~(3) Clinical nutrition services shall be provided by a qualified dietician with two years clinical training and experience in nutrition. The number of hours of clinical nutrition services on either a full-time or part-time employment or contract basis shall be adequate to meet the needs of the patients. Each patient's nutrition needs shall be reviewed at least monthly. Clinical~~

~~nutrition services shall include:~~

- ~~(A) Assessing the appropriateness of the ordered diet for conformance with each patient's physiological and pharmacological condition.~~
- ~~(B) Evaluating each patient's laboratory data in relation to nutritional status and hydration.~~
- ~~(C) Applying technical knowledge of feeding tubes, pumps and equipment to each patient's specialized needs.~~
- ~~(4) Clinical social work shall be provided by a social worker meeting the requirements of Rule .1306 of this Subchapter.~~
- ~~(5) Recreation therapy, when required, shall be provided on either a full-time or part-time employment or contract basis by a clinician eligible for certification as a therapeutic recreation specialist by the State of North Carolina Therapeutic Recreational Certification Board. The number of hours of therapeutic recreation services shall be adequate to meet the needs of the patients. In event that a qualified specialist is not locally available, alternate treatment modalities shall be developed by the occupational therapist and reviewed by the attending physician. The program designed must be adequate to meet the needs of this specialized population and must be administered in accordance with Section .1200 of this Subchapter.~~
- ~~(6) Speech therapy, when required, shall be provided by a clinician with a current valid license in speech pathology issued by the State Board of Audiology and Speech pathology.~~
- ~~(7) Respiratory therapy, when required, shall be provided by an individual meeting the same qualifications for providing respiratory therapy under Rule .1107 of this Section.~~
- ~~(b) Each patient's program shall be governed by an interdisciplinary treatment plan incorporating and expanding upon the health plan required under Section .0400 of this Subchapter. The plan is to be initiated on the first day of admission. Upon completion of baseline data development and an integrated interdisciplinary assessment the initial treatment plan is to be expanded and finalized within 14 days of admission. Through an interdisciplinary process the treatment plan shall be reviewed at least monthly and revised as appropriate. In executing the treatment plan the interdisciplinary team shall be the major decision-making body and shall determine the goals, process, and time frames for accomplishment of each patient's program. Disciplines to be represented on the team shall be medicine, nursing, clinical pharmacy and all other disciplines directly involved in the patient's treatment or treatment plan.~~
- ~~(c) Each patient's overall program shall be assigned to an individually designated case manager. The case manager acts as the coordinator for assigned patients. Any professional staff member involved in a patient's care may be assigned this responsibility for one or more patients.~~

~~Professional staff may divide this responsibility for all patients on the unit in the best manner to meet all patients' needs for a coordinated, interdisciplinary approach to care. The case manager shall be responsible for:~~

- ~~(1) coordinating the development, implementation and periodic review of the patient's treatment plan;~~
- ~~(2) preparing a monthly summary of the patient's progress;~~
- ~~(3) cultivating the patient's participation in the program;~~
- ~~(4) general supervision of the patient during the course of treatment;~~
- ~~(5) evaluating appropriateness of the treatment plan in relation to the attainment of stated goals; and~~
- ~~(6) assuring that discharge decisions and arrangements for post discharge follow up are properly made.~~

~~(d) For each 20 patients or fraction thereof, dedicated treatment facilities and equipment shall be provided as follows:~~

- ~~(1) A combined therapy space equal to or exceeding 600 square feet, adequately equipped and arranged to support each of the therapies;~~
- ~~(2) Access to one full reclining wheelchair per patient;~~
- ~~(3) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs including splints, casts, cushions, wedges, and bolsters.~~
- ~~(4) There shall be roll in bath facilities with a dressing area available to all patients which shall afford maximum privacy to the patient.~~

Statutory Authority G.S. 131E-104.

.1109 SPECIAL NURSING REQUIREMENTS FOR BRAIN INJURY LONG-TERM CARE

~~Direct care nursing personnel staffing ratios established in Section .0500 of this Subchapter shall not be applied to nursing services for patients who require brain injury long term care, due to their more intensive maintenance and nursing needs. The minimum direct care nursing staff shall be 5.5 hours per patient day, allocated on a per shift basis as the facility chooses, to appropriately meet the patients' needs. It is also required that regardless of how low the patient census, the direct care nursing staff shall not fall below a registered nurse and a nurse aide I at any time during a 24 hour period.~~

Statutory Authority G.S. 131E-104.

.1130 ADMISSIONS TO THE HIV DESIGNATED UNIT

~~If a facility declines admission to a patient known to have Human Immunodeficiency Virus disease, the reasons for the denial shall be documented.~~

Statutory Authority G.S. 131E-104.

.1131 HIV DESIGNATED UNIT POLICIES AND PROCEDURES

~~(a) In addition to Rule .0314 of this Subchapter, in units dedicated to the treatment of patients with Human Immunodeficiency Virus disease, policies and procedures specific to the specialized needs of the patients served shall be developed. At a minimum they shall include staff training and education, and the availability of consultation by a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.~~

~~(b) Policies and procedures for infection control shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38.00 or may be purchased with a credit card by telephone to the Government Printing Office at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service which is incorporated by reference including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 for \$15.95.~~

Statutory Authority G.S. 131E-104.

.1132 PHYSICIAN SERVICES IN A HIV DESIGNATED UNIT

~~In facilities with a Human Immunodeficiency Virus designated unit, the facility shall insure that attending physicians have documented, pre arranged access in person or by telephone to a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus Disease.~~

Statutory Authority G.S. 131E-104.

.1133 SPECIAL NURSING REQUIREMENTS FOR A HIV DESIGNATED UNIT

~~(a) Facilities with a Human Immunodeficiency Virus designated unit shall have a registered nurse with specialized education or knowledge in the care of Human Immunodeficiency Virus disease.~~

~~(b) Nursing personnel assigned to the Human Immunodeficiency Virus unit shall be regularly assigned to the unit. Rotations are acceptable to alleviate staff burnout or staffing emergencies.~~

Statutory Authority G.S. 131E-104.

.1134 SPECIALIZED STAFF EDUCATION FOR HIV DESIGNATED UNITS

~~For facilities with a Human Immunodeficiency Virus designated unit, an organized, documented program of education specific to the care of patients infected with the Human Immunodeficiency Virus shall be provided and include at a minimum:~~

- ~~(1) Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome disease processes;~~
- ~~(2) transmission modes, causes, and prevention of Human Immunodeficiency Virus;~~
- ~~(3) treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;~~
- ~~(4) psycho socio economic needs of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome patients;~~
- ~~(5) universal precautions and infection control; and~~
- ~~(6) policies and procedures specific to the Human Immunodeficiency Virus designated unit.~~

Statutory Authority G.S. 131E-104.

.1135 USE OF INVESTIGATIONAL DRUGS FOR HIV DESIGNATED UNITS

~~(a) The supervision and monitoring for the administration of investigational drugs is the responsibility of the pharmacist and a licensed registered nurse, acting pursuant to the orders of a physician duly authorized to prescribe or dispense such drugs. Responsibilities shall include, but not be limited to, the following:~~

- ~~(1) insuring the provision of written guidelines for any investigational drug or study are provided; and~~
- ~~(2) training and determination of staff's abilities regarding administration of drugs, policies, procedures and regulations.~~

~~(b) The pharmacist or physician dispensing the investigational drug is to provide the facility with information regarding at least the following:~~

- ~~(1) a copy of the protocol, including drug information;~~
- ~~(2) a copy of the patient's informed consent;~~
- ~~(3) drug storage;~~
- ~~(4) handling;~~
- ~~(5) any specific preparation and administration instructions;~~
- ~~(6) specific details for drug accountability, resupply and return of unused drug; and~~
- ~~(7) a copy of the signed consent to participate in the study.~~

~~(c) Labeling of investigational drugs shall be in accordance with written guidelines of protocol and State and federal requirements regarding such drugs. Prescription labels for investigational drugs are to be distinguishable from other labels by an appropriate legend, "Investigational Drug" or "For Investigational Use Only".~~

Statutory Authority G.S. 131E-104.

.1136 ADDITIONAL SOCIAL WORK REQUIREMENTS FOR HIV DESIGNATED UNITS

~~In addition to the social work services specified in Rule .1307 of this Subchapter, in facilities with a Human Immunodeficiency Virus disease designated unit, the social worker shall provide or arrange for the provision of spiritual, pastoral and grief counseling and bereavement services for patients and staff where appropriate. Support services shall be provided to resident families and significant others. Where necessary, coordination with treatment services for substance abuse, legal services and other community resources shall be identified.~~

Statutory Authority G.S. 131E-104.

.1150 DEFINITIONS

~~The following definitions shall apply to inpatient rehabilitation facilities or units only:~~

- ~~(1) "Case management" means the coordination of services, for a given patient, between disciplines so that the patient may reach optimal rehabilitation through the judicious use of resources.~~
- ~~(2) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive, rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psycho-social and cognitive deficits.~~
- ~~(3) "Inpatient rehabilitation facility or unit" means a free standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.~~
- ~~(4) "Medical consultations" means consultations which the rehabilitation physician or the attending physician determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.~~
- ~~(5) "Occupational therapist" means any individual licensed in the State of North Carolina as an occupational therapist in accordance with the provisions of G.S. 90, Article 18D.~~
- ~~(6) "Occupational therapist assistant" means any individual licensed in the State of North Carolina as an occupational therapist assistant in accordance with the provisions of G.S. 90, Article 18D.~~
- ~~(7) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.~~

- ~~(8) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accrediting Council of Graduate Medical Education or the American Osteopathic Association.~~
- ~~(9) "Physical therapist" means any person licensed in the State of North Carolina as a physical therapist in accordance with the provisions of G.S. 90, Article 18B.~~
- ~~(10) "Physical therapist assistant" means any person licensed in the State of North Carolina as a physical therapist assistant in accordance with the provisions of G.S. 90-270.24, Article 18B.~~
- ~~(11) "Recreational therapist" means a person certified by the State of North Carolina Therapeutic Recreational Certification Board.~~
- ~~(12) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with training, either academic or on the job, in physical rehabilitation nursing and at least one year experience in physical rehabilitation nursing.~~
- ~~(13) "Rehabilitation aide" means an unlicensed assistant who works under the supervision of a registered nurse, licensed physical therapist or occupational therapist in accordance with the appropriate occupational licensure laws governing his or her supervisor and consistent with staffing requirements as set forth in Rule .1157 of this Section. The rehabilitation aide shall be listed on the North Carolina Nurse Aide Registry and have received additional staff training as listed in Rule .1158 of this Section.~~
- ~~(14) "Rehabilitation physician" means a physiatrist or a physician who is qualified, based on education, training and experience regardless of specialty, of providing medical care to rehabilitation patients.~~
- ~~(15) "Social worker" means a person certified by the North Carolina Certification Board for Social Work in accordance with G.S. 90B-3.~~
- ~~(16) "Speech and language pathologist" means any person licensed in the State of North Carolina as a speech and language pathologist in accordance with the provisions of G.S. 90, Article 22.~~

Statutory Authority G.S. 131E-104.

.1151 PHYSICIAN REQUIREMENTS/INPATIENT REHABILITATION FACILITIES OR UNITS

- ~~(a) In a rehabilitation facility or unit a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.~~
- ~~(b) In a rehabilitation facility or unit a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be developed and implemented under the supervision of a rehabilitation physician.~~
- ~~(c) The rehabilitation physician shall participate in the preliminary assessment within 48 hours of admission,~~

~~prepare a plan of care and direct the necessary frequency of contact based on the medical and rehabilitation needs of the patient. The frequency shall be appropriate to justify the need for comprehensive inpatient rehabilitation care.~~

~~(d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients are to be discharged to another health care facility, the discharging facility shall assure that the patient has been provided with a discharge plan which incorporates post discharge continuity of care and services. When patients are to be discharged to a residential setting, the facility shall assure that the patient has been provided with a discharge plan that incorporates the utilization of community resources when available and when included in the patient's plan of care.~~

~~(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.~~

~~(f) Where the attending physician of a patient in an inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations shall be provided by qualified physicians within 48 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 48 hours.~~

~~(g) An inpatient rehabilitation facility or unit shall have a written procedure for setting the qualifications of the physicians rendering physical rehabilitation services in the facility or unit.~~

Statutory Authority G.S. 131E-104.

.1152 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

~~(a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.~~

~~(b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.~~

~~(c) Within 48 hours of admission a preliminary assessment shall be completed by members of the interdisciplinary team to insure the appropriateness of placement and to identify the immediate needs of the patient.~~

~~(d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.~~

~~(e) Patients admitted to an inpatient rehabilitation facility~~

or unit must be medically stable, have a prognosis indicating a progressively improved medical condition and have the potential for increased independence.

Statutory Authority G.S. 131E-104.

.1153 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION

(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.

(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation and speech language pathology.

Statutory Authority G.S. 131E-104.

.1154 COMPREHENSIVE INPATIENT REHABILITATION INTERDISCIPLINARY TREAT/PLAN

(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The plan shall include evaluation findings and information about the following:

- (1) prior level of function;
- (2) current functional limitations;
- (3) specific service needs;
- (4) treatment, supports and adaptations to be provided;
- (5) specified treatment goals;
- (6) disciplines responsible for implementation of separate parts of the plan; and
- (7) anticipated time frames for the accomplishment of specified long term and short term goals.

(b) The treatment plan shall be reviewed by the interdisciplinary team at least every other week. All members of the interdisciplinary team, or a representative of their discipline, shall attend each meeting. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.

(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive inpatient, rehabilitation evaluation completed in accordance with Rule .1153 of this Subchapter.

(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the

needs of the patient and shall participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of nursing or social worker may accept the coordination responsibility for the patients.

Statutory Authority G.S. 131E-104.

.1155 DISCHARGE CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall involve the patient, family, staff members and referral sources in discharge planning.

(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social workers.

(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.

Statutory Authority G.S. 131E-104.

.1156 COMPREHENSIVE REHABILITATION PERSONNEL ADMINISTRATION

(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.

(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.

(c) Written agreements shall be maintained by the facility when services are provided by contract on an ongoing basis.

Statutory Authority G.S. 131E-104.

.1157 COMPREHENSIVE INPATIENT REHABILITATION PROGRAM STAFFING

REQS

~~—(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:~~

- ~~—(1) The inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs.~~
- ~~—(2) The minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which shall be a registered nurse.~~
- ~~—(3) The inpatient rehabilitation unit shall employ or provide by contractual agreements sufficient therapists, licensed in North Carolina, to provide a minimum of three hours of specific (physical, occupational or speech) or combined rehabilitation therapy services per patient day.~~
- ~~—(4) Physical therapy assistants and occupational therapy assistants shall be licensed or certified and shall be supervised on site by licensed physical therapists or licensed occupational therapists.~~
- ~~—(5) Rehabilitation aides shall have documented training appropriate to the activities to be performed and the occupational licensure laws of his or her supervisor. The overall responsibility for the on-going supervision and evaluation of the rehabilitation aide remains with the registered nurse as identified in Subparagraph (a)(1) of this Rule. Supervision by the licensed physical therapist or by the occupational therapist is limited to that time when the therapist is on site and directing the rehabilitation activities of the aide.~~
- ~~—(6) Hours of service by the rehabilitation aide are counted toward the required nursing hours when the aide is working under the supervision of the licensed nurse. Hours of service by the rehabilitation aide are counted toward therapy hours during that time the aide works under the immediate, on site supervision of the licensed physical therapist or occupational therapist. Hours of service shall not be dually counted for both services. Hours of service by rehabilitation aides in performing nurse aide duties in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirements described for the rehabilitation unit.~~

~~—(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive, inpatient rehabilitation evaluation.~~

Statutory Authority G.S. 131E-104.

.1158 STAFF TRAINING FOR INPATIENT REHABILITATION FACILITIES OR UNIT

~~—Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training that includes at a minimum the following:~~

- ~~—(1) active and passive range of motion;~~
- ~~—(2) assistance with ambulation;~~
- ~~—(3) transfers;~~
- ~~—(4) maximizing functional independence;~~
- ~~—(5) the psycho-social needs of the rehabilitation patient;~~
- ~~—(6) the increased safety risks of rehabilitation training (including falls and the use of restraints);~~
- ~~—(7) proper body mechanics;~~
- ~~—(8) nutrition, including dysphagia and restorative eating;~~
- ~~—(9) communication with the aphasic and hearing impaired patient;~~
- ~~—(10) behavior modification;~~
- ~~—(11) bowel and bladder training; and~~
- ~~—(12) skin care.~~

Statutory Authority G.S. 131E-104.

.1159 EQUIPMENT REQS/COMPREHENSIVE INPATIENT REHABILITATION PROGRAMS

~~—(a) The facility shall provide each discipline with the necessary equipment and treatment methods to achieve the short and long term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.~~

~~—(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.~~

~~—(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided, including splints, casts, cushions, wedges and bolsters.~~

~~—(d) Physical therapy devices shall be provided, including a mat table, parallel bars and sliding boards and special adaptive bathroom equipment.~~

Statutory Authority G.S. 131E-104.

.1160 PHYSICAL FACILITY REQS/INPATIENT REHABILITATION FACILITIES OR UNITS

~~—(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive, inpatient rehabilitation program.~~

~~—(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair on at least one side of the bed.~~

~~—(c) The floor area of a multi-bed bedroom shall be sufficient for the patient or the staff to easily transfer the~~

patient from the bed to a wheelchair and to maneuver a 180-degree turn with a wheelchair between beds.

~~(d) Each patient room shall meet the following requirements:~~

- ~~(1) Maximum room capacity of no more than four patients;~~
- ~~(2) Operable windows;~~
- ~~(3) A nurse call system designed to meet the special needs of rehabilitation patients;~~
- ~~(4) In single and two bed rooms with private toilet room, the lavatory may be located in the toilet room;~~
- ~~(5) A wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;~~
- ~~(6) A chest of drawers or built in drawer storage with mirror above, which is wheelchair accessible; and~~
- ~~(7) A bedside table for toilet articles and personal belongings.~~

~~(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in proximity to the nurse's station and out of traffic.~~

~~(f) Patients' bathing facilities shall meet the following specifications:~~

- ~~(1) There shall be at least one shower stall or one bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant.~~
- ~~(2) Showers in central bathing facilities shall be at least five foot square without curbs and designed to permit use by a wheelchair patient.~~
- ~~(3) At least one five foot by seven foot shower shall be provided which can accommodate a stretcher and an assisting attendant.~~

~~(g) Patients' toilet rooms and lavatories shall meet the following specifications:~~

- ~~(1) The size of toilets shall permit a wheelchair, a staff person and appropriate wheel to water closet transfers.~~
- ~~(2) A lavatory in the room shall permit wheelchair access.~~
- ~~(3) Lavatories serving patients shall:~~
 - ~~(A) allow wheelchairs to extend under the lavatory; and~~
 - ~~(B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture.~~
- ~~(4) Lavatories used by patients and by staff shall be equipped with blade operated supply valves.~~
- ~~(h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but must, at a minimum,~~

include:

- ~~(1) office space for staff;~~
- ~~(2) office space for speech therapy evaluation and treatment;~~
- ~~(3) waiting space;~~
- ~~(4) training bathroom which includes toilet, lavatory and bathtub;~~
- ~~(5) gymnasium or exercise area;~~
- ~~(6) work area such as tables or counters suitable for wheelchair access;~~
- ~~(7) treatment areas with available privacy curtains or screens;~~
- ~~(8) an activities of daily living training kitchen with sink, cooking top (secured when not supervised by staff), refrigerator and counter surface for meal preparation;~~
- ~~(9) storage for clean linens, supplies and equipment;~~
- ~~(10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment; one closet or space may serve more than one area of the inpatient rehabilitation facility or unit; and~~
- ~~(11) hand washing facilities.~~
- ~~(i) For social work and psychological services the following shall be provided:~~
 - ~~(1) office space for staff;~~
 - ~~(2) office space for private interviewing and counseling for all family members; and~~
 - ~~(3) workspace for testing, evaluation and counseling.~~
- ~~(j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:~~
 - ~~(1) work space for technician; and~~
 - ~~(2) space for evaluation and fittings (with provisions for privacy).~~
- ~~(k) If vocational therapy services are provided, the following space shall be made available as necessary:~~
 - ~~(1) office space for staff;~~
 - ~~(2) workspace for vocational services activities such as prevocational and vocational evaluation;~~
 - ~~(3) training space;~~
 - ~~(4) storage for equipment; and~~
 - ~~(5) counseling and placement space.~~
- ~~(l) Recreational therapy space requirements include the following:~~
 - ~~(1) activities space;~~
 - ~~(2) storage for equipment and supplies;~~
 - ~~(3) office space for staff; and~~
 - ~~(4) access to male and female toilets.~~
- ~~(m) The following space shall be provided for patient's dining, recreation and day areas:~~
 - ~~(1) sufficient room for wheelchair movement and wheelchair dining seating;~~
 - ~~(2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a~~

~~serving counter low enough to view food;~~

- ~~—(3)— total space for inpatients, a minimum of 25 square feet per bed;~~
- ~~—(4)— for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program; and~~
- ~~—(5)— storage for recreational equipment and supplies, tables and chairs.~~
- ~~—(n) The patient dining, recreation and day area spaces shall be provided with windows that have glazing of an area not less than eight percent of the floor area of the space, at least one half of the required window area must be operable.~~
- ~~—(o) A laundry shall be available and accessible for patients.~~

Statutory Authority G.S. 131E-104.

.1161 ADDITIONAL REQUIREMENTS FOR TRAUMATIC BRAIN INJURY PATIENTS

~~Inpatient rehabilitation facilities providing services to persons with traumatic brain injuries shall meet the requirements in this Rule in addition to those identified in this Section.~~

- ~~—(1)— Direct care nursing personnel staffing ratios established in Rule .1157 of this Section shall not be applied to nursing services for traumatic brain injury patients in the inpatient, rehabilitation facility or unit. The minimum nursing hours per traumatic brain injury patient in the unit shall be 6.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which shall be a registered nurse.~~
- ~~—(2)— The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.5 hours of specific or combined rehabilitation therapy services per traumatic brain injury patient day.~~
- ~~—(3)— The facility shall provide special facility or equipment needs for patients with traumatic brain injury, including a quiet room for therapy, specially designed wheelchairs and standing tables.~~
- ~~—(4)— The medical director of an inpatient traumatic brain injury program shall have two years management in a brain injury program, one of which may be in a clinical fellowship program and board eligibility or certification in the medical specialty of the physician's training.~~
- ~~—(5)— The facility shall provide the consulting services of a neuropsychologist.~~
- ~~—(6)— The facility shall provide continuing education in the care and treatment of brain injury patients for all staff.~~
- ~~—(7)— The size of the brain injury program shall be adequate to support a comprehensive, dedicated ongoing brain injury program.~~

Statutory Authority G.S. 131E-104.

.1162 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

~~Inpatient rehabilitation facilities providing services to persons with spinal cord injuries shall meet the requirements in this Rule in addition to those identified in this Section.~~

- ~~—(1)— Direct care nursing personnel staffing ratios established in Rule .1157 of this Section shall not be applied to nursing services for spinal cord injury patients in the inpatient, rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which shall be a registered nurse.~~
- ~~—(2)— The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.~~
- ~~—(3)— The facility shall provide special facility or special equipment needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables.~~
- ~~—(4)— The medical director of an inpatient spinal cord injury program shall have either two years experience in the medical care of persons with spinal cord injuries or six month's minimum in a spinal cord injury fellowship.~~
- ~~—(5)— The facility shall provide continuing education in the care and treatment of spinal cord injury patients for all staff.~~
- ~~—(6)— The facility shall provide specific staff training and education in the care and treatment of spinal cord injury.~~
- ~~—(7)— The size of the spinal cord injury program shall be adequate to support a comprehensive, dedicated ongoing spinal cord injury program.~~

Statutory Authority G.S. 131E-104.

.1163 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

~~—(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF), and has been approved by the Department in accordance with G.S. 131E, Article 9, the department deems the facility to be in compliance with Rules .1150 through .1160 and .1163 of this Section.~~

~~—(b) Deemed status shall be provided only if the inpatient rehabilitation facility or unit provides copies of survey reports to the Division. The JCAHO report shall show that~~

~~the facility or unit was surveyed for rehabilitation services. The CARE report shall show that the facility or unit was surveyed for comprehensive rehabilitation services. The facility or unit shall sign an agreement (Memorandum of Understanding) specifying these terms.~~

~~(e) The inpatient rehabilitation facility or unit shall be subject to inspections or complaint investigations by representatives of the Department at any time. If the facility or unit is found not to be in compliance with the rules listed in Paragraph (a) of this Rule, the facility shall submit a plan of correction and be subject to a follow up visit to assure compliance.~~

~~(d) If the inpatient rehabilitation facility or unit loses or does not renew its accreditation, the facility or unit shall notify the Division in writing within 30 days.~~

Statutory Authority G.S. 131E-104.

SECTION .1200 - ACTIVITIES AND RECREATION

.1204 DESIGNATED PERSON

~~The facility administrator shall designate an activities and recreation services director who shall be under the administrative supervision of the administrator, be responsible for the activities and recreation services for all patients and who shall have appropriate management authority. Any director hired on or after the effective amended date of this Rule shall be a qualified professional who:~~

- ~~(1) Is a therapeutic recreation specialist or therapeutic recreation assistant certified by the North Carolina State Board of Therapeutic Recreation Certification pursuant to G.S. 90C 9 or is eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or~~
- ~~(2) Has two years of experience in a social or recreation program within the last five years, one of which was full time in a resident activities program in a health care setting; or~~
- ~~(3) Is a qualified occupational therapist or occupational therapy assistant licensed as such by the North Carolina Board of Occupational Therapy pursuant to G.S. 90 270.70; or~~
- ~~(4) Is certified by the National Certification Council for Activity Professionals; or~~
- ~~(5) Has completed an activities training course approved by the State.~~

Authority G.S. 131E-104; 143B-165(10); 42 U.S.C. 1396; 42 C.F.R. 483.15(f).

.1205 RESOURCES

~~The facility shall maintain and make available a listing of local resources for activities and recreation to be utilized in meeting the needs and interests of all patients and residents.~~

Statutory Authority G.S. 131E-104.

.1206 ACTIVITY PROGRAM: GOALS AND SCOPE

~~(a) Restoration to self care and resumption of normal activity shall be one of the main goals of the recreation or activity program.~~

~~(b) The scope of the activity program shall include:~~

- ~~(1) social activities involving individual and group participation which are designed to promote group relationships;~~
- ~~(2) recreational activities, both indoor and outdoor;~~
- ~~(3) opportunity to participate in activities outside the facility;~~
- ~~(4) assisting patients and residents exercise their right to attend church and religious programs of their choice;~~
- ~~(5) creative and expressive activities;~~
- ~~(6) educational activities; and~~
- ~~(7) exercise.~~

Statutory Authority G.S. 131E-104.

.1207 POLICIES AND PROCEDURES

~~The facility shall have written policies and procedures which are available and implemented by staff that:~~

- ~~(1) attempt to prevent the further mental or physical deterioration for those patients or residents who cannot realistically resume normal activities;~~
- ~~(2) assure opportunities for patient involvement, both individual and group, in both planning and implementing the activity program;~~
- ~~(3) provide patients or residents the opportunity for choice among a variety of activities; and~~
- ~~(4) encourage participation by each patient or resident in social and recreational activities according to individual need and abilities and desires unless the patient's or resident's record contains documentation that he is unable to participate.~~

Statutory Authority G.S. 131E-104.

.1208 DOCUMENTATION

~~(a) Each patient's or resident's activity plan shall be a part of his overall plan of care and shall contain documentation of periodic assessments of the individual's activity needs and interests. A record of activities and individuals participating shall be maintained in the facility.~~

~~(b) A licensed facility shall display a monthly activities calendar which includes a variety to appeal to different interest groups in all levels of care for which the facility is licensed.~~

Statutory Authority G.S. 131E-104.

.1210 SUPPLIES AND EQUIPMENT

~~There shall be equipment and supplies sufficient to carry out planned programs for both individual and group activities.~~

Statutory Authority G.S. 131E-104.

SECTION .1300 - SOCIAL SERVICES

.1306 DESIGNATED PERSON

~~The Administrator shall designate an employee to be responsible for the provision of social services who shall be known as the Social Services Director. Subsequent to the effective date of the rules contained in this Subchapter any newly designated person must be a graduate of a four year college or university with one year's experience in the health care or long-term care field or have an equivalent combination of education and experience. An equivalent combination of education and experience means the number of years of education leading to a baccalaureate or associate degree plus the number of years of long-term nursing facility experience equal to five years; or eligible for certification as a social worker pursuant to G.S. 90B-7. The Social Services Director shall have authority to carry out provisions contained in Rule .1307 of this Section.~~

Statutory Authority G.S. 131E-104.

.1307 PLAN OF SERVICES

~~(a) Each patient's or resident's plan of care shall contain a written plan for meeting his individual social needs and involving his active participation.~~
~~(b) The plan shall provide for needed assistance in meeting the patient's or resident's physical, social and emotional needs through consultation with the patient or resident, legal guardian or his relative, physician and/or others.~~
~~(c) The plan shall provide for assisting the patient or resident in adjusting to his environment, for referral to other supporting resources, for protective services, for financial services and for assistance at the time of discharge or transfer into a new environment.~~
~~(d) The plan shall provide for the utilization of caseworkers employed by the county Department of social services in the case of recipients of public assistance and for the utilization of appropriate persons with experience and training in the general area of social work in the case of those not on public assistance.~~

Statutory Authority G.S. 131E-104.

.1308 DISCHARGE PLANNING

~~(a) Discharge planning shall be in keeping with each patient's and resident's post discharge needs.~~
~~(b) The Administrator shall assure that a medical order for discharge including any special instructions for meeting rehabilitation potential is obtained for all patients or residents except when a patient or resident leaves against a physician's order or advice.~~
~~(c) The Social Services Director shall coordinate discharge instructions and assure that patients and residents and their families are instructed in accordance with discharge orders.~~

Statutory Authority G.S. 131E-104.

SECTION .1400 - SPECIAL REQUIREMENTS

.1405 EMERGENCY PROCEDURES

~~(a) Each employee providing direct patient care shall be trained in at least the following:~~
~~(1) use of emergency equipment such as oxygen and suction apparatus;~~
~~(2) procedure to follow with choking victims; and~~
~~(3) procedure to follow in summoning assistance required for emergency rescue, law enforcement or protection and fire.~~
~~(b) Personnel files for patient care employees must contain documentation to reflect that employees have successfully completed training in the areas described in Paragraph (a) of this Rule.~~

Statutory Authority G.S. 131E-104.

.1406 REPORTABLE DISEASE

~~All cases of reportable disease as required by the Commission for Health Services (10 NCAC 7A .0100) and epidemic outbreaks, and poisonings shall be reported immediately to the local Health Director and the Department.~~

Statutory Authority G.S. 131E-104.

.1408 RESTRAINTS

~~(a) Patients and residents shall be restrained only as provided for in Declaration of Patients' Rights, G.S. 131E-117(6) and in accordance with policies implemented pursuant to Rule .0505(f).~~
~~(b) In emergency situations either the nurse in charge or a registered nurse in a higher supervisory position, shall be responsible for making the determination relative to necessity for the type and duration of physical restraint to use while contacting a physician.~~
~~(c) The type of restraint used and the time of application and removal shall be recorded by a licensed nurse in the patient's or resident's record.~~

Statutory Authority G.S. 131E-104.

.1409 REPORT OF DEATH

~~A licensed facility shall have a written plan to be followed when a patient dies. The plan must provide for the following:~~
~~(1) collection of data needed for death certificate as required by G.S. 130A-117;~~
~~(2) recording time of death;~~
~~(3) pronouncement of death by a physician or medical examiner;~~
~~(4) notification of attending physician responsible for signing death certificate if different from physician pronouncing death;~~
~~(5) notification of next of kin or legal guardian if one has been appointed;~~

- ~~—(6)— authorization and release of body to funeral home; and~~
- ~~—(7)— notification to the Department of any death resulting from an injury, accident or other possible unnatural causes.~~

Statutory Authority G.S. 131E-104.

.1410 PETS (COMPANION ANIMALS)

- ~~—(a) No animal shall be brought into the facility except in accordance with Paragraph (b) of this Rule.~~
- ~~—(b) A patient's or resident's personal pet may be brought into the facility for a short visit under the following conditions:~~
 - ~~—(1)— the facility's policies and procedures permit pet visitation and the policies are followed during the visit;~~
 - ~~—(2)— before a dog or cat may enter the facility, proof of immunization against rabies shall be submitted to the Administrator; and~~
 - ~~—(3)— pets shall not be permitted in areas where food or drink is prepared or served.~~

Statutory Authority G.S. 131E-104.

SECTION .1500 - DESIGN AND CONSTRUCTION

.1501 GENERAL RULES

- ~~—(a) Each facility must be planned, constructed, and equipped to provide the services offered to be performed in the facility.~~
- ~~—(b) Any existing building converted to a nursing home or related facility shall meet all requirements of a new facility.~~
- ~~—(c) The sanitation, water supply, sewage disposal, and dietary facilities must comply with the rules of the Commission for Health Services.~~
- ~~—(d) The domiciliary home portion of a combination facility must meet the rules for a nursing facility contained in Sections .1500, .1600, .1700 and .1800 of this Subchapter, except when separated by a two hour fire resistive construction. In this case, the domiciliary home portion must meet the rules for domiciliary homes, 10 NCAC 42D, and supporting areas must be located in the same area of the facility as the domiciliary home portion.~~

Authority G.S. 131E-104; 42 U.S.C. 1396.

.1502 SITE

- ~~—The site of the proposed facility must be approved by the Department prior to construction and shall:~~
 - ~~—(1)— be accessible by public roads and public transportation;~~
 - ~~—(2)— be accessible to fire fighting services;~~
 - ~~—(3)— be provided with an approved water supply, sewage disposal system, garbage disposal system and trash disposal system;~~
 - ~~—(4)— meet all local ordinances and zoning laws; and~~

- ~~—(5)— be free from exposure to hazards and pollutants.~~

Statutory Authority G.S. 131E-104.

.1503 PLANS AND SPECIFICATIONS

- ~~—(a) When construction or remodeling is planned, final working drawings and specifications must be submitted by the owner or his appointed representative to the Department for review and approval. Schematic drawings and preliminary working drawings shall be submitted by the owner prior to the required submission of final working drawings. The Department will forward copies of each submittal to the Department of Insurance and Division of Health Services for review and approval. Three copies of the plans shall be provided at each submittal.~~
- ~~—(b) Approval of final plans and specification shall expire one year from the date granted unless a contract for the construction has been signed prior to the expiration date.~~
- ~~—(c) If an approval expires, a renewed approval shall be issued provided revised plans meeting all current regulations, codes, and standards are submitted.~~
- ~~—(d) Completed construction must conform to the minimum standards established in Sections .1500, .1600, .1700 and .1800 of this Subchapter. Prior to approval for licensure, one set of "as built working drawings" must be furnished to the Department.~~
- ~~—(e) The owner or his designated agent shall notify the Department when actual construction starts and at points when construction is 50 percent, 75 percent, and 90 percent of completion and upon final completion, so that periodic and final inspections can be performed.~~
- ~~—(f) The owner or his designated agent shall submit for approval by the Department all alterations or remodeling changes which affect the structural integrity of the building, functional operation, fire safety or which add beds or facilities over those for which the facility is licensed.~~

Statutory Authority G.S. 131E-104.

SECTION .1600 - FUNCTIONAL REQUIREMENTS

.1612 REQUIRED SPACES

- ~~—(a) The floor area of a single bedroom shall not be less than 100 square feet and the floor area of a room for more than 1 bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes. When a designated single room exceeds 159 square feet floor area, it shall remain a single bedroom and cannot be used as a multi-bedroom at any future date.~~
- ~~—(b) The total space set aside for dining, recreation and other common uses shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for a domiciliary home. Physical therapy and occupational therapy space shall not be included in this total:~~
 - ~~—(1)— In new nursing homes diversional activity and~~

~~therapeutic recreation areas shall be provided separate from the main living and dining areas.~~

~~(2) Dining, recreation and other common use areas shall be designed and equipped to provide accessibility to both wheel chair and ambulatory patients.~~

~~(3) Recreation and other common use areas shall be designed for independent and group activity use.~~

~~(4) Closets and other storage areas for equipment and supplies shall not be included in the required dining, recreation and common use floor space area.~~

~~(5) Handicap accessible outdoor areas for individual and group activities shall be provided.~~

~~(e) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient room. One tub or shower shall be provided for each 15 beds not individually served. There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.~~

~~(d) For each nursing unit or fraction thereof on each floor, the following shall be provided:~~

~~(1) a medication preparation area with counter, sink with four inch handles, medication refrigerator, eye level medication storage, cabinet storage, and double locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;~~

~~(2) a clean utility room with counter, sink with four inch handles, wall and under counter storage;~~

~~(3) a soiled utility room with counter, sink with four inch handles, wall and under counter storage, a flush rim clinical sink or water closet with a device for cleaning bedpans and a means for washing and sanitizing bedpans and other utensils;~~

~~(4) a nurses' toilet and locker space for coats, purses, etc.;~~

~~(5) an audiovisual nurse patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;~~

~~(6) a soiled linen storage room shall be provided; and~~

~~(7) a clean linen storage room shall be provided.~~

~~(e) Clean linen storage shall be provided in a separate room for bulk supplies. Clean linen for nursing units may be stored in closed carts or cabinets in the clean utility room or in a linen closet on the unit floor.~~

~~(f) A soiled linen room shall be provided.~~

~~(g) Each nursing unit shall be provided with at least one janitor's closet. Dietary and laundry each must have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care, and employee facilities shall be provided janitor's closets and may share one as a~~

~~group.~~

~~(h) Stretcher and wheelchair storage shall be provided.~~

~~(i) Bulk storage shall be provided at the rate of five square feet of floor area per bed.~~

~~(j) Office space must be provided for persons holding the following positions: Administrator, Director of Nursing, Social Services Director, Activities and Recreation Director, and Physical Therapist, if offered. There must also be a business office.~~

Authority G.S. 131E-104; 42 U.S.C. 1396.

.1613 FURNISHINGS

~~(a) Handgrips shall be provided for all toilet and bath facilities used by patients. Handrails shall be provided on both sides of all corridors used by patients.~~

~~(b) For each nursing unit or fraction thereof on each floor, the following shall be provided:~~

~~(1) a nourishment station with work space, cabinet, and refrigerated storage, a small stove or hot plate in an area physically separated from the nurses' station;~~

~~(2) one nurses' station consisting of desk space for writing, storage space for office supplies and storage space for patients' records.~~

~~(c) Flameproof privacy screens or curtains shall be provided in multi-bedded rooms.~~

Statutory Authority G.S. 131E-104.

SECTION .1700 - FIRE AND SAFETY REQUIREMENTS

.1703 NEW FACILITY REQUIREMENTS

~~A new facility shall meet the requirements of the current North Carolina State Building Code and the following additional requirements:~~

~~(1) Each floor used for sleeping patients shall be divided into at least two sections by a smoke barrier.~~

~~(2) Where nursing units are located on the same floor with other Departments or services, the facility shall be designed to provide separation from the other Departments or services with a smoke barrier.~~

~~(3) Horizontal exits are not permitted in any new facility.~~

Statutory Authority G.S. 131E-104.

.1704 ADDITIONS

~~An addition to an existing facility shall meet the same requirements as a new facility except that in no case shall more than one horizontal exit be used to replace a required exit to the outside.~~

Statutory Authority G.S. 131E-104.

SECTION .1800 - MECHANICAL: ELECTRICAL:
PLUMBING

.1804 HEATING AND AIR CONDITIONING

~~Heating and cooling systems shall meet the current American Society of Heating, Refrigeration, and Air Conditioning Engineers Guide and National Fire Protection Association Code 90A (1973 edition) with the following modifications:~~

- ~~(1) Soiled linen, bathrooms, janitor closets and soiled utility rooms must have negative pressure with relationship to adjacent areas.~~
- ~~(2) Clean linen, clean utility and drug rooms must have positive pressure with relationship to adjacent areas.~~
- ~~(3) All areas not covered in (1) and (2) of this Rule must have neutral pressure.~~

Statutory Authority G.S. 131E-104.

.1805 EMERGENCY ELECTRICAL SERVICE

~~Emergency electrical service shall be provided for use in the event of failure of the normal electrical service. This emergency service shall be made up as follows:~~

- ~~(1) In any existing facility, the following must be provided:~~
 - ~~(a) type 1 or 2 emergency lights as required by the North Carolina State Building Code;~~
 - ~~(b) additional emergency lights for all nursing stations, drug preparation and storage areas, and for the telephone switchboard, if applicable;~~
 - ~~(c) one or more portable battery powered lamps at each nursing station; and~~
 - ~~(d) a suitable source of emergency power for life sustaining equipment, if the home admits or cares for occupants needing such equipment, to ensure continuous operation for a minimum of 72 hours.~~
- ~~(2) Any addition to an existing facility shall meet the same requirements as new construction.~~
- ~~(3) Any conversion of an existing building (hotel, motel, abandoned hospital, abandoned school, etc.) shall meet the same requirements for emergency electrical services as required for new construction.~~
- ~~(4) For new construction, an emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.~~
- ~~(5) Lighting for emergency electrical services shall be provided in the following places:~~
 - ~~(a) exit ways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;~~
 - ~~(b) dining and recreation rooms;~~

- ~~(c) nursing station and medication preparation area;~~
- ~~(d) generator set location, switch gear location, and boiler room (if applicable); and~~
- ~~(e) elevator (if required for emergency).~~
- ~~(6) Emergency equipment which is essential to life, safety, and the protection of important equipment or vital materials shall be provided:~~
 - ~~(a) nurses' calling system;~~
 - ~~(b) alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler systems if electrically operated, fire detecting and smoke detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;~~
 - ~~(c) fire pump, if installed;~~
 - ~~(d) sewerage or sump lift pump, if installed;~~
 - ~~(e) one elevator, where elevators are used for vertical transportation of patients;~~
 - ~~(f) equipment such as burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls, required for heating and sterilization, if installed;~~
 - ~~(g) equipment necessary for maintaining telephone service;~~
 - ~~(h) A minimum of one dedicated emergency branch circuit per bed is required for ventilator dependent patients in addition to the normal system receptacle at each bed location required by the National Electrical Code. This emergency circuit shall be provided with a minimum of two duplex receptacles identified for emergency use. Additional emergency branch circuits/receptacles shall be provided where the electrical life support needs of the patient exceed the minimum requirements stated in this Subparagraph. Each emergency circuit serving ventilator dependent patients shall be fed from the automatically transferred critical branch of the essential electrical system. This Subparagraph shall apply to both new and existing facilities;~~
 - ~~(i) Heating equipment provided for ventilator dependent patient bedrooms shall be connected to the critical branch of the essential electrical system and arranged for delayed automatic or manual connection to the emergency power source if the heating equipment depends upon electricity for proper operation. This Subparagraph shall apply to both new and existing facilities; and~~
 - ~~(j) Task lighting connected to the automatically transferred critical branch of the essential electrical system shall be provided for each ventilator dependent patient bedroom. This Subparagraph shall apply to both new and existing facilities.~~
- ~~(7) Where electricity is the only source of power~~

normally used for space heating, the emergency service shall provide for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the nursing home is supplied by at least two separate generating sources, or a network distribution system with the nursing home feeders so routed, connected, and protected that a fault any place between the generators and the nursing home will not likely cause an interruption.

(8) The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within 10 seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the 10 second primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification.

(9) Battery powered corridor lights shall not replace the requirements for the emergency circuit nor be construed to substitute for the generator set. Sufficient fuel shall be stored for the operation of the emergency generator for a period not less than 72 hours, on a 24 hour per day operational basis. The systems shall be test run for a period of not less than 15 minutes on a weekly schedule. Records of running time shall be maintained and kept available for reference.

(10) To ensure proper evaluation of design of emergency power systems, the owner or operator shall submit with final working drawings and specifications a letter describing the policy for admissions and discharges to be used when the facility begins operation. If subsequent yearly inspections for licensure indicate the admission policies have been changed, the facility will be required to take immediate steps to meet appropriate code requirements for continued licensure.

Statutory Authority G.S. 131E-104.

1806 GENERAL ELECTRICAL

(a) All main water supply shut-off valves in the sprinkler system must be electronically supervised so that if any valve is closed an alarm will sound at a continuously manned central station.

(b) No two adjacent emergency lighting fixtures shall be on the same circuit.

(c) Receptacles in bathrooms must have ground fault protection.

(d) Each patient bed location must be provided with a minimum of four single or two duplex receptacles.

(e) Each patient bed location must be supplied by at least two branch circuits.

(f) The fire alarm system must be installed to transmit an alarm automatically to the fire Department that is legally committed to serve the area in which the facility is located, by the most direct and reliable method approved by local ordinances.

(g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.

(h) All receptacles in patient use areas must be grounded by an insulated conductor sized in accordance with Table 950.95 of the 1975 National Electric Code.

Statutory Authority G.S. 131E-104.

1807 OTHER

(a) In general patient areas, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. In multi corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' and residents' use at each patient and resident toilet, bath, and shower room.

(b) At least one telephone shall be available in each area to which patients are admitted and additional telephones or extensions as are necessary to ensure availability in case of need.

(c) General outdoor lighting shall be provided adequate to illuminate walkways and drive.

(d) A flow of hot water within safety ranges specified as follows:

Patient Areas — 6½ gallons per hour per bed and at a temperature of 100 — 116 degrees F; and

Dietary Services — 4 gallons per hour per bed and at a temperature of 130 degrees — 140 degrees F; and

Laundry Areas — 4½ gallons per hour per bed and at a temperature of 130 degrees — 140 degrees F.

(e) Plumbing systems shall meet the requirements of the North Carolina State Plumbing Code.

(f) The Administrator shall assure that isolation facilities as approved by the Department shall be available and used for any patient admitted or retained with a communicable disease.

Statutory Authority G.S. 131E-104.

SECTION .2000 - GENERAL INFORMATION

.2001 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (3) "Accredited medical record technician" means a person trained in record maintenance and preservation, and accredited by the American Medical Record Association.
- (4) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (5) "Administrator" means a person licensed by the North Carolina State Board of Examiners for Nursing Home Administrators in accordance with G.S. 90-276, Article 20, and who has authority for and is responsible for the overall operation of a facility.
- (6) "Appropriate" means right, suitable or proper for the specified use or purpose, suitable or proper, when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (7) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.
- (8) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (9) "Case manager" means the individual responsible for the coordination of services, for a given patient, between disciplines so that the patient may reach optimal rehabilitation through the judicious use of resources.
- (10) "Combination facility" means a combination home as defined in G.S. 131E-101.
- (11) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive, rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial and cognitive deficits.
- (12) "Convalescent care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (13) "Department" means the North Carolina Department of Human Resources.
- (14) "Dietitian" means a person who meets the standards and qualifications established by the Commission on Dietetic Registration of the American Dietetic Association included in "Standards of Practice" which is incorporated by reference, including subsequent amendments. Copies of the standards may be purchased for seven dollars and twenty five cents (\$7.25) or "Code of Ethics for the Profession of Dietetics" for two dollars and fifteen cents (\$2.15), from the American Dietetic Association, 216 W. Jackson Blvd., Chicago, IL 60606-6995.
- (15) "Director of nursing" means a registered nurse who has authority and direct responsibility for all nursing services and nursing care.
- (16) "Discharge" means a patient who physically relocates to another health care setting or is discharged home or relocated from a nursing bed to a domiciliary bed or from a domiciliary bed to a nursing bed.
- (17) "Drug" means substances:
 - (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - (d) intended for use as a component of any article specified in Subitems (a), (b), or (c) of this Subparagraph.
- (18) "Existing facility" means a facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the design development drawings stage prior to the effective date of this Rule.
- (19) "Exit conference" means the conference held at the end of a survey or investigation between the Department's representatives and the facility

- administration representative.
- (20) "Facility" means a nursing facility or combination facility as defined in this Rule.
- (21) "Finding" (when used in conjunction with the Nurse Aide program) means a determination by the Department that an allegation of patient abuse or neglect, or misappropriation of patient property has been substantiated.
- (22) "HIV Unit" means designated areas dedicated to patients or residents known to have Human Immunodeficiency Virus disease.
- (23) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.
- (24) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (25) "Interdisciplinary" means an integrated process involving a representative from appropriate disciplines of the health care team.
- (26) "Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (27) "Licensed practical nurse" means a nurse who is licensed as a practical nurse under G.S. 90, Article 9A.
- (28) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued. The licensee is the legal entity which is responsible for the operation of the business.
- (29) "Medical consultations" means consultations which the rehabilitation physician, the attending physician or other authorized persons determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.
- (30) "Medication" means drug as defined in Item (17) of this Rule.
- (31) "Medication error rate" means a discrepancy between what was ordered and what is actually administered. It is the number of errors observed divided by the opportunities for error times 100.
- (32) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's belongings or money without the patient's consent.
- (33) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.
- (34) "New facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (35) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and is in compliance with 42 CFR Part 483 which is incorporated by reference, including subsequent amendments. Copies of the Code of Federal Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for thirty eight dollars (\$38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 783-3238.
- (36) "Nurse aide trainee" means a person who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.
- (37) "Nursing facility" means a nursing home as defined in G.S. 131E-104.
- (38) "Nurse-in-charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (39) "Occupational therapist" means a person licensed in the State of North Carolina as an occupational therapist in accordance with the provisions of G.S. 90, Article 18D.
- (40) "Occupational therapist assistant" means a person licensed in the State of North Carolina as an occupational therapist assistant in accordance with the provisions of G.S. 90, Article 18D.
- (41) "On-duty personnel" means personnel who are responsive to patient needs and physically present in the facility performing assigned duties.
- (42) "Patient" means any person admitted for nursing care.
- (43) "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.
- (44) "Pharmacist" means a person who is licensed to practice pharmacy in North Carolina.
- (45) "Physician" means a person licensed under G.S. 90, Article 1 to practice medicine in North Carolina.
- (46) "Proposal" means a Negative Action Proposal containing information that may ultimately be classified as violations.
- (47) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.
- (48) "Psychologist" means a person licensed as a

- practicing psychologist in accordance with G.S. 90, Article 18A.
- (49) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accrediting Council of Graduate Medical Education or the American Steopathic Association.
- (50) "Physical therapist" means a person licensed in the State of North Carolina as a physical therapist in accordance with the provisions of G.S. 90, Article 18B.
- (51) "Physical therapist assistant" means a person licensed in the State of North Carolina as a physical therapist assistant in accordance with the provisions of G.S. 90-270.24, Article 18B.
- (52) "Recreational therapist" means a person certified by the State of North Carolina Therapeutic Recreational Certification Board.
- (53) "Registered Nurse" means a nurse who is licensed as a registered nurse under G.S. 90, Article 9A.
- (54) "Registered Records Administrator" means a person who is registered by the American Medical Record Association.
- (55) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with training, either academic or on-the-job, in physical rehabilitation nursing and at least one year experience in physical rehabilitation nursing.
- (56) "Rehabilitation aide" means an unlicensed assistant who works under the supervision of a registered nurse, licensed physical therapist or occupational therapist in accordance with the appropriate occupational licensure laws governing his or her supervisor and consistent with staffing requirements as set forth in Rule .3027 of this Subchapter. Any rehabilitation aide, who works in a nursing department and is under the supervision of a registered nurse, shall be listed on the North Carolina Nurse Aide Registry and have received additional staff training as listed in Rule .3028 of this Subchapter.
- (57) "Rehabilitation physician" means a physiatrist or a physician who is qualified, based on education, training and experience, regardless of specialty, to providing medical care to rehabilitation patients.
- (58) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing facility.
- (59) "Resident" means any person admitted for care to a domiciliary home part of a combination facility as defined in G.S. 131E-101.
- (60) "Respite care" means services provided for persons admitted to a nursing facility on a temporary basis, not to exceed 30 days.
- (61) "Significant medication error" means an error which causes the patient discomfort or jeopardizes the health and safety of the patient. Factors to consider when determining significance of error include the patient's condition, the drug category (need titration of blood levels, etc.) and frequency of the error.
- (62) "Single unit or unit dose package" means each dose of medication is individually packaged in a properly sealed and properly labeled container in accordance with the U.S. Pharmacopeia and professional standards.
- (63) "Sitter" means an employee or volunteer who provides companionship and social interaction to a particular patient, usually on a private duty basis.
- (64) "Social worker" means a person who meets the qualifications set forth in Rule .2902 of this Subchapter.
- (65) "Speech and language pathologist" means a person licensed in the State of North Carolina as a speech and language pathologist in accordance with the provisions of G.S. 90, Article 22.
- (66) "Supervisor-in-charge" (domiciliary home) means any employee to whom supervisory duties for the domiciliary home portion of a combination home have been delegated by either the administrator or director of nursing.
- (67) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.
- (68) "Unit dose system" means a drug distribution system in which each dose of medication is contained in, and administered from, single unit or unit dose packages.
- (69) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (70) "Violation" means a finding which directly relates to a patient's or resident's health, safety or welfare, or which creates a substantial risk that death or serious physical harm will occur. It is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E-117 and 131D-21 or applicable state and federal laws, rules and regulations.

Statutory Authority G.S. 131E-104.

SECTION .2100 - LICENSURE

.2101 APPLICATION REQUIREMENTS

- (a) An application for licensure for a new facility shall be submitted to the Medical Facilities Licensure Section of the Division of Facility Services at least 30 days prior to a license being issued or patients admitted.

(b) The application shall contain the following:

- (1) legal identity of applicant (licensee) and mailing address;
- (2) name or names under which the facility is presented to the public;
- (3) location and mailing address of facility;
- (4) ownership disclosure;
- (5) accreditation data;
- (6) bed compliment;
- (7) magnitude and scope of services offered;
- (8) name and current license number of the administrator; and
- (9) name and current license number of the director of nursing.

Statutory Authority G.S. 131E-104.

.2102 ISSUANCE OF LICENSE

(a) Only one license shall be issued to each facility. The Department shall issue a license to the licensee of the facility following review of operational policies and procedures and verification of compliance with applicable laws and rules.

(b) Licenses are not transferable.

(c) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding Certificate of Need.

(d) The license shall be posted in a prominent location, accessible to public view, within the licensed premises.

Statutory Authority G.S. 131E-104.

.2103 LENGTH OF LICENSURE

Licenses shall remain in effect up to 12 months, unless any of the following occurs:

- (1) Department imposes an administrative sanction which specifies license expiration;
- (2) closure;
- (3) change of ownership;
- (4) change of site;
- (5) change in bed compliment; or
- (6) failure to comply with Rule .2104 of this Section.

Statutory Authority G.S. 131E-104.

.2104 REQUIREMENTS FOR LICENSURE RENEWAL OR CHANGES

(a) The Department shall renew the facility's license at the end of each calendar year, if the following occur:

- (1) The licensee maintains and submits to the Department, at least 30 days prior to the licensure expiration date, statistical data for the State's medical facilities plan and review for certificate of need determination. The Department shall provide forms annually to the facility for this purpose.
- (2) The facility is in conformance with G.S. 131E-102(c).

(b) The Medical Facilities Licensure Section of the Division of Facility Services shall be notified in writing and changes made in the licensure application at least 30 days prior to the occurrence of the following:

- (1) a change in the name or names under which the facility is presented to the public;
- (2) a change in the legal identity (licensee) which has ownership responsibility and liability (such information shall be submitted by the proposed new owner);
- (3) a change in the licensed bed capacity; or
- (4) a change in the location of the facility.

The Department shall issue a new license following notification and verification of data submitted.

(c) The facility shall notify the Medical Facilities Licensure Section of the Division of Facility Services within one working day following the occurrence of:

- (1) change in administration;
- (2) change in the director of nursing;
- (3) change in facility mailing address or telephone number;
- (4) changes in magnitude or scope of services; or
- (5) emergencies or situations requiring relocation of patients to a temporary location away from the facility.

Statutory Authority G.S. 131E-104.

.2105 TEMPORARY CHANGE IN BED CAPACITY

(a) A life care center, having an agreement to care for all residents regardless of level of care needs, may temporarily increase bed capacity by 10 percent or 10 beds, whichever is less, over the licensed bed capacity for a period up to 30 days following notification of and approval by the Department.

(b) A facility other than a life care center or combination home shall accept no more patients or residents than the total number for which it is licensed except in an emergency situation approved and confirmed in writing by the Medical Facilities Licensure Section of the Division of Facility Services. Emergency authorizations shall not exceed 30 calendar days and shall not exceed the total licensed bed capacity for the facility.

(c) The Department shall authorize, in writing, a temporary increase in licensed beds in accordance with Paragraphs (a) and (b) of this Rule, if it is determined that:

- (1) the increase is not associated with a capital expenditure; and
- (2) the increase would not jeopardize the health, safety and welfare of the patients.

Statutory Authority G.S. 131E-104.

.2106 DENIAL, AMENDMENT, OR REVOCATION OF LICENSE

(a) The Department shall deny any licensure application upon becoming aware that the applicant is not in compliance with G.S. 131E, Article 9 and the rules adopted under that

law.

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

(c) The Department shall give the licensee written notice of the amendment to the license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional license;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the facility's right to a contested case hearing on the amendment of the license.

(d) The provisional license shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location within the facility, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license.

(e) If a licensee has a provisional license at the time the licensee submits the annual utilization data, the provisional license shall remain in effect unless the Department determines that the licensee can be returned to full licensure status.

(f) The Department may revoke a license whenever:

- (1) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
 - (B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6; and
 - (B) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- (3) The Department finds that there has been any failure to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article that endanger the health, safety or

welfare of the patients in the facility.

(g) The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Paragraph (f) of this Rule.

(h) The Department can, in accordance with G.S. 131E-232, petition to have a temporary manager appointed to operate a facility.

Statutory Authority G.S. 131E-104.

.2107 SUSPENSION OF ADMISSIONS

(a) The Department may suspend the admission of any new patient to any facility when warranted under the provisions of G.S. 131E-109(c).

(b) The Department shall notify the facility personally or by certified mail of the decision to suspend admissions. Such notice shall include:

- (1) factual allegations;
- (2) citation of statutes and rules alleged to be violated; and
- (3) notice of the facility's right to a contested case hearing on the suspension.

(c) The suspension shall be effective when the notice is served or on the date specified in the notice of suspension, whichever is later. The suspension shall remain effective until the facility demonstrates to the Department that conditions are no longer detrimental to the health and safety of the patients.

(d) The facility shall not admit new patients during the effective period of the suspension.

(e) Patients requiring hospitalization during the period of suspension of admissions shall be readmitted after hospitalization or on return from temporary care to the facility based on the availability of a bed and the ability of the facility to provide necessary care. Upon return from the hospital, the requirements of G.S. 131E-130 shall apply.

Statutory Authority G.S. 131E-104.

.2108 PROCEDURE FOR APPEAL

(a) The facility may appeal any decision of the Department to deny, revoke or alter a license or any decision to suspend admissions by making such an appeal in accordance with G.S. 150B and 10 NCAC 1B .0200.

(b) A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display full license during the appeal.

Statutory Authority G.S. 131E-104.

.2109 INSPECTIONS

(a) The facility shall allow inspection by an authorized representative of the Department at any time.

(b) At the time of inspection, any authorized representative of the Department shall make his or her presence known to the administrator or other person in charge who

shall cooperate with the representative and facilitate the inspection.

(c) Inspections of medical records will be carried out in accordance with G.S. 131E-105.

(d) The administrator shall provide and make available to representatives of the Department financial and statistical records required to verify compliance with all rules contained in this Subchapter.

(e) The Department shall mail a written report to the facility within 10 working days from the date of the licensure survey or complaint investigation exit conference. The report shall include statements of any deficiencies or violations cited during the survey or investigation.

(f) The administrator shall prepare a written plan of correction and mail it to the Department within 10 working days following receipt of any statement of deficiencies or violations. The Department shall review and accept or reject the plan of correction, with written notice given to the administrator within 10 working days following receipt of the plan.

Statutory Authority G.S. 131E-104.

.2110 PUBLIC ACCESS TO DEPARTMENT LICENSURE RECORDS

(a) All Department files pertaining to the licensure of any facility under this Subchapter shall be open for inspection by any member of the public during normal business hours. The Department shall have an opportunity to ensure that none of the information identified in Paragraph (b) of this Rule will be disclosed during the inspection. Except for information identified in Paragraph (b) of this Rule, any member of the public may obtain copies of any information contained in the Department licensure files in accordance with Division of Facility Services Directive 30, Publication Guidelines, which is incorporated by reference, including subsequent amendments. A copy of the directive may be obtained, without charge, from the Medical Facilities Licensure Section, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530.

(b) Unless disclosure is ordered by a court of competent jurisdiction, the following classes of information shall not be disclosed to members of the public:

- (1) information about the diagnosis, prognosis, treatment, or any other confidential medical information under G.S. 8-53, regarding a named person, unless that person consents in writing to the disclosure;
- (2) the name of any person who provided information concerning a facility licensed under this Subchapter, or registered a complaint about the treatment of a patient unless that person consents to the disclosure;
- (3) information identifying any person as a recipient of public assistance or social services, unless that person consents to the disclosure; and
- (4) any confidential communication between the attorney for the Department and the Department.

(c) When documents in the file contain only confidential information of the types identified in Paragraph (b) of this Rule, then they shall be removed from the file before inspection. If a document contains both information of those types identified in Paragraph (b) of this Rule and non-confidential information, then the Department will provide for inspection a copy of the document from which the confidential information is deleted, in lieu of the original document.

Statutory Authority G.S. 8-53; 108A-80; 131E-104; 131E-124(c); 132-1.1.

SECTION .2200 - GENERAL STANDARDS OF ADMINISTRATION

.2201 ADMINISTRATOR

(a) The facility shall be under the direct management control of an administrator. The administrator shall not serve simultaneously as the director of nursing.

(b) If an administrator is not the sole owner of a facility, his or her authority and responsibility shall be clearly defined in a written agreement or in the facility's governing bylaws.

(c) The administrator shall be responsible for the operation of a facility on a full-time basis.

(d) The administrator shall ensure patient services are provided in accordance with all applicable local, state and federal regulations and codes, and with acceptable standards of practice that apply to professionals providing such services in the facility.

(e) The administrator shall be responsible for developing and implementing policies for the management and operation of the facility.

(f) In the temporary absence of the administrator, a person shall be on-site who is designated to be in charge of the overall facility operation.

Statutory Authority G.S. 90-284; 131E-104.

.2202 ADMISSIONS

(a) No patient shall be admitted except by a physician or other persons legally authorized to admit patients. Admission shall be in accordance with facility policies and procedures.

(b) The administrator shall ensure patients receive communicable disease screening, including tuberculosis, in accordance with Rule .2209 of this Section.

(c) The facility shall acquire, prior to or at the time of admission, orders from the attending physician for the immediate care of the patient.

(d) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnosis, and a summary of the hospital stay if the patient is being transferred from a hospital.

(e) If a patient is admitted from somewhere other than a hospital, the facility shall acquire a copy of the patient's most recent medical history and physical, which shall have

been updated within the preceding six months.

(f) Only persons who are 18 years of age or older shall be admitted to the domiciliary portion of a combination facility.

Statutory Authority G.S. 131E-104.

.2203 PATIENTS NOT TO BE ADMITTED

(a) Patients who require health, habilitative or rehabilitative care or training beyond those for which the facility is licensed and is capable of providing shall not be admitted.

(b) No person requiring continuous nursing care shall be admitted to a domiciliary bed in a combination facility. Should an existing resident of a domiciliary bed require continuous nursing care, the administrator shall provide the next available nursing facility bed (that is not needed to comply with G.S. 131E-130) to the resident to ensure continuity of care and to prevent discharge from the facility.

Statutory Authority G.S. 131E-104.

.2204 RESPITE CARE

(a) Respite care is not required as a condition of licensure. Facilities providing respite care, however, shall meet the requirements of this Subchapter with the following exceptions: Rules .2205, .2301, and .2501(b) and (c) of this Subchapter.

(b) Facilities providing respite care shall meet the following additional requirements:

- (1) A patient's descriptive record of stay shall include the preadmission or admission assessment, interdisciplinary notes as warranted by episodic events, medication administration records and a summary of the stay upon discharge.
- (2) The facility shall complete a preadmission or admission assessment which allows for the development of a short-term plan of care and is based on the patient's customary routine. The assessment shall address needs, including but not limited to identifying information, customary routines, hearing, vision, cognitive ability, functional limitations, continence, special procedures and treatments, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The plan shall be developed to meet the respite care patient's needs.
- (3) The attending physician of the respite care patient will be notified of any acute changes or acute episode which warrant medical involvement. Medical orders and progress notes shall be written following the physician's visits.

Statutory Authority G.S. 131E-104.

.2205 DISCHARGE OF PATIENTS

(a) The facility shall ensure a medical order for discharge

is obtained for all patients except when a patient leaves against medical advice or is discharged for non-payment.

(b) The facility shall ensure discharge planning is accomplished according to each patient's needs when a discharge is anticipated.

(c) The facility shall ensure the patient or the legal representative is informed and included in the discharge planning process.

Statutory Authority G.S. 131E-104.

.2206 MEDICAL DIRECTOR

(a) The facility shall designate a physician to serve as medical director.

(b) The medical director shall be responsible for implementation of patient care policies and coordination of medical care in the facility.

Statutory Authority G.S. 131E-104.

.2207 PATIENT RIGHTS

(a) The facility shall enforce the Nursing Facility Patient's Bill of Rights as described in G.S. 131E-115 through G.S. 131E-127.

(b) In matters of patient abuse, neglect or misappropriation the definitions shall have the meaning defined in Rule .2001 of this Subchapter.

Statutory Authority G.S. 131E-104; 131E-131.

.2208 SAFETY

(a) The facility shall have detailed written plans and procedures to meet potential emergencies and disasters, including but not limited to fire, severe weather and missing patients or residents.

(b) The plans and procedures shall be made available upon request to local or regional emergency management offices.

(c) The facility shall provide training for all employees in emergency procedures upon employment and annually.

(d) The facility shall conduct unannounced drills using the emergency procedures.

(e) The facility shall ensure that:

- (1) the patients' environment remains as free of accident hazards as possible; and
- (2) each patient receives adequate supervision and assistance to prevent accidents.

Statutory Authority G.S. 131E-104.

.2209 INFECTION CONTROL

(a) The facility shall establish and maintain an infection control program for the purpose of providing a safe, clean and comfortable environment and preventing the transmission of diseases and infection.

(b) Under the infection control program, the facility shall decide what procedures, such as isolation techniques, are

needed for individual patients, investigate all episodes of infection and attempt to control and prevent infections in the facility.

(c) The facility shall maintain records of all infections and of the corrective actions taken.

(d) The facility shall ensure communicable disease screening, including tuberculosis, prior to admission of all patients and within seven days upon the hiring of all staff; and tuberculosis screening annually thereafter for patients and staff as required by 15A NCAC 19A .0101 "Communicable Disease Control" which is incorporated by reference, including subsequent amendments. Copies of these Rules may be obtained at no charge by contacting the N.C. Department of Environment, Health, and Natural Resources, Tuberculosis Control branch, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Identification of a communicable disease does not, in all cases, in and of itself, preclude admission to the facility.

(e) All cases of reportable disease as defined by 15A NCAC 19A "Communicable Disease Control" and epidemic outbreaks, and poisonings shall be reported immediately to the local health department.

(f) The facility shall isolate any patient deemed appropriate by the infection control program.

(g) The facility shall prohibit any employee with a communicable disease or infected skin lesion from direct contact with patients or their food, if direct contact is the mode of transmission of the disease.

(h) The facility shall require all staff to use good hand washing technique as indicated by accepted professional practice.

(i) All linen shall be handled, store, processed and transported so as to prevent the spread of infection.

Statutory Authority G.S. 131E-104.

.2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

(a) The facility shall take reasonable measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including but not limited to orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.

(b) The administrator shall ensure that the Complaint Investigation Branch of the Division of Facility Services is notified within 24 hours or as soon as practicable of all allegations which appear to a reasonable person to be related to patient abuse, neglect or misappropriation of patient property.

(c) The facility shall thoroughly investigate allegations of patient abuse, patient neglect, or misappropriation of patient property in accordance with 42 CFR subsection 483.13 which is incorporated by reference, including subsequent amendments, and shall document all relevant information pertaining to such investigation and shall take whatever steps are necessary to prevent further incidents of abuse, neglect

or misappropriation of patient property while the investigation is in progress. Copies of the Code of Federal Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for thirty eight dollars (\$38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 783-3238.

(d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Complaint Investigation Branch of the Division of Facility Services within five working days of the allegation. The report shall include the date and time of the alleged incident of abuse, neglect or misappropriation of property; the patient's full name and room number; details of the allegation and any injury; names of the accused and any witnesses; names of the facility staff who investigated the allegation; results of the investigation; and any corrective action that may have been taken by the facility.

Statutory Authority G.S. 131E-104; 131E-111; 131E-131.

.2211 PERSONNEL STANDARDS

(a) The facility shall employ the types and numbers of professional and non-professional staff to ensure the health, safety and proper care of patients.

(1) Each employee shall be assigned duties consistent with his or her job description and with his or her level of education and training.

(2) Professional staff shall be licensed, certified or registered in accordance with applicable state laws.

(3) The facility shall provide orientation regarding facility policies and procedures for all staff upon employment.

(4) The facility shall train all staff periodically in accordance with their job duties.

(b) The facility shall maintain an individual personnel record for each employee, including verification of credentials.

(c) The facility shall have a written agreement with any nursing personnel agency providing staff to the facility and shall ensure orientation of agency staff who work in the facility.

Statutory Authority G.S. 131E-104.

.2212 QUALITY ASSURANCE COMMITTEE

(a) The administrator shall ensure that a quality assessment and assurance committee is actively maintained and consists of the director of nursing, a physician designated by the facility, a pharmacist and at least three other staff members.

(b) The committee shall meet at least quarterly.

(c) The committee shall develop and implement appropriate plans of action which will correct identified quality care problems.

Statutory Authority G.S. 131E-104.

SECTION .2300 - PATIENT AND RESIDENT CARE AND SERVICES

.2301 PATIENT ASSESSMENT AND CARE PLANNING

(a) At the time each patient is admitted, the facility shall ensure physician orders are available for the patient's immediate care and that, within 24 hours, a nursing assessment of immediate needs is completed by a registered nurse and measures implemented as appropriate.

(b) The facility shall perform, within 14 days of admission and at least annually, a comprehensive, accurate, documented assessment of each patient's capability to perform daily life functions. This comprehensive assessment shall be coordinated by a registered nurse and shall include at least the following:

- (1) current medical diagnoses;
- (2) medical status measurements, including current cognitive status, stability of current conditions and diseases, vital signs, and abnormal lab values and diagnostic tests that are a part of the medical history;
- (3) the patient's ability to perform activities of daily living, including the need for staff assistance and assistive devices, and the patient's ability to make decisions;
- (4) presence of neurological or muscular deficits;
- (5) nutritional status measurements and requirements, including but not limited to height, weight, lab work, eating habits and preferences, and any dietary restrictions;
- (6) special care needs, including but not limited to pressure sores, enteral feedings, specialized rehabilitation services or respiratory care;
- (7) indicators of special needs related to patient behavior or mood, interpersonal relationships and other psychosocial needs;
- (8) facility's expectation of discharging the patient within the three months following admission;
- (9) condition of teeth and gums, and need and use of dentures or other dental appliances;
- (10) patient's ability and desire to take part in activities, including an assessment of the patient's normal routine and lifetime preferences;
- (11) patient's ability to improve in functional abilities through restorative care; and
- (12) presence of visual, hearing or other sensory deficits.

(c) The facility shall develop a comprehensive care plan for each patient and shall include measurable objectives and timetables to meet needs identified in the comprehensive assessment. The facility shall ensure the comprehensive care plan is developed within seven days of completion of the comprehensive assessment by an interdisciplinary team that includes a nurse with responsibility for the patient and representatives of other appropriate disciplines as dictated by

the needs of the patient. To the extent practicable, preparation of the comprehensive care plan should include the participation of the patient and the patient's family or legal representative. The physician may participate by alternative methods, including, but not limited to, telephone or face-to-face discussion, or written notice.

(d) The facility shall review comprehensive assessments and care plans no less frequently than once every 90 days and make necessary revisions to ensure accuracy.

Statutory Authority G.S. 131E-104.

.2302 NURSING SERVICES

(a) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis.

(b) The director of nursing shall be responsible for the administering of nursing services.

(c) The director of nursing may serve also as charge nurse, only if the average daily occupancy is less than 60.

(d) The director of nursing shall not serve as administrator, assistant administrator or acting administrator during an employment vacancy in the administrator position.

Statutory Authority G.S. 131E-104.

.2303 NURSE STAFFING REQUIREMENTS

(a) The facility shall provide licensed nursing personnel consistent with applicable occupational regulations and sufficient to accomplish the following:

- (1) patient needs assessment;
- (2) patient care planning; and
- (3) supervisory functions in accordance with the levels of patient care advertised or offered by the facility.

(b) The facility shall provide other nursing personnel sufficient to ensure that activities of daily living, personal grooming, restorative nursing actions and other health care needs, as identified in each patient's plan of care, are met.

(c) A multi-storied facility shall have at least one direct-care staff member on duty on each patient care floor at all times.

(d) Except for designated units with higher staffing requirements noted elsewhere in this Subchapter, daily direct patient care nursing staff, licensed and unlicensed, shall equal or exceed 2.1 nursing hours per patient per day. (This is sometimes referred to as nursing hours per patient day or NHPPD or NH/PD.)

- (1) Inclusive in these nursing hours is the requirement that at least one licensed nurse is on duty for direct patient care at all times.
- (2) Nursing care shall include the services of a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists. The director of nursing may be counted as meeting the requirements for both the director of nursing and patient staffing for

facilities with a total census of 60 nursing beds or less.

- (3) Nursing support personnel, including ward clerks, secretaries, nurse educators and persons in primarily administrative management positions and not actively involved in direct patient care, shall not be counted toward compliance with minimum daily requirements for direct care staffing.

(e) An exception to meeting the minimum staffing requirements shall be reported to the Department at the end of each month. Staffing waivers granted by the federal government for Medicare and Medicaid certified beds shall be accepted for licensure purposes.

Statutory Authority G.S. 131E-104.

.2304 NURSE AIDES

(a) The facility shall employ or contract individuals as nurse aides in compliance with 42 CFR Part 483 which is incorporated by reference, including subsequent amendments. Copies of the Code of Federal Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for thirty eight dollars (\$38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 783-3238.

(b) The facility shall provide to the Department, upon request, verification of in-service training and of past or present employment of any nurse aide employed by the facility.

Authority G.S. 131E-104; 131E-111; 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396.

.2305 QUALITY OF CARE

(a) The facility shall provide necessary care and services in accordance with physician's orders, the patient's comprehensive assessment and on-going plan of care.

(b) Acute changes in the patient's physical, mental or psychosocial status shall be evaluated and reported to the physician.

(c) The facility shall not utilize any chemical or physical restraints for the purpose of discipline or convenience, and that are not required to treat the patient's medical condition. An evaluation shall be done to ensure that the least restrictive means of restraint have been initiated on patients requiring restraints.

(d) The facility shall ensure that all patients who are unable to perform activities of daily living receive the necessary assistance to maintain good grooming, and oral and personal hygiene. The facility shall ensure appropriate measures are taken to restore the patient's ability to bathe, dress, groom, transfer and ambulate, toilet and eat.

(e) The facility shall ensure measures are taken to prevent the formation of pressure sores and to promote healing of existing pressure sores. The facility shall ensure that patients with limited mobility receive appropriate care to

promote comfort and maintain skin integrity.

(f) The facility shall ensure that in-dwelling catheters are not used unless the patient's clinical condition necessitates their use. The facility shall ensure incontinent patients receive appropriate treatment to prevent infections and to regain continence to the degree possible.

(g) The facility shall ensure that patients with limited range of motion, or who are at risk for loss of range of motion, receive treatment services to prevent development of contractures or deformities, and to obtain and maintain their optimal level of functioning.

(h) The facility shall ensure that patients who are unable to feed themselves receive the appropriate assistance, retraining and assistive devices when needed.

(i) The facility shall ensure that enteral feeding tubes are used only when the patient's condition indicates the use of an enteral feeding tube is unavoidable.

(j) The facility shall ensure that patients fed by enteral feeding tubes receive the proper treatment to avoid aspiration pneumonia, metabolic and gastrointestinal problems, and to restore the patient to the highest practicable level of normal feeding function. The facility shall ensure appropriate care and services are provided to address needs related to hydration and nutrition.

(k) The facility shall ensure that patients requiring special respiratory care receive appropriate services.

(l) The facility shall ensure that patients are assisted to utilize personal visual lenses, hearing aids and dentures.

Statutory Authority G.S. 131E-104.

.2306 MEDICATION ADMINISTRATION

(a) The facility shall ensure that medications are administered in accordance with standards of professional practice and applicable occupational licensure regulations.

(b) The facility shall ensure that each patient's drug regimen is free from drugs used in excessive dose or duplicative therapy, for excessive duration or without adequate indications for the prescription of the drug. Drugs shall not be used without adequate monitoring or in the presence of adverse conditions that indicate the drugs' usage should be modified or discontinued.

(c) Antipsychotic therapy shall not be initiated on any patient unless necessary to treat a clinically diagnosed and clinically documented condition. When antipsychotic therapy is prescribed, unless clinically contraindicated, gradual dose reductions and behavioral interventions shall be employed in an effort to discontinue these drugs.

(d) The facility shall ensure that procedures aimed at minimizing medication error rates include, but are not limited to, the following:

- (1) All medications or drugs and treatments shall be administered and discontinued in accordance with signed physician orders which are recorded in the patient's medical record. Such orders shall be complete and include drug name, strength, quantity to be administered, route of administration, frequency and, if ordered on an

as-needed basis, a clearly stated indication for use.

- (2) The requirements for self-administration of medication shall include, but not be limited to, the following:
 - (A) determination by the interdisciplinary team that this practice is safe;
 - (B) administration ordered by the physician;
 - (C) specific instructions for administration printed on the medication label; and
 - (D) administration of medication monitored by the licensed nursing staff and consultant pharmacist.
- (3) The administration of one patient's medications to another patient is prohibited except in the case of an emergency. In the event of such emergency, steps shall be taken to ensure that the borrowed medications are replaced promptly and so documented.
- (4) Omission of medications and the reason for omission shall be indicated in the patient's medical record.
- (5) Medication administration records shall provide time of administration, identification of the drug and strength of drug, quantity of drug administered, route of administration, frequency, name of administering employee and title of employee. Medication administration records shall indicate documentation of injection sites and topical medication sites requiring rotation, including, but not limited to, transdermal medication.
- (6) The pharmacy shall receive an exact copy of each physician's order for medications and treatments.
- (7) Automatic stop orders for medications and treatments shall be established and implemented.
- (8) The facility shall maintain an accountability of controlled substances as defined by the North Carolina Controlled Substances Act, G.S. 90, Article 5.

Statutory Authority G.S. 131E-104.

.2307 DENTAL CARE AND SERVICES

- (a) The facility shall ensure that routine and emergency dental services are available for all patients.
- (b) The facility shall, if necessary, assist the patient in making appointments and obtaining transportation to the dentist's office.

Statutory Authority G.S. 131E-104.

.2308 DOMICILIARY HOME PERSONNEL REQUIREMENTS

- (a) The administrator shall designate a person to be in charge of the domiciliary home residents at all times. The nurse in charge of the nursing facility may also serve as

supervisor in charge of the domiciliary beds.

- (b) If domiciliary beds are located in a separate building or a separate level of the same building, there shall be a person on duty in the domiciliary portion of the facility at all times.

- (c) The facility shall comply with all rules in Subchapter 10 NCAC 42D, Licensing of Homes for the Aged and Infirm, which is incorporated by reference, including all subsequent amendments. Copies of these Rules can be obtained free of charge from the Division of Facility Services, Domiciliary and Group Care Section, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-104.

SECTION .2400 - MEDICAL RECORDS

.2401 MAINTENANCE OF MEDICAL RECORDS

- (a) The facility shall establish a medical records service. It shall be directed, staffed and equipped to ensure:

- (1) records are processed, indexed and filed accurately;
- (2) records are stored in such a manner as to provide protection from loss, damage or unauthorized use;
- (3) records contain sufficient information to identify the patient plus a record of all assessments; plan of care; pre-admission screening, if applicable; records of implementation of plan of care; progress notes; and record of discharge, including a discharge summary signed by the physician; and
- (4) records are readily accessible by authorized personnel.

- (b) The facility shall ensure that a master patient index is maintained, listing patients alphabetically by name, dates of admission, dates of discharge and case number.

- (c) The administrator shall designate an employee who works full-time to be the medical records manager. The manager shall advise, administer, supervise and perform work involved in the development, analysis, maintenance and use of medical records and reports. If that employee is not qualified by training or experience in medical record science, he or she shall receive consultation from a registered records administrator or an accredited medical record technician to ensure compliance with rules contained in this Subchapter. The facility shall provide orientation, on-the-job training and in-service programs for all medical records personnel.

Statutory Authority G. S. 131E-104.

.2402 PRESERVATION OF MEDICAL RECORDS

- (a) The manager of medical records shall ensure that medical records, whether original, computer media or microfilm, be kept on file for a minimum of 11 years following the discharge of an adult patient.

(b) The manager of medical records shall ensure that if the patient is a minor, records shall be kept on file until his or her 19th birthday and, then, for 11 years.

(c) If a facility discontinues operation, the licensee shall make known to the Division of Facility Services where its records are stored. Records are to be stored in a business offering retrieval services for at least 11 years after the closure date.

(d) Prior to destruction, public notice shall be made to permit former patients or their representatives to claim their own records. Public notice shall be in at least two forms.

(e) The manager of medical records may authorize the microfilming of medical records. Microfilming may be done on or off the premises. If done off the premises, the facility shall take precautions to ensure the confidentiality and safekeeping of the records. The original of the micro-filmed medical records shall not be destroyed until the manager of medical records has had an opportunity to review the processed film for content.

(f) Nothing in this Subchapter shall be construed to prohibit the use of automation of medical records, provided that all of the provisions in this Rule are met and the medical record is readily available for use in patient care.

(g) All medical records are confidential. Only authorized personnel shall have access to the records. Signed authorization forms concerning approval or disapproval of release of medical information outside the facility shall be a part of each patient's medical record. Representatives of the Department shall be notified at the time of inspection of the name and record number of any patient who has denied medical record access to the Department.

(h) Medical records are the property of the facility, and they shall not be removed from the facility except through a court order. Copies shall be made available for authorized purposes such as insurance claims and physician review.

Statutory Authority G.S. 131E-104.

SECTION .2500 - PHYSICIAN'S SERVICES

.2501 AVAILABILITY OF PHYSICIAN'S SERVICES

(a) The facility shall ensure each patient's care is supervised by a physician and that provisions are made for emergency physicians when attending physicians are unavailable. The names and telephone numbers of the designated physicians shall be posted at each nurse's station.

(b) Patients shall be seen by a physician at least once every 30 days for the first 90 days and at least every 60 days thereafter. Following the first 90 days, the physician may delegate this responsibility to a physician assistant or nurse practitioner every other visit. A physician's visit is considered timely if the visit occurs not later than 10 days after the visit was required.

(c) Physicians shall review the patient's medical plan of care, write or dictate and sign progress notes; and sign and date all current orders at each visit.

(d) A physician's oral orders, including telephone orders,

shall be given only to a nurse or other licensed professional who by law is allowed to accept physician's orders, except orders for therapeutic diets which shall be given either to a qualified dietitian or licensed nurse. The record of each telephone order shall include the name of physician giving the order, date and time of order, content of order and name of person receiving the order. The physician who gives oral orders shall sign the orders within five days.

Statutory Authority G.S. 131E-104.

.2502 PRIVATE PHYSICIAN

(a) Each patient or legal representative shall be allowed to select his or her private physician except in those facilities affiliated with medical teaching programs and having written policies requiring all patients to participate in the medical teaching program.

(b) The private physician shall fulfill given requirements as determined by applicable state and federal regulations, and the facility's policies and procedures pertaining to physician services.

(c) The facility shall have the right, after informing the patient, to seek an alternative physician, when requirements are not being met and to ensure that the patient is provided with appropriate, adequate care and treatment.

Statutory Authority G.S. 131E-104.

.2503 USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

(a) If a facility employs physician assistants or nurse practitioners it shall maintain the following information for each nurse practitioner and physician assistant:

- (1) a statement of approval to practice as a nurse practitioner by the Board of Medical Examiners and Board of Nursing for each practitioner, or a statement of approval to practice as a physician assistant by the Board of Medical Examiners for each physician assistant;
- (2) an approved annual renewal form; and
- (3) a copy of instructions or protocols signed by the nurse practitioner or physician assistant and the supervising physicians.

(b) The privileges of the nurse practitioner or physician assistant shall be clearly defined by the facility's policies and procedures and shall be limited to those privileges authorized in 21 NCAC 32M for the nurse practitioner or 21 NCAC 32O for the physician assistant which are hereby incorporated by reference including subsequent amendments. Copies of the rules may be obtained from the North Carolina Board of Medical Examiners, PO Box 20007, 1203 Front Street, Raleigh, NC 27619, at no charge.

Statutory Authority G.S. 131E-104.

.2504 LABORATORY AND RADIOLOGY SERVICES

The facility shall provide or obtain clinical laboratory and

radiology services to ensure that each patient's needs are met. Such services shall include the following:

- (1) provision of laboratory and radiology services within the facility or by contractual agreement;
- (2) diagnostic testing to be done only in accordance with a physician's order;
- (3) reports to be dated once filed in the patient's medical record;
- (4) notification of the physician regarding findings; and
- (5) assistance in arranging transportation for the patient when testing must be done other than in the facility.

Statutory Authority G.S. 131E-104.

.2505 BRAIN INJURY LONG-TERM CARE PHYSICIAN SERVICES

(a) For facility patients located in designated brain injury long-term care units, there shall be an attending physician who is responsible for the patient's specialized care program. The intensity of the program requires that there shall be direct patient contact by a physician at least once per week and more often as the patient's condition warrants. Each patient's interdisciplinary, rehabilitation program shall be developed and implemented under the supervision of a physiatrist (a physician trained in physical medicine and rehabilitation) or a physician of equivalent training and experience.

(b) If a physiatrist or physician of equivalent training or experience is not available on a weekly basis to the facility, the facility shall provide for weekly medical management of the patient by another physician. In addition, oversight for the patient's interdisciplinary, long-term care program shall be provided by a qualified consultant physician who visits patients monthly, makes recommendations for and approves the interdisciplinary care plan, and provides consultation as requested to the physician who is managing the patient on a weekly basis.

(c) The attending physician shall actively participate in individual case conference or care planning sessions and shall review and sign discharge summaries and records within 15 days of a patient discharge. When patients are to be discharged to either another health care facility or a residential setting, the attending physician shall ensure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

Statutory Authority G.S. 131E-104.

.2506 PHYSICIAN SERVICES FOR VENTILATOR DEPENDENT PATIENTS

Facilities with ventilator dependent care patients shall contract with a physician who has specialized training in pulmonary medicine. This physician shall be responsible for respiratory services and shall:

- (1) establish, with the respiratory therapist and nursing staff, appropriate ventilator policies and procedures, including emergency procedures;
- (2) assess each ventilator-dependent patient's status at least monthly with corresponding progress notes;
- (3) be available on an emergency basis; and
- (4) participate in individual patient care planning.

Statutory Authority G.S. 131E-104.

SECTION .2600 - PHARMACEUTICAL SERVICES

.2601 AVAILABILITY OF PHARMACEUTICAL SERVICES

(a) The facility shall provide pharmaceutical services under the supervision of a qualified pharmacist, including procedures that ensure the accurate acquiring, receiving and administering of all drugs and biologicals.

(b) The facility shall be responsible for obtaining drugs, therapeutic nutrients and related products prescribed or ordered by a physician for patients in the facility.

(c) To ensure that drug therapy is rational, safe and effective, a pharmaceutical care assessment shall be conducted in the facility at least every 31 days for each patient. All new admissions shall receive a pharmaceutical care assessment at the time of the pharmacist's next visit or within 31 days, whichever comes first. This assessment shall include at least:

- (1) a review of the patient's diagnoses, history and physical, discharge summary, diet, vital signs, current physician's orders, laboratory values, progress notes, interdisciplinary care plans and medication administration records; and
- (2) the pharmacist's progress notes in the patient's medical record which reflect the results of this assessment and, if necessary, recommendations for change based on desired drug outcomes.

Statutory Authority G.S. 131E-104.

.2602 PHARMACY PERSONNEL

(a) If the pharmacist is an employee of the facility and performs vending or clinical services, an up-to-date job description and personnel file shall be maintained.

(b) If pharmaceutical vending or clinical services are contracted, there shall be a current written agreement for each service which includes a statement of responsibilities for each party.

(c) The facility shall keep, or be able to make available, a copy of the current license of the pharmacists.

Statutory Authority G.S. 131E-104.

.2603 ADMINISTRATIVE RESPONSIBILITIES

(a) The pharmacist shall report any potential drug therapy irregularities or discrepancies in drug accountability and administration with recommendations for change to the

director of nursing and the attending physician. Recommendations shall be communicated to the health care professionals in the facility who have the authority to effect a change. These reports shall be submitted monthly following the pharmacist's pharmaceutical care assessments.

(b) The administrator shall ensure documentation of action taken relative to the pharmacist's reports.

Statutory Authority G.S. 131E-104.

.2604 DRUG PROCUREMENT

(a) The facility shall not be permitted to possess a stock of prescription legend drugs for general or common use except as permitted by the North Carolina Board of Pharmacy and as follows:

- (1) for all intravenous and irrigation solutions in single unit quantities exceeding 49 ml. and related equipment for the use and administration of such;
- (2) diagnostic agents;
- (3) vaccines;
- (4) drugs designated for inclusion in an approved emergency kit;
- (5) water for injection; and
- (6) normal saline for injection.

(b) Patient Drugs:

- (1) The contents of all prescriptions shall be kept in the original container bearing the original label as described in Subparagraph (b)(2) of this Rule.
- (2) Except in a 72-hour or less unit dose system, each individual patient's prescription or legend drugs shall be labeled with the following information:
 - (A) the name of the patient for whom the drug is intended;
 - (B) the most recent date of issue;
 - (C) the name of the prescriber;
 - (D) the name and concentration of the drug, quantity dispensed, and prescription serial number;
 - (E) a statement of generic equivalency which shall be indicated if a brand other than the brand prescribed is dispensed;
 - (F) the expiration date, unless dispensed in a single unit or unit dose package;
 - (G) auxiliary statements as required of the drug;
 - (H) the name, address and telephone number of the dispensing pharmacy; and
 - (I) the name of the dispensing pharmacist.

(c) Non-legend drugs shall be kept in the original container as received from the supplier and shall be labeled as described in Subparagraph (b)(2) of this Rule or with at least:

- (1) the name and concentration of the drug, and quantity packaged;
- (2) the name of the manufacturer, lot number and expiration date.

Statutory Authority G.S. 131E-104.

.2605 DRUG STORAGE AND DISPOSITION

(a) The pharmacist and director of nursing shall ensure that drug storage areas are clean, secure, well lighted and well ventilated; that room temperature is maintained between 59 degrees F. and 86 degrees F.; and that the following conditions are met:

- (1) All drugs shall be maintained under locked security except when under the immediate or direct physical supervision of a nurse or pharmacist.
- (2) Drugs requiring refrigeration shall be stored in a refrigerator containing a thermometer and capable of maintaining a temperature range of 2 degrees C. to 8 degrees C. (36 degrees F. to 46 degrees F.) Drugs shall not be stored in a refrigerator containing non-drugs and non-drug related items, except when stored in a separate container.
- (3) Drugs intended for topical use, except for ophthalmic, otic and transdermal medications, shall be stored in a designated area separate from the drugs intended for oral and injectable use.
- (4) Drugs that are outdated, discontinued or deteriorated shall be removed from the facility within five days.

(b) Upon discontinuation of a drug or upon discharge of a patient, the remainder of the drug supply shall be disposed of promptly. If it is reasonably expected that the patient shall return to the facility and that the drug therapy will be resumed, the remaining drug supply may be held for not more than 30 calendar days after the date of discharge or discontinuation.

(c) The disposition of drugs shall be in accordance with written policies and procedures established by the Quality Assurance Committee.

(d) Destruction of controlled substances shall be in compliance with North Carolina Controlled Substance Act and Regulations (10 NCAC 45G) which is hereby incorporated by reference including subsequent amendments. Copies of the rules may be obtained from the Controlled Substances Regulatory Branch, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603 at a cost of thirteen dollars (\$13.00).

Statutory Authority G.S. 131E-104.

.2606 PHARMACEUTICAL RECORDS

(a) The pharmacist shall ensure that accurate records of the receipt, use and disposition of drugs are maintained and readily available.

(b) The director of nursing and pharmacist shall ensure accountability of controlled substances as defined by the North Carolina Controlled Substances Act and Regulations (10 NCAC 45G) which is hereby incorporated by reference including subsequent amendments. Copies of the rules may be obtained from the Controlled Substances Regulatory

Branch, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603 at a cost of thirteen dollars (\$13.00).

Statutory Authority G.S. 131E-104.

.2607 EMERGENCY DRUGS

(a) The facility shall maintain a supply of emergency drugs in compliance with 21 NCAC 46 .1403 which is hereby incorporated by reference including subsequent amendments. Copies of the rule may be obtained from the North Carolina Board of Pharmacy, P.O. Box 459, Carrboro Plaza, Highway 54 Bypass, Carrboro, North Carolina 27510 at a cost of eight dollars and forty eight cents (\$8.48).

(b) Emergency drugs shall be stored in a portable container sealed with an easily breakable closure which cannot be resealed or reused and shall be readily accessible for use.

(c) Emergency drug kits shall be stored in a secure area out of site of patients and the general public. If stored in a locked area the kits shall be immediately accessible to all licensed nursing personnel.

(d) All emergency drugs and quantity to be maintained shall be approved by the Quality Assurance Committee.

(e) If emergency drug items require refrigerated storage, they shall be stored in a separate sealed container within the medication refrigerator. The container shall be labeled to indicate the emergency status of the enclosed drug and sealed as indicated in Paragraph (b) of this Rule.

(f) An accurate inventory of emergency drugs and supplies shall be maintained with each emergency drug kit.

(g) The pharmacist shall personally examine the refrigerated and non-refrigerated emergency drug supply at least every 90 days and make any necessary changes at that time.

(h) The facility shall have written policies and procedures which are enforced to ensure that in the event the sealed emergency drug container is opened and contents utilized, immediate steps are taken to replace the items used.

(i) The availability of a controlled substance in an emergency kit shall be in compliance with the North Carolina Controlled Substances Act and Regulations (10 NCAC 45G) which is hereby incorporated by reference including subsequent amendments. Copies of the rules may be obtained from the Controlled Substances Regulatory Branch, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603 at a cost of thirteen dollars (\$13.00).

Statutory Authority G.S. 131E-104.

SECTION .2700 - DIETARY SERVICES

.2701 PROVISION OF NUTRITION AND DIETETIC SERVICES

(a) The facility shall ensure that each patient is provided with a palatable diet that meets his or her daily nutritional

and specialized nutritional needs.

(b) The facility shall designate a person to be known as the director of food service who shall be responsible for the facility's dietetic service and for supervision of dietetic service personnel. If this person is not a dietitian, he or she shall meet the criteria for membership in the Dietary Managers Association which is hereby incorporated by reference including subsequent amendments and editions. Copies of criteria may be obtained from the Dietary Managers Association, 1 Pierce Place, Suite 1220 West, Itasca, Illinois, 60143 at no cost. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by course requirements.

(c) If the food service supervisor is not a dietitian, the facility shall employ a dietitian on at least a consultant basis. The consultant shall submit written reports to the Administrator and food service supervisor.

(d) The dietitian shall spend sufficient time in the facility to assure the following parameters of nutrition have been addressed and that recommended interventions meet standards of practice:

- (1) An analysis of weight loss or gain;
- (2) Laboratory values;
- (3) Clinical indicators of malnutrition;
- (4) Drug therapy that may contribute to nutritional deficiencies;
- (5) The amount of meal and supplement consumed to meet nutritional needs;
- (6) Increased nutritional needs related to disease state or deterioration in physical or mental status, i.e., decubitus, low protein status, inadequate intake, or nutrition provided via enteral or parenteral route.

(e) There shall be sufficient dietetic personnel employed competent to meet the nutritional needs of all patients in the areas of therapeutic diets, food preparation and service, principles of sanitation, and resident's rights as related to food services.

(f) The facility shall ensure that menus are followed which meet the nutritional needs of patients in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences which are incorporated by reference, including subsequent amendments. Copies of this publication can be obtained by contacting Printing and Publishing Office, National Academy of Sciences, 2101 Constitution Avenue, Washington, D.C. Cost of this publication is eighteen dollars and ninety five cents (\$18.95) and includes shipping and handling. Menus shall:

- (1) be planned at least 14 days in advance,
- (2) provide for substitutes of similar nutritive value for patients who refuse food that is served, and
- (3) be posted weekly for patient's review.

(g) Food must be prepared to conserve its nutritive value and appearance.

(h) Food shall be served at the appropriate temperature, in

the form to meet the patient's individual needs and with assistive devices as dictated by the patient's needs. The following temperatures are acceptable upon patient receipt:

- (1) Hot liquids 150 degrees (minimum)
- (2) Hot cereal 150 degrees (minimum)
- (3) Soups 130 degrees (minimum)
- (4) Hot foods 110 degrees (minimum)
- (5) Cold liquids 50 degrees (maximum)
- (6) Cold foods 65 degrees (maximum)

(i) If patients require assistance in eating, food shall be maintained at serving temperature until assistance is provided.

(j) All diets, including enteral and parenteral nutrition therapy, shall be ordered by the physician and served as ordered.

(k) At least three meals shall be served daily to all patients in accordance with physician orders.

(l) No more than 14 hours shall elapse between an evening meal containing a protein food and a morning meal containing a protein food.

(m) Hour-of-sleep (hs) nourishment shall be available to patients upon request or in accordance with nutritional plans.

(n) Between meal fluids for hydration shall be available and offered to all patients in accordance with physician orders.

(o) The facility shall have a current nutrition care manual or handbook approved by the dietitian, medical staff and the Administrator which shall be used in the planning of the regular and therapeutic diets and be accessible to all staff.

(p) Food services shall comply with Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments as promulgated by the Commission for Health Services which is incorporated by reference, including subsequent amendments, assuring storage, preparation, and serving of food under sanitary conditions. Copies of these Rules can be obtained, at no charge, by contacting the N.C. Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, NC 27605-3248.

Statutory Authority G.S. 131E-104.

SECTION .2800 - ACTIVITIES, RECREATION AND SOCIAL SERVICES

.2801 ACTIVITY SERVICES

(a) The facility shall provide a program of activities that is on-going and in accordance with the comprehensive assessment, and that promotes the interests, as well as physical, mental and psychosocial well-being, of each patient.

(b) The administrator shall designate an activities director who shall be responsible for activity and recreational services for all patients and who shall have appropriate management authority. The director shall:

- (1) be a recreation therapist or be eligible for certification as a therapeutic recreation specialist by a

- (2) recognized accrediting body; or
- (2) have two years of experience in a social or recreation program within the last five years, one of which was full-time in a patient activities program in a health care setting; or
- (3) be an occupational therapist or occupational therapy assistant; or
- (4) be certified by the National Certification Council for Activity Professionals; or
- (5) have completed an activities training course approved by the State.

Authority G.S. 131E-104; 143B-165(10); 42 C.F.R. 483.15(f).

.2802 SOCIAL SERVICES

(a) The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

(b) The administrator shall designate an employee to be responsible full-time for social services.

(c) A facility with more than 120 nursing beds shall employ on a full time basis, a social worker who has:

- (1) a Bachelors' degree in social work or a Bachelors' degree in human services field, including but not limited to sociology special education, rehabilitation counseling and psychology; and
- (2) one year of supervised social work experience in a health care setting working directly with patients.

Statutory Authority G.S. 131E-104.

SECTION .2900 - SPECIAL REQUIREMENTS

.2901 REPORT OF DEATH

The facility shall have a written plan to be followed in case of patient death. The plan shall provide for the following:

- (1) collection of data needed for the death certificate as required by G.S. 130A-117;
- (2) recording time of death;
- (3) pronouncement of death in accordance with facility policy;
- (4) notification of the attending physician responsible for signing the death certificate;
- (5) documented notification of next of kin or legal guardian;
- (6) authorization and release of the body to a funeral home.

Statutory Authority G.S. 131E-104.

.2902 PETS (COMPANION ANIMALS)

When facility policies permit pets in the facility, the following conditions shall be met:

- (1) The facility policy shall not be in violation of any local health ordinances regarding pet health and

control.

- (2) Pets shall not be permitted to enter areas where food is being prepared.

Statutory Authority G.S. 131E-104.

SECTION .3000 - SPECIALLY DESIGNATED UNITS

.3001 SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES

Specialized rehabilitative and habilitative services, such as physical therapy, occupational therapy and speech therapy, are not required as a condition of licensure. Patients requiring such services, however, shall not be admitted or retained in a facility unless the facility is capable of furnishing the needed services. If specialized rehabilitative services are provided:

- (1) The facility shall provide or obtain from an outside resource specialized rehabilitative services as required by the patient's comprehensive plan of care.
- (2) Specialized rehabilitative services shall be ordered by the physician and provided by a licensed or certified, professional therapist in the area of assignment.

Statutory Authority G.S. 131E-104.

.3002 QUALITY OF SPECIALIZED REHABILITATION SERVICES

(a) While the person supervising specialized rehabilitative and habilitative services shall be a licensed or certified professional therapist, all other support personnel shall be trained in the area of assignment and directly supervised by the therapist in the area of assignment.

(b) Services provided through outside resources shall be carried out through, and in accordance with, written agreements.

(c) Services shall be designed to maintain and improve the patient's ability to function independently, prevent as much as possible the advancement of progressive disabilities, and restore maximum function.

(d) If nursing staff carry out selected therapy procedures, they shall do so under the supervision of the physical or occupational therapist and only after documented training and approval by the therapist. This is not to prohibit simple restorative measures by the nursing staff.

Statutory Authority G.S. 131E-104.

.3003 VENTILATOR DEPENDENCE

The general requirements in this Subchapter shall apply when applicable. In addition, facilities having patients requiring the use of ventilators for more than eight hours a day shall meet the following requirements:

- (1) The facility shall be located within 30 minutes of

an acute care facility.

- (2) Respiratory therapy shall be provided and supervised by a respiratory therapist currently registered by the National Board for Respiratory Care. The respiratory therapist shall:

- (a) make, as a minimum, weekly on-site assessments of each patient receiving ventilator support with corresponding progress notes;
 - (b) be on-call 24 hours daily; and
 - (c) assist the pulmonologist and nursing staff in establishing ventilator policies and procedures, including emergency policies and procedures.
- (3) Direct nursing care staffing shall be in accordance with Rule .3005 of this Section.

Statutory Authority G.S. 131E-104.

.3004 BRAIN INJURY LONG-TERM CARE

(a) The general requirements in this Subchapter shall apply when applicable, but brain injury long term care units shall meet the supplement requirements in Rules .3004 and .3005 of this Section. The facility shall provide services through a medically supervised interdisciplinary process as provided in Rule .2505 of this Subchapter and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functioning. Following are the minimum requirements for specific services that may be necessary to maintain the individual at optimum level:

- (1) Overall supervisory responsibility for brain injury long term care services shall be assigned to a registered nurse with one year experience in caring for brain injured patients.

- (2) Physical therapy shall be provided by a physical therapist with a current valid North Carolina license. Occupational therapy shall be provided by an occupational therapist with a current valid North Carolina License. The services of a physical therapist and occupational therapist shall be combined to provide one full-time equivalent position for each 20 patients. The assistance of a physical therapy aide and occupational therapy aide, with appropriate supervision, shall be combined to provide one full-time equivalent position for each 20 patients. A proportionate number of hours shall be provided for a census less than 20 patients.

- (3) Clinical nutrition services shall be provided by a qualified dietitian with two years clinical training and experience in nutrition. The number of hours of clinical nutrition services on either a full-time or part-time employment or contract basis shall be adequate to meet the needs of the patients. Each patient's nutrition needs shall be reviewed at least monthly. Clinical nutrition services shall include:

- (A) Assessing the appropriateness of the ordered diet for conformance with each patient's physi-

- ological and pharmacological condition.
- (B) Evaluating each patient's laboratory data in relation to nutritional status and hydration.
- (C) Applying technical knowledge of feeding tubes, pumps and equipment to each patient's specialized needs.
- (4) Clinical social work shall be provided by a social worker meeting the requirements of Rule .3002 of this Section.
- (5) Recreation therapy, when required, shall be provided on either a full-time or part-time employment or contract basis by a clinician eligible for certification as a therapeutic recreation specialist by the State of North Carolina Therapeutic Recreational Certification Board. The number of hours of therapeutic recreation services shall be adequate to meet the needs of the patients. In event that a qualified specialist is not locally available, alternate treatment modalities shall be developed by the occupational therapist and reviewed by the attending physician. The program designed shall be adequate to meet the needs of this specialized population and shall be administered in accordance with Section .3000 of this Subchapter.
- (6) Speech therapy, when required, shall be provided by a clinician with a current valid license in speech pathology issued by the State Board of Audiology and Speech Pathology.
- (7) Respiratory therapy, when required, shall be provided by an individual meeting the same qualifications for providing respiratory therapy under Rule .3003 of this Section.

(b) Each patient's program shall be governed by an interdisciplinary treatment plan incorporating and expanding upon the health plan required under Section .2300 of this Subchapter. The plan is to be initiated on the first day of admission. Upon completion of baseline data development and an integrated interdisciplinary assessment, the initial treatment plan is to be expanded and finalized within 14 days of admission. Through an interdisciplinary process the treatment plan shall be reviewed at least monthly and revised as appropriate. In executing the treatment plan, the interdisciplinary team shall be the major decision making body and shall determine the goals, process, and time frames for accomplishment of each patient's program. Disciplines to be represented on the team shall be medicine, nursing, clinical pharmacy and all other disciplines directly involved in the patient's treatment or treatment plan.

(c) Each patient's overall program shall be assigned to an individually designated case manager. The case manager acts as the coordinator for assigned patients. Any professional staff member involved in a patient's care may be assigned this responsibility for one or more patients. Professional staff may divide this responsibility for all patients on the unit in the best manner to meet all patients' needs for a coordinated, interdisciplinary approach to care. This case manager shall be responsible for:

- (1) coordinating the development, implementation and periodic review of the patient's treatment plan;
 - (2) preparing a monthly summary of the patient's progress;
 - (3) cultivating the patient's participation in the program;
 - (4) general supervision of the patient during the course of treatment;
 - (5) evaluating appropriateness of the treatment plan in relation to the attainment of stated goals; and
 - (6) assuring that discharge decisions and arrangements for post discharge follow-up are properly made.
- (d) For each 20 patients or fraction thereof, dedicated treatment facilities and equipment shall be provided as follows:
- (1) a combined therapy space equal to or exceeding 600 square feet, adequately equipped and arranged to support each of the therapies;
 - (2) access to one full reclining wheel chair per patient;
 - (3) special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs including splints, casts, cushions, wedges, and bolsters; and
 - (4) roll-in bath facilities with a dressing area available to all patients, providing maximum privacy to the patient.

Statutory Authority G.S. 131E-104.

.3005 SPECIAL NURSING REQUIREMENTS FOR BRAIN INJURY LONG-TERM CARE

Direct care nursing personnel staffing ratios established in Rule .2303 of this Subchapter shall not be applied to nursing services for patients who require brain injury long-term care. The minimum direct care nursing staff shall be 5.5 hours per patient day, allocated on a per shift basis as the facility chooses, to appropriately meet the patients' needs. It is also required that regardless of how low the patient census, the direct care nursing staff shall not fall below a registered nurse and a nurse aide I at any time during a 24-hour period.

Statutory Authority G.S. 131E-104.

.3006 RESERVED FOR FUTURE CODIFICATION

.3007 RESERVED FOR FUTURE CODIFICATION

.3008 RESERVED FOR FUTURE CODIFICATION

.3009 RESERVED FOR FUTURE CODIFICATION

.3010 RESERVED FOR FUTURE CODIFICATION

.3011 HIV DESIGNATED UNIT POLICIES AND PROCEDURES

(a) In units dedicated to the treatment of patients with Human Immunodeficiency Virus disease, policies and procedures specific to the specialized needs of the patients served shall be developed. At a minimum they shall include staff training and education, and the availability of consultation by a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.

(b) Policies and procedures for infection control shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for thirty eight dollars (\$38.00) or may be purchased with a credit card by telephoning the Government Printing Office at (202) 783-3238. Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service, which is incorporated by reference, including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 for fifteen dollars and ninety five cents (\$15.95).

Statutory Authority G.S. 131E-104.

.3012 PHYSICIAN SERVICES IN AN HIV DESIGNATED UNIT

In a facility with a Human Immunodeficiency Virus designated unit, the facility shall ensure that attending physicians have documented, prearranged access in person or by telephone to a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.

Statutory Authority G.S. 131E-104.

.3013 SPECIAL NURSING REQUIREMENTS FOR AN HIV DESIGNATED UNIT

(a) A facility with a Human Immunodeficiency Virus designated unit shall have a registered nurse with specialized education or knowledge in the care of Human Immunodeficiency Virus disease.

(b) Nursing personnel assigned to the Human Immunodeficiency Virus unit shall be regularly assigned to the unit. Periodic rotations are acceptable.

Statutory Authority G.S. 131E-104.

.3014 SPECIALIZED STAFF EDUCATION FOR HIV DESIGNATED UNITS

A facility with a Human Immunodeficiency Virus designated unit shall provide an organized, documented program of education specific to the care of patients infected with the Human Immunodeficiency Virus, including at a minimum:

- (1) Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome disease processes;
- (2) transmission modes, causes, and prevention of Human Immunodeficiency Virus;
- (3) treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;
- (4) psycho-socio-economic needs of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome patients;
- (5) universal precautions and infection control; and
- (6) policies and procedures specific to the Human Immunodeficiency Virus designated unit.

Statutory Authority G.S. 131E-104.

.3015 USE OF INVESTIGATIONAL DRUGS FOR HIV DESIGNATED UNITS

(a) The supervision and monitoring for the administration of investigational drugs is the responsibility of the pharmacist and a registered nurse, acting pursuant to the orders of a physician authorized to prescribe or dispense such drugs. Responsibilities shall include, but not be limited to, the following:

- (1) insuring the provision of written guidelines for any investigational drug or study; and
- (2) training and determination of staff's abilities regarding administration of drugs, policies, procedures and regulations.

(b) The pharmacist or physician dispensing the investigational drug is to provide the facility with information regarding at least the following:

- (1) a copy of the protocol, including drug information;
- (2) a copy of the patient's informed consent;
- (3) drug storage;
- (4) handling;
- (5) any specific preparation and administration instructions;
- (6) specific details for drug accountability, resupply and return of unused drug; and
- (7) a copy of the signed consent to participate in the study.

(c) Labeling of investigational drugs shall be in accordance with written guidelines of protocol and State and federal requirements regarding such drugs. Prescription labels for investigational drugs are to be distinguishable from other labels by an appropriate legend, "Investigational Drug" or "For Investigational Use Only."

Statutory Authority G.S. 131E-104.

.3016 ADDITIONAL SOCIAL WORK REQUIREMENTS FOR HIV DESIGNATED

UNITS

In addition to the social work services specified in Rule .3002 of this Section, in a facility with a Human Immunodeficiency Virus disease designated unit, the social worker shall provide or arrange for the provision of spiritual, pastoral and grief counseling and bereavement services for patients and staff where appropriate. Support services shall be provided to the patients' families and significant others. Where necessary, coordination with treatment services for substance abuse, legal services and other community resources shall be identified.

Statutory Authority G.S. 131E-104.

.3017 RESERVED FOR FUTURE CODIFICATION

.3018 RESERVED FOR FUTURE CODIFICATION

.3019 RESERVED FOR FUTURE CODIFICATION

.3020 RESERVED FOR FUTURE CODIFICATION

.3021 PHYSICIAN REQUIREMENTS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) In a rehabilitation facility or unit a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.

(b) In a rehabilitation facility or unit a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be developed and implemented under the supervision of a rehabilitation physician.

(c) The rehabilitation physician shall participate in the preliminary assessment within 48 hours of admission, prepare a plan of care and direct the necessary frequency of contact based on the medical and rehabilitation needs of the patient. The frequency shall be appropriate to justify the need for comprehensive inpatient rehabilitation care.

(d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients are to be discharged to another health care facility, the discharging facility shall ensure that the patient has been provided with a discharge plan which incorporates post discharge continuity of care and services. When patients are to be discharged to a residential setting, the facility shall ensure that the patient has been provided with a discharge plan that incorporates the utilization of community resources when available and when included in the patient's plan of care.

(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.

(f) Where the attending physician of a patient in an

inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations shall be provided by qualified physicians within 48 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 48 hours.

(g) An inpatient rehabilitation facility or unit shall have a written procedure for setting the qualifications of the physicians rendering physical rehabilitation services in the facility or unit.

Statutory Authority G.S. 131E-104.

.3022 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.

(b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.

(c) Within 48 hours of admission a preliminary assessment shall be completed by members of the interdisciplinary team to ensure the appropriateness of placement and to identify the immediate needs of the patient.

(d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.

(e) Patients admitted to an inpatient rehabilitation facility or unit must be medically stable, have a prognosis indicating a progressively improved medical condition and have the potential for increased independence.

Statutory Authority G.S. 131E-104.

.3023 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION

(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.

(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation and speech-language pathology.

Statutory Authority G.S. 131E-104.

**.3024 COMPREHENSIVE INPATIENT
REHABILITATION INTERDISCIPLINARY
TREAT/PLAN**

(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The plan shall include evaluation findings and information about the following:

- (1) prior level of function;
- (2) current functional limitations;
- (3) specific service needs;
- (4) treatment, supports and adaptations to be provided;
- (5) specified treatment goals;
- (6) disciplines responsible for implementation of separate parts of the plan; and
- (7) anticipated time frames for the accomplishment of specified long-term and short-term goals.

(b) The treatment plan shall be reviewed by the interdisciplinary team at least every other week. All members of the interdisciplinary team, or a representative of their discipline, shall attend each meeting. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.

(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive inpatient rehabilitation evaluation completed in accordance with Rule .3023 of this Section.

(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the needs of the patient and shall participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of nursing or social worker may accept the coordination responsibility for the patients.

Statutory Authority G.S. 131E-104.

**.3025 DISCHARGE CRITERIA FOR INPATIENT
REHABILITATION FACILITIES OR UNITS**

(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall involve the patient, family, staff members and referral sources in discharge planning.

(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social worker.

(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.

Statutory Authority G.S. 131-104.

**.3026 COMPREHENSIVE REHABILITATION
PERSONNEL ADMINISTRATION**

(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.

(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.

(c) Written agreement shall be maintained by the facility when services are provided by contract on an ongoing basis.

Statutory Authority G.S. 131E-104.

**.3027 COMPREHENSIVE INPATIENT
REHABILITATION PROGRAM
STAFFING REQUIREMENTS**

(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:

- (1) The inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs.
- (2) The minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which shall be a registered nurse.
- (3) The inpatient rehabilitation unit shall employ or provide by contractual agreements sufficient therapists to provide a minimum of three hours of specific (physical, occupational or speech) or combined rehabilitation therapy services per patient day.
- (4) Physical therapy assistants and occupational therapy assistants shall be supervised on-site by physical therapists or occupational therapists.
- (5) Rehabilitation aides shall have documented training appropriate to the activities to be per-

formed and the occupational licensure laws of his or her supervisor. The overall responsibility for the on going supervision and evaluation of the rehabilitation aide remains with the registered nurse as identified in Subparagraph (a)(1) of this Rule. Supervision by the physical therapist or by the occupational therapist is limited to that time when the therapist is on-site and directing the rehabilitation activities of the aide.

- (6) Hours of service by the rehabilitation aide are counted toward the required nursing hours when the aide is working under the supervision of the nurse. Hours of service by the rehabilitation aide are counted toward therapy hours during that time the aide works under the immediate, on-site supervision of the physical therapist or occupational therapist. Hours of service shall not be dually counted for both services. Hours of service by rehabilitation aides in performing nurse-aide duties in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirement described for the rehabilitation unit.

(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive inpatient rehabilitation evaluation.

Statutory Authority G.S. 131E-104.

.3028 STAFF TRAINING FOR INPATIENT REHABILITATION FACILITIES OR UNIT

Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training that includes at a minimum the following:

- (1) active and passive range of motion;
- (2) assistance with ambulation;
- (3) transfers;
- (4) maximizing functional independence;
- (5) the psycho-social needs of the rehabilitation patient;
- (6) the increased safety risks of rehabilitation training including falls and the use of restraints;
- (7) proper body mechanics;
- (8) nutrition, including dysphagia and restorative eating;
- (9) communication with the aphasic and hearing impaired patient;
- (10) behavior modification;
- (11) bowel and bladder training; and
- (12) skin care.

Statutory Authority G.S. 131E-104.

.3029 EQUIPMENT REQS/COMPREHENSIVE INPATIENT REHABILITATION PROGRAMS

(a) The facility shall provide each discipline with the necessary equipment and treatment methods to achieve the short and long-term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.

(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.

(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided, including splints, casts, cushions, wedges and bolsters.

(d) Physical therapy devices shall be provided, including a mat table, parallel bars, sliding boards and special adaptive bathroom equipment.

Statutory Authority G.S. 131E-104.

.3030 PHYSICAL FACILITY REQS/INPATIENT REHABILITATION FACILITIES OR UNIT

(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive inpatient rehabilitation program.

(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair on at least one side of the bed.

(c) The floor area of a multi-bed bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair between beds.

(d) Each patient room shall meet the following requirements:

- (1) Maximum room capacity of no more than four patients;
- (2) Operable windows;
- (3) A nurse call system designed to meet the special needs of rehabilitation patients;
- (4) In single and two-bed rooms with private toilet room, the lavatory may be located in the toilet room;
- (5) A wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;
- (6) A chest of drawers or built-in drawer storage with mirror above, which is wheelchair accessible; and
- (7) A bedside table for toilet articles and personal belongings.

(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in proximity to the nurse's station and out of traffic.

(f) Patients' bathing facilities shall meet the following specifications:

- (1) There shall be at least one shower stall or one

bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant.

(2) Showers in central bathing facilities shall be at least five feet square without curbs and designed to permit use by a wheelchair patient.

(3) At least one five-foot-by-seven-foot shower shall be provided which can accommodate a stretcher and an assisting attendant.

(g) Patients' toilet rooms and lavatories shall meet the following specifications:

(1) The size of toilet rooms shall permit a wheelchair, a staff person and appropriate wheel-to-water closet transfers.

(2) A lavatory in the room shall permit wheelchair access.

(3) Lavatories serving patients shall:

(A) allow wheelchairs to extend under the lavatory; and

(B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

(4) Lavatories used by patients and by staff shall be equipped with blade-operated supply valves.

(h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but shall, at a minimum, include:

(1) office space for staff;

(2) office space for speech therapy evaluation and treatment;

(3) waiting space;

(4) training bathroom which includes toilet, lavatory and bathtub;

(5) gymnasium or exercise area;

(6) work area such as tables or counters suitable for wheelchair access;

(7) treatment areas with available privacy curtains or screens;

(8) an activities of daily living training kitchen with sink, cooking top (secured when not supervised by staff), refrigerator and counter surface for meal preparation;

(9) storage for clean linens, supplies and equipment;

(10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment, with one closet or space serving more than one area of the inpatient rehabilitation facility or unit as needed; and

(11) hand washing facilities.

(i) For social work and psychological services the following shall be provided:

(1) office space for staff;

(2) office space for private interviewing and counseling for all family members; and

(3) work space for testing, evaluation and counseling.

(j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:

(1) work space for technician; and

(2) space for evaluation and fittings (with provisions for privacy).

(k) If vocational therapy services are provided, the following space shall be made available as necessary:

(1) office space for staff;

(2) work space for vocational services activities such as prevocational and vocational evaluation;

(3) training space;

(4) storage for equipment; and

(5) counseling and placement space.

(l) Recreational therapy space requirements include the following:

(1) activities space;

(2) storage for equipment and supplies;

(3) office space for staff; and

(4) access to male and female toilets.

(m) The following space shall be provided for patient dining, recreation and day areas:

(1) sufficient room for wheelchair movement and wheelchair dining seating;

(2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a serving counter low enough to view food;

(3) total space for inpatients, a minimum of 25 square feet per bed;

(4) for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program; and

(5) storage for recreational equipment and supplies, tables and chairs.

(n) The patient dining, recreation and day area spaces shall be provided with windows that have glazing of an area not less than eight percent of the floor area of the space, and at least one-half of the required window area must be operable.

(o) A laundry shall be available and accessible for patients.

Statutory Authority G.S. 131E-104.

.3031 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with spinal cord injuries shall meet the requirements in this Rule in addition to those identified in this Section.

(1) Direct-care nursing personnel staffing ratios established in Rule .3027 of this Section shall not be applied to nursing services for spinal cord

injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which shall be a registered nurse.

- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.
- (3) The facility shall provide special facility or special equipment needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables.
- (4) The medical director of an inpatient spinal cord injury program shall have either two years experience in the medical care of persons with spinal cord injuries or six months minimum in a spinal cord injury fellowship.
- (5) The facility shall provide continuing education in the care and treatment of spinal cord injury patients for all staff.
- (6) The facility shall provide specific staff training and education in the care and treatment of spinal cord injury.
- (7) The size of the spinal cord injury program shall be adequate to support a comprehensive, dedicated ongoing spinal cord injury program.

Statutory Authority G.S. 131E-104.

.3032 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF), and has been approved by the Department in accordance with G.S. 131E, Article 9, the Department deems the facility to be in compliance with Rules .3021 through .3031 of this Section.

(b) Deemed status shall be provided only if the inpatient rehabilitation facility or unit provides copies of survey reports to the Department. The JCAHO report shall show that the facility or unit was surveyed for rehabilitation services. The CARF report shall show that the facility or unit was surveyed for comprehensive rehabilitation services. The facility or unit shall sign an agreement (Memorandum of Understanding) with the Department specifying these terms.

(c) The inpatient rehabilitation facility or unit shall be subject to inspections or complaint investigations by representatives of the Department at any time. If the facility or

unit is found not to be in compliance with the rules listed in Paragraph (a) of this Rule, the facility shall submit a plan of correction and be subject to a follow-up visit to ensure compliance.

(d) If the inpatient rehabilitation facility or unit loses or does not renew its accreditation, the facility or unit shall notify the Department in writing within 30 days.

Statutory Authority G.S. 131E-104.

SECTION .3100 - DESIGN AND CONSTRUCTION

.3101 GENERAL RULES

(a) Each facility shall be planned, constructed, equipped, and maintained to provide the services offered in the facility.

(b) A new facility or remodeling of an existing facility shall meet the requirements of the North Carolina State Building Code, all applicable volumes, which is incorporated by reference, including all subsequent amendments. Copies of this code may be purchased from the Department of Insurance Engineering Division located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost of two hundred fifty dollars (\$250.00). Existing licensed facilities shall meet the requirements of the North Carolina State Building Code in effect at the time of construction or remodeling.

(c) Any existing building converted from another use to a nursing facility shall meet all requirements of a new facility.

(d) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the Commission for Health Services, which are incorporated by reference, including all subsequent amendments. Copies of these Rules may be obtained from the Department of Environment, Health, and Natural Resources, Division of Environmental Health, Environmental Health Services Section, 512 N. Salisbury Street, Raleigh, NC 27604-1148 at no cost.

(e) The domiciliary portion of a combination facility shall meet the rules for a nursing facility contained in Sections .3100, .3200, .3300, and .3400 of this Subchapter, except when separated by two-hour fire-resistive construction. When separated by two hour fire resistive construction, the domiciliary portion of the facility shall meet the rules for domiciliary homes in 10 NCAC 42D, Licensing of Homes for the Aged and Infirm, which are incorporated by reference, including all subsequent amendments; and domiciliary resident areas must be located in the domiciliary section of the facility. Copies of 10 NCAC 42D can be obtained free of charge from the Division of Facility Services, Domiciliary and Group Care Section, P.O. Box 29530, Raleigh, NC 27626-0530.

(f) An addition to an existing facility shall meet the same requirements as a new facility.

Authority G.S. 131E-104; 42 U.S.C. 1396.

.3102 APPLICATION OF PHYSICAL PLANT

REQUIREMENTS

The physical plant requirements for each facility shall be applied as follows:

- (1) New construction shall comply with the requirements of Sections .3100-.3400 of this Subchapter.
- (2) Except where otherwise specified, existing buildings shall meet licensure and code requirements in effect at the time of construction, alteration or modification.
- (3) New additions, alterations, modifications and repairs shall meet the technical requirements of Sections .3100-.3400 of this Subchapter; however, where strict conformance with current requirements would be impractical, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility.
- (4) Rules contained in Sections .3100-.3400 of this Subchapter are minimum requirements and are not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements.
- (5) Equivalency: alternate methods, procedures, design criteria and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs or unusual conditions, may be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility.
- (6) Where rules, codes or standards have any conflict, the most stringent requirement shall apply.

Statutory Authority G.S. 131E-104.

.3103 SITE

The site of the proposed facility must be approved by the Department prior to construction and shall:

- (1) be accessible by public roads and public transportation;
- (2) be accessible to fire fighting services;
- (3) have an approved water supply, sewage disposal system, garbage disposal system and trash disposal system;
- (4) meet all local ordinances and zoning laws; and
- (5) be free from exposure to hazards and pollutants.

Statutory Authority G.S. 131E-104.

.3104 PLANS AND SPECIFICATIONS

(a) When construction or remodeling is planned, final working drawings and specifications shall be submitted by the owner or his appointed representative to the Department

for review and approval. Schematic drawings and preliminary working drawings shall be submitted by the owner prior to the required submission of final working drawings. The Department will forward copies of each submittal to the Department of Insurance and the Division of Environmental Health for review and approval. Three copies of the plan shall be provided at each submittal.

(b) Approval of final plans and specifications must be obtained from the Department prior to licensure. Approval of plans shall expire after one year unless a building permit for the construction has been obtained prior to the expiration date of the approval of final plans.

(c) If an approval expires, renewed approval shall be issued provided revised plans meeting all current regulations, codes, and standards are submitted and reviewed.

(d) Completed construction or remodeling shall conform to the minimum standards established in Sections .3100, .3200, .3300, and .3400 of this Subchapter. Prior to approval for licensure, one set of "as built working drawings" shall be furnished to the Department. Final working drawings and building construction including building systems operation must be approved by the Department prior to licensure.

(e) The owner or his designated agent shall notify the Department when actual construction or remodeling starts and at points when construction is 50 percent, 75 percent, and 90 percent complete and upon final completion. New construction or remodeling must be approved in writing by the Department prior to use.

Statutory Authority G.S. 131E-104.

SECTION .3200 - FUNCTIONAL REQUIREMENTS

.3201 REQUIRED SPACES

(a) The net floor area of a single bedroom shall not be less than 100 square feet and the net floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and cannot be used as a multi-bedroom at any future date.

(b) The total space set aside for dining, recreation and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the domiciliary portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total:

- (1) In new facilities, included in the total square footage required by Paragraph (b) of this Rule, a separate dining area or areas at 10 square feet per bed minimum; at least one separate activity area at 5 square feet per bed minimum; and at least one separate living area at 5 square feet per

bed minimum shall be provided.

- (2) Dining, activity, and living areas shall be designed and equipped to provide accessibility to both patients confined to wheelchairs and ambulatory patients.
- (3) Closets and storage units for equipment and supplies shall not be included as part of the required dining, activity, and living floor space area.
- (4) Handicap accessible outdoor areas for individual and group activities shall be provided.
- (5) Separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 48 cubic feet of lockable clothing space at least half of which is for hanging clothes.

(c) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient room. One tub or shower shall be provided for each 15 beds not individually served. There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.

(d) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

- (1) a medication preparation area with a counter, a sink with four-inch faucet trim handles, a medication refrigerator, eye level medication storage, cabinet storage and double locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
- (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
- (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water closet with a device for cleaning bedpans and a means for washing and sanitizing bedpans and other utensils;
- (4) a nurses' toilet and locker space for coats, purses, and personal belongings;
- (5) an audio-visual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
- (6) a soiled linen storage room;
- (7) a clean linen storage room;
- (8) a nourishment station in a separate area enclosed with walls and doors which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven or hot plate; and
- (9) one nurses' station consisting of desk space for writing, storage space for office supplies, storage space for patients' records and space for nurses' call equipment.

(e) Clean linen storage shall be provided in a separate room from bulk supplies. Clean linen for nursing units may be stored in closed carts or cabinets in the clean utility room or in a linen closet on the unit floor.

(f) A soiled linen room shall be provided.

(g) Each nursing unit shall be provided with at least one janitor's closet. The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care and employee facilities shall be provided janitor's closets and may share one as a group.

(h) Stretcher and wheelchair storage shall be provided.

(i) Bulk storage shall be provided at the rate of five square feet of floor area per bed.

(j) Office space shall be provided for persons holding the following positions: administrator, director of nursing, social services director, activities director and physical therapist. There shall also be a business office.

(k) Each new combination facility shall provide a minimum of one residential washer and residential dryer located to be accessible by domiciliary staff, residents, and family.

Statutory Authority G.S. 131E-104.

.3202 FURNISHINGS

(a) Handgrips shall be provided for all toilet and bath facilities used by patients. Handrails shall be provided on both sides of all corridors used by patients.

(b) Flame resistant privacy screens or curtains shall be provided in multi-bedded rooms.

Statutory Authority G.S. 131E-104.

SECTION .3300 - FIRE AND SAFETY REQUIREMENTS

.3301 NEW FACILITY REQUIREMENTS

In addition to the requirements in Rule .3101(b) of this Subchapter, a new facility shall meet the following additional requirements:

- (1) Each floor used for patient sleeping rooms shall be divided into at least two sections by a smoke partition.
- (2) Nursing units shall be designed to provide separation from other departments or services with a smoke barrier.
- (3) Horizontal exits are not permitted in any new facility.

Statutory Authority G.S. 131E-104.

.3302 ADDITIONS

An addition to an existing facility shall meet the same requirements as a new facility except that in no case shall more than one horizontal exit be used to replace a required exit to the outside.

Statutory Authority G.S. 131E-104.

**SECTION .3400 - MECHANICAL: ELECTRICAL:
PLUMBING**

.3401 HEATING AND AIR CONDITIONING

Heating and cooling systems shall meet the American Society of Heating, Refrigeration, and Air Conditioning Engineers Guide [which is incorporated by reference, including all subsequent amendments; copies of this document may be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers at United Engineer Center, 345 East 47th Street, New York, NY 10017 at a cost of one hundred nineteen dollars (\$119.00.)]; and the National Fire Protection Association Code 90A, [current addition with all subsequent amendments which is adopted by reference; copies of this code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 at a cost of nineteen dollars and fifty cents (\$19.50)] with the following modifications:

- (1) Drug rooms must have positive pressure with relationship to adjacent areas.
- (2) Environmental temperature control systems shall be capable of maintaining temperatures in the facility at 72 degrees F. minimum in the heating season and a maximum of 81 degrees F. during the non-heating season.
- (3) Rooms designated for isolation shall have negative or positive pressure with relationship to adjacent areas depending upon the type of patient to be isolated. Exhaust for isolation rooms shall be ducted directly to the outdoors.

Statutory Authority G.S. 131E-104.

.3402 EMERGENCY ELECTRICAL SERVICE

Emergency electrical service shall be provided for use in the event of failure of the normal electrical service. This emergency service shall consist of the following:

- (1) In any existing facility, the following shall be provided:
 - (a) type 1 or 2 emergency lights as required by the North Carolina State Building Code;
 - (b) additional emergency lights for all nursing stations, drug preparation and storage areas, and for the telephone switchboard, if applicable;
 - (c) one or more portable battery-powered lamps at each nursing station; and
 - (d) a suitable source of emergency power for life-sustaining equipment, if the facility admits or cares for occupants needing such equipment, to ensure continuous operation for a minimum of 72 hours.
- (2) Any new addition to an existing facility shall meet the same requirements as new construction.
- (3) Any conversion of an existing building (hotel, motel, abandoned hospital, abandoned school, or

other building) shall meet the same requirements for emergency electrical services as required for new construction.

- (4) For new construction, an emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.
- (5) Emergency electrical services shall be provided for new facilities as required by Rule .3101(b) of this Subchapter with the following modifications:
 - (a) Exception No. 2 and Exception No. 3 contained in Section 517-10 of the North Carolina State Building Code, Volume IV shall not apply to new facilities.
 - (b) Egress lighting shall be connected to the essential electrical system at exterior of exits.
 - (c) Task illumination in the switchgear and boiler rooms shall be connected to the essential electrical system.
- (6) The following equipment, devices, and systems which are essential to life, safety, and the protection of important equipment or vital materials shall be connected to the emergency electrical system as follows:
 - (a) nurses' calling system;
 - (b) fire pump if installed;
 - (c) sewerage lift or sump pumps if installed;
 - (d) one elevator, where elevators are used for vertical transportation of patients;
 - (e) equipment such as burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls, required for heating and sterilization, if installed;
 - (f) equipment necessary for maintaining telephone service.
- (7) A minimum of one dedicated emergency branch circuit per bed for ventilator dependent patients is required in addition to the normal system receptacle at each bed location required by the North Carolina State Building Code, Volume IV. This emergency circuit shall be provided with a minimum of two duplex receptacles identified for emergency use. Additional emergency branch circuits/receptacles shall be provided where the electrical life support needs of the patient exceed the minimum requirements stated in this Paragraph. Each emergency circuit serving ventilator dependent patients shall be fed from the automatically transferred critical branch of the essential electrical system. This Paragraph shall apply to both new and existing facilities.
- (8) Heating equipment provided for ventilator dependent patient bedrooms shall be connected to the critical branch of the essential electrical system and arranged for delayed automatic or manual connection to the emergency power source if the

heating equipment depends upon electricity for proper operation. This Paragraph shall apply to both new and existing facilities.

- (9) Task lighting connected to the automatically transferred critical branch of the essential electrical system shall be provided for each ventilator dependent patient bedroom. This Paragraph shall apply to both new and existing facilities.
- (10) Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the facility is supplied by at least two separate generating sources, or a network distribution system with the facility feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption.
- (11) The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected with 10 seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, and equipment necessary for maintaining telephone service. All other lighting and equipment required to be connected to the emergency system shall either be connected through the 10 second primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification.
- (12) Sufficient fuel shall be stored for the operation of the emergency generator for a period not less than 72 hours, on a 24-hour per day operational basis. The generator system shall be tested and maintained per National Fire Protection Association (NFPA) code 99, current addition with all subsequent amendments, which is adopted by reference. Copies of this code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 at a cost of thirty one dollars (\$31.00). Records of running time shall be maintained and kept available for reference.
- (13) Existing facilities shall have electrical systems that comply with licensure standards in effect at the time a license is first issued. Any remodeling that results in changes in service delivery shall comply with current licensure requirements to support the delivery of those services.

Statutory Authority G.S. 131E-104.

.3403 GENERAL ELECTRICAL

- (a) All main water supply shut off valves in the sprinkler

system shall be electronically supervised so that if any valve is closed an alarm will sound at a continuously manned central station.

- (b) No two adjacent emergency lighting fixtures shall be on the same circuit.

- (c) Receptacles in bathrooms shall have ground fault protection.

- (d) For new construction, and remodeling of spaces to be used as patient rooms that involve modification of the electrical system in patient rooms, each patient bed location shall be provided with a minimum of four single or two duplex receptacles. Two single receptacles or one duplex receptacle shall be connected to the critical branch of the emergency power system at each bed location. Each patient bed location shall also be provided with a minimum of two single receptacles or one duplex receptacle connected to the normal electrical system.

- (e) Each patient bed location shall be supplied by at least two branch circuits.

- (f) The fire alarm system shall be installed to transmit an alarm automatically to the fire department that is legally committed to serve the area in which the facility is located, by the most direct and reliable method approved by local ordinances.

- (g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.

- (h) All receptacles in patient use areas must be grounded by an insulated conductor sized in accordance with Table 250-95 of the North Carolina State Building Code, Volume IV.

Statutory Authority G.S. 131E-104.

.3404 OTHER

- (a) In general patient areas, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' and residents' use at each patient and resident toilet, bath, and shower.

- (b) At least one telephone shall be available in each area to which patients are admitted and additional telephones or extensions as are necessary to ensure availability in case of need.

- (c) General outdoor lighting shall be provided adequate to illuminate walkways and drive.

- (d) A flow of hot water shall be within safety ranges specified as follows:

OTHER PROGRAMS

SUBCHAPTER 18J - AREA PROGRAM
MANAGEMENT STANDARDS

SECTION .0800 - ESTABLISHMENT OF AN
AREA AUTHORITY APPEALS PANEL

.0803 APPEALS PROCEDURES

(a) Appeals of the decision of local area authorities shall be forwarded, along with all supplementary documentation considered during the local area appeals process, to the Division Director within 44 15 days of the local decision being rendered.

(b) The Division Director shall forward all information to the Chair of the Panel within five working days.

(c) The Panel shall complete an administrative review and notify the appealing party and the area program of its decision, in writing, within 44 15 days of receipt of the appeal. Unless further appealed within 44 15 days of the date of this decision, this decision shall be considered final.

(d) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final, by submitting a written request to the Chair of the Panel, within 44 15 days of the date of the administrative review decision.

(e) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chair.

(f) The hearing shall be scheduled at a time and place designated by the Chair.

(g) The appealing party and the area program shall be notified of the time and place of the hearing no less than 44 15 days prior to the hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 26B .0124 and 26H .0213.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 1:30 p.m. on May 17, 1995 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC.

Reason for Proposed Action:

10 NCAC 26B .0124 - Some parts of the state, particularly the rural areas, have a shortage of qualified supervisors for HIV case management services. Allowing graduates of accredited schools of professional nursing to become qualified HIV case management supervisors will increase the access of services throughout the state.

Patient Areas - 6 1/2 gallons per hour per bed and at a temperature of 100 -116 degrees F; and

Dietary Services - 4 gallons per hour per bed and at a minimum temperature of 140 degrees F; and

Laundry Area - 4 1/2 gallons per hour per bed and at a minimum temperature of 140 degrees F.

(e) Plumbing systems shall meet the requirements of the North Carolina State Building Code, Volume II.

(f) Medical gas and vacuum systems shall be installed, tested, and maintained in accordance with the National Fire Protection Code 99 current addition with all subsequent amendments, which is adopted by reference. Copies of this code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 at a cost of thirty one dollars (\$31.00).

(g) The Administrator shall assure that isolation facilities as approved by the Department are available and used for any patient admitted or retained with a communicable disease.

(h) Each facility shall have a wanderer control system to aid staff in the supervision of patients who wander or are disoriented.

Statutory Authority G.S. 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division Of Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule cited as 10 NCAC 18J .0803.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on May 17, 1995 at the Division of MH/DD/SAS, Albemarle Bldg., 325 N. Salisbury St., Room 1112, Raleigh, NC 27603.

Reason for Proposed Action: To provide area programs with a time frame that is consistent in the Appeals Procedures for the Division and for Carolina Alternatives.

Comment Procedures: Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of MH/DD/SAS, 325 N. Salisbury St., Raleigh, NC 27603, 919-733-4774. Comments submitted as a written statement must be sent to the above address no later than May 17, 1995, and must state the rule to which the comments are addressed. Time limits for oral remarks may be imposed.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 18 - MENTAL HEALTH:

10 NCAC 26H .0213 - To amend the North Carolina Hospital Inpatient Reimbursement Plan effective January 1, 1995 to establish a disproportionate share pool for those hospitals that qualify as disproportionate share hospital and also operate a Medicare approved graduate medical education program.

Comment Procedures: Written comments concerning this rule-making action must be submitted by May 17, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal note is available upon written request from the same address.

Fiscal Note: 10 NCAC 26H .0124 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. 10 NCAC 26H .0213 does not have a fiscal impact.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0124 HIV CASE MANAGEMENT

(a) The components of HIV case management are listed below. In order to be reimbursed by the Division of Medical Assistance, a provider shall provide all of these components:

- (1) Evaluation of the client's situation to determine the need for initial case management services;
- (2) Comprehensive assessment of the client's health care, psychosocial, environmental and financial needs;
- (3) Development and implementation of a plan of care which includes goals, services to be provided and progress notes;
- (4) Coordination of service delivery when multiple providers or programs are involved in care provision;
- (5) Monitoring to ensure that services received meet the client's needs and are consistent with good quality of care;
- (6) Follow-up an assessment to determine the continued appropriateness of services, the correct level of care, and the continued need for services;
- (7) Discharge of the client from service; and
- (8) Locating and helping access available systems, resources and services within the community to meet the client's needs.

(b) Persons are eligible to receive HIV case management services if they:

- (1) Have a medical diagnosis of HIV disease or HIV seropositivity; and

- (2) Are eligible for regular Medicaid services; and
- (3) Are not institutionalized; and
- (4) Are not recipients of other Medicaid-reimbursed case management services provided through the State's home and community-based waivers or the State Plan.

(c) Provider Qualifications. Providers of HIV case management services shall:

- (1) Be enrolled in accordance with section 1902(a)(23) of the Social Security Act; and
- (2) Meet applicable State and Federal Laws governing the participation of providers in the Medicaid program; and
- (3) Be certified by the AIDS Care Branch, Division of Adult Health Promotion, Department of Environment, Health and Natural Resources as a qualified HIV case management provider. To be certified, a provider must:

(A) Submit an application to the AIDS Care Branch that includes the provider's plans for :

- (i) Provision of all the HIV case management components in 10 NCAC 26B .0124(a); and
- (ii) Quality assurance, including the monitoring and evaluation of case management records.

(B) Have qualified case managers with supervision provided by a supervisor who meets the requirements in 10 NCAC 26B .0124(d), except that case managers qualified under 10 NCAC 26B .0124(e)(4) shall have all their charts reviewed and signed by such a supervisor.

(d) Supervisor Qualification. An HIV case management supervisor shall meet the following qualifications:

- (1) Have a master's level degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and one year of experience in case management; or
- (2) Have a bachelor's degree in a human service including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and two years experience in case ~~management~~ management; or
- (3) Have graduated from an accredited school of professional nursing and completed three years of professional nursing experience, including two years in Public Health. Be licensed to practice as a registered nurse and have a minimum of two years experience in case management; or
- (4) Have graduated from an accredited school of professional nursing and completed three years of professional nursing experience, including two years experience supervising nurses responsible for developing and maintaining care plans

and coordinating care and services for patients receiving care in their homes. Be licensed to practice as a registered nurse and have a minimum of two years experience in case management.

(e) Case Manager Qualifications. HIV case managers shall meet the following qualifications:

- (1) Have a master's degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing; or
- (2) Have a bachelor's level degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and two years experience working in human services; or
- (3) Be a licensed Registered Nurse, Nurse Practitioner, Physician Assistant or Certified Substance Abuse Counselor with two years experience working in human ~~services~~ services; or
- (4) Have a high school diploma and two years experience providing HIV case management. A person who qualifies under 10 NCAC 26B .0124 (e)(4) may serve as an HIV case manager for five years from date of employment as an HIV case manager in an agency certified to provide HIV case management. If an agency is not a certified HIV case management provider at the time of the person's employment as an HIV case manager, the five year time period begins with the agency's certification date. After the five year period ends, the person must meet HIV case manager requirements defined in 10 NCAC 26B .0124 (c)(1),(2), or (3) in order to continue to providing HIV case management ~~services~~ services; or
- (5) HIV case managers shall attend, at least annually, training sessions approved by the AIDS Care Branch, Division of Adult Health Promotion, Department of Environment, Health and Natural Resources.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.169; Social Security Act 1915(b).

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate

adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
- (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or
- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
- (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or

- (6) Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) and UNC Hospitals operated by the University of North Carolina.

(b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(c) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified ~~below~~ in Subparagraphs (1), (2) and (3) of this Paragraph.

- (1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) divided by three.

In Subparagraph (c)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

(d) Effective January 1, 1995 and subject to the availability of funds, hospitals that qualify as disproportionate share

hospitals under Subparagraphs (a)(1) through (5) of this Rule and that also operate Medicare approved graduate medical education programs will be eligible for disproportionate share payments for hospital inpatient services in addition to other payments made under the North Carolina Medicaid Hospital DRG reimbursement methodology from a disproportionate share pool under the circumstances specified in Subparagraphs (1) and (2) of this Paragraph:

- (1) Qualifications effective January 1, 1995 through September 30, 1995 are based on cost report data and financial information for the fiscal year ending in 1993 as submitted to the Division of Medical Assistance on or before September 1, 1994. Qualifications for the 12 month period beginning October 1, 1995 and subsequent 12 month periods beginning October 1 of each year, will be based on cost report data and financial information for the fiscal year ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before September 1 immediately preceding the 12 month period beginning October 1 for which eligibility is being determined.

- (2) Additional payments for the period from January 1, 1995 through September 30, 1995 will be made based on hospital cost per case mix index adjusted discharge, as established by Exhibit 5.1 contained in the report entitled "DRG-Based Prospective Payment Methodology for Inpatient Services" dated January 25, 1995 prepared by Myers and Stauffer, Chartered Certified Public Accountants, for the North Carolina Division of Medical Assistance and arranged from low to high as specified in Parts (A) and (B) of this Subparagraph:

- (A) Hospitals with a calculated cost per case mix index adjusted discharge cost of three thousand one hundred fifty six dollars (\$3,156) or less will be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement;

- (B) Hospitals with a calculated cost per case mix index adjusted discharge cost of more than three thousand one hundred fifty six dollars (\$3,156) will be entitled to additional payments in an amount that when added to other Medicaid payments may not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.

- (3) Additional payments for the 12 month period beginning October 1, 1995 and for each subsequent 12 month period will be determined as specified in Parts (A), (B) and (C) of this Subparagraph:

- (A) The calculated cost per case mix index adjusted discharge amount of three thousand one

hundred fifty six (\$3,156) shall be updated annually by the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management;

(B) Each hospital's cost per case mix index adjusted discharge will be ascertained by analysis of charges for Medicaid inpatient claims reimbursed under the DRG methodology and paid during the immediately preceding calendar year, multiplied by each hospital's ratio of cost to charges derived from cost report data and financial information for the fiscal year of each hospital ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before the first day of September immediately preceding the 12 month period beginning October 1 for which eligibility is being determined; and

(C) Hospitals with a case mix index adjusted discharge cost equal to or less than three thousand one hundred fifty six (\$3,156) plus any annual updated amount will be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement; hospitals with calculated costs per case mix index adjusted discharge greater than three thousand one hundred fifty six (\$3,156) plus any annual updated amount will be entitled to additional payments in an amount that when added to other Medicaid payment does not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.

(4) Payments will be made on an estimated basis no less frequently than quarterly during the period for which such payments are to be made. Estimated payments will be based on costs incurred and payments received for Medicaid inpatient DRG services during the most recent fiscal year for which the Division of Medical Assistance has a completed cost report. Estimated payments made to each hospital will be cost settled as determined by an independent CPA furnished by the provider, based on cost reports for the period for which payments are made, and appropriate adjustments will be made to assure that such payments do not exceed the hospital's net cost of providing services to Medicaid patients.

(5) Payments may not exceed the amount of funds available as determined by the Director of the Division of Medical Assistance. Should available funds be insufficient to pay in full the

authorized payments, the Division of Medical Assistance shall ascertain maximum payments allowable and the funds available to qualifying hospitals shall be prorated on that basis.

(6) The changes to disproportionate share payments authorized by this Paragraph are in accordance with G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rules cited as 12 NCAC 9A .0204; 9B .0113, .0201 - .0202, .0205 - .0206, .0210, .0212 - .0214, .0226 - .0228, .0232 - .0233; 9C .0401, .0601; 9D .0102, .0104 - .0106.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on June 1, 1995 at the Hearing Room of the Alcoholic Beverage Control Commission Building, 3322 Garner Road, Raleigh, NC.

Reason for Proposed Action: *The Standards Commission has authorized rule-making authority to propose amending several of its administrative rules in order to better define the minimum standards that regulate the criminal justice officer profession as well as the criminal justice training schools. Additionally, the Commission is updating several incorrect rule references to G.S. 150B and is adding eight new types of radar instruments to the approved list.*

Comment Procedures: *Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. In addition, the record of hearing will be open for receipt of written comments from April 17, 1995 to June 1, 1995. Written comments not presented at the hearing should be directed to David D. Cashwell, Criminal Justice Standards, P.O. Box 149, Raleigh, NC 27602. The proposed rules are available for public inspection and copies may be obtained at the following address: Criminal Justice Standards, P.O. Box 149, Raleigh, NC 27602 (Room 150, Court of Appeals Building, 1 West Morgan St., Raleigh, NC).*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

**SUBCHAPTER 9A - CRIMINAL JUSTICE
EDUCATION AND TRAINING STANDARDS
COMMISSION**

SECTION .0200 - ENFORCEMENT OF RULES

**.0204 SUSPENSION; REVOCATION;
OR DENIAL OF CERTIFICATION**

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

- (1) a felony offense; or
- (2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

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

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 9B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 9B .0200 or 12 NCAC 9B .0400 for the category of the officer's certification;
- (3) has committed or been convicted of:
 - (A) a criminal offense or unlawful act defined in 12 NCAC 9A .0103 as a Class B misdemeanor; or
 - (B) four or more criminal offenses or unlawful acts defined in 12 NCAC 9A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;
- (4) has been discharged by a criminal justice agency for commission or conviction of:
 - (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
 - (B) any other offense involving moral turpitude;
- (5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrep-

resentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission;

- (9) has failed to make either of the notifications as required by 12 NCAC 9B .0101(7);
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 9E;
- (12) has refused to submit to an applicant or lateral transferee drug screen as required by these Rules; or
- (13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 9C .0310, where the positive result cannot be explained to the Commission's ~~satisfaction~~ satisfaction; or
- (14) has been denied certification or had such justice officer certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, revoked, or denied.

Statutory Authority G.S. 17C-6; 17C-10.

**SUBCHAPTER 9B - STANDARDS FOR
CRIMINAL JUSTICE EMPLOYMENT:
EDUCATION: AND TRAINING**

**SECTION .0100 - MINIMUM STANDARDS
FOR CRIMINAL JUSTICE EMPLOYMENT**

**.0113 MINIMUM STANDARDS PROBATION/
PAROLE OFFICERS-SURVEILLANCE**

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole officer-surveillance shall ~~have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university. be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.~~

Statutory Authority G.S. 17C-6.

SECTION .0200 - MINIMUM STANDARDS

FOR CRIMINAL JUSTICE SCHOOLS AND
CRIMINAL JUSTICE TRAINING PROGRAMS
OR COURSES OF INSTRUCTION

.0201 ADMINISTRATION OF CRIMINAL
JUSTICE SCHOOLS

(a) The executive officer or officers of the institution or agency sponsoring any criminal justice training program or course of instruction shall have primary responsibility for implementation of these Rules and standards and for administration of the school. The executive officer or officers of the institution or agency shall secure School Accreditation pursuant to 12 NCAC 9C .0401 prior to offering any criminal justice training course.

(b) The executive officers shall designate not more than one compensated staff member for each commission-accredited program for which the institution or agency has been granted accreditation. Such staff member shall be formally certified by the Commission under Section .0500 of this Subchapter to be the criminal justice school director. The school director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited criminal justice training course. If the accredited institution or agency assigns additional responsibilities to the certified school director during the planning, development, and implementation of an accredited basic recruit training course, an additional qualified staff person must be designated to assist the school director in the administration of the course. This person must be selected by the school director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

(c) The executive officers shall permanently maintain records of all criminal justice training courses sponsored or delivered by the school, reflecting:

- (1) course title;
- (2) delivery hours of course;
- (3) course delivery dates;
- (4) names and addresses of instructors utilized within designated subject-matter areas; and
- (5) a roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful;
- (6) copies of all rules, regulations and guidelines developed by the school director;
- (7) documentation of any changes in the initial course outline, including substitution of instructors; and
- (8) documentation of make-up work achieved by each individual trainee, including test scores and methods.

(d) The executive officers of the institution or agency sponsoring any criminal justice training program or course of instruction shall meet or exceed the following specifications:

- (1) acquire and allocate sufficient financial resources to provide commission certified instructors and to meet other necessary program expenses;
- (2) provide ~~adequate secretarial, one designated clerical, and other supportive staff assistance as required by the school director~~ support person to assist the school director in maintaining required records, complete reports, and provide other clerical needs as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, specifically including the following:
 - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees; specifically:
 - (i) provide a minimum of 24 square feet of floor space per trainee;
 - (ii) provide over-head lighting measuring at a minimum, 70 foot candles at desk level;
 - (iii) provide an adult size table and chair for each trainee;
 - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
 - (C) a library for trainees' use covering the subject-matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access;
 - (D) ~~where required by course content, provide or make available facilities, equipment, and supplies to provide training in physical and motor skill exercises such as defensive tactics, firearms qualification, and pursuit/defensive driving;~~ a firearms firing range designed for criminal justice firearms instruction to conduct the basic recruit firearms course, with the following specifications:
 - (i) an operational public address system of sufficient volume to be audible to persons wearing ear plugs or other hearing protection while firearms are being discharged;
 - (ii) an emergency first-aid kit;
 - (iii) access limited to criminal justice trainees, criminal justice instructors, and personnel authorized by the school director when firearms are being discharged;
 - (iv) warning signs posted at all access points which clearly identify the area as a criminal justice firing range;
 - (v) restrooms, drinking water and a rain-resistant shelter for personnel engaged in training; and
 - (vi) telephone or radio communications immediately available to range instructors;
 - (E) a driving range designated for criminal justice

training, adequate in size and design to safely conduct the law enforcement basic recruit driving course, with the following specifications:

- (i) secured by barriers from through traffic while training is being conducted on the range;
- (ii) warning signs posted at all vehicle access points that shall clearly identify the area as a law enforcement training driving range and limit access to criminal justice trainees, criminal justice instructors, and personnel authorized by the school director;
- (iii) an emergency first-aid kit;
- (iv) access to at least two automobiles designed and equipped for criminal justice driver training;
- (v) restrooms and drinking water for personnel engaged in training; and
- (vi) telephone or radio communications immediately available to range instructors;
- (F) a suitable area designated for criminal justice defensive tactics instruction which enables the safe execution of the basic recruit defensive tactics course, with the following specifications:
 - (i) permanent or portable cushioned floor matting;
 - (ii) an emergency first-aid kit; and
 - (iii) telephone or radio communications immediately available to defensive tactics instructors;
- (G) a suitable area for the conducting of physical fitness training, with the following specifications:
 - (i) an obstacle course designed and constructed according to specifications outlined in the Basic Law Enforcement Training Course Management Guide;
 - (ii) appropriate space for running, weight training, calisthenics; and aerobics;
 - (iii) restrooms and drinking water for personnel engaged in training;
 - (iv) shower facilities, if physical fitness training is conducted prior to classroom training.

(e) ~~The sponsoring institution, unless it is an agency or department accredited by the Commission to provide basic training to its own personnel, is not required to assume the costs of providing the following specified equipment and supplies for trainee use during course delivery:~~ In the event that an institution or agency does not own a required facility, written agreements with other entities must be made to assure use of and timely access to such facilities. A copy of such agreement must be on file for review by Standards Division staff.

- (1) ~~firearms (handgun and shotgun);~~
- (2) ~~firearm ammunition (practice and qualifying);~~

- (3) ~~motor vehicle;~~
- (4) ~~police baton;~~
- (5) ~~gas mask;~~
- (6) ~~handcuffs; or~~
- (7) ~~radar, radar and time distance or time distance speed measurement instruments.~~

(f) ~~The school rules may require the employing agency or department to make the equipment and supplies listed in Paragraph (e) of this Rule available at the appropriate scheduled time during course delivery for the use of its own trainee officers. Each institution or agency accredited to deliver basic recruit training shall provide access to supplies and equipment for trainee use during course delivery as specified in the Basic Law Enforcement Training Course Management Guide.~~

Statutory Authority G.S. 17C-6.

.0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each commission-accredited criminal justice training course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the Commission.
 - (A) The school director shall schedule course presentation for delivery as follows:
 - (i) Each basic training course required for criminal justice officer certification shall be presented with a minimum of 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed. This Rule shall not apply to presentations of the "Basic Training--State Youth Services Officers" course.
 - (ii) The "Criminal Justice Instructor Training Course" shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the Director of the Standards Division may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule qualified instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
 - (A) In the presentation of a delivery of the "Basic Recruit Training--Law Enforcement" course:
 - (i) No instructor shall be scheduled to ~~instruct~~ instruct, either as the lead instructor or in any other capacity, in a high liability topic area as identified under Rule .0304(a) of

this Subchapter unless specifically certified for that topic area by the Commission.

- (ii) With the exception of the First Responder, Physical Fitness, Medical Emergencies (DYS), and Electrical and Hazardous Materials Emergencies topical areas as outlined in Rule .0304(a) of this Subchapter, there shall be one specific certified instructor for each six trainees while actively engaged in a practical performance exercise.

- (iii) ~~(ii)~~ No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the "Basic Recruit Training--Law Enforcement" course presentation.

- (iv) ~~(iii)~~ Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Standards Division may grant written approval for the expansion of the individual instructional limitation.

(B) In the presentation of a delivery of the "Criminal Justice Instructor Training Course":

- (i) At least one evaluator of trainee performance shall be scheduled for each six trainees and in course delivery no evaluator will be assigned more than six trainees.
 - (ii) Each evaluator, as well as the instructors, must have successfully completed a commission-accredited instructor training course or an equivalent instructor training course as determined by the Commission.
 - (iii) Each instructor and evaluator must document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
 - (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition and duplication of subject matter.
 - (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
 - (6) Develop, adopt, reproduce, and distribute any

supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:

- (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- A copy of such rules, regulations and requirements shall be submitted to the Director of the Standards Division as an attachment to the Pre-delivery Report of Training Course Presentation. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing agency or department at the time the trainee enrolls in the course.
- (7) If appropriate, recommend housing and dining facilities for trainees.
 - (8) Not less than 15 days before commencing delivery of the "Basic Recruit Training--Law Enforcement" course, submit to the commission a Pre-delivery Report of Training Course Presentation (Form F-10A) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for Professional Lecturer Certification.
 - (C) The Director of the Standards Division shall review the submitted Pre-delivery Report together with all attachments and notify the school director of any apparent deficiency.
 - (9) Not less than 30 days before commencing delivery of the "Criminal Justice Instructor Training Course", submit to the commission a Pre-delivery Report of Training Course Presentation with the following attachments:
 - (A) The name and credentials of the school director.
 - (B) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (C) The names and credentials of all instructors and evaluators.
 - (D) A copy of any rules, regulations, and requirements for the school.
 - (E) The Director of the Standards Division shall review the submitted Pre-delivery Report together with all attachments and notify the school director of any apparent deficiency.
 - (10) Administer the course delivery in accordance

with commission-approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.

- (11) The school director or designated certified instructor shall monitor the presentations of all probationary instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the Commission. Based on this evaluation, the school director shall have the added responsibility for recommending approval or denial of requests for General Instructor Certification.
- (12) The school director or designated certified instructor shall monitor the presentations of all other instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. Any designated certified instructor who is evaluating the instructional presentation of another instructor shall, at a minimum, hold certification in the same instructional topic area as that for which the instructor is being evaluated. Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.
- (13) Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery:
 - (A) to determine and record the level of trainee comprehension and retention of instructional subject-matter; and
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced criminal justice officer; and
 - (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of this Subchapter.
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (15) During a delivery of the "Basic Recruit Training--Law Enforcement" course, make available to authorized representatives of the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.

- (16) Report the completion of each presentation of a commission-accredited criminal justice training course to the Commission as follows:
 - (A) "Basic Recruit Training--Law Enforcement". Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-delivery Report of Training Course Presentation (Form F-10B).
 - (B) Special arrangements shall be made between the school director and the Director of the Standards Division for the reporting of law enforcement achievement in a commission-accredited Public Safety Officer course.
 - (C) Upon successful completion of a commission-accredited training course by correctional, state youth services, or probation/parole trainees, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.
 - (D) "Criminal Justice Instructor Training Course". Not more than 10 days after course completion the school director shall submit to the Commission a Post-delivery Report containing the following:
 - (i) Class enrollment roster.
 - (ii) Course schedule with designation of instructors and evaluators utilized in delivery.
 - (iii) Scores recorded for each trainee on both the 80 minute skill presentation and the final written examination.
 - (iv) Designation of trainees who successfully complete the course in its entirety and whom the school director finds to be competent to instruct.
- (b) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each commission-accredited radar, radar and time-distance or time-distance speed measurement operator training course or re-certification course, the school director shall:
 - (1) select and schedule qualified radar or time-distance speed measurement instrument instructors who are properly certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:
 - (A) Provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
 - (B) Require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on

- each specific instrument;
- (C) Require each instructor to sign each individual form and submit the original to the school director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation.
- (A) The request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained in each type of approved speed-measurement instrument;
- (B) The Director of the Standards Division shall review the request and notify the school director of the accepted delivery period unless a conflict exists with previously scheduled programs.
- (3) during the delivery of the training course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee.
- (4) upon completing delivery of the Commission-accredited course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

(7)	Defensive Tactics	16 Hours
(8)	Juvenile Laws and Procedures	8 Hours
(9)	First Responder	40 Hours
(10)	Firearms	40 Hours
(11)	Patrol Techniques	16 Hours
(12)	Crime Prevention Techniques	4 Hours
(13)	Field Notetaking and Report Writing	12 Hours
(14)	Mechanics of Arrest; Vehicle Stops	6 Hours
(15)	Mechanics of Arrest; Custody Procedures	2 Hours
(16)	Mechanics of Arrest; Processing Arrestee	4 Hours
(17)	Crisis Management	10 Hours
(18)	Special Populations	12 Hours
(19)	Civil Disorders	8 Hours
(20)	Criminal Investigation	28 Hours
(21)	Interviews: Field and In-Custody	8 Hours
(22)	Controlled Substances	6 Hours
(23)	ABC Laws and Procedures	4 Hours
(24)	Electrical and Hazardous Materials Emergencies	12 Hours
(25)	Motor Vehicle Laws	20 Hours
(26)	Techniques of Traffic Law Enforcement	6 Hours
(27)	Traffic Accident Investigation	20 Hours
(28)	Law Enforcement Driver Training	46 44 Hours
(29)	Preparing for Court and Testifying in Court	12 Hours
(30)	Dealing with Victims and the Public	4 Hours
(31)	Ethics of Professional Law Enforcement	4 Hours
(32)	Testing	13 Hours
(33)	Physical Fitness	43 Hours

Statutory Authority G.S. 17C-6.

.0205 BASIC TRAINING – LAW ENFORCEMENT OFFICERS

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Recruit Training -- Law Enforcement" shall consist of a minimum of ~~432~~ 460 hours of instruction and shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Course Orientation	2 Hours
(2)	Constitutional Law	4 Hours
(3)	Laws of Arrest, Search and Seizure	16 Hours
(4)	Mechanics of Arrest; Arrest Procedures	8 Hours
(5)	Law Enforcement Communications and Information Systems	4 Hours
(6)	Elements of Criminal Law	24 Hours

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained for ninety-five dollars (\$95.00) per copy from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99

Salemburg, North Carolina 28385

Total

160 Hours

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6, to be used by certified school directors in planning, implementing and delivering basic training courses. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school. The public may obtain copies of this guide from the Justice Academy for one dollar and sixty-five cents (\$1.65) per copy.

Statutory Authority G.S. 17C-6; 17C-10.

.0206 BASIC TRAINING – CORRECTIONAL OFFICERS

(a) The basic training course for correctional officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a correctional officer.

(b) Each basic training course for correctional officers shall include the following identified topic areas and minimum instructional hours for each area; however, the director is authorized to permit modification of the topical areas and minimum instructional hours, not inconsistent with a minimum of 160 hours of instruction, on an interim basis with such modifications to be submitted to the Standards Committee and the full commission at their next regularly scheduled meeting:

(1)	The Division of Prisons Employee	2 Hours
(2)	Prison Security Functions and Procedures	4 Hours
(3)	Contraband and Techniques of Search	8 Hours
(4)	Inmate Supervision	8 Hours
(5)	Firearms	24 Hours
(6)	Inmate Classification Process and Programs	4 Hours
(7)	Understanding Inmate Behavior	12 Hours
(8)	Prison Emergency Operations	18 Hours
(9)	Radio Communications, Transporting, and Restraints	4 Hours
(10)	Basic Life Support	12 Hours
(11)	Prison Health Services	2 Hours
(12)	Report Writing	6 Hours
(13)	You and the Law	4 Hours
(14)	Interpersonal Communication Skills	16 Hours
(15)	Unarmed Self Defense	18 Hours
(16)	Role of the Correctional Witness	4 Hours
(17)	Disciplinary and Inmate Grievance Procedures	4 Hours
(18)	Administrative Matters, Review and Testing	10 Hours

(c) The "Basic Correction Officer Training Manual" as published by the Department of Correction is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as the basic curriculum for delivery of correctional officer basic training courses.

(d) Commission-accredited schools that are accredited to offer the "Basic Training: Correctional Officers" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

Statutory Authority G.S. 17C-6; 17C-10.

.0210 RADAR INSTRUCTOR TRAINING COURSE

(a) The radar instructor training course required for radar instructor certification shall consist of a minimum of 62 hours of instruction presented within a period not to exceed six consecutive weeks.

(b) Each radar instructor training course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a criminal justice radar instructor.

(c) Each applicant for radar instructor training shall:

- (1) Present the endorsement of a commission-recognized school director or agency executive officer or his designee.
- (2) Possess criminal justice general instructor certification as required in 12 NCAC 9B .0302.

(d) Each radar instructor training course shall include but not be limited to the following topic areas and corresponding instructional hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- (1) Course Orientation 2 Hours
 - (A) description of the course content;
 - (B) outline of the performance requirements for successful completion of the radar instructor training program.
- (2) North Carolina Administrative Code: 2 Hours

Familiarization with the code as to radar training courses and certification requirements, to include completion of the forms that pertain to speed measurement instrument training.
- (3) Overview and Introduction to Radar Training 4 Hours
 - (A) description of the objectives of a radar training program;
 - (B) identification of specific requirements for radar instructors, operators and equipment as set forth in the Radar Reliability Act (G.S. 17C and G.S. 8-50.2);
- (4) Speed Offenses and Speed Enforcement 6 Hours
 - (A) description in quantitative and qualitative terms

- the association between speed offenses and motor vehicle accidents;
- (B) description of major types of speed regulations, including origin, development, and scope of these regulations;
- (C) description in quantitative and qualitative terms the safety benefits of effective speed enforcement in general and 55 mph in particular.
- (5) **Basic Principles of Radar Speed Measurement** 6 Hours
- (A) description of the basic operating principles of a stationary and moving radar instrument;
- (B) explanation of the Doppler Principle in terms of how a radar signal is changed by reflection off a moving object;
- (C) description of factors that can affect radar accuracy and effectiveness.
- (6) **Legal and Operational Considerations** 8 Hours
- (A) identification and description of fundamental case law affecting the use of radar for speed measurement and enforcement;
- (B) demonstration of basic skills in preparing and presenting evidence and testimony concerning speed enforcement and radar speed measurement;
- (C) description and application of required operating procedures of radar instruments.
- (7) **Classroom Familiarization with Specific Radar Instruments:** 8 Hours
- demonstration of familiarity with the functions and operating procedures of approved radar instruments.
- (8) **Moot Court** 6 Hours
- (A) preparation of complete, concise and effective direct testimony for radar cases;
- (B) respond properly and effectively to cross examination.
- (9) **Field Operation of Specific Radar Instrument** 8 Hours
- (A) description of the functional components of approved radar units;
- (B) description of the setup, calibration, and operation procedures of approved radar units;
- (C) operation and performance of all procedural requirements of actual patrol with approved radar units.
- (10) **Motor-Skill Performance Testing:** 8 Hours
- (A) demonstration of the ability to successfully setup, calibrate and operate approved radar instruments for which the trainee seeks certification in accordance with criteria specified on a standardized trainee performance evaluation form;
- (B) demonstration of the ability to estimate vehicular speed in accordance with criteria specified on a standardized trainee performance evaluation form.

(11)	Course Review	2 Hours
(12)	Written Test	2 Hours
Total		62 Hours

(e) The "Radar Operator Training Course" as published by the North Carolina Justice Academy is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for the radar instructor training course for radar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost at the address in this Rule.

(f) Commission-accredited schools that are accredited to offer the "Radar Instructor Training Course" are: The North Carolina Justice Academy.

Statutory Authority G.S. 17C-6.

.0212 CERTIFICATION TRAINING FOR RADAR OPERATORS

(a) The radar operator training course for law enforcement officers shall consist of a minimum of 32 hours of instruction designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as a radar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the radar operator training course. Such a trainee shall not be certified as a radar operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in radar operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or hold general law enforcement certification.

(c) Each radar operator training course for law enforcement officers shall include the following topic areas and corresponding instructional hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- | | | |
|-----|---|--------|
| (1) | Course Orientation: | 1 Hour |
| (A) | description of the course content; | |
| (B) | outline of the performance requirements for | |

- successful completion of the radar operator training program.
- (2) Speed Offenses and Speed Measurement: 3 Hours
- (A) description in quantitative and qualitative terms the association between speed offenses and motor vehicle accidents;
- (B) description of major types of speed regulations, including origin, development, and scope of these regulations;
- (C) description in quantitative and qualitative terms the safety benefits of effective speed enforcement in general.
- (3) Basic Principles of Radar Speed Measurement: 5 Hours
- (A) description of the basic operating principles of a stationary and moving radar instrument;
- (B) explanation of the Doppler Principle in terms of how a radar signal is changed by reflection off a moving object;
- (C) description of factors that can affect radar accuracy and effectiveness.
- (4) Legal and Operational Considerations: 4 Hours
- (A) identification and description of fundamental case law affecting the use of radar for speed measurement and enforcement;
- (B) demonstration of basic skills in preparing and presenting evidence and testimony concerning speed enforcement and radar speed measurement;
- (C) description and application of accepted operating procedures of radar instruments;
- (D) demonstration of the ability to estimate vehicular speed in accordance with criteria specified on a standardized trainee performance evaluation form.
- (5) Classroom Familiarization with Specific Radar Instruments: 2 Hours
- demonstration of familiarity with the functions and operating procedures of radar instruments for which the trainee seeks certification.
- (6) Moot Court: 4 Hours
- (A) preparation of complete, concise and effective direct testimony for radar cases;
- (B) respond properly and effectively to cross examination
- (7) Supervised/Monitored Practice with Specific Radar Instruments: 6 Hours
- (A) description of the functional components of the radar units for which the trainee seeks certification;
- (B) description of the setup, calibration, and operation procedures of the radar units for which the trainee seeks certification;
- (C) operation and performance of all procedural requirements of actual patrol with the radar units for which the trainee seeks certification.
- (8) Motor-Skill Performance Testing: 4 Hours

	demonstration of the ability to successfully setup, calibrate and operate the radar instruments for which the trainee seeks certification in accordance with criteria specified on a standardized trainee performance evaluation form.	
(9)	Course Review	1 Hour
(10)	Written Test.	2 Hours
	Total	32 Hours

(d) The "Radar Operator Training Course" as published by the North Carolina Justice Academy is hereby adopted incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for the radar operator training course for radar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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Statutory Authority G.S. 17C-6.

.0213 CERTIFICATION TRAINING FOR RADAR TD/SMI OPERATORS

(a) Each radar and time-distance speed measurement instrument operator training course for law enforcement officers shall consist of a minimum of 48 hours of instruction designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as a radar and time-distance speed measurement instrument operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency may be enrolled in the radar and time-distance speed measurement instrument operator training course. Such a trainee shall not be certified as a radar and time-distance speed measurement instrument operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs, and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in radar and time-distance speed measurement instrument operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or holding general law enforcement certification.

(c) Each combined radar and time-distance speed measurement instrument operators' training course shall include

all topic areas specified in 12 NCAC 9B .0212(c). The additional 16 instructional hours in the time-distance speed measurement instrument operators' training course shall include but not be limited to the following topic areas and corresponding instructional hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- (1) Basic Principles of Time-Distance Speed Measurement Instruments: 1 Hour
 - (A) description of the basic principles on which time-distance speed measurement instruments operate;
 - (B) explanation of the procedures used in calibrating time-distance speed measurement instruments;
 - (C) description of the basic operating procedures required when employing time-distance speed measurement instruments.
- (2) Legal and Operational Considerations of Time-Distance Speed Measurement Instruments: 2 Hours
 - (A) identification and description of fundamental case law affecting the use of time-distance speed measurement for speed enforcement;
 - (B) identification and description of accepted operating procedures for the proper use of time-distance speed measurement instruments;
 - (C) identification and description of factors which may affect the selection of various speed measurement sites.
- (3) Classroom Familiarization with Specific Time-Distance Speed Measurement Instruments: 2 Hours

demonstration of familiarity with the functions and operating procedures time-distance speed measurement instrument(s) for which the trainee seeks certification.
- (4) Moot Court: 2 Hours
 - (A) preparation of complete, concise and effective direct testimony for time-distance speed measurement instrument cases;
 - (B) respond properly and effectively to cross examination.
- (5) Supervised/Monitored Practice with Specific Time-Distance Speed Measurement Instruments: 5 Hours
 - (A) description of the functional components of the time-distance speed measurement instrument(s) for which the trainee seeks certification;
 - (B) description of the setup, calibration and operation procedures of the time-distance speed measurement instrument(s) for which the trainee seeks certification;
 - (C) operation and performance of all procedural requirements of actual patrol with the time-distance speed measurement instrument for which the trainee seeks certification.

- (6) Motor-Skill Performance Testing: 4 Hours

demonstration of the ability to successfully setup, calibrate and operate the time-distance speed measurement instrument(s) for which the trainee seeks certification in accordance with criteria specified on a standardized trainee performance evaluation form.

Total	16 Hours
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(d) The "Time-Distance Operator Course" as published by the North Carolina Justice Academy is hereby adopted incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for the radar and time-distance speed measurement instrument operator training course for radar and time-distance speed measurement instrument operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost at the address in this Rule.

Statutory Authority G.S. 17C-6.

.0214 CERTIFICATION TRAINING FOR TD/SMI OPERATORS

(a) The time-distance speed measurement operator training course for law enforcement officers shall consist of a minimum of 32 hours of instruction designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as a time-distance speed measurement operator. This course shall not exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency may be enrolled in the time-distance speed measurement operator training course. Such a trainee shall not be certified as a time-distance speed measurement operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs, and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in time-distance speed measurement operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or holding general law enforcement certification.

(c) Each time-distance speed measurement instrument operator training course for law enforcement officers shall

include the following topic areas and corresponding instructional hours and incorporate the corresponding minimum student performance objectives within the course curriculum:

- (1) Course Orientation: 1 Hour
 - (A) description of the course content;
 - (B) outline of the performance requirements for successful completion of the time-distance speed measurement instrument operator training program.
- (2) Speed Offenses and Speed Measurement: 3 Hours
 - (A) description in quantitative and qualitative terms the association between speed offenses and motor vehicle accidents;
 - (B) description of major types of speed regulations, including origin, development, and scope of these regulations;
 - (C) description in quantitative and qualitative terms the safety benefits of effective speed enforcement in general.
- (3) Basic Principles of Time-Distance Speed Measurement: 2 Hours
 - (A) description of the basic operating principles of electronic time-distance speed measurement instruments;
 - (B) description of factors that can affect electronic time-distance speed measurement instrument accuracy and effectiveness.
- (4) Legal and Operational Considerations: 4 Hours
 - (A) identification and description of fundamental case law affecting the use of time-distance speed measurement for speed enforcement;
 - (B) description and application of accepted operating procedures of time-distance speed measurement instruments;
 - (C) demonstration of the ability to estimate vehicular speed in accordance with criteria specified on a standardized trainee performance evaluation form.
- (5) Classroom Familiarization with Specific Time-Distance Speed Measurement Instruments: 2 Hours

demonstration of familiarity with the functions and operating procedures of time-distance speed measurement instruments for which the trainee seeks certification.
- (6) Moot Court: 4 Hours
 - (A) preparation of complete, concise and effective direct testimony for time-distance speed measurement cases;
 - (B) respond properly and effectively to cross examination;
 - (C) demonstration of basic skills in preparing and presenting evidence and testimony concerning speed enforcement and time-distance speed measurement.
- (7) Supervised/Monitored Practice with Specific

Time-Distance Speed Measurement

Instruments:

8 Hours

- (A) description of the functional components of the time-distance speed measurement units for which the trainee seeks certification;
 - (B) description of the setup, calibration, and operation procedures of the time-distance speed measurement units for which the trainee seeks certification;
 - (C) operation and performance of all procedural requirements of actual patrol with the time-distance speed measurement units for which the trainee seeks certification.
- (8) Motor-Skill Performance Testing: 5 Hours
demonstration of the ability to successfully setup, calibrate and operate the time-distance speed measurement instruments for which the trainee seeks certification in accordance with criteria specified on a standardized trainee performance evaluation form.
- (9) Course Review 1 Hour
- (10) Written Test 2 Hours

Total 32 Hours

(d) The "Time-Distance Operator Course" as published by the North Carolina Justice Academy is hereby adopted incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for the time-distance speed measurement operator training course for time-distance speed measurement operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost at the address in this Rule.

Statutory Authority G.S. 17C-6.

.0226 SPECIALIZED INSTRUCTOR TRAINING - FIREARMS

- (a) The instructor training course requirement for specialized firearms instructor certification shall consist of a minimum of 83 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in a "Basic Recruit Training -- Law Enforcement" course or a "Law Enforcement Officers's In-Service Firearms Training and Qualification Program".
- (c) Each applicant for specialized firearms instructor

training shall:

- (1) have completed the criminal justice general instructor training course; and,
- (2) present a written endorsement by a certified school director indicating the student will be utilized to instruct firearms in "Basic Recruit Training--Law Enforcement" courses; or
- (3) present a written endorsement by a department head or certified school director indicating the student will be utilized to instruct firearms in a "Law Enforcement Officer's In-Service Firearms Training and Qualification Program"; and,
- (4) possess a current valid CPR Certification.

(d) Each specialized firearms instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation/Pretest	8 Hours
(2)	Range Operations	38 Hours
(3)	Civil Liability	4 Hours
(4)	Night Firing	2 Hours
(5)	Combat Shooting	8 Hours
(6)	Mental Conditioning	1 Hour
(7)	Shotgun Operation and Firing	4 Hours
(8)	Service Handgun - Operation and Use	5 Hours
(9)	Rifle - Operation and Maintenance	4 Hours
(10)	Service Handgun - Maintenance and Cleaning	2 Hours
(11)	Range Medical Emergencies	2 Hours
(12)	In-Service Firearms Requirements	2 Hours
(13)	BLET Lesson Plan Review/Post Test	3 Hours

(e) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as the basic curriculum for delivery of specialized firearms instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

(f) Commission-accredited schools that are accredited to offer the "Specialized Instructor Training - Firearms" course are: The North Carolina Justice Academy.

Statutory Authority G.S. 17C-6.

.0227 SPECIALIZED INSTRUCTOR TRAINING - DRIVING

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of

35 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a "Basic Recruit Training - Law Enforcement" course.

(c) Each applicant for specialized driver instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a written endorsement by a certified school director indicating the student will be utilized to instruct driving in "Basic Recruit Training--Law Enforcement" courses;
- (3) possess a valid operator driver's license;
- (4) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years; and,
- (5) possess a current valid CPR Certification.

(d) Each specialized driver instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	1 Hour
(2)	Lesson Plan Review (BLET)	4 Hours
(3)	General Mechanical Knowledge	2 Hours
(4)	Before - Operation Inspection	1 Hour
(5)	Laws of Natural Force & Operating Characteristics	4 Hours
(6)	Driver Practicum	16 Hours
(7)	Fundamentals of Professional Liability for Trainers	4 Hours
(8)	Course Review/State Exam	3 Hours

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as the basic curriculum for delivery of specialized driver instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

(f) Commission-accredited schools that are accredited to offer the "Specialized Instructor Training - Driving" course are: The North Carolina Justice Academy and The North Carolina State Highway Patrol.

Statutory Authority G.S. 17C-6.

.0228 BASIC TRAINING – WILDLIFE ENFORCEMENT OFFICERS

(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under General Statute 113-136 shall consist of a minimum of 556 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.

(b) Each basic training course for wildlife enforcement officers shall include the following identified topical areas and minimum instructional hours for each area:

(1)	Course Orientation	2 Hours
(2)	Constitutional Law	4 Hours
(3)	Laws of Arrest, Search and Detention	16 Hours
(4)	Mechanics of Arrest, Arrest Procedures	8 Hours
(5)	Law Enforcement Communications and Information System	4 Hours
(6)	Elements of Criminal Law	24 Hours
(7)	Defensive Tactics	32 Hours
(8)	Juvenile Law and Procedures	8 Hours
(9)	First Responder	40 Hours
(10)	Firearms	40 Hours
(11)	Hunter Safety	10 Hours
(12)	Patrol Techniques	16 Hours
(13)	Field Notetaking and Report Writing	12 Hours
(14)	Crisis Management	10 Hours
(15)	Criminal Investigation	12 Hours
(16)	Interviews; Field and In-Custody	8 Hours
(17)	Controlled Substances	6 Hours
(18)	ABC Laws and Procedures	4 Hours
(19)	Electrical and Hazardous Materials Emergencies	12 Hours
(20)	Law Enforcement Drivers Training	40 Hours
(21)	Preparing for Court and Testifying in Court	12 Hours
(22)	Game and Fish Laws	36 Hours
(23)	Motorboat Laws	12 Hours
(24)	Boating Procedures & Small Boat Handling	20 Hours
(25)	Dealing with Problem Animal Situations	4 Hours
(26)	Basic Field Identification of Fishes	6 Hours
(27)	Basic Field Identification of Game Animals, Game Birds and Non-Game Animals	2 Hours
(28)	Identification of Migratory Waterfowl	2 Hours
(29)	Endangered Species	2 Hours
(30)	Trapping	8 Hours
(31)	Water Safety and Swimming	16 Hours
(32)	Knotsmanship, A Practical Use of Rope	2 Hours
(33)	Wildlife Law Enforcement and the Media	8 Hours
(34)	Motorboat Accident Investigation	12 Hours
(35)	Civil Disorders	12 Hours
(36)	Radiological Monitoring	16 Hours

(37)	Covert Activities	2 Hours
(38)	Basic Photography	8 Hours
(39)	Motor Vehicle Laws	6 Hours
(40)	DWI Enforcement	2 Hours
(41)	Physical Training	60 Hours

(c) The "Wildlife Basic Training Manual" as published by the North Carolina Wildlife Resources Commission is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6, to apply as the basic curriculum for delivery of wildlife enforcement officer basic training courses.

(d) Commission-accredited schools that are accredited to offer the "Basic Training: Wildlife Enforcement Officers" course are: The Division of Enforcement Training Office of the North Carolina Wildlife Resources Commission.

Statutory Authority G.S. 17C-6; 17C-10.

.0232 SPECIALIZED INSTRUCTOR TRAINING - DEFENSIVE TACTICS

(a) The instructor training course required for specialized defensive tactics instructor certification shall consist of a minimum of 40 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized defensive tactics instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice defensive tactics instructor in a "Basic Recruit Training--Law Enforcement" course.

(c) Each applicant for specialized defensive tactics instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course;
- (3) present a written endorsement by a certified school director indicating the student will be utilized to instruct defensive tactics in "Basic Recruit Training--Law Enforcement" courses; and,
- (4) possess a current valid CPR Certification.

(d) Each specialized defensive tactics instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation/Pretest	4 Hours
(2)	Civil Liability	4 Hours
(3)	Response to Injury	4 Hours
(4)	Safety Rules	2 Hours
(5)	Lesson Plan Review (BLET)	2 Hours
(6)	Defensive Tactics Instructional Methods	24 Hours

(e) The "Specialized Defensive Tactics Instructor Training Manual" as published by the North Carolina Justice Academy is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of

the ~~adopted matter as authorized by G.S. 150B-14(e)~~
incorporated material as provided by G.S. 150B-21.6, to
apply as the basic curriculum for delivery of specialized
defensive tactics instructor training courses. Copies of this
publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

(f) Commission-accredited schools that are accredited to
offer the "Specialized Instructor Training - Defensive
Tactics" course are: The North Carolina Justice Academy.

Statutory Authority G.S. 17C-6.

.0233 SPECIALIZED INSTRUCTOR TRAINING - PHYSICAL FITNESS

(a) The instructor training course required for specialized
physical fitness instructor certification shall consist of a
minimum of 40 hours of instruction presented during a
continuous period of not more than one week.

(b) Each specialized physical fitness instructor training
course shall be designed to provide the trainee with the
skills and knowledge to perform the function of a criminal
justice physical fitness instructor in a "Basic Recruit
Training -- Law Enforcement" Course.

(c) Each applicant for specialized physical fitness training
shall:

- (1) qualify through one of the following three
options:
 - (A) have completed the criminal justice general
instructor training course; or
 - (B) hold a current and valid North Carolina
Teacher's Certificate and hold a minimum of
a baccalaureate degree in physical education
and be actively teaching in physical education
topics; or
 - (C) be presently instructing physical education
topics in a community college, college or
university and hold a minimum of a baccalaureate
degree in physical education; and
- (2) present a written endorsement by a certified
school director indicating the student will be
utilized to instruct physical fitness in "Basic
Recruit Training -- Law Enforcement" courses;
and
- (3) present a letter from a physician stating fitness
to participate in the course; and,
- (4) possess a current valid CPR Certification.

(d) Each specialized physical fitness instructor training
course shall include as a minimum the following identified
topic areas and minimum instructional hours for each area:

- | | |
|-----------------------------------|---------|
| (1) Orientation | 1 Hour |
| (2) Lesson Plan Review | 2 Hours |
| (3) Physical Fitness Assessments, | |

Exercise Programs and Instructional

- | | |
|------------------------------------|----------|
| Methods | 26 Hours |
| (4) Injury Care and Prevention | 3 Hours |
| (5) Nutrition | 3 Hours |
| (6) Civil Liabilities for Trainers | 3 Hours |
| (7) Examination | 2 Hours |

(e) The "Physical Fitness Instructor Training Manual" as
published by the North Carolina Justice Academy is hereby
~~adopted~~ incorporated by reference, and shall automatically
include any later amendments and editions of the ~~adopted~~
~~matter as authorized by G.S. 150B-14(e)~~ incorporated
material as provided by G.S. 150B-21.6, to apply as the
basic curriculum for delivery of specialized physical fitness
instructor training courses. Copies of this publication may
be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

(f) Commission-accredited schools that are accredited to
offer the "Specialized Instructor Training -- Physical
Fitness" course are: The North Carolina Justice Academy.

Statutory Authority G.S. 17C-6.

SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0400 - ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS AND TRAINING COURSES

.0401 ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS

(a) ~~Any school meeting the minimum requirements
contained in 12 NCAC 9B .0200 and submitting a properly
completed Request for School Accreditation shall be
accredited to provide criminal justice training courses.
Accreditation of a school shall remain effective for two
years from issuance unless earlier suspended or revoked. The
Commission shall establish a standing subcommittee of the
Education and Training Committee for the purposes of
evaluating Request for School Accreditation applications and
making recommendations to the Education and Training
committee on the granting of accreditation to institutions and
agencies. The Accreditation Committee shall be comprised
of two members appointed by the School Directors' Advi-
sory Committee and two members who shall be commission
members to include the North Carolina Department of
Community Colleges' representative to the Commission.
The Chairman of the Commission shall appoint the Chair-
man of the Accreditation Committee.~~

(b) Any existing Commission-issued accreditations issued
and valid on January 1, 1996 are automatically extended

with an expiration date of December 31, 1996. Previously issued accreditations with established expiration dates extending beyond December 31, 1996 are declared to be terminated and void on and after December 31, 1996. All new applicants for school accreditation shall meet the requirements of this section after January 1, 1996.

(c) ~~A school may renew its accreditation biennially by submitting an updated Request for School Accreditation. Any school meeting the minimum requirements contained in 12 NCAC 9B .0200 must submit a properly completed Request for School Accreditation application. Upon receipt of a properly completed Request for School Accreditation application;~~

- (1) The Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) The applying institution or agency shall be contacted concerning deficiencies and assistance shall be given on correcting problem areas;
- (3) The application and staff reports are submitted to the Accreditation Committee for review;
- (4) A recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application; and
- (5) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(d) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for just cause.

(e)(b) The identity of those schools accredited under this Rule shall be published and distributed annually by the Standards Division together with the name and business address of the school director and the schedule of criminal

justice training courses planned for delivery during the succeeding year.

(f) A school may apply for reaccreditation to the Commission by submitting a properly completed Request for School Accreditation application. The application for reaccreditation shall contain information on major changes in facilities, equipment, and staffing. Upon receipt of a properly completed application;

- (1) The Standards Division staff shall review the application for any omissions and clarification;
- (2) Copies of the site visits conducted during the last period of certification shall be attached to the application;
- (3) The application and staff reports shall be submitted to the Accreditation Committee for review;
- (4) A recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application;
- (5) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation of the applicant institution or agency.

(g) In instances where accredited schools have been found to be in compliance with 12 NCAC 9B .0200 through favorable site visit reports, Standards Division staff shall be authorized to reaccredit on behalf of the Commission. Such action shall be reported to the Commission through the Accreditation Committee and the Education and Training Committee at its next scheduled meeting.

(h)(d) The Commission may suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation.

Statutory Authority G.S. 17C-6.

SECTION .0600 - EQUIPMENT AND PROCEDURES

.0601 APPROVED SPEED-MEASURING INSTRUMENTS

(a) ~~The following speed measuring instruments are approved for radio-microwave (radar) use, provided they are not equipped with dual antennas:~~

- (1) ~~repealed~~
- (2) ~~repealed~~
- (3) ~~repealed~~
- (4) ~~repealed~~
- (5) ~~repealed~~
- (6) ~~repealed~~
- (7) ~~repealed~~
- (8) ~~repealed~~
- (9) ~~repealed~~
- (10) ~~repealed~~
- (11) ~~repealed~~
- (12) ~~Kustom HR-8~~
- (13) ~~Kustom HR-12~~

Stationary
Moving/Stationary

(14)	repealed	
(15)	repealed	
(16)	Kustom KR-11	Moving/Stationary
(17)	MPH K-15	Stationary
(18)	MPH K-55	Moving/Stationary
(19)	MPH S-80	Moving/Stationary
(20)	repealed	
(21)	repealed	
(22)	Decatur Ra-Gun (RAS & "N" Series)	Stationary
(23)	repealed	
(24)	Decatur Ra-Gun 1 and 2 (RAS) (Included in No. 22)	
(25)	Kustom KR-10 SP	Moving/Stationary
(26)	repealed	
(27)	repealed	
(28)	Kustom Falcon	Stationary
(29)	Kustom Roadrunner	Stationary
(30)	Kustom Trooper	Moving/Stationary
(31)	Decatur MVR 715	Moving/Stationary
(32)	Decatur MVR 724	Moving/Stationary
(33)	Decatur Hunter	Moving/Stationary
(34)	Kustom PRO-1000	Moving/Stationary
(35)	MPH K15 II (86)	Stationary
(36)	Applied Concepts Stalker	Moving/Stationary
(37)	Decatur Genesis	Moving/Stationary

(a) The following speed-measuring instruments are approved for radio microwave (RADAR) use, provided they are operated with a single antenna:

<u>Manufacturer</u>	<u>Model</u>	<u>Mode</u>
(1) <u>Kustom Signals, Inc.</u>	<u>HR-8</u>	<u>Stationary</u>
(2) <u>Kustom Signals, Inc.</u>	<u>HR-12</u>	<u>Moving/Stationary</u>
(3) <u>Kustom Signals, Inc.</u>	<u>KR-11</u>	<u>Moving/Stationary</u>
(4) <u>MPH Industries, Inc.</u>	<u>K-15</u>	<u>Stationary</u>
(5) <u>MPH Industries, Inc.</u>	<u>K-55</u>	<u>Moving/Stationary</u>
(6) <u>MPH Industries, Inc.</u>	<u>S-80</u>	<u>Moving/Stationary</u>
(7) <u>Decatur Electronics, Inc.</u>	<u>Ra-Gun</u>	<u>Stationary</u>
(8) <u>Kustom Signals, Inc.</u>	<u>KR-10 SP</u>	<u>Moving/Stationary</u>
(9) <u>Kustom Signals, Inc.</u>	<u>Falcon</u>	<u>Stationary</u>
(10) <u>Kustom Signals, Inc.</u>	<u>Roadrunner</u>	<u>Stationary</u>
(11) <u>Kustom Signals, Inc.</u>	<u>Trooper</u>	<u>Moving/Stationary</u>
(12) <u>Decatur Electronics, Inc.</u>	<u>MVR</u>	<u>Moving/Stationary</u>
(13) <u>Decatur Electronics, Inc.</u>	<u>Hunter</u>	<u>Moving/Stationary</u>
(14) <u>Kustom Signals, Inc.</u>	<u>Pro-1000</u>	<u>Moving/Stationary</u>
(15) <u>MPH Industries, Inc.</u>	<u>K-15 II</u>	<u>Stationary</u>
(16) <u>Applied Concepts, Inc.</u>	<u>Stalker ATR</u>	<u>Moving/Stationary</u>
(17) <u>Decatur Electronics, Inc.</u>	<u>Genesis I</u>	<u>Moving/Stationary</u>
(18) <u>Applied Concepts, Inc.</u>	<u>Stalker ATR</u>	<u>Stationary</u>
(19) <u>Applied Concepts, Inc.</u>	<u>Stalker DUAL</u>	<u>Moving/Stationary</u>
(20) <u>Applied Concepts, Inc.</u>	<u>Stalker DUAL SL</u>	<u>Moving/Stationary</u>
(21) <u>Kustom Signals, Inc.</u>	<u>Eagle</u>	<u>Moving/Stationary</u>
(22) <u>Kustom Signals, Inc.</u>	<u>Eagle; Plus</u>	<u>Moving/Stationary</u>
(23) <u>Kustom Signals, Inc.</u>	<u>Eagle; Silver</u>	<u>Moving/Stationary</u>
(24) <u>Kustom Signals, Inc.</u>	<u>Eagle; Golden</u>	<u>Moving/Stationary</u>
(25) <u>M.P.H. Industries, Inc.</u>	<u>BEE-36</u>	<u>Moving/Stationary</u>

(b) ~~The following speed-measuring instruments are approved for time-distance use provided that the instrument is not capable of accepting double time or double distance into the computer:~~

- (1) ~~repealed~~
- (2) ~~repealed~~
- (3) ~~repealed~~
- (4) ~~repealed~~
- (5) ~~Vasear Plus~~

Traffic Safety Systems, Inc.

(b) The following speed-measuring instruments are approved for time-distance use:

<u>Manufacturer</u>	<u>Model</u>	<u>Mode</u>
(1) <u>Traffic Safety Systems, Inc.</u>	<u>VASCAR-plus</u>	<u>Moving/Stationary</u>

(c) All approved models and types of radio microwave (radar) speed-measuring instruments are made subject to and restricted as follows:

- (1) The automatic operate functions have been disconnected.
- (2) The automatic alarms, audio and visual have been disconnected.
- (3) The automatic locking functions have been disconnected.
- (4) The instrument does not provide an external control that would permit the adjustment or correction of the zero or calibration readings.
- (5) The "High Speed Lock" function has been disconnected.

Note: The automatic functions that shall be disconnected are any and all automatic violation alarm or lock capabilities that occur prior to the speed measuring instrument being manually locked by the operator.

(d) All radar speed measuring instruments, as herein defined, purchased on or after July 1, 1982 for speed enforcement shall meet or exceed performance specifications as provided in the "Model Performance Specifications for Police Traffic Radar Devices" as prepared by the Law Enforcement Standards Laboratory of the National Bureau of Standards and published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) incorporated by reference herein and including any later amendments and editions as provided for in G.S. 150B-21.6. Copies of the document in this Rule are available from the agency address at the cost of three dollars and seventy-five cents (\$3.75) per copy.

(e) Prior to inclusion as an approved radar speed measuring instrument, the manufacturer of said instrument shall certify in writing to the agency that said instrument meets or exceeds the standards of 12 NCAC 9C .0601(d) and provide a copy of a testing report or other document illustrating the method and results used in such certification.

Statutory Authority G.S. 17C-6.

SUBCHAPTER 9D - PROFESSIONAL CERTIFICATE PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICERS' PROFESSIONAL CERTIFICATE

.0102 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications, ~~except as provided for in 12 NCAC 9D .0102(a)(4):~~

- (1) The officer shall presently hold general law enforcement officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics.
- (3) The officer shall be a full-time, sworn, paid member of a law enforcement agency within the state.
- (4) ~~Applicants who became full time, sworn, paid members of a law enforcement agency prior to~~

~~October 1, 1984, shall be evaluated under criteria in existence on April 30, 1986. This criteria shall be applied for a period of time not to exceed December 31, 1990.~~

- (4) ~~(5) Effective May 1, 1986, all~~ All applicants who ~~become~~ became full-time, sworn, paid members of a law enforcement agency within the state on or after October 1, 1984, shall be given credit for satisfactory completion of only one commission-accredited basic training program for purposes of calculating training points. ~~Furthermore, in addition to meeting the qualifications set forth in this Rule, these applicants shall also have acquired the combination of educational points or degrees, law enforcement training points and years of full time law enforcement experience as outlined in Rules .0103, .0104(a)(2), or .0105(a)(2) of this Section.~~
- (5) (6) Full-time, paid employees of a law enforcement agency within the State who have successfully completed a commission-accredited law enforcement officer basic training program and

have previously held general law enforcement officer certification as specified in 12 NCAC 9D .0102(a)(1), but are presently, by virtue of promotion or transfer, serving in non sworn positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the law enforcement agency from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula which combines formal education, law enforcement training, and actual experience as a law enforcement officer. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) Twenty classroom hours of commission-approved law enforcement training shall equal one point;
- (3) Only experience as a full-time, sworn, paid member of a law enforcement agency or equivalent experience shall be acceptable for consideration.

(c) Certificates will be awarded in an officer's area of expertise only. Separate sub-programs will be administered as follows:

- (1) General Law Enforcement Certificate. The General Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by units of local government with authority to arrest for any violation of the criminal law and to arrest anywhere within the boundaries of the unit, including:

- (A) municipal and county police officers,
- (B) local ABC board enforcement officers.

- (2) State Law Enforcement Certificate. The State Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by an agency of state government, with authority to arrest throughout the state, including:

- (A) Special agents of the State Bureau of Investigation,
- (B) State Highway Patrol officers,
- (C) State Alcohol Law Enforcement officers,
- (D) ~~License and theft~~ Division of Motor Vehicles officers,
- (E) Fisheries enforcement officers,
- (F) Wildlife enforcement officers, and
- (G) State forest rangers.

- (3) Special Law Enforcement Certificate. The Special Law Enforcement Certificate is appropriate for other full-time, sworn law enforcement officers with arrest authority, including:

- (A) Security officers for State buildings and agencies,
- (B) Airport security officers,
- (C) Campus police officers,
- (D) Company police officers,
- (E) Department of Correction extradition officers, and
- (F) Parks and recreation commissions enforcement officers.

(d) There shall be limited reciprocity between sub-programs. Only training and/or experience gained in an officer's area of expertise will be eligible for application to the sub-program.

Statutory Authority G.S. 17C-6.

.0104 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

- (1) ~~The following standard will be applied in evaluating applicants pursuant to Rule .0102(a)(4) of this Section:~~

Educational Degrees	AA/AS		AB/BS	
Years of Law Enforcement Experience	8	6	4	2
Minimum Law Enforcement Training Points	15		14	
Minimum Total Education and Training Points	30	60	90	14

~~(2) The following standard will be applied in evaluating applicants pursuant to Rule .0102(a)(5) of this Section:~~

Educational Degrees				AA/AS	AB/BS
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points	-	-	-	22	21
Minimum Total Education and Training Points	37	67	97	22	21

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

Statutory Authority G.S. 17C-6.

.0105 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

~~(1) The following standard will be applied in evaluating applicants pursuant to Rule .0201(a)(4) of this Section:~~

Educational Degrees				AA/AS	AB/BS	GRAD./PRO.
Years of Law Enforcement Experience	12	9	9	6	4	
Minimum Law Enforcement Training Points				24	18	14
Minimum Total Education and Training Points	60	90	24	18	14	

~~(2) The following standard will be applied in evaluating applicants pursuant to Rule .0102(a)(5) of this Section:~~

Educational Degrees				AA/AS	AB/BS	GRAD./PRO.
Years of Law Enforcement Experience	12	9	9	6	4	
Minimum Law Enforcement Training Points	-	-	31	25	21	
Minimum Total Education and Training Points	67	97	31	25	21	

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

located, the recognized national accrediting body, or the state university of the state in which the institution is located.

Statutory Authority G.S. 17C-6.

.0106 METHOD OF APPLICATION

(a) All applicants for an award of the basic, intermediate or advanced certificates in each sub-program shall complete an "Application for Award of Law Enforcement Certificate."

(b) Documentation of education and training shall be provided by certified copies of transcripts, diplomas, Report of Training Course Completion, agency training records, or other verifying documents attached to the application.

(c) The applicant shall submit the Application for Award of Law Enforcement Certificate to ~~his~~ the department head who shall attach ~~his~~ a recommendation and forward the application to the Commission. Certificates will be issued to the ~~D~~department head for award to the applicant.

(d) Certificates and awards remain the property of the Commission and the Commission shall have the power to cancel or recall any certificate or award.

Statutory Authority G.S. 17C-6.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rules cited as 13 NCAC 12 .0101, .0303, .0307 - .0309, .0501; adopt 12 .0304 - .0306, .0310 - .0315, .0803 - .0808; and repeal 12 .0502.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on Friday, June 2, 1995 at the Agriculture Building, Room 359, 2 W. Edenton Street, Raleigh, NC 27601.

Reason for Proposed Action: To update the Wage and Hour regulations. As part of the process of revising these rules, the Department proposes a rearrangement of the rule numbers in certain sections. This proposal is made for purposes of clarifying the rules.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX: (919) 715-5629; telephone: (919) 733-0368 by June 2, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the chair.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 12 - WAGE AND HOUR

SECTION .0100 - GENERAL PROVISIONS

.0101 WAGE AND HOUR DIVISION

The main office of the Wage and Hour Division, which administers the provisions of Article 2A of G.S. Chapter 95, is maintained ~~in the Raleigh office of the Department of Labor at 4 West Edenton Street, 413 N. Salisbury Street,~~ Raleigh, North Carolina ~~27604~~ 27603. The Division maintains ~~a branch offices office at 20 South Spruce Street, Asheville, North Carolina; 115 Broadfoot Avenue, Fayetteville, North Carolina; and 500 West Trade Street, Charlotte, North Carolina where it also receives public inquiries and complaints. Other field offices are maintained throughout the state where meetings may be arranged by appointment.~~ The Division's mailing address is:

Wage and Hour Division

North Carolina Department of Labor

~~4 West Edenton Street~~ 413 N. Salisbury St.

Raleigh, North Carolina ~~27604~~ 27603

919/733-2152.

Statutory Authority G.S. 95-25.17.

SECTION .0300 - WAGES

.0303 CERTIFICATION OF TIPS

(a) For the purpose of counting tips as wages pursuant to G.S. 95-25.3(f), acceptance of wages from the employer does not constitute certification by the employee of tips received.

(b) An employer must maintain accurate and complete records of each employee's tips, whether received individually or as part of a tip pooling arrangement. Individual contributions and resulting shares of any tip pooling ~~must~~ shall be recorded. In addition, an employer's records ~~must~~ shall show the amount claimed as a tip credit for each employee for each workweek. If the amount claimed as a credit cannot be calculated from the records for any workweek, the employer ~~may~~ shall not count the tips as wages.

(c) If an employer maintains the required records of each employee's tips, obtaining the signature or initials of the employees monthly or for each pay period constitutes certification by the employees and these tips ~~will~~ shall be counted as wages pursuant to G.S. 95-25.3(f).

(d) This Section applies only to tipped employees who do not participate in a tip pooling arrangement. If the tipped employee refuses to certify tips accurately and completely, tips may still be counted as wages when the employer complies with the provisions of G.S. 95-25.3(f) and can demonstrate by showing timely written documentation that a tipped employee regularly receives tips in the amount for

which the tip credit is taken. While no particular form of written documentation is required, it is sufficient for a tipped employee to certify tips in the amount for which the tip credit is taken or for the employer to show that a tipped employee similarly situated certifies that he or she regularly receives tips in the amount for which the tip credit was taken. Such certification shall be made each pay period or month.

(e) If tipped employees are participating in a tip pooling arrangement, the employer is required under all circumstances to keep accurate and complete records of tips received by each employee participating in the tip pooling arrangement.

Statutory Authority G.S. 95-25.3; 95-15; 95-19.

.0304 EMPLOYER ADDED SERVICE CHARGES AND GRATUITIES

(a) Service charges included by the employer in the charge to the customer constitute amounts due the business and are not tips within the meaning of the term as defined in G.S. 95-25.2(15). An employer's retention of all or part of such a service charge shall not, unless otherwise promised, violate the requirement of G.S. 95-25.6 to pay all wages and tips accruing to the employee, nor shall such retention invalidate an otherwise valid tip credit arrangement.

(b) A gratuity added by the employer to the charge to the customer is a tip, which, absent an agreement to the contrary, belongs the employee.

Statutory Authority G.S. 95-25.2(15); 95-25.6; 95-25.19.

.0305 TIPS CHARGED ON CREDIT CARDS

(a) Where tips are charged on credit cards, employers may retain from the tips an amount up to or equal to the pro rata portion of the fee charged by the credit card company that is attributable to the tips. When employers make such retentions, they do so without violating G.S. 95-25.6 and without becoming disqualified from claiming the tip credit on the charged tip because the tipped employee has not been allowed to retain all tips pursuant to G.S. 95-25.3(f).

(b) Where tips are part of the employee's compensation, tips charged on credit or charge cards accrue to the employee at the time they are charged and shall be paid on or before the payday of the pay period in which they are charged.

Statutory Authority G.S. 95-25.3; 95-25.6; 95-25.19.

.0306 TIP POOLING

(a) In a tip pooling arrangement, for the purposes of G.S. 95-25.6 "tips accruing to the employee" shall mean either the employee's share of the tip pool or 85% of the employee's tips before they were pooled, whichever is greater.

(b) When an employer allows a tipped employee, who is participating in a tip pooling arrangement, to retain the amount specified in Paragraph (a) of this Rule, the employer

has satisfied the provision under G.S. 95-25.3(f) requiring the employer to allow the tipped employee to retain all tips.

(c) An employer shall give each employee who is required to participate in a tip pooling arrangement advance notice of the arrangement in accordance with G.S. 95-25.13. Employees not so notified are not subject to the tip pooling arrangement, unless they otherwise agree to it.

(d) Only those employees who are employed in occupations that customarily and regularly receive tips may share in a tip pooling arrangement. Examples of such occupations include waiters, waitresses, bellhops, busboys/girls, and bartenders. Examples of occupations that shall not participate in tip pooling arrangements include janitors, dishwashers, chefs and cooks.

Statutory Authority G.S. 95-25.3(f); 95-25.6; 95-25.13; 95-25.19.

.0307 ~~.0305~~ AUTHORIZATION FOR WITHHOLDING OF WAGES

(a) An authorization by an employee which will allow the employer to withhold or divert a portion of an employee's wages ~~must~~ shall be in writing and ~~must~~ specify the reason for the deduction.

(b) An authorization for withholding of wages ~~must~~ shall be signed on or before the payday for the pay period from which the deduction is to be made. The two permissible types of authorization are the specific authorization and the blanket authorization.

(c) A specific authorization may be for one or more paychecks and ~~must~~ shall state the dollar amount or percentage of wages which the employee agrees may be deducted from each paycheck. Employees ~~must~~ shall be given a reasonable opportunity to withdraw specific authorizations if such deductions are for their convenience. Deductions for the convenience of the employees may include, but are not limited to, such things as insurance, savings plans, credit union installments, savings bonds, union or club dues, uniform rental, uniform cleaning, parking and charitable contributions. ~~All other authorizations for withholding of specific amounts, once agreed upon by an employee, may not be withdrawn. A payroll deduction that satisfies a requirement of the employer is not a deduction for the convenience of the employee within the meaning of G.S. 95-25.8(2), and the employer is not required to give employees a reasonable opportunity to withdraw their authorization prior to making such a deduction.~~

(d) A blanket authorization may be signed by an employee which authorizes specific categories of deductions or withholdings without specifying an actual dollar amount. When the amount of any such deduction becomes known, the employer ~~may~~ shall not make the deduction until the employee has been given advance notice of the specific amount of the proposed deduction and has been given a reasonable opportunity to withdraw his authorization before the deduction is made. What constitutes advance notice for deductions involving cash shortages, inventory shortages, or loss or damage to an employer's property is at least the

seven day period prescribed in G.S. 95-25.9 and Rule .0304 of this Section.

(e) Specific and blanket authorizations signed by an employee ~~may~~ shall not waive and ~~must~~ shall comply with the authorization requirements, monetary limitations and time requirements specified in G.S. 95-25.8, 95-25.9 and 95-25.10 of the Wage and Hour Act, and the rules and regulations promulgated thereunder.

(f) G.S. 95-25.8(2) requires the employer under certain circumstances to give the employee a reasonable opportunity to withdraw the employee's authorization. In determining whether the employee was in fact given a "reasonable opportunity", such factors as the amount of time between when the employee was given advance notice of the employer's intent to deduct under the authorization, the time of the deduction, and the accessibility to the employee of the person designated to receive such withdrawals shall be considered, but under no circumstances shall an employee be found to have been given a reasonable opportunity to withdraw the authorization if the employee did not have knowledge of the right to withdraw. While not required, the inclusion of a notice of the right to withdraw in the authorization signed by the employee shall be presumptive evidence that the employee had knowledge of that right.

(g) The taking of a wage credit for an advancement of wages does not fall within the scope of G.S. 95-25.8(2), and no written authorization is required prior to crediting the advancement toward wages due.

(h) An employee's authorization in accordance with G.S. 95-25.8(2) to allow an employer to withhold or divert a portion of the employee's wages shall be invalid if the reason for the deduction or withholding is illegal. For example, G.S. 97-21 invalidates agreements by an employee to pay any portion of a premium paid by his or her employer to a workers' compensation insurance carrier, and 13 NCAC 7F.0101(a) requires the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job. If an employer withholds or diverts wages for either of these reasons, even if the employee authorizes the withholding in writing pursuant to G.S. 95-25.8(2), the employer shall be in violation of G.S. 95-25.6 or G.S. 95-25.7, or both, because that authorization is invalid.

(i) If the employer obtains written authorization pursuant to G.S. 95-25.8(2)(a) to withhold a specific amount or percentage from a series of paychecks to recover an amount other than an advance owed to the employer and includes in the authorization a provision for deducting the balance of the unpaid amount from the employee's paycheck in the event the employee separates before the full amount has been collected, the employer may deduct as much of the balance possible from the final paycheck without having to give the employee notice of the amount and a reasonable opportunity to withdraw his or her authorization as required by G.S. 95-25.8(2)(b), subject to the withholding limitations of G.S. 95-25.10. If the employer does not include in the specific authorization an express provision to deduct the balance

upon an employee's separation, then an employer shall not deduct from the final paycheck an unpaid balance which is greater than the specific amount or percentage authorized unless an additional authorization is obtained.

(j) Where tips or the reasonable costs of furnishing employees with meals, lodging or other facilities are credited as wages paid to an employee pursuant to the provisions of Chapter 95, Article 2A and this Chapter, the employer is not required to obtain prior written authorization pursuant to G.S. 95-25.8(2) since a wage credit is not a withholding of wages.

(k) An employer shall comply with G.S. 95-25.8(2) before making a deduction from an escrow or bond account funded by wages and established for the purpose of recovering amounts owed to the employer.

Statutory Authority G.S. 95-25.8; 95-25.9; 95-25.10; 95-25.11; 95-25.13, 95-25.19.

.0308 .0306 VACATION PAY

(a) The purposes of the vacation provisions of the Wage and Hour Act are to ensure that employees know what their vacation benefits are and that they receive the promised benefits. Employees ~~must~~ shall be notified of ~~company~~ the employer's policies and practices concerning vacation pay in two ways. Pursuant to G.S. 95-25.13(1), ~~an employee~~ employees must shall initially be notified orally or in writing at the time of hiring. Pursuant to G.S. 95-25.13(2), ~~an employee~~ employees must shall also subsequently be notified by making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the ~~employee~~ employees. All vacation policies and practices communicated to employees ~~must~~ shall address: the method of vacation calculation so that the ~~employees know~~ employee knows the number of days of vacation to which ~~he is~~ they are entitled; whether or not vacation days may be carried forward from one year to another; when vacation days must be taken; when and if vacation pay may be paid in lieu of time off; and, under what conditions and in what amount vacation pay will be paid upon termination. Ambiguous policies and practices ~~will~~ shall be construed against the employer and in favor of the employees.

(b) ~~If a company provides vacations, all vacation time or payment in lieu of time off must be paid to the employees in accordance with established company policy or past practice as known and understood by the employees.~~

(b)(e) Any employer who fails to notify an employee in accordance with G.S. 95-25.13 and Paragraph (a) of this Rule, of any policy or practice which requires or results in a loss or forfeiture of vacation time or pay, is liable for such vacation time and pay without loss or forfeiture by the employee.

Statutory Authority G.S. 95-25.12; 95-25.13; 95-25.19.

.0309 .0307 BONUSES AND COMMISSIONS

(a) Payment of wages based on bonuses, commissions or other forms of calculation may be paid as infrequently as annually, so long as employees are notified in advance of earning such wages of the employer's time for payment of such wages. Employees ~~must~~ shall also be notified in accordance with the provisions of G.S. 95-25.13 of any ~~company~~ policy or practice which requires or results in forfeiture of such wages.

(b) Employees ~~must~~ shall be notified of the time for payment and of forfeiture policies relating to wages based on bonuses, commissions or other forms of calculation in two ways. Pursuant to G.S. 95-25.13(1), ~~an employee~~ employees must shall initially be notified orally or in writing at the time of hiring. Pursuant to G.S. 95-25.13(2), ~~an employee~~ employees must shall subsequently also be notified by making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the ~~employee~~ employees.

(c) Any employer who fails to notify an employee in accordance with G.S. 95-25.13, and Paragraphs (a) and (b) of this Rule, is liable for such wages based on bonuses, commission or other forms of calculation without forfeiture by the employee.

Statutory Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19.

.0310 FINAL PAY

(a) For the purposes of determining pursuant to G.S. 95-25.7 the payday on which separated employees shall be paid all wages due, the "next regular payday" is that payday for the pay period during which the employee separates from employment or, in the case of commissions, bonuses and other forms of calculation, the first regular payday is that payday for the pay period during which such wages become calculable.

(b) G.S. 95-25.7 requires the employer to mail the final paycheck to the employee at its own expense if requested by the employee. Employers shall not withhold the final paycheck because the employee refuses to come to the business office or place of employment to pick up the paycheck if the employee requests the employer to mail it to him/her in accordance with G.S. 95-25.7. The employer may require the employee to provide a notarized or witnessed written request to avoid fraudulent requests. In all cases, the employee is owed the wages due until he/she receives his/her final paycheck. However, if the check is dishonored by the financial institution against which it is drawn, then the employer's obligation to pay the wages remains.

(c) If an employee requests to receive the final paycheck by mail pursuant to G.S. 95-25.7, the employer shall not, without written authorization pursuant to G.S. 95-25.8, deduct any costs related to the replacement of a paycheck which is lost or stolen prior to the employee's receipt of the check.

Statutory Authority G.S. 95-25.7; 95-25.8; 95-25.19.

.0311 ADVANCEMENT OF WAGES

(a) The requirement of G.S. 95-25.6 that the employer shall pay every employee all wages and tips accruing to the employee on the regular payday is met if the employer pays the accrued wages in advance of the regular payday.

(b) Any form of wages advanced by an employer to an employee which have not been repaid by the employee may be used by the employer as a credit toward any other form of wages due the employee. For example, if an employer has advanced an employee two weeks' wages and the employee quits after working only one more week, the employer may credit the second week's advanced wages toward any vacation pay owed to the employee at separation.

(c) Amounts which an employer has advanced to an employee through a payment to a third party primarily for that employee's benefit and at the employee's request or with the employee's knowledge and consent may be credited toward wages owed to the employee without first obtaining the prior written authorization required by G.S. 95-25.8(2). For example, if an employer pays an employee's car loan payment at the employee's request, the employer may credit the amount paid on the employee's behalf as an advance toward the employee's accrued wages. A dated receipt evidencing the payment to the third party, signed by the employee, shall be sufficient to show that the advancement was requested or approved and made.

Statutory Authority G.S. 95-25.2(16); 95-25.8; 95-25.19.

.0312 LOANS FROM EMPLOYERS TO EMPLOYEES

(a) In the absence of an executed loan document, the principal of a loan from an employer to an employee is an advance of wages. The loan shall be from the employer and not a personal loan merely from a supervisor or another employee. If the employer is a corporation, the loan shall have been made from corporate funds. If the employer is a sole proprietor or a partnership, a loan from the proprietor or any partner shall constitute a loan from the employer and may be treated as an advance of wages.

(b) A loan includes credit advanced by the employer to an employee for purchasing from the employer items not primarily for the benefit of the employee.

(c) A deduction for interest and other charges related to the loan shall only be withheld from the employee's wages with proper authorization under G.S. 95-24.8(2).

(d) A loan from a third party, such as a bank or credit union, is not an advance of wages, and written authorization under G.S. 95-25.8(2) shall be secured by the employer prior to deducting for such a loan.

Statutory Authority G.S. 95-25.2(16); 95-25.8; 95-25.13; 95-25.19.

.0313 MISCALCULATION OF WAGES

(a) An overpayment to an employee as a result of a miscalculation of wages or other bona fide error may be

treated as an advance.

(b) When a miscalculation of wages or other bona fide error results in a payment of wages less than the actual wages accrued during the pay period, a violation of G.S. 95-25.6 shall have occurred, and the employer shall pay the amount due as soon as possible upon the discovery of the error together with interest at the legal rate set forth in G.S. 24-1 from the date the wages first became due.

Statutory Authority G.S. 95-25.2(16); 95-25.6; 95-25.19.

.0314 FORM OF PAYMENT OF WAGES

Since G.S. 95-25.6 and G.S. 95-25.7 do not provide for a specific form of payment, the employer may select any legal form of payment, so long as payment is made in full on the designated payday, subject to authorized deductions and legal withholdings. Acceptable forms of payment include cash, money order, negotiable checks, and direct deposit into an institution whose deposits are insured by the United States government or an institution selected by the employee.

Statutory Authority G.S. 95-25.6; 95-25.7; 95-25.19; 95-245.

.0315 OTHER AMOUNTS PROMISED AS WAGES

So long as the employer has promised to make such payments and has a policy or practice of making such payments, wages in the form of "other amounts promised" as that term is used in G.S. 95-25.2(16) include, but are not limited to such other forms of compensation as travel expenses, holiday pay, birthday pay, jury duty pay, shift premium pay, prizes such as trips if commission quota is met, moving expenses, educational expenses, telephone expenses, and other reimbursements so long as the employer has promised to make such payments and has a policy or practice of making such payments.

Statutory Authority G.S. 95-25.2(16); 95-25.19.

SECTION .0500 - JURISDICTION AND EXEMPTIONS

.0501 EXEMPTIONS

(a) The exemption from minimum wage, overtime, youth employment and recordkeeping, for any person covered by the Fair Labor Standards Act, applies to persons whose wages, overtime, and conditions and records of employment are regulated by the Fair Labor Standards Act and the rules promulgated thereunder. Persons covered by the Fair Labor Standards Act, but whose wages, overtime, and conditions and records of employment are exempted from federal regulation, are subject to the state wage and hour provisions unless specifically exempted by the Wage and Hour Act.

(a) Subject to the specific exceptions stated in subdivisions a, b, and c of G.S. 95-25.14(a)(1), that subdivision exempts from minimum wage, overtime, and youth

employment coverage of the Wage and Hour Act certain, but not all employees covered by the minimum wage, overtime, and youth employment provisions of the Fair Labor Standards Act, 29 USC §201 et seq (herein "FLSA"). Only those employees employed by an "enterprise engaged in commerce or the production of goods for commerce" as defined in 29 USC §203(s) are exempt from those provisions of the Wage and Hour Act. Employees who are covered by the FLSA by virtue of their involvement in interstate commerce, but who are not employed by an enterprise engaged in interstate commerce, are not exempt from the Wage and Hour Act provisions under this subdivision and are covered by both Acts.

(b) For the purpose of clarifying the exemptions under G.S. 95-25.14(a)(1)(c) of the Wage and Hour Act, where the FLSA provides an exemption from minimum wage, overtime or child labor to an employee in a FLSA covered enterprise and the Wage and Hour Act does not contain the same exemption, the employees and employers so exempted by the FLSA shall be covered under the North Carolina Act. The following are some examples of FLSA covered enterprises whose employees, exempted from FLSA provisions, continue to have full minimum wage and overtime coverage under G.S. 95-25.3 and G.S. 95-25.4 of the Wage and Hour Act due to the FLSA exemption noted:

- (1) Seasonal amusement or recreational establishments as exempted under 29 USC §213(a)(3).
- (2) Small newspapers as exempted under 29 USC §213(a)(8).
- (3) Small public telephone companies as exempted under 29 USC §213(a)(10).

(c) Where the FLSA provides exemptions from its overtime requirements to certain FLSA covered employees or employers and the Wage and Hour Act does not contain the same exemption, such FLSA exempted employees and employers shall be covered under the North Carolina Act. The following are some examples of such employees and employers:

- (1) Outside buyers of poultry, eggs, and milk as exempted under 29 USC §213(b)(5).
- (2) Small grain elevators as exempted under 29 USC §213(b)(14).
- (3) Maple sugar or syrup processors as exempted under 29 USC §213(b)(15).
- (4) Employees engaged in intra-state transportation of fruits or vegetables as exempted under 29 USC §213(b)(16).
- (5) Motion picture theaters as exempted under 29 USC §213(b)(27).
- (6) Small lumbering or forestry operations as exempted under 29 USC §213(b)(28).
- (7) Newspaper carriers and makers of wreaths composed of natural materials as exempted under 29 USC §213(d).

(d) Where the FLSA contains an overtime exemption which provides a method for calculating overtime in the alternative to the normal time and one-half the regular rate

of pay for hours worked in excess of 40 in a workweek, and the North Carolina Wage and Hour Act does not contain such exemptions, the Wage and Hour Act adopts by reference the FLSA exemption with the alternate overtime calculation methods and applies those methods to similar state-covered businesses. The following are examples of FLSA overtime exemptions which provide for an alternate method for calculating overtime and which are adopted by reference under G.S. 95-24.14(a)(1)(c):

- (1) 29 USC §207(b)(3) which exempts employees of certain petroleum distributors.
- (2) 29 USC §207(f) which exempts certain employees who work irregular hours and are paid a guaranteed salary.
- (3) 29 USC §207(g) which exempts certain piece rate workers.
- (4) 29 USC §207(i) which exempts certain commissioned inside salespersons in retail.
- (5) 29 USC §207(j) which exempts certain employees of hospitals, nursing homes, old age homes.
- (6) 29 USC §207(m) which exempts certain seasonal employees at tobacco warehouses and auctions.
- (7) 29 USC §207(n) which exempts certain bus drivers.
- (8) 29 USC §213(b)(2) which exempts certain employees of concessionaires in national parks.
- (9) 29 USC §213(h) which exempts certain seasonal employees in cotton ginning, sugarcane or sugarbeet processing.
- (10) 29 USC §213(i) which exempts certain seasonal employees in local cotton ginning.
- (11) 29 USC §213(j) of the FLSA which exempts certain seasonal employees in sugar processing.

(e)(b) The statutory exemption from certain wage and hour provisions for the spouse, child, parent or dependent of the employer applies equally to the spouse, child, parent or dependent of corporate officers. For the purposes of this Section only, corporate officers are those who directly head control the day to day affairs of the establishment and:

- (1) are majority stockholders, or
- (2) are principal stockholders with voting control, or
- (3) are in voting control through stock ownership or with joint ownership of spouse or family.

(f)(e) Homes for dependent children pursuant to G.S. 95-25.14(c)(6) include institutions and group homes for dependent children.

Statutory Authority G.S. 95-25.14; 95-25.19.

.0502 COUNTING EMPLOYEES

(a) For the purpose of establishing jurisdiction pursuant to G.S. 95-25.14(b)(5), a proprietor or owner who works in and about his enterprise is not counted as a person employed in the enterprise.

(b) With respect to a business set up as a corporation, if an officer of the corporation only performs duties of an executive nature, he will not be counted as an employee. However, if an officer performs managerial or other

non executive duties, he is an employee of the corporation and will be counted for jurisdictional purposes.

(c) With respect to partnerships, a partner who has a substantial ownership interest and functions as a proprietor or owner will be treated as an employer. Where the partnership interest and incidence of ownership authority are de minimis, a partner will be counted as an employee.

(d) Part time employees and family members who work in an enterprise will be counted in determining the number of persons employed for jurisdictional purposes.

(e) The number of employees at an enterprise who work during the course of a workweek, not the number of employees working on any particular day, determines the wage and hour jurisdiction for any workweek.

Statutory Authority G.S. 95-25.14; 95-25.19.

SECTION .0800 - RECORDKEEPING

.0803 SCOPE OF PROMISED WAGES

For the purposes of G.S. 95-25.13, the term "promised wages" includes all forms of wages as defined in G.S. 95-25.2(16), and any policy or practice with regard to such wages.

Statutory Authority G.S. 95-25.2(16); 95-25.19; 95-245.

.0804 NOTIFICATION AT TIME OF HIRING

(a) The purpose of the notice provision of G.S. 95-25.13(1) is to ensure that employees know at the time of hiring what wages they are promised, as well as any policies or practices of the employer that may affect the rate or amount of wages. The employee shall not be subject to any policy or practice that decreases the employee's wages if the employer does not provide the employee with express notice orally or in writing of such policy or practice.

(b) A dated copy of an employer's written notification of the promised wages bearing an employee's signature shall be presumptive evidence of the employer's notification to that employee of the information contained in the notice on the date stated.

(c) If an employer fails to inform an employee at the time of hiring of any policy or practice regarding promised wages which creates additional earning prerequisites or which could result in a decrease in the employee's wages, the policy or practice shall not be effective as to that employee until the employee is notified of the policy or practice pursuant to G.S. 95-25.13(1).

Statutory Authority G.S. 95-25.13(1); 95-25.19.

.0805 NOTIFICATION DURING TENURE OF EMPLOYMENT

(a) The purpose of G.S. 95-25.13(2) is to ensure that employees have ready access to a written statement of the employer's policies and practices regarding promised wages throughout their tenure with the employer so that they are capable of making use of the information contained therein.

If the employer chooses to comply with this notice requirement by posting a copy of its practices and policies relating to the promised wages, they must be posted in such a manner and in such a place and during such times as to meet the purpose of this Section. If not so posted, the employer shall ensure that a written copy of such policies and practices is freely obtainable or easily accessible in a timely manner for review by the affected employees.

(b) While not the only acceptable method for compliance, an employer who gives to all its employees an "employee handbook" or other written statement setting forth the policies and practices with regard to promised wages shall be presumed to have met the requirement of G.S. 95-25.13(2).

(c) Payroll records, including check stubs, if made available to employees, may be used to satisfy the requirement of G.S. 95-25.13(2) for wages promised in the form of hourly pay, salary or other form whose terms are readily identifiable from the payroll records.

(d) The employer's failure to comply with the requirement to have a policy or practice in writing under G.S. 95-25.13(2) shall not affect the employer's obligation to pay employees all wages promised in accordance with the employer's unwritten policy or practice with regard to such wages.

(e) A policy or practice resulting in the loss or forfeiture of vacation time or pay, commissions, bonuses, or other forms of calculation is not subject to Paragraph (d) of this Rule and such policies or practices shall be unenforceable if they are not in writing as required under G.S. 95-25.13(2).

Statutory Authority G.S. 95-25.13(2); 95-25.19; 95-245.

.0806 NOTIFICATION OF CHANGES IN PROMISED WAGES

(a) The purpose of G.S. 95-25.13(3) is to ensure that employees know of any changes in promised wages prior to the time of such changes, particularly changes that decrease their wages. The employer is required to take appropriate actions reasonably calculated to inform the affected employees, in writing or through a posted notice, of such changes. The notice shall be such that a reasonable employee acting with ordinary diligence would be informed of the change in promised wages.

(b) A change in an employer's policy or practice may occur in two ways:

- (1) in writing; or
- (2) through a succession of consistent actions taken by the employer which deviate from a prior written or unwritten policy or practice.

(c) The determination whether the set of actions with regard to promised wages constitute a "change" in the employer's practice or policy shall be made depending on such factors as the number, consistency, timing and reason for the deviating actions.

(d) No change in a policy and practice with regard to promised wages, whether in writing or not, shall be effective

until written notice is given to the employees as required in G.S. 95-25.13(3), except to the extent that such changes have the effect of increasing wages.

Statutory Authority G.S. 95-25.13(3); 95-25.19; 95-245.

.0807 MEANING OF "MAINTAINED IN A PLACE ACCESSIBLE"

For the purposes of G.S. 95-25.13(2) and (3), the phrase "maintained in a place accessible" applies to the posting and to the writing. "Accessible" with respect to posting means "easily approached and viewed for reading", at a place designated for such purposes and regularly frequented by the affected employees. "Accessible" with respect to the writing means "easily and promptly obtained or viewed for reading" at a place designated for maintaining such writings.

Statutory Authority G.S. 95-25.19; 95-245.

.0808 METHODS OF PROVIDING EMPLOYEES WITH ITEMIZED STATEMENT OF DEDUCTIONS

G.S. 95-25.13(4) requires the employer, in all circumstances, to furnish the employee with an itemized statement of deductions made from that employee's wages under G.S. 95-25.8. Generally, the employer shall provide such a statement in writing. However, it is also sufficient for the employer to furnish the employee with the itemized statement of deductions via telecommunications, for example, electronic mail, but only if such a transmission is capable of being printed out as a paper copy by the employee.

Statutory Authority G.S. 95-25.19; 95-245.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules pertaining to the Wage and Hour Act. The agency will subsequently publish in the *Register* the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-25.1 et seq.

Proposed Effective Date: October 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on Friday June 2, 1995 at the Agriculture Building, 2 West Edenton Street, Room 359, Raleigh, NC.

Reason for Proposed Action: To provide necessary rules for the Wage and Hour Act, particularly with regard to recordkeeping and youth employment issues.

Comment Procedures: Please submit your comments to

Mr. Scott Templeton, APA Coordinator, N.C. Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by June 2, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules regarding the Migrant Housing Act of North Carolina. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-222 et seq.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on August 18, 1995 at the NC Department of Agriculture Building, 2 W. Edenton Street, Room 359, Raleigh, NC 27601.

Reason for Proposed Action: To update the administrative rules regarding the Migrant Housing Act.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Department of Labor, 4 West Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by August 18, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules regarding regulation of job listing services. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-47.19 et seq.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on May 18, 1995 at the NC Department of Agriculture Building, 2 W. Edenton Street, Room 359, Raleigh, NC 27601.

Reason for Proposed Action: To provide administrative rules for the Regulation of Job Listing Services Act.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Department of

Labor, 4 West Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by May 18, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules pertaining to the Retaliatory Employment Discrimination Act. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-240 et seq.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on Thursday, May 18, 1995 at the Agriculture Building, 2 West Edenton Street, Room 359, Raleigh, NC 27601.

Reason for Proposed Action: To provide rules for the Retaliatory Employment Discrimination Act.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by May 18, 1995. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Sedimentation Control Commission intends to adopt rule cited as 15A NCAC 4B .0028.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on May 8, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: This new rule is needed to clarify the authority of the Sedimentation Control Commission to regulate land-disturbing activities under-taken by railroad companies. Specifically, the Commission must recognize a zone of federal preemption within railroad rights-of-way which is established by federal law. Outside

this zone, the Office of the Attorney General has advised that the Commission does have authority to enforce the Sedimentation Pollution Control Act of 1973.

Comment Procedures: Any person requiring information may contact Mr. Craig Deal, Land Quality Section, PO Box 27687, Raleigh, NC 27611 - Telephone - (919) 733-4574. Written comments may be submitted to the above address no later than May 17, 1995.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 4 - SEDIMENTATION CONTROL

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

.0028 RAILROAD COMPANIES

(a) The Commission recognizes that under the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. 421 et seq., as interpreted by federal administrative rules and court decisions, existing railroad roadbeds comprise a zone of federal preeminence within which federal law takes precedence over the Act [the SPCA].

(b) While the specific definition of this zone of federal preeminence is a question of federal law and regulation, in general the zone of federal preeminence extends outward from the center of the railroad roadbed to and including drainage ditches and spoil banks on either side of the roadbed.

(c) In the event of a derailment, washout, or other emergency condition which requires immediate action to protect public safety, the zone of federal preeminence temporarily expands, for the duration of the emergency condition, to encompass areas adjacent to the roadbed within which emergency repairs are undertaken pursuant to the FRSA and Federal Railroad Administration rules.

(d) The Act and rules do not apply to activities conducted within the zone of federal preeminence. The Act and rules apply to all other activities conducted by railroad companies.

(e) A railroad company's failure to comply with a requirement of the Act or rules in order to avoid creating a safety hazard or to avoid noncompliance with a federal safety requirement is not a knowing or willful violation of the Act or rules.

(f) The Commission will provide advice and technical assistance to railroad companies in the development and implementation of voluntary best management practices to reduce environmental impacts that may otherwise result from activities conducted within the zone of federal preeminence.

Statutory Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 1 - NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to amend rule cited as 21 NCAC 1 .0101; adopt rules .0401 and .0402.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 3:00 p.m. on May 2, 1995 at the Pack Memorial Library, 67 Haywood St., Asheville, NC.

Reason for Proposed Action:

21 NCAC 1 .0101 - This rule was adopted effective August 1, 1994. A typographical error was made and the word "not" was left out.

21 NCAC 1 .0401 & .0402 - To adopt rules to establish practice parameters and procedures for the practice of acupuncture in North Carolina.

Comment Procedures: Any person may submit written comments to the Board until May 17, 1995 or speak to the Rule-making Coordinator at the Public Hearing on May 2, 1995 at 3:00 p.m. at Pack Memorial Library in Asheville, NC.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .0100 - LICENSURE

.0101 QUALIFICATIONS FOR LICENSURE

In addition to and for the purposes of meeting the requirements of G.S. 90-455 an applicant for licensure to practice acupuncture shall:

- (1) Submit a completed application,
- (2) Submit fees as required by Rule .0103 of this Section,
- (3) Submit proof of a score of not less than 70% on the National Commission for the Certification of Acupuncturists (NCCA) certifying examination or a score of not less than 70% from any state utilizing the NCCA examination,
- (4) Submit a certified copy, certified by the issuing institution, of a transcript including evidence of graduation from a three-year postgraduate acupuncture college,
- (5) Submit proof of successful completion of the Clean Needle Technique course offered by the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM),

- (6) With any document that is not in English in its original form, submit a translation of it into English by someone other than the applicant. Each translated document shall have affixed to it a notarized statement of the translator certifying that he or she is competent in both the language of the original document and English and that the translation is a true and complete translation of the foreign language original. The applicant shall assume the cost of any document necessary for a complete application.
- (7) Submit all correspondence to North Carolina Acupuncture Licensing Board, P.O. Box 25171, Asheville, NC 28803.

Statutory Authority G.S. 90-454; 90-455.

SECTION .0400 - PRACTICE PARAMETERS AND PROCEDURES

.0401 PRACTICE PARAMETERS

The following are the practice parameters for acupuncturists in North Carolina:

- (1) A licensed acupuncturist shall practice within the scope of training offered by a college certified by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.
- (2) A licensed acupuncturist must practice within the confines of his training. Parameters for diagnosis and treatment of patients include, Five Elements, Eight Principles, Yin Yang Theory, Channel Theory, Organ Theory, Six Stage and 4 Aspects of Disease Progressions.

Statutory Authority G.S. 90-454.

.0402 ACUPUNCTURE PROCEDURES

The following procedures shall be followed within the practice of acupuncture:

- (1) Practice Setting:
 - (a) Treatments shall be given in surroundings that provide privacy and confidentiality.
 - (b) Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have a readily accessible bathroom facility.
 - (c) OSHA Standards for Blood Borne Pathogens shall be met.
- (2) New Patient Intake:
 - (a) Prior to treatment, a written or oral medical history shall be obtained from the patient. Oral statements shall be reflected in the practitioner's notes. Information shall include current and past medical illnesses, treatments, hospitalizations, current medications and allergies to medications. A social history shall include use of tobacco, alcohol, caffeine and recreational drugs.
 - (b) The names of current health practitioners shall

be listed.

- (c) The current complaints shall be outlined along with remedies and treatments tried and in progress.
- (d) The possibility of pregnancy or the presence of biomedical devices, such as artificial joints or cardiac pacemaker shall be ascertained.
- (3) Fees. Information concerning fees shall be made available prior to treatment.
- (4) Guarantees. No guarantee or implied guarantee about the success of treatment shall be given. Reasonable indication of the length of treatment and usual outcome shall be given.
- (5) Diagnosis:
 - (a) Diagnosis shall be made utilizing methods connected with the traditions represented in Chinese medicine as listed in Rule .0104 of this Chapter. Examples of diagnostic measures include the Eight Principles, Five Elements, Pulse diagnosis, and Tongue diagnosis.
 - (b) The diagnostic procedures shall be recorded at each visit.
- (6) Treatment. The specifics of the treatment shall be recorded at each visit.
- (7) Medical Records. Dated notes of each patient visit and communication shall be kept. These records may only be made available to other parties with the patients's written authorization.
- (8) Failure to Progress:
 - (a) If a patient fails to respond to treatments as expected, discussion about other forms of treatment or referral to another health care professional shall be made.
 - (b) In the case of persistent, unexplained pain, or the unexplained worsening of any condition in the face of ongoing treatment, referral or consultation shall be made. In choosing a referral source, priority shall be given to previously seen practitioners if possible.
 - (c) Requests by the patient for information about other forms of treatment or referral shall always be honored.

Statutory Authority G.S. 90-454.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rules cited as 21 NCAC 32H .0102, .0201, .0601 - .0602, .0801, .1001; 321 .0003 - .0004 and adopt 32H .0203, .0408, and .0506.

Proposed Effective Date: 21 NCAC 32H .0102, .0201, .0203, .0408, .0506, .0602, .0801, .1001 - July 1, 1996.
21 NCAC 32H .0601; 32I .0003 - .0004 - July 1, 1995.

A Public Hearing will be conducted at 1:00 p.m. on May 3, 1995 at the North Carolina Division of Facility Services, 701 Barbour Drive, Room 201, Raleigh, NC 27603.

Reason for Proposed Action:

21 NCAC 32H .0102, .0201, .0203, .0408, .0506, .0602, .0801, .1001 - To establish rules for a new class of ALS Professionals who will work as dispatchers.

21 NCAC 32H .0601 - To delineate grounds for disciplinary actions against ALS Professionals.

21 NCAC 32I .0003 - .0004 - To extend the approval period for use of Epinephrine for adverse reaction to bee stings from 1 year to 4 years.

Comment Procedures: Persons interested may present written or oral statements relevant to the proposed actions at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed to: Administrative Procedures, NC Board of Medical Examiners, PO Box 20007, Raleigh, NC 27619, no later than May 17, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 32H - EMERGENCY MEDICAL SERVICES ADVANCED LIFE SUPPORT

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

The following definitions apply in this Subchapter:

- (1) "Audit and review panel" means a committee composed of representatives of the medical, nursing, administrative and prehospital care service elements of an advanced life support (ALS) program that has the responsibility for the on-going monitoring and evaluation of the program. The chairman of the panel shall be a physician and a majority of the voting members shall be physicians.
- (2) "Emergency medical technician-advanced intermediate (EMT-AI)" means a person specially educated in a program approved by the Office of Emergency Medical Services who has been certified or recertified by the Board of Medical Examiners as qualified to render the services enumerated in Rule .0406 of this Subchapter.
- (3) "Emergency medical technician-defibrillation (EMT-D)" means a person specially educated in a program approved by the Office of Emergency Medical Services who has been certified or recertified by the Board of Medical Examiners as

qualified to render the services enumerated in Rule .0407 of this Subchapter.

- (4) "Emergency medical technician-intermediate (EMT-I)" means a person specially educated in a program approved by the Office of Emergency Medical Services who has been certified or recertified by the Board of Medical Examiners as qualified to render the services enumerated in Rule .0403 of this Subchapter.
- (5) "Emergency medical technician-paramedic (EMT-P)" means a person specially educated in a program approved by the Office of Emergency Medical Services who has been certified or recertified by the Board of Medical Examiners as qualified to render the services enumerated in Rule .0402 of this Subchapter.
- (6) "Advanced Life Support Professional (ALS Professional)" means a certified emergency medical dispatcher, emergency medical technician-defibrillation, emergency medical technician-intermediate, emergency medical technician-advanced intermediate, or emergency medical technician-paramedic whether working on a paid or volunteer basis.
- (7) "Medical control" means the management and accountability for the medical care aspects of an ALS program. It entails physician direction and oversight of the initial education and continuing education of the ALS professionals; development and monitoring of both operational and treatment protocols; evaluation of the medical care rendered by ALS personnel; participation in system evaluation; and directing, by radio or telephone, the medical care rendered by the ALS professionals.
- (8) "Medical director" means the physician responsible for the medical aspects of the management of an ALS program.
- (9) "Mobile intensive care nurse (MICN)" means a registered nurse who has been approved or reapproved by the Board of Medical Examiners to issue instructions to ALS professionals in accordance with protocols approved by the sponsor hospital and under the direction of the medical director.
- (10) "Advanced life support program (ALS program)" means a program of prehospital emergency medical care whereby definitive medical care is delivered to a victim of sudden injury or illness by appropriately educated and certified ALS professionals operating under the direction of a sponsor hospital. All ALS programs shall conform to the criteria established in the rules contained in this Subchapter and must be approved by the Office of Emergency Medical Services.
- (11) "Mobile intensive care unit" means any emergency vehicle staffed by ALS professionals and equipped in accordance with standards established by the North Carolina Medical Care Commission as

found in 10 NCAC 3M .0202, .0203, .0204, .0205, and .0207 to provide remote intensive care to sick and injured persons at the scene of a medical emergency and during transport to a health care facility.

- (12) "Oral interview panel" means a committee composed of physicians, ALS professionals certified at or above the level of application and may include other medical personnel such as registered nurses and mobile intensive care nurses involved in the ALS program. The responsibility of the oral interview panel is to interview each applicant for certification, either collectively or individually, and evaluate his suitability to perform successfully at the certification level sought. The panel must be approved by the medical director and consist of a minimum of three members including one physician and one ALS professional.
- (13) "Office of Emergency Medical Services" means an official agency of the State of North Carolina, Department of Human Resources, that serves in an administrative capacity to the Board of Medical Examiners.
- (14) "Physician" means an individual licensed by the Board of Medical Examiners to practice medicine in the State of North Carolina.
- (15) "Sponsor hospital" means a hospital and its medical staff which participates in an ALS program and has responsibility for providing or ensuring the provision of initial education, continuing education, education and medical control to the ALS professionals. The sponsor hospital shall meet criteria adopted by the Board of Medical Examiners and be approved by the Office of Emergency Medical Services.
- (16) "Study project" means a proposal involving exceptions to the provisions of this Subchapter for the purpose of evaluating the efficiency and effectiveness of alternate means of providing ALS services to the citizens of North Carolina.
- (17) "Blind insertion airway device" means an airway adjunct designed to be used as a pharyngeal or esophageal device which is inserted without the use of direct visualization. For the purposes of these Rules, this definition does not include esophageal obturator airways, esophageal gastric tube airways, or endotracheal tubes.
- (18) "Coding" means the selection and assignment of an alphanumeric classification to a call for medical assistance by an EMD.
- (19) "Emergency Medical Dispatcher (EMD)" means a trained public safety telecommunicator with additional training and specific emergency medical knowledge essential for the efficient management of emergency medical service communications who has successfully completed an education and training program meeting the criteria established by the Office of Emergency Medical Services and

who functions as an agent or constituent of an Emergency Medical Dispatch Program approved by the Office of Emergency Medical Services.

- (20) "Emergency Medical Dispatching" means the reception and management of requests for emergency medical assistance.
- (21) "Emergency Medical Dispatch Program" means the approved program with procedures established for the management and delivery of emergency medical assistance by a public or private agency that sends emergency medical assistance to requesting persons and provides pre-arrival instructions for a victim of sudden injury or illness.
- (22) "Emergency Medical Dispatch Priority Reference System (EMDPRS)" means a medically approved written or computer generated reference system used by an emergency medical dispatching agency to provide medical direction, and to dispatch aid to medical emergencies.
- (23) "EMD selection" means the process which establishes criteria to identify a candidate for education and training as an Emergency Medical Dispatcher (EMD).
- (24) "Pre-arrival instructions" means telephone rendered, medically approved written instructions read by emergency medical dispatchers to callers, which help provide aid to the victim and control the situation prior to patient access by pre-hospital care providers.
- (25) "Public Safety Telecommunicator" means an individual trained to communicate by electronic means with persons seeking emergency assistance and with public or private agencies and individuals providing such assistance.
- (26) "Approved Teaching Institution" means an agency with a current contract with the Office of Emergency Medical Services to provide emergency medical services training programs.

Statutory Authority G.S. 143-514.

SECTION .0200 - PROGRAM STANDARDS AND APPROVAL

.0201 ADVANCED LIFE SUPPORT PROGRAM CRITERIA

ALS programs shall cover a defined service area of generally not less than one county and must have the following:

- (1) a plan, as specified in Rule .0302 of this Subchapter, for the coordination of the sponsor hospitals participating in the program;
- (2) a designated medical director who shall be responsible either directly or by clearly established delegation to the other licensed physicians at the sponsor hospital(s) for the following:
 - (a) the initial establishment, approval and periodic updating of treatment protocols or EMDPRS for

- (b) emergency medical dispatch programs;
- (b) medical supervision of the selection, initial education, continuing education and performance of the ALS professionals and MICN personnel;
- (c) the medical review of the care provided to patients;
- (d) keeping the care provided current with advanced biomedical science and technology; and
- (e) participation in the overall management of the ALS program in liaison with nursing, technical, and administrative staff of the program. The medical director has the authority to suspend temporarily, pending due process review, an ALS professional or MICN from further participation in the ALS program when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient;
- (3) an organized and defined system of communications that provides for:
 - (a) public access through a central emergency communications center;
 - (b) dispatch and coordination of all resources (manpower, vehicles and equipment) essential to the effective and efficient management of requests for emergency medical assistance;
 - (c) communications linkages for interacting with other public safety agencies to obtain additional resources required to support emergency medical services activities; and
 - (d) two-way voice communications as specified in Rule .0303(a)(2)(H) of this Subchapter between the ALS professionals and the personnel at the sponsor hospital responsible for directing the medical treatment rendered by the ALS professionals;
- (4) adequate certified manpower to ensure that the program will be continuously available on a 24 hour-a-day basis; and
- (5) an audit and review panel that meets at a minimum on a quarterly basis and whose responsibilities include at least the following:
 - (a) reviewing ALS cases to determine the appropriateness of the medical care rendered by all personnel involved in the cases;
 - (b) making recommendations to the medical director for the continuing education program for ALS personnel; and
 - (c) reviewing the policies, procedures and protocols of the ALS program and making recommendations for improvement.

Statutory Authority G.S. 143-514.

.0203 APPROVAL REQUIREMENTS: EMERGENCY MEDICAL DISPATCHER PROGRAM

- (a) All emergency medical dispatching agencies applying

the principles of EMD or offering EMD services, procedures, or programs to the public shall conform to the criteria established in the rules contained in this Subchapter and shall submit a proposal for program approval to the Office of Emergency Medical Services at least 60 days prior to program implementation. The proposal must document that the EMD program has:

- (1) a defined service area;
- (2) a designated medical director responsible for medical supervision of the program in accordance with Rule .0201(2)(a)-(e) of this Section;
- (3) adopted, maintains, and updates on a regular basis, a written or computer-based emergency medical dispatch priority reference system (EMDPRS) approved by the EMD program medical director including at least the minimum incident protocols set forth in the "Guidelines for the Development and Operation of Emergency Medical Dispatch Programs" dated March 1995, incorporated herein by reference;
- (4) adequate personnel certified in accordance with the requirements of this Subchapter to ensure that the program will be continuously available on a 24 hour-a-day basis;
- (5) an organized and defined system of communications that provides for public access through a central emergency communications center using a single seven digit telephone number for the service area or an emergency 9-1-1 telephone system;
- (6) the ability to dispatch and coordinate all resources, such as manpower, vehicles and equipment that are essential to the effective and efficient management of requests for emergency medical assistance;
- (7) an audit and review panel which meets at a minimum on a quarterly basis;
- (8) a formal written policy delineating the procedures for individuals to be trained and/or employed as emergency medical dispatchers. The policy shall address:
 - (A) Provision for EMD selection in a manner that ensures ability to function in the program;
 - (B) Provision for initial EMD training and EMD certification;
 - (C) Probationary on the job EMD experience;
 - (D) Provision of continuing professional EMD education;
 - (E) Recertification of EMDs functioning in the program;
 - (F) Requisite basic medical familiarization including CPR and Heimlich maneuver training;
 - (G) Exposure to EMS field operations and EMS system familiarization;
- (9) a formal risk management program including written procedures that provide:
 - (A) The chain of command for establishment of

policies, procedures, and resolution of conflicts relating to the EMD Program;

- (B) Administrative procedures and written protocols for resource allocation and alternative response assignments of emergency response units;
- (C) EMD responsibilities in special situations, such as disasters, multi-causality incidents, or situations requiring referral to specialty hot-lines;
- (D) Complete written and recorded documentation of EMD operations that permit timely medical audit and review;
- (E) Procedures for selection and processing of cases for EMD audit and review;
- (10) adopted and maintains a dispatch coding system consistent with the incident protocol types in the EMDPRS which categorizes the problem determination through the EMDs evaluation of the problem or situation;
- (11) provides, maintains, and upgrades on a regular basis, all necessary protocols, training equipment, and quality assurance/case review equipment and supplies required for operation of the EMD program.

(b) Make application to the Office of Emergency Medical Services and be re-approved every four years following initial EMD program approval.

Statutory Authority G.S. 143-514.

SECTION .0400 - EDUCATION AND PERFORMANCE OF ADVANCED LIFE SUPPORT

.0408 EMERGENCY MEDICAL DISPATCHER PERFORMANCE

EMDs educated in approved training programs, when certified by the Board of Medical Examiners, and while functioning in an approved Emergency Medical Dispatch program, may do the following in compliance with the protocols established in the emergency medical dispatch priority reference protocol system approved by the program medical director:

- (1) Receive and process calls for medical assistance in a standardized manner, using the approved EMDPRS protocol to elicit required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.
- (2) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with the EMDPRS.

Statutory Authority G.S. 143-514.

SECTION .0500 - CERTIFICATION AND

APPROVAL REQUIREMENTS FOR ADVANCED LIFE SUPPORT PERSONNEL

.0506 CERTIFICATION REQUIREMENT: EMERGENCY MEDICAL DISPATCHER

(a) To become certified as an EMD, a person must meet the following criteria:

- (1) be at least 18 years of age;
- (2) be affiliated on a continuous basis with an emergency medical dispatch program approved by the Office of Emergency Medical Services;
- (3) successfully complete, within one year prior to application, an American Heart Association (AHA) Level "C" cardiopulmonary resuscitation (CPR) course or equivalent;
- (4) successfully complete, within one year prior to application, an approved EMD educational program meeting the requirements of the "Guidelines for Development and Operation of Emergency Medical Dispatch Programs" dated March 1995 incorporated herein by reference. If the educational program was completed over one year prior to application, a person must submit evidence of completion of pertinent continuing education in emergency medical dispatch taken in the past year and have the continuing education approved by the Office of Emergency Medical Services;
- (5) successfully complete an evaluation conducted under the direction of the medical director of the EMD program assessing the ability to perform the skills and procedures specified in Rule .0408 of this Subchapter; and be recommended for certification examination;
- (6) pass the EMD written examination administered by the Office of Emergency Medical Services.

(b) Persons holding current certification equivalent to EMD with an approved emergency medical dispatch certification agency or in another state where the educational and certification requirements have been approved for legal recognition by the Office of Emergency Medical Services may become certified by:

- (1) presenting evidence of such certification for verification by the Office of Emergency Medical Services; and
- (2) meeting the criteria specified in Subparagraphs (a)(1), (a)(2), (a)(3), and (a)(5) of this Rule.

(c) Certification obtained through legal recognition shall be valid for four years or the unexpired term of the certification that was used to obtain a certification in this state, whichever is shorter. All certifications shall be valid for the period stated on the certificate issued to the applicant by the Office of Emergency Medical Services. This period shall not exceed four years. Persons must be recertified by presenting documentation to the Office of Emergency Medical Services that they have successfully completed either of the following options:

OPTION 1:

- (1) an ongoing continuing education program under the direction of the medical director, meeting the requirements of "Guidelines for Development and Operation of Emergency Medical Dispatch Programs" dated March 1995 incorporated herein by reference.
- (2) an EMD performance evaluation conducted under the direction of the medical director meeting the requirements of "Guidelines for Development and Operation of Emergency Medical Dispatch Programs" dated March 1995 incorporated herein by reference assessing the ability to perform the skills specified in Rule .0408 of this Subchapter; and
- (3) an EMD written examination administered by the Office of Emergency Medical Services; or

OPTION II:

- (1) the criteria specified in (1) and (2) of OPTION I of this Rule; and
- (2) a written examination following guidelines established by the Office of Emergency Medical Services and administered under the direction of the medical director in compliance with the test specifications of the state EMD written examination.

Statutory Authority G.S. 143-514.

SECTION .0600 - ENFORCEMENT

.0601 GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION

(a) The Board of Medical Examiners may deny, suspend or revoke the approval of an ALS program, EMD program or sponsor hospital for any of the following reasons:

- (1) failure to comply with the requirements as found in Sections .0200 and .0300 of this Subchapter; or
- (2) obtaining approval through fraud or misrepresentation.

(b) The Board of Medical Examiners may deny, suspend or revoke the certification of an ALS professional or the approval of a MICN for any of the following reasons:

- (1) failure to comply with the applicable performance and certification and approval requirements as found in these Rules .0402, .0403, .0404, .0406, .0407, .0501, .0502, .0503, .0504, and .0505 of this Subchapter;
- (2) obtaining or attempting to obtain certification, recertification, approval or reapproval through fraud or misrepresentation;
- (3) aiding a person in obtaining or attempting to obtain certification, recertification, approval or reapproval through fraud or misrepresentation;
- (4) failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure which is

not within the scope and responsibility of the certificate holder;

- (5) performance of a procedure which is detrimental to the health and safety of a patient;
- (6) any felony conviction;
- (2) immoral or dishonorable conduct;
- (3) making false statements or representations to the Board of Medical Examiners or the Office of Emergency Medical Services or willfully concealing of material information in connection with an application for certification or approval;
- (4) being unable to perform as an ALS Professional or MICN with reasonable skill and safety to patients and the public by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;
- (5) unprofessional conduct, including but not limited to a failure to comply with the rules relating to the proper function of an ALS Professional or MICN contained in this Subchapter or the performance of or attempt to perform a procedure which is detrimental to the health and safety of a patient or which is beyond the scope and responsibility of the ALS Professional or MICN;
- (6) conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the function of an ALS Professional or MICN;
- (7) by false representations obtaining or attempting to obtain money or anything of value from a patient;
- (8) adjudication of mental incompetency;
- (9) lack of professional competence to practice with a reasonable degree of skill and safety for patients including but not limited to a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure which is not within the scope of official duties of the ALS Professional or MICN;
- (10) failure to respond within a reasonable period of time and in a reasonable manner to inquiries from the Board of Medical Examiners of the Office of Emergency Medical Services concerning any matter relating to the practice of an ALS Professional or an MICN;
- (11) testing positive for substance abuse by blood, urine or breath testing while on duty as an ALS Professional or MICN; or
- (12) representing or allowing others to represent that the ALS Professional or MICN is a physician or otherwise has a certification or approval that the ALS Professional or MICN does not in fact have.

Statutory Authority G.S. 143-514.

.0602 PROCEDURES FOR DENIAL: SUSPENSION OR REVOCATION

(a) The Board of Medical Examiners may deny, suspend or revoke the certification of an ALS professional or the approval of a MICN, sponsor hospital, EMD program or ALS program in accordance with Article 3A of Chapter 150B.

(b) Notwithstanding Paragraph (a) of this Rule, the Board of Medical Examiners may summarily suspend the certification of an ALS professional, the approval of a MICN, sponsor hospital, EMD program or ALS program as specified in G. S. 150B-3(c).

Statutory Authority G.S. 143-514.

SECTION .0800 - FORMS

.0801 REQUIRED FORMS AND DOCUMENTS

(a) The following forms are required for certification or approval:

- (1) Certification Application Form;
- (2) ALS Personnel Verification Form.

(b) The following documents are required for educational and evaluation programs and referenced in the Rules:

- (1) "North Carolina EMT-P Curriculum Outline";
- (2) "North Carolina EMT-AI Curriculum Outline";
- (3) "North Carolina EMT-I Curriculum Outline";
- (4) "North Carolina EMT-D Curriculum Outline";
- (5) "North Carolina MICN Curriculum Outline";
- (6) "Guidelines for Continuing Education and Performance Evaluation of Emergency Medical Services Advanced Life Support Personnel";
- (7) "Guidelines for Reapproval of Mobile Intensive Care Nurses"; and
- (8) "Guidelines for the Selection and Performance of the Emergency Medical Services Nurse Liaison";
- (9) "Guidelines for Development and Operation of Emergency Medical Dispatch Programs".

Statutory Authority G.S. 143-514.

SECTION .1000 - MEDICAL CONTROL

.1001 MEDICAL CONTROL PROCEDURES

Each ALS program must have procedures established to ensure medical control over the medical care rendered in the ALS program. This shall include, at a minimum:

- (1) a designated medical director to carry out the tasks as specified in Rule .0201(2)(a)-(e) of this Subchapter;
- (2) treatment protocols or approved emergency medical dispatch priority reference system (EMDPRS);
- (3) operational protocols for obtaining medical direction from the sponsor hospital(s); and
- (4) audit and review of the medical care rendered in the program.

Statutory Authority G.S. 143-514.

SUBCHAPTER 32I - EPINEPHRINE FOR ADVERSE REACTIONS TO INSECT STINGS

.0003 APPROVAL

A certification by the physician from whom the individual has received instruction as required in Rule .0002 of this Subchapter, certifying that such individual has satisfactorily completed such training program shall be filed with the N.C. Office of Emergency Medical Services. Upon recommendation of the Office of Emergency Medical Services, the Board will approve applicants to administer epinephrine for the treatment of adverse reactions to insect stings. This approval will be effective for ~~one year~~ four years.

Statutory Authority G.S. 143-509(9).

.0004 FORMS

Forms may be obtained from the Office of Emergency Medical Services, Division of Facility Services, Department of Human Resources, ~~701 Barbour Drive~~ P.O. Box 29530, Raleigh, N.C. ~~27603~~ 27626-0530.

Statutory Authority G.S. 143-509(9).

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58A .0110, .0504 - .0506, .1703, .1707 - .1708, .1710 - .1711; 58E .0103, .0203 - .0204, .0303 - .0305, .0406 - .0407, .0506; and adopt 58E .0515.

Proposed Effective Date: July 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on May 3, 1995 at the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 58A .0110, .0504 - .0506 - to codify changes in requirements and procedures concerning broker-in-charge, license status, license reinstatement and supervision of salesman by broker in light of the real estate continuing education requirement.

21 NCAC 58A .1703, .1707 - .1708, .1710 - .1711 - to refine and clarify requirements and procedures concerning continuing education for real estate licensees.

21 NCAC 58E .0103, .0203 - .0204, .0303 - .0305, .0406 - .0407, and .0506 - to refine and clarify procedures and standards for the real estate continuing education program.

21 NCAC 58E .0515 - to codify allowable deviations from Commission rules regarding conduct of continuing education courses when the rules conflict with a course sponsor's obligation to comply with the Americans With Disabilities Act.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be sent to or delivered to Mr. Stephen L. Fussell c/o North Carolina Real Estate Commission, PO Box 17100, Raleigh, NC 27619-7100, through May 17, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

.0110 BROKER-IN-CHARGE

(a) There shall be designated for each firm and branch office thereof one broker who shall assume responsibility at such office for:

- (1) the proper display of license certificates of the brokers and salesmen associated with or engaged on behalf of the firm at such office, ~~ascertaining whether and assuring that~~ each licensee employed at the office has complied with Rules .0503, .0504 and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office;
- (6) the proper supervision of salesmen associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; and
- (7) the verification to the Commission of the experience of any salesman at such office who may be applying for licensure as a broker.

No broker shall be broker-in-charge of more than one office or branch office.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and

(2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continually maintain his license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his status as broker-in-charge within 10 days following the change. Within 10 days following termination of his supervisory responsibilities over any salesman, the broker-in-charge shall provide the salesman, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased or rented for others by the salesman while under the supervision of the broker-in-charge.

Statutory Authority G.S. 93A-3(c).

SECTION .0500 - LICENSING

.0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of Chapter 93A of the General Statutes of North Carolina or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Upon initial licensure, a salesman's license shall be assigned by the Commission to inactive status and the license of a broker or corporate broker shall be assigned to active status. The license of a broker, salesman or corporate broker shall be assigned by the Commission to inactive status upon the written request of the licensee. A salesman's license shall be assigned by the Commission to inactive status ~~by the Commission~~ when the salesman is not under the active, personal supervision of a broker-in-charge. A corporate broker's license shall be assigned by the Commission to inactive status when the corporation does not have a principal broker. A broker or salesman shall also be assigned to inactive status if, upon the second renewal of his license following initial licensure, or upon any subsequent renewal, he has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

~~(c) A salesman's inactive license shall be assigned to~~

active status upon receipt by the Commission of the properly completed form prescribed in Rule .0506(b) of this Section, upon presentation of evidence that he has obtained any continuing education that may be required by Rule .1703 of this Subchapter, and upon submission of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the salesman may have had while his license was inactive. A broker's inactive license shall be assigned to active status upon the written request of the broker on a form prescribed by the Commission, upon presentation of evidence that he has obtained any continuing education that may be required by Rule .1703 of this Subchapter, and upon submission of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the broker may have had while his license was inactive. A corporate broker's inactive license shall be assigned to active status upon designation in writing of a principal broker or upon reinstatement of the expired license of the last designated principal broker and upon submission by the principal broker of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the corporation may have had while its license was inactive.

(c) A salesman with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506(b) of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the broker, a list of Commission-approved continuing education courses completed by the broker within the previous 30 days, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgement of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his real estate brokerage activities pending receipt of the written acknowledgement from the Commission. If the broker is notified that he is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6.

.0505 REINSTATEMENT OF EXPIRED LICENSE

(a) Licenses expired for not more than 12 months may be reinstated upon proper application and payment of the twenty-five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. In order to reinstate such license on active status for a license period beginning on or after July

1, 1995, the applicant shall also present evidence satisfactory to the Commission of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status, ~~except that the time during which the license was expired shall also count as inactive time for the purpose of determining the amount of continuing education elective credit hours required.~~ A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter ~~and the time during which the license was expired shall also count as inactive time for the purpose of determining the amount of continuing education elective credit hours required.~~

(b) Reinstatement of licenses expired for more than 12 months may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence necessary to function in the real estate business in a manner that protects and serves the public interest. In this regard, the Commission may require such applicants to complete real estate education and/or pass the license examination.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A.

.0506 SALESMAN TO BE SUPERVISED BY BROKER

(a) ~~A salesman's license is valid~~ salesman may engage in or hold himself out as engaging in activities requiring a real estate license only while his license is on active status and he is supervised by the broker-in-charge of the real estate firm or office where the salesman is engaged in the business of a salesman associated. ~~A salesman shall not act as or hold himself out to be a broker, nor shall he act as a salesman outside the supervision of the broker-in-charge of the firm or office where the salesman is employed.~~

(b) Upon a salesman's association with a real estate broker or brokerage firm, the salesman and the broker-in-charge of the office where the salesman will be engaged in the real estate business of a real estate salesman shall immediately file with the Commission a salesman supervision notification on a form prescribed by the Commission containing the salesman's name and residence address, the name of identifying information about the salesman and the broker-in-charge, the name of the firm and the address of the office with which the broker-in-charge is associated, a statement from the broker-in-charge certifying that he will supervise the salesman in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesman and broker-in-charge. If the salesman is on inactive status at the time of associating with a broker or brokerage firm, the salesman and broker-in-charge shall also file, along with the salesman supervision

notification, the salesman's request for license activation on a form prescribed by the Commission containing identifying information about the salesman, a list of Commission-approved continuing education courses completed by the salesman within the previous 30 days, the salesman's statement that he has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesman and the salesman's proposed broker-in-charge. Upon mailing or delivering the properly completed form to the Commission by the broker-in-charge, the salesman named in the form may engage in the business of a salesman under the supervision of the broker-in-charge pending acknowledgment from the Commission of receipt of such form; however, in the event such written acknowledgment from the Commission is not received by the broker-in-charge within thirty calendar days following the date shown in the form, the broker-in-charge shall cause the salesman to immediately cease any further activity for which a real estate license is required pending receipt of the written acknowledgment from the Commission. Upon the mailing or delivery of the required form(s) by the broker-in-charge, the salesman may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesman and broker-in-charge do not receive from the Commission a written acknowledgment of the salesman supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesman's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesman and broker-in-charge are notified that the salesman is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesman to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesman supervision notification and request for license activation is submitted to the Commission.

(c) A broker-in-charge who certifies to the Commission that he will supervise a licensed salesman shall actively and personally supervise the salesman in a manner which would reasonable assure reasonably assures that the salesman performs all acts for which a real estate license is required in accordance with the real estate license law Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesman as prescribed in this Rule may be subject to disciplinary action by the Commission.

(d) Upon termination of his supervision of a salesman, a broker-in-charge shall immediately:

- (1) notify the Commission in writing setting forth the date of termination; and
- (2) give the salesman, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased or rented for others by the salesman while under the supervision of

the broker-in-charge.

Statutory Authority G.S. 93A-2(b); 93A-3(c).

SECTION .1700 - MANDATORY CONTINUING EDUCATION

.1703 CONTINUING EDUCATION FOR LICENSE ACTIVATION

(a) ~~On and after July 1, 1995, a A broker or salesman requesting to change an inactive license to active status on or after the licensee's second license renewal following his initial licensure shall be required to demonstrate completion of continuing education as described in this Rule. The licensee must have completed, since the beginning of the license period immediately preceding the date of request for license activation, both a mandatory update course and a number of hours in approved elective courses to be determined according to Paragraph (b) or (c) of this Rule, whichever is appropriate.~~

~~(b) If the mandatory update course was completed during the immediate preceding license period, the licensee must also have obtained, since the beginning of the immediate preceding license period, four credit hours in approved elective courses for each license period or portion thereof that the license has been continuously inactive, up to a maximum of 12 hours. None of the elective course credit hours obtained to satisfy this requirement may be credited toward the continuing education requirement for the current license period.~~

~~(b) If the inactive licensee's license has properly been on active status at any time since the preceding July 1, the licensee is considered to be current with regard to continuing education and no additional continuing education is required to activate the license.~~

~~(c) If the mandatory update course was completed during the current license period, the licensee must also have obtained, since the beginning of the immediate preceding license period, four credit hours in approved elective courses for each license period or portion thereof that the license has been continuously inactive, up to a maximum of 16 hours, provided that the minimum number of elective course credit hours required since the beginning of the immediate preceding license period shall be eight hours. None of these elective course credit hours may be credited toward the continuing education requirement for the current license period; however, the update course credit hours shall be credited toward the continuing education requirement for the current license period.~~

~~(c) If the inactive licensee's license has not been on active status since the preceding July 1, the licensee must make up any deficiency in his continuing education record for the previous two license periods. Any deficiency may be made up by completing, during the current license period, approved continuing education elective courses; however, such courses will not be credited toward the continuing education requirement for the current license period. In~~

addition, if the licensee's deficiency included the mandatory update course for the immediate preceding license period, the licensee must also complete, during the current license period, the mandatory update course for the current license period; however, such course shall be credited toward the continuing education requirement for the current license period. Regardless of the length of time a license has been on inactive status, the maximum amount of continuing education credit hours required to activate that license shall be 20 hours. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours.

~~(d) For the purpose of satisfying the elective course credit hour requirement described in Paragraphs (b) and (c) of this Rule, the maximum number of credit hours that shall be awarded for any single course is four hours.~~

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1707 ELECTIVE COURSE CARRY-OVER CREDIT

~~If a licensee fully satisfies the continuing education elective requirement for a particular license period and then takes an additional approved continuing education elective course(s) in that same license period, the creditable hours taken in the additional course(s) may be applied toward satisfaction of the continuing education elective requirement for the next succeeding license period. A maximum of four hours of continuing education credit for an approved elective course taken during the current license period may be carried over to satisfy the continuing education elective requirement for the next following license period if the licensee receives no continuing education elective credit for the course toward the elective requirement for the current license period or the previous license period. However, if a continuing education elective course is used to wholly or partially satisfy the elective requirement for a particular the current or previous license period, then any excess hours completed in such course which are not needed to satisfy the four-hour elective requirement for that license period may not be carried forward and applied toward the elective requirement for the next succeeding following license period.~~

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1708 EQUIVALENT CREDIT

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licensee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a nonrefundable evaluation fee of ~~fifty thirty~~ dollars ~~(\$50.00)~~ (\$30.00) for each request for evaluation of a course or real estate education activity. Such requests and all supporting documents, with the exception of applications from instructors of continuing education courses desiring

equivalent credit for teaching Commission-approved continuing education courses, must be received by the Commission at least 60 days prior to the expiration of the licensee's current license.

(b) The Commission may award continuing education elective credit for satisfactory completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal. Each activity for which continuing education credit is requested must have been completed within the current license period. The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for the license period in which the instructor teaches the course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. The instructor must provide proof that he taught the course within the current license period. Licensees who are instructors of continuing education courses approved by the Commission shall not be subject to the ~~fifty thirty~~ dollar ~~(\$50.00)~~ (\$30.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate prelicensing course.

(e) No carry-over credit to a subsequent license period shall be awarded for taking an unapproved continuing education course or for any real estate education activity other than teaching an approved elective course.

(f) A licensee completing a real estate appraisal prelicensing, precertification or continuing education course approved by the North Carolina Appraisal Board may obtain real estate continuing education elective credit for such course by submitting to the Commission a written request for equivalent continuing education elective credit accompa-

nied by a nonrefundable processing fee of twenty dollars (\$20.00) and a copy of the certificate of course completion issued by the course sponsor for submission to the North Carolina Appraisal Board. Such appraisal course must have been completed during the license period for which the request for equivalent credit is made.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1710 DENIAL OR WITHDRAWAL OF CONTINUING EDUCATION CREDIT

(a) The Commission may deny continuing education credit claimed by a licensee or reported by a course sponsor for a licensee, and may withdraw continuing education credit previously awarded by the Commission to a licensee upon finding that:

- (1) The licensee or course sponsor provided incorrect or incomplete information to the Commission concerning continuing education completed by the licensee;
- (2) The licensee failed to comply with either the attendance requirement established by Rule .1705 of this Section or the student participation standards set forth in Rule .0511 of Subchapter 58E; or
- (3) The licensee was mistakenly awarded continuing education credit due to an administrative error.

(b) When continuing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the licensee remains responsible for satisfying the continuing education requirement. However, when an administrative error or an incorrect report by a course sponsor results in the denial or withdrawal of continuing education credit for a licensee, the Commission may, upon request of the licensee, grant the licensee an extension of time to satisfy the continuing education requirement.

(c) A licensee who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) Real estate brokers and salesmen licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status for a license period beginning on or after July 1, 1995 may fully satisfy the continuing education requirement either by completing, within one year preceding license expiration, either the Commission-prescribed update course plus four classroom hours of instruction in Commission-approved continuing education elective courses or by completing eight classroom hours of instruction in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or

in the state where the course was taken. Credit for such education shall be awarded only upon receipt of verification provided by the licensing agency in the licensee's state of residence or by the official course sponsor that the licensee has completed the number of hours of continuing education for which the licensee desires the Commission to award credit. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per course and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than 12 months, a nonresident broker or salesman may take continuing education courses approved by the real estate licensing agency in his state of residence or another state to fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter.

(c) If the licensing agency in the licensee's state of residence does not approve courses for real estate continuing education, or if the licensee is not licensed in his state of residence, the licensee in addition to the options described in Paragraphs (a) and (b) of this Rule for satisfying the continuing education requirement, a nonresident licensee may request that the Commission award continuing education credit for a course not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section.

(d) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0100 - UPDATE COURSE

.0103 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval to sponsor a Commission-developed update course must make application on a form prescribed by the Commission. Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year. Applications for original approval will not be accepted between April 1 and June 30 of any calendar year after 1994. The applicant must submit a nonrefundable fee of one hundred dollars (\$100.00) in the form of a certified check, bank check or money order payable to the North Carolina Real Estate

Commission; provided, however, that no fee is required if the entity making application is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0200 - UPDATE COURSE INSTRUCTORS

.0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. ~~Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year. Applications for original approval will not be accepted between April 1 and June 30 of any calendar year after 1994.~~ An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of real estate.
- (2) Possession of a current North Carolina real estate broker license, three years active full-time experience in real estate brokerage within the previous ten years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.
- (3) Possession of a current North Carolina real estate broker license and experience teaching at least ten real estate prelicensing courses within the previous five years.
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years, with a substantial emphasis on real estate practice.
- (5) Possession of qualifications found by the Commission to be equivalent to one or more of the above standards, provided that the requirement for a current North Carolina real estate broker license shall be waived only for applicants who qualify under Subparagraph (c)(1) or (4) of this Rule.

(d) The applicant must possess good teaching skills as

demonstrated on a videotape portraying the instructor teaching a live audience. The applicant must submit for Commission review a videotape in a format prescribed by the Commission. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The videotape must have been made within the previous three years. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he possesses a current North Carolina real estate broker license and a current designation as a Designated Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0204 RENEWAL OF APPROVAL

Commission approval of update course instructors expires on the next December 31 following issuance of approval, except that approval of instructors approved prior to January 1, 1995 shall expire on December 31, 1995. In order to assure continuous approval, approved instructors must file applications for renewal of approval ~~must be filed~~ on a form prescribed by the Commission on or before December 1 immediately preceding expiration of their approval. Applicants must satisfy the criteria for original approval, with the exception of the requirement stated in Rule .0203(d) of this Section, in order to renew their approval.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0300 - ELECTIVE COURSES

.0303 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval of a proposed elective course must make application on a form prescribed by the Commission. ~~Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year.~~ Applications for original approval will not be accepted between April 1 and June 30 of any calendar year, provided that this restriction shall not apply when an applicant is seeking approval to conduct a course for which approval has already been obtained by another sponsor, after 1994. The applicant must submit a nonrefundable fee of one hundred dollars (\$100.00) per course in the form of a ~~certified check, bank check or money order~~ payable to the North Carolina Real Estate Commission; provided, however, that no fee is required if the entity making application is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. The application shall be accom-

panied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable.
- (2) The applicant must satisfy ~~any~~ of the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course must satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate.
- (4) The course must involve a minimum of two classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter must be truthful, honest and of high integrity. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval.
- (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section.
- (7) The course must be one that will be conducted by a qualified instructor who will be able to interact directly either in person or by interactive television with all students at all times during the course. The course may be conducted through the use of interactive television which permits continuous mutual communication between the instructor and all students, continuous observation of the instructor by all students, and continuous observation of all students by the instructor. The use of media-based instruction such as videotape, remote non-interactive television, computer programs or similar types of instruction may be employed on a limited basis to enhance or supplement personal instruction. No portion of the course may consist of correspondence instruction.
- (8) ~~The course plan or instructor's guide must provide for the use of instructional methods and instructional aids that are appropriate in view of the~~

~~subject matter and must clearly identify the learning objectives for the course. The applicant must submit an instructor guide that includes:~~

- (a) a detailed course outline,
- (b) the amount of time to be devoted to each major topic and to breaks,
- (c) the learning objective(s) for each major topic, and
- (d) the instructional methods and instructional aids that will be utilized in the course.

The proposed time allotments must be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include, but are not limited to, class discussion, role-playing, in-class work assignments, overhead transparencies and videotape.

- (9) The course must include handout materials for students unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course. Such materials ~~must adequately cover the topics described in the course plan or instructor's guide and~~ must be current, accurate, grammatically correct, logically organized and produced in a manner that reflects reasonable quality.
- (10) Either the instructor guide or the student materials must describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, complete, and otherwise appropriate.
- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0305 ELECTIVE COURSE SUBJECT MATTER

- (a) Elective courses must cover a real estate topic and must directly contribute to accomplishment of the primary purpose of mandatory continuing education, which is to help assure that real estate licensees possess the knowledge, skills and competence necessary to function in the real estate business in a manner that protects and serves the public interest. The knowledge or skills taught in an elective

course must enable licensees to better serve real estate consumers and the subject matter must be directly related to real estate practice. Examples of acceptable subject matter include, but are not limited to: Real property law; agency law; real estate contracts; land use controls; environmental protection laws; real estate economics and markets; real estate finance, investment or appraisal; property management; real estate construction or development; commercial real estate brokerage; taxation of real estate investments; the Real Estate License Law and Commission rules; and other similar topics. Examples of subject matter that is not acceptable include, but are not limited to: Real estate sales training; real estate brokerage management; business administration or management; general office and computer skills; success training; motivational training; personal development; time management; and other similar topics.

(b) If there are unique North Carolina laws, rules or customary practices that are relevant to a topic being addressed in an elective course, and if the course is to be conducted in North Carolina or primarily for the benefit of North Carolina licensees, then the course must accurately and completely address such North Carolina laws, rules or practices.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENT

.0406 COURSE ROSTERS, COMPLETION CERTIFICATES AND EVALUATIONS

(a) ~~Course sponsors and instructors must complete or have students complete, as appropriate, a roster of all real estate licensees enrolled in an approved continuing education course and a course completion card report for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Sponsors may allow students to complete portions of the course completion report, but sponsors will be held accountable for the accuracy of all information on such report.~~ Sponsors must submit these documents to the Commission within fifteen calendar days following the course, but in no case later than June 15 for courses conducted prior to that date. These documents shall be completed on forms and in accordance with instructions prescribed by the Commission.

(b) ~~Course sponsors and instructors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course. The evaluation shall be completed on a form and in accordance with instructions prescribed by the Commission. Sponsors must submit the completed evaluation forms to the Commission within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date.~~

(c) ~~Course sponsors and instructors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A~~

.1705 a course completion certificate on a form and in accordance with instructions prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his proof of having completed the course.

(d) Course sponsors shall advise the Commission in writing when a licensee in attendance at a continuing education course does not comply with the Commission's attendance or student participation standards.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0407 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the sponsor must submit to the Commission, along with the roster, course completion ~~cards~~ reports and evaluation forms required to be submitted by Rule .0406 of this Section, a fee in the amount of five dollars (\$5.00) for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705. This fee is not required if the sponsor is a community college, junior college, college or university located in North Carolina and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. This fee shall be paid by check payable to the North Carolina Real Estate Commission. A separate check is required for each separate class session.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

.0506 CLASSES OPEN TO ALL LICENSEES

All class sessions of approved continuing education courses must be open to all licensees on a first-come/first-served basis; provided that the sponsor of a course which has a bona fide education or experience prerequisite, such as an advanced course leading to a special real estate designation, may refuse admission to a licensee not satisfying such prerequisite. ~~Real estate licensees, companies, franchises, company-owned schools or trade organizations approved by the Commission as course sponsors must afford all licensees an equal opportunity to enroll in each session of an approved course. Courses may not be promoted or conducted in such a manner as would effectively exclude licensees who are not affiliated in some manner with the sponsor. An approved sponsor may contract with an organization such as a real estate firm, franchise or trade organization to conduct approved continuing education courses for licensees affiliated with such organization, but the sponsor must allow licensees not affiliated with the organization to enroll in any class session on a first-come/first-served basis.~~

Statutory Authority G.S. 93A-3(c); 93A-4A.

**.0515 ACCOMMODATIONS FOR PERSONS
WITH DISABILITIES**

Course sponsors may deviate from Commission rules concerning the conduct of continuing education courses, such as rules addressing classroom facilities, minimum class size and instructional methods, as may be necessary in order for the sponsor to comply with the Americans with Disabilities Act or other laws requiring such sponsors to accommodate persons with disabilities. A sponsor providing a special accommodation for a licensee with a disability that requires the sponsor to deviate from Commission rules shall notify the Commission in writing of the accommodation at the time reports are submitted for the class session attended by the licensee.

Statutory Authority G.S. 93A-3(c); 93A-4A.

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

MARCH 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
10	Human Resources	19A	Transportation
11	Insurance	21	Occupational Licensing Boards
12	Justice	14 -	Cosmetic Art Examiners
13	Labor	18 -	Electrical Contractors
15A	Environment, Health, and Natural Resources	25	Personnel
17	Revenue	26	Administrative Hearings
		27	State Bar

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10 NCAC 3K .0101 - .0104	✓			✓		04/01/95	
3R .3001		✓		✓		04/01/95	
.3020		✓		✓		04/01/95	
.3030		✓		✓		04/01/95	
.3032		✓		✓		04/01/95	
.3040		✓		✓		04/01/95	
.3050		✓		✓		04/01/95	
3U .1001		✓		✓		07/01/95	
11 NCAC 1 .0413		✓				04/01/95	
4 .0123 - .0124	✓			✓		04/01/95	
.0432 - .0433	✓			✓		04/01/95	
12 .1001			✓			04/01/95	
.1024		✓				04/01/95	
16 .0601 - .0602	✓			✓		04/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
11	NCAC	16	.0603 - .0606	✓					04/01/95	
			.0607	✓			✓		04/01/95	
12	NCAC	7D	.0113	✓					04/01/95	
13	NCAC	7F	.0101		✓				04/01/95	
			.0301		✓				04/01/95	
15A	NCAC	2D	.0105	✓			✓		04/01/95	
			.0955 - .0957	✓			✓		05/01/95	
			.1201 - .1203		✓				04/01/95	
			.1204		✓		✓		04/01/95	
			.1205		✓				04/01/95	
			.1206		✓		✓		04/01/95	
			.1209		✓		✓		04/01/95	
			.1401 - .1412	✓			✓		04/01/95	
			.1413	✓					04/01/95	
			.1414	✓			✓		04/01/95	
			.1415	✓					04/01/95	
			.1501	✓			✓		04/01/95	
			.1502	✓					04/01/95	
			.1503	✓			✓		04/01/95	
			.1504	✓					04/01/95	
			.1601	✓			✓		04/01/95	
			.1602	✓					04/01/95	
			.1603	✓			✓		04/01/95	
	2K		.0501 - .0503		✓		✓		04/01/95	
	7H		.0104		✓		✓		04/01/95	
			.0309		✓				04/01/95	
			.0406		✓		✓		04/01/95	
	7J		.0403		✓		✓		04/01/95	
			.0404		✓				04/01/95	
	12K		.0101	✓					04/01/95	
			.0102 - .0106	✓			✓		04/01/95	
			.0107 - .0108	✓					04/01/95	
			.0109 - .0111	✓			✓		04/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	13A	.0012		✓				04/01/95	
		16A	.0104		✓		✓		04/01/95	
			.0107		✓				04/01/95	
			.0109		✓		✓		04/01/95	
		18A	.3201 - .3202	✓			✓		04/01/95	
			.3203	✓					04/01/95	
			.3204 - .3211	✓			✓		04/01/95	
			.3212	✓					04/01/95	
		24A	.0202		✓				04/01/95	
			.0403		✓		✓		04/01/95	
			.0405		✓		✓		04/01/95	
17	NCAC	7B	.0123		✓				04/01/95	
			.0707		✓				04/01/95	
			.1101		✓				04/01/95	
			.2401		✓				04/01/95	
			.5436			✓			04/01/95	
			.5437			✓			04/01/95	
19A	NCAC	5B	.0101		✓				04/01/95	
21	NCAC	14F	.0007		✓		✓		04/01/95	
		14G	.0003		✓				04/01/95	
		14I	.0103		✓				04/01/95	
		14J	.0205		✓		✓		04/01/95	
		18B	.0901		✓		✓		04/01/95	
25	NCAC	1E	.0902		✓		✓		04/01/95	
26	NCAC	2A	.0102		✓				04/01/95	
		2B	.0104		✓		✓		04/01/95	
27	NCAC	1B	.0105		✓				02/20/95	
			.0111 - .0112		✓				02/20/95	
			.0125		✓				02/20/95	
		1D	.0203					✓		
			.0206		✓				02/20/95	
			.1604					✓		
2		10.2(f)			✓				02/20/95	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>15A NCAC 7M .0202 - Policy Statements</i>	<i>RRC Objection</i>	<i>03/16/95</i>

Environmental Health

<i>15A NCAC 18A .2801 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Rule Approved as Written</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>

LICENSING BOARDS AND COMMISSIONS

Board of Cosmetic Art Examiners

<i>21 NCAC 14F .0014 - Salon Renewal</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>21 NCAC 14I .0401 - App. for Licensure by Individuals Who Have Been Convicted of a Felony</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions</i>	<i>RRC Objection</i>	<i>03/16/95</i>

Board of Examiners of Electrical Contractors

<i>21 NCAC 18B .0901 - Applicants Convicted of Crimes</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>

Board of Opticians

<i>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>11/17/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/15/94</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>

PUBLIC EDUCATION

Elementary and Secondary Education

<i>16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans</i>	<i>RRC Objection</i>	<i>02/16/95</i>
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REVENUE

Sales and Use Tax

<i>17 NCAC 7B .1123 - Certain Sales to Commercial Livestock and Poultry Farmers</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>17 NCAC 7B .5445 - Commercial Swine, Livestock and Poultry Farmers' Cert. Form: E-599S</i>	<i>RRC Objection</i>	<i>03/16/95</i>

SECRETARY OF STATE

Notary Public Division

<i>18 NCAC 7 .0301 - Approved Course of Study</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:2 NCR 176
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
Thomasine Inman v. Crime Victims Compensation Commission	94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission	94 CPS 1782	Gray	03/09/95	
Ellen Sherwin v. Crime Vic Comp James Byrum Emp/ Baptist Hosp	95 CPS 0012	West	03/22/95	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Setzer Bros. Inc. v. Environment, Health, and Natural Resources	94 EHR 1676	Nesnow	03/09/95	
John W. VanHoy, Jr. & Adjacent Land Owners v. EHRN and Shugart Enterprises, Inc.	95 EHR 0016	Phipps	03/17/95	
<i>Coastal Resources</i>				
Howard C. Slack v. Coastal Resources Comm, EHRN	95 EHR 0140	Phipps	03/22/95	10:2 NCR 186
<i>Davidson County Health Department</i>				
John Dee Clodfelter v. Davidson County Health Dept.; EHRN	94 EHR 1037	Chess	03/13/95	
<i>Hyde County Health Department</i>				
Fritzner Henry v. Hyde County Health Department	94 EHR 0924	Gray	03/09/95	
<i>Macon County Health Department</i>				
Four Residents on Genva Circle v. Macon County Health Department	94 EHR 1202	Nesnow	03/27/95	
<i>Maternal and Child Health</i>				
Philip Haskins v. EHRN, Div. of Maternal & Child Health	94 EHR 1777	Chess	03/09/95	
EQUAL EMPLOYMENT OPPORTUNITY				
Marsha Dianne McKoy v. DHR, Div. of MH/DD/SAS, Caswell Center	94 EEO 0379	Chess	02/21/95	
HUMAN RESOURCES				
Helen J. Walls, D/B/A Walls Young World v. Human Resources	94 DHR 1362	Becton	03/20/95	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Division of Child Development</i>				
Iola Malloy v. DHR, Division of Child Development	94 DHR 0849	Mann	03/03/95	
Esther Elder v. DHR, Division of Child Development	94 DHR 1771	Reilly	03/17/95	
<i>Facility Services</i>				
William H. Cooke v. DHR, Division of Facility Services	94 DHR 0565	Gray	03/16/95	
Mildred Reece, Calvin Reece v. DHR, Division of Facility Svcs, Domiciliary & Group Care Section	94 DHR 1783	Gray	03/16/95	
<i>Certificate of Need Section</i>				
Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd. Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR, Division of Facility Services, Certificate of Need Section and Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/ Wallace, Inc.	94 DHR 0403	Chess	12/14/94	
<i>Division of Social Services</i>				
<i>Child Support Enforcement Section</i>				
Daniel J. Carter v. Department of Human Resources	91 CSE 1103	Morrison	03/03/95	
Shawn Dominic Caldwell v. Department of Human Resources	92 CSE 1449	Reilly	03/29/95	
William Zonta Thompson v. Department of Human Resources	92 CSE 1559	Reilly	03/29/95	
Jackie E. Hackney v. Department of Human Resources	93 CSE 1088	Chess	03/20/95	
Elbert Quick v. Department of Human Resources	93 CSE 1169	Chess	03/08/95	
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Lacy Green, Jr. v. Department of Human Resources	93 CSE 1295	Chess	03/08/95	
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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 CPS 0237

COUNTY OF CUMBERLAND

JOHN PAVLIKIANIDIS

Petitioner,

v.

N.C. VICTIMS COMPENSATION

COMMISSION

Respondent.

RECOMMENDED DECISION

Petitioner filed a timely Petition for a Contested Case Hearing with the Office of Administrative Hearings on February 22, 1994.

On March 15, 1995, this contested case came on for hearing by telephone conference with Fred G. Morrison Jr., Senior Administrative Law Judge presiding.

APPEARANCES

For Petitioner: James H. Cooke, Jr.
Parish, Cooke and Russ
P.O. Drawer 1824
Fayetteville, NC 28302

For Respondent: Robert T. Hargett
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

STATUTES AT ISSUE

N.C. Gen. Stat. §§15B-4(a) & 15B-11(a)(3)

ISSUE

Did the N.C. Crime Victims Compensation Commission properly deny Petitioner's claim?

FINDINGS OF FACT

1. Alexandra Pavlikianidis, age 13, daughter of Petitioner, rode her bike to the Honeycutt Recreation area in Fayetteville on Sunday, August 30, 1992.
2. When Alexandra arrived at the park, she stopped to get a drink by the public bathroom. When she stopped, she noticed three girls approximately 10 to 13 years of age playing near the area.
3. When Alexandra was trying to go up some playground equipment stairs after resting, the three girls came running down the stairs towards her. During this incident, Alexandra was pushed, shoved, or bumped backwards down the stairs. She fell over the handrail and down to the base of the steps. The three girls laughed and ran off after Alexandra had fallen.
4. There were three women at the scene with their children and two of them rushed over to Alexandra and asked if she was okay. She told them that her ankle and foot were hurt. One of the women offered her a ride home.
5. The other woman went to see where the three girls had gone. The woman yelled for the girls to come back and

brought the oldest girl back to where Alexandra was.

6. When Alexandra returned home, her mother took her to the Doctors Urgent Care to have them look at her injuries. The doctor put a cast on Alexandra's leg and told her that she might need surgery. He referred her to another doctor.

7. On August 31, 1992, Petitioner and Alexandra spoke with someone at the Parks and Recreation Department to report the incident. They were told to make a report with the police.

8. Pete Pavlikianidis, Alexandra's uncle, called the police on August 31, 1992, to make a report. They took Alexandra's statement over the telephone and then spoke to her father. They asked her if she had reported the incident to the Parks and Recreation Department and she told them that she had.

9. On August 31, 1992, Alexandra spoke to Investigator Tew of the Fayetteville Police Department who took her statement and asked her about the report made to the Parks and Recreation Department. Investigator Tew also asked Alexandra about the police report she had previously made. Alexandra also spoke to George McCarthy from the Risk Management Division of the Parks and Recreation Department.

10. On August 31, 1992, Alexandra went to see Dr. George Dimitri who told her that she would need surgery on her foot. He told her that she had broken four toes and two connective bones in her foot.

11. On September 2, 1992, Alexandra had surgery on her foot and was out of school for more than two months after the surgery.

12. Alexandra has been required to have continuous follow-up care, including physical therapy, which has caused her to miss school.

13. Petitioner's father filed a claim for compensation with Respondent which was denied.

14. Pushing and shoving by children playing are facts of life.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to G.S. 150B and 15B.

2. Subject to the limitations in G.S. 15B-22, compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence established that the requirements for an award have been met. . . .

N.C. Gen. Stat. §15B-4(a) (1994) (emphasis added).

3. The statute defines "criminally injurious conduct" as:

(C)onduct which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, . . .

N.C. Gen. Stat. §15B-2(5) (1994) (emphasis added).

4. The evidence is inconclusive as to whether or not Alexandra was injured by criminally injurious conduct, the proof of which is a necessary element for the award of compensation. Pushing and shoving by children on a public playground does not alone constitute criminal conduct within the purview of G.S. 15B.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

It is recommended that Petitioner's claim for compensation be denied.

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 Crime Victims Compensation Commission.

This the 21st day of March, 1995.

Fred G. Morrison Jr.
Senior Administrative Law Judge

RECOMMENDED DECISION

10:2

relationship between the underlying crime and his continuing ability to perform any of his professional functions effectively.

2. Whether Respondent has substantial evidence, sufficient to justify permanent revocation of Petitioner's teaching certificate, that Petitioner has engaged in other illegal, unethical, or lascivious conduct and that there is a reasonable and adverse relationship between the underlying conduct and his continuing ability to perform any of his professional functions effectively.

FINDINGS OF FACT

1. The parties received notice of hearing more than 15 days prior to the hearing and each stipulated on the record that notice was proper in all respects.
2. Petitioner currently holds a teaching certificate issued by the State Board of Education.
3. Petitioner resides in Brunswick County and did so at the time of the events giving rise to this contested case appeal.
4. Petitioner was employed by South Brunswick High School (SBHS) in June, 1990 to serve as a teacher, head football coach, and athletic director. Petitioner taught health and physical education and remedial math to both males and females at SBHS.
5. Prior to his employment with SBHS, Petitioner worked for a number of years as a teacher and coach in other high school systems in both North and South Carolina.
6. On or about November 17, 1993, Petitioner was suspended from his position with SBHS because of allegations arising from November 16, 1993 off-campus encounters between Petitioner and two current female students at SBHS in which it was alleged that Petitioner was intoxicated and had touched the breasts of the two students without consent. Petitioner did not return to his position and eventually resigned in February, 1994. The allegations against Petitioner were investigated by the Brunswick County School Superintendent. The investigation and allegations were covered by the press.
7. The parties stipulated, and it is found as fact, that Petitioner received a January 27, 1994 document captioned FINDING OF REASONABLE CAUSE AND STATEMENT OF CHARGES. The reasonable cause section of this document provides, in pertinent part:

Bob Etheridge, State Superintendent of Public Instruction, having received notice from the Brunswick County Schools, finds that:

[o]n the evening of November 16, 1993, Mr. Hewett appeared intoxicated at two restaurants where female students were working, and deliberately touched two current female students on their breasts, following which the students filed criminal charges against Mr. Hewett (sic).

. . . .

3. While Mr. Hewett denies all allegations except that of being intoxicated on the evening of November 16, 1993, the superintendent has found there is substantial reason to believe that Mr. Hewitt (sic) has violated 16 NCAC 6C .0312(b)(8).
4. The State Board of Education has adopted a rule, codified as 16 NCAC 6C .0312, that governs the suspension or revocation of certificates. That rule provides, in part, that the Board may revoke a certificate for any illegal, unethical or lascivious conduct by a person if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.
8. In the Statement of Charges section of this January 27, 1994 document, the State Superintendent states in pertinent part:

On the basis of this determination of reasonable cause, the State Superintendent files written charges against Mr.

Hewlett (sic) as follows:

1. The Brunswick County school superintendent has reported that he has substantial reason to believe that:

On the evening of November 16, 1993, Mr. Hewett appeared intoxicated at two restaurants where female students were working, and deliberately touched two current female students on their breasts, following which the students filed criminal charges against Mr. Hewitt (sic).

. . . .

2. These actions constitute grounds for the revocation of his certificate pursuant to 16 NCAC 6C .0312(a)(8) and indicate that the certificate should in fact be revoked.

9. Respondent's rule cited by Superintendent Etheridge as authority for revocation of Petitioner's certificate provides, in pertinent part:

(a) The SBE may deny an application for certification or may suspend or revoke a certificate issued by the department only for the following reasons:

- (1) fraud, material misrepresentation or concealment in the application for certification;
- (2) changes in or corrections of the certificate documentation which makes the individual ineligible to hold a certificate;
- (3) conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner;
- (4) final dismissal of a person by a local board pursuant to G.S. 115C-325(e)(1)b., if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
- (5) final dismissal of a person by a LEA under G.S. 115C-325(e)(1)e;
- (6) resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
- (7) revocation of a certificate by another state; and
- (8) any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the under-lying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.
- (9) Failure to report revocable conduct as required under paragraph (b) of this Rule. N.C. Admin. Code, tit. 16, r. 6C.0312(a) (November, 1994).

10. Respondent contends in this certificate action against Petitioner that it has grounds to revoke his certificate under both .0312(a)(3) and .0312(a)(8).

11. SBHS senior Tina Mount filed a criminal charge against Petitioner on November 27, 1993 for assault on a female over 18 years of age by grabbing her breast. This charge was tried before a District Court Judge in Brunswick County on June 3, 1994. Petitioner entered a plea of not guilty. The District Court Judge found Petitioner guilty of assault on a female over the age of 18 by grabbing her breast in violation of G.S. 14-33(b)(2) as charged. The District Court ordered a prayer for judgment continued upon payment of court costs. This is the only charge asserted by Respondent as grounds for revocation of Petitioner's Certificate under either its Conviction Rule, .0312(a)(3) or its Conduct Rule, .0312(a)(8).

12. Tina Mount did not appear and testify in this contested case hearing.

13. Marsha Cochran, guidance counselor at SBHS since 1985 and at the time of the events in this case, observed that Tina Mount, who worked in her office as a student mentor, was happy and outgoing prior to November 16, 1993 but became nervous and more withdrawn after that date.

14. Respondent offered no direct evidence of the conduct of Petitioner on the evening of November 16, 1993. Respondent asserts that it can imply the underlying conduct by proving that Petitioner received a guilty verdict, with a prayer for judgment continued, in the District Court criminal trial.

15. Petitioner went to a bar/restaurant known as the Shamrock in Southport on the evening of November 16, 1993. When he entered the restaurant, Tina Mount was working as a waitress and spoke to him as he entered. Petitioner ordered a beer and later ordered a meal. Petitioner had consumed one or more drinks during an earlier visit to the Shamrock that evening. Tina Mount sat at his table and talked with Petitioner. He offered to buy a drink for her. She refused because she was working. He gave her five dollars with which to buy herself a drink after she finished work. She told him that she was a student at SBHS. While she was standing and he was seated, he gave her a hug around the waist. As they walked toward the door on his way out, he reached for her arm and touched her breast during the process. Petitioner's uncontroverted testimony is that he was reaching for her arm to say thanks and accidentally touched her breast, for which he apologized before leaving.

16. Ralph Ward has been in education for thirty-six years, serving as personnel director of the Brunswick Schools for the last seven. He gave a lay opinion under G.S. 8C-1, Rule 701, regarding Petitioner's ability to continue to perform his professional functions after being found guilty of assault on a female. Mr. Ward's opinion as personnel director of SBHS was that some students would have concerns about their safety and parents would have concerns about their students' safety under Petitioner's control. He also believes that Petitioner's return to teaching would raise a concern that another similar incident could occur and that morale in the school would be affected negatively.

17. Thomas Lewis has been in education for thirty-eight years, serving as principal for twenty-eight of those years. He was tendered and accepted as an expert witness in education under G.S. 8C-1, Rule 702. Mr. Lewis' expert opinion was that Petitioner could continue to be effective as a teacher and coach in some other community but probably not in the Brunswick County community.

18. Carlton Prince has served for thirty years in the Whiteville, North Carolina City Schools, serving as principal for the last fifteen before retiring in 1991. Mr. Prince was tendered and accepted as an expert witness in education under G.S. 8C-1, Rule 702. Petitioner served as a teacher, coach, and athletic director for a number of years at Whiteville while Carlton Prince was the principal there. Mr. Prince gave an expert opinion that Petitioner still could effectively function as a teacher, coach, athletic director, and role model for students.

19. Coleman Barbour has been in education for twenty-one years. He presently serves as principal at Whiteville High School and was there during part of Petitioner's tenure as a teacher, coach, and athletic director. Mr. Barbour was tendered and accepted as an expert witness in education and in middle and high school principalship under G.S. 8C-1, Rule 702. Mr. Barbour gave an expert opinion that Petitioner still could function effectively as a teacher, coach, and as a role model in middle or high school.

20. Joseph Miller has been in education for twenty-two years with the New Hanover County schools. He has known Petitioner for approximately ten years in his capacities as football coach and athletic director. Mr. Miller was tendered and accepted as an expert witness in teaching health and physical education at the high school level under G.S. 8C-1, Rule 702. Mr. Miller gave an expert opinion that Petitioner still could function effectively as a teacher in health and physical education and could continue to serve as a role model for students enrolled in his health and physical education courses.

21. Timothy Fitzgerald has been a teacher and assistant football coach at SBHS for the last five years. He served as assistant football coach under the supervision of Petitioner for four of his five years at SBHS. Prior to that he was a teacher and coach at West Brunswick High School. He served as a teacher and coach in six different schools in Ohio before coming to North Carolina. He is certified to teach health and physical education, vocational welding, and history in North Carolina. He was tendered and accepted as an expert witness in teaching health and physical education, vocational welding, and history under G.S. 8C-1, Rule 702. Mr. Fitzgerald gave an expert opinion that Petitioner still could function effectively as a teacher in health and physical education in high school and could continue to serve as a role model for students in his classes.

22. Petitioner was well regarded in the Brunswick County community prior to the November 1993 allegations. He

continues to have a good reputation as a teacher and coach among those with whom he has worked during his teaching and coaching career.

23. Petitioner's professional effectiveness in the Brunswick County community has been adversely affected by the events of November 16, 1993, the subsequent investigation, and the resulting legal and administrative proceedings and press coverage.

24. Public school teachers in North Carolina are required by statute to maintain discipline and to encourage temperance and morality among students. N.C. Gen. Stat. Section 115C-307(6) (1994).

25. Our courts have enumerated various professional functions of teachers including, but not limited to,

- (a) teaching subject matter,
- (b) class discipline,
- (c) interaction with the fellow staff members and administrative superiors,
- (d) interaction with parents and community members, and
- (e) interaction with and being a role model for students. Burrow v. Board of Education, 61 N.C. App. 619, 625, 301 S.E.2d 704 (1983) (dismissal upheld where board found teacher no longer effectively could perform enumerated professional functions).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law.

1. The parties are properly before the Office of Administrative Hearings.

2. Respondent gave Petitioner constitutionally sufficient notice of the charges against him in the January 27, 1994 FINDING OF REASONABLE CAUSE AND STATEMENT OF CHARGES. Although Respondent indicated its intent to proceed against Petitioner's certificate on the basis of its conduct rule, N.C. Admin. Code tit. 16, r. 6C.0312(a)(8)(November 1994), it also notified Petitioner of the underlying conduct and resultant pending criminal charges and that the rule, 6C.0312, governed suspension and revocation of certificates.

3. Respondent has not defined the term conviction as used in its rules. Our Court has recited, with implicit approval, a general rule for defining and applying the term conviction in a driver license revocation case:

[i]n the restricted or technical legal sense in which it is sometimes used, conviction means the final consummation of the prosecution against the accused including the judgment or sentence rendered pursuant to a verdict, confession, or plea of guilty. Frequently the term is used to denote the judgment or sentence itself, or to signify both the ascertaining of the guilt of accused and judgment thereon by the court. A judgment or sentence is indispensable to a conviction in this sense of the term, and the mere ascertainment of guilt by verdict or plea, which satisfies the ordinary legal definition of conviction, does not suffice. In construing the term conviction, it has been held that the technical meaning ought not to be attributed to it, unless there is something in the context to indicate that it was used in such sense. Barbour v. Scheidt, 246 N.C. 169, 173, 97 S.E.2d 855 (1957) (conviction for speeding with prayer for judgment continued not conviction for purpose of driver license revocation because G.S. 20-24(c) then required final conviction), citing, 24 C.J.S. Criminal Law, Section 1556, Page 17, in accord, Florence v. Hiatt, 101 N.C.App. 539, 400 S.E.2d 118 (1991).

4. Petitioner's conviction by a district court judge on June 3, 1994 of the criminal offense of assault on a female over the age of eighteen is a conviction within the ordinary legal definition of the term and is a conviction within the contemplation of N.C. Admin. Code tit. 16, r. 6C.0312(a)(3) (November 1994) which does not define or qualify the term so as to require its use in the restricted or technical sense.

5. Respondent produced no evidence of the underlying conduct, from the November 16, 1993 incident, to support its charge under N.C. Admin. Code tit. 16, r. 6C.0312(a)(8) (November 1994), its other illegal, unethical, or lascivious conduct rule. Respondent contends that it can proceed against Petitioner's certificate under its conduct rule, without producing evidence of his conduct on November 16, 1993, solely by establishing his conviction on June 3, 1994.

To support this argument, Respondent asserts that Petitioner is estopped to relitigate issues determined in the criminal trial. Application of collateral estoppel or res judicata in a subsequent action requires that the initial action result

in a final, appealable judgment. State v. Lewis, 311, N.C. 727, 319 S.E.2d 145 (1984) (defendant's criminal conviction, with final judgment entered, for willful neglect of and refusal to support his minor children estops him from relitigating issue of paternity in subsequent civil action); But see, Smith v. Burden, 31 N.C.App. 145, 228 S.E.2d 662 (1976) (defendant, pleading not guilty, found guilty with prayer for judgment continued in criminal action for nonsupport and paternity not estopped from litigating issue of paternity in subsequent civil action because there was been no judicial determination (final judgment) of paternity).

It is concluded as a matter of law that Respondent cannot rely solely on proof of Petitioner's conviction with a prayer for judgment continued in the criminal action for assault on a female to prove the underlying conduct required to sustain its charge of other illegal, unethical, or lascivious conduct in the present administrative action against Petitioner's teaching certificate. Id.

6. Respondent must establish, by the greater weight of the evidence, not only that Petitioner has been convicted of a crime as an adult, which it has done, but also that there is a reasonable and adverse relationship between the underlying crime and the continuing ability of Petitioner to perform any of his professional functions in an effective manner. N.C. Admin. Code tit. 16, r. 6C.0312(a)(3) (November 1994).

7. Five expert witnesses testified that Petitioner still could function effectively as a teacher, coach, and role model for students. Respondent called no expert witnesses to establish a reasonable and adverse relationship between Petitioner's conviction of assault on a female over the age of eighteen and his continuing ability to perform any of his professional functions in an effective manner. Considering the evidence thus produced in this contested case hearing, and the illustrative, enumerated functions found in Burrows, supra, it is concluded as a matter of law that there is a reasonable and adverse relationship between Petitioner's conviction for assault on a female over the age of eighteen and his continuing ability to perform his professional functions in an effective manner in the Brunswick County community.

The preponderance of evidence in this contested case has established that Petitioner likely retains the ability to perform his professional functions in an effective manner in some community in North Carolina other than the Brunswick County community.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent determine, from the evidence admitted in this contested case hearing, the appropriate discipline, if any, which should be applied to Petitioner under the circumstances of this case but that Respondent rescind its intent to permanently revoke Petitioner's teaching certificate as not supported by a preponderance of the evidence or by substantial evidence.

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 State Board of Education.

This the 31st day of March, 1995.

Beecher R. Gray
Administrative Law Judge

4. Even if a decision had been made at the time the petition was filed with the Office of Administrative Hearings, the organic statute provides that a decision by the Coastal Resources Commission denying the third party request for a contested case hearing is a final agency decision and the person aggrieved by such final agency decision is entitled to judicial review in superior court pursuant to Article 4 of Chapter 150B of the North Carolina General Statutes. G.S. 113A-121.1(b); see also, G.S. 113A-123(a) & (b).

5. Once the Petitioner receives the written order from the Coastal Resources Commission denying his request to commence a contested case, he will have thirty days in which to file a petition for judicial review in superior court. G.S. 150B-45. Therefore, he maintains an opportunity to redress his grievance.

6. Based upon Empire Power Co. v. N.C. Dept. of E.H.N.R., 337 N.C. 569, 447 S.E.2d 768 (1994), the Office of Administrative Hearings does not have subject matter jurisdiction to hear this matter; however, this conclusion of law is made without prejudice to the Petitioner should the superior court determine upon judicial review of the denial of Petitioner's Third Party Hearing Request that he was entitled to a contested case hearing.

IT IS THEREFORE ORDERED that the Respondent's Motion to Dismiss this petition based upon a lack of subject matter jurisdiction is hereby **ALLOWED** and this contested case must be and is hereby **DISMISSED WITHOUT PREJUDICE**. This is a final decision pursuant to G.S. 150B-36(c).

NOTICE

This final decision is subject to judicial review in the Superior Court Division of the North Carolina General Court of Justice in accordance with the provisions of G.S. Chapter 150B, Article 4, which require that an appeal be filed in the superior court within thirty (30) days following service upon the person of a written copy of the final decision.

This the 22nd day of March, 1995.

Meg Scott Phipps
Administrative Law Judge

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
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1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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