

NORTH CAROLINA REGISTER

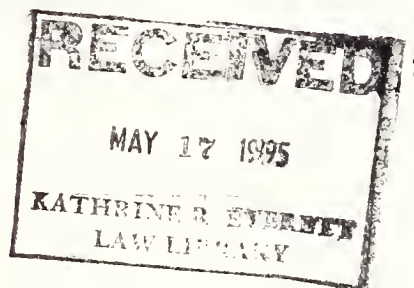
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May 15, 1995**

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RRC Objections
Contested Case Decisions

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and 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.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

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9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
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
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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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.

**TITLE 2 - DEPARTMENT OF
AGRICULTURE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Structural Pest Control Committee intends to amend rule cited as 2 NCAC 34 .0904.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on June 8, 1995 at the Board Room (Room 357), Agriculture Building, 2 W. Edenton Street, Raleigh, NC 27601.

Reason for Proposed Action: To prohibit the use of unregistered pesticides.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing or prior to the hearing by mail, addressed to the Chairman of the North Carolina Structural Pest Control Committee, P.O. Box 27647, Raleigh, NC 27611. This proposed rule was requested by rulemaking petition submitted to and approved by the Structural Pest Control Committee.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

**CHAPTER 34 - STRUCTURAL PEST
CONTROL DIVISION**

**SECTION .0900 - DUTIES AND RESPONSIBILITIES
OF LICENSEE**

.0904 PROHIBITED ACTS

(a) No reference shall be made by any certified applicator, licensee, business establishment or business entity in any form of advertising that would indicate approval, endorsement or recommendation by the committee, or by any agency of the federal government or North Carolina State, county, or city government.

(b) The use of a structural pest control license(s), certified applicator's identification card(s), registered technician's identification card(s) or licensee identification card(s) for any purpose other than identification is prohibited.

(c) In solicitation of structural pest control business, no licensee or his employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection and/or treatment is required for a specific structure.

(d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any phase(s) of work for which he does not hold a valid license(s) as provided for under G.S. 106-65.25(a), unless said licensee shall hold a valid certified applicator's identification card or registered technician's identification card, as

provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license(s) covering phases of structural pest control work advertised.

(e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is prohibited.

(f) No licensee, certified applicator or registered technician's identification card holder shall advertise or hold himself out in any manner in connection with the practice of structural pest control as an entomologist, plant pathologist, horticulturist, public health engineer, sanitarian, and the like, unless such person shall be qualified in such field(s) by required professional and educational standards for the title used.

(g) No certified applicator, licensee or his employees shall represent to any property owner or his authorized agent or occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, unless strongly supporting visible evidence of such infestation exists.

(h) No certified applicator or licensee or their employees shall authorize, direct, assist, or aid in the publication, advertisement, distribution, or circulation of any material by false statement or representation concerning the licensee's structural pest control business or business of the company with which he is employed.

(i) No certified applicator or licensee or their employees shall advertise or contract in a company name style contradictory to that shown on the certified applicator's identification card or license certificate.

(j) No certified applicator shall use any name style on his certified applicator's identification which contains the words "exterminating", "pest control" or any other words which imply that he provides pest control services for a valuable consideration unless he is a licensee or a duly authorized agent or employee of a licensee.

(k) No licensee issued an inactive license shall engage in any phase of structural pest control.

(l) No certified applicator or licensee or their employees shall apply any unregistered substance, that consists of or contains an active ingredient that can be used as a pesticide or to manufacture a pesticide, in conjunction with, any registered pesticide, before, during, or after the registered pesticide is applied for the control of household pests.

Statutory Authority G.S. 106-65.29.

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

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 26H .0302, .0304 - .0305, .0308 - .0309.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 1:30 p.m. on June 14, 1995 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC.

Reason for Proposed Action: *The proposed changes to the ICF-MR reimbursement plan are the result of an indepth study of the ICF-MR industry by the Division of Medical Assistance. The consulting firm of Myers and Stauffer studied the industry under contract #MA-075-93 and recommended an acuity based reimbursement model. The ICF-MR Management Team (comprised of representatives from affected state agencies) and the ICF-MR providers evaluated the Myers and Stauffer study and formulated the proposed plan. The proposed plan has been endorsed by the three ICF-MR provider associations.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted by June 14, 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: *These Rules affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0302 REPORTING REQUIREMENTS

(a) Financial reports shall include the following:

- (1) Budget reports: Each provider shall include appropriate budget information in its application for an initial rate for a new facility:
 - (A) The budget shall reflect the projected annual operating results of each of the two years subsequent to the commencement of operating said facility.
 - (B) The budget information used to support the Certificate of Need award shall be provided to the Division of Medical Assistance on or before 30 days prior to the enrollment of said facility by the Medicaid program.
 - (C) Budgets are not deemed to be appropriately filed unless they are properly prepared, in accordance to rules established by the Division of Medical Assistance.
- (2) Cost reports: Each facility that receives payments from the North Carolina Medicaid Program shall prepare and submit a separate annual cost report of its costs, a working trial balance

related to reimbursement, and other financial information as requested by the Division of Medical Assistance. Providers that have an approved combined uniform rate in accordance with Rule .0304 Paragraph (n) of this reimbursement plan shall file a combined cost report that is supported by the individual facility cost reports. For these providers, the combined cost report shall be filed with the Division of Medical Assistance Audit Section while the individual facility cost reports should be filed with the Division of Medical Assistance Rate Setting Section.

- (A) The cost report shall cover a 12 month period, from July 1 to the following June 30, unless another time frame is specified by the Division of Medical Assistance.
- (B) The cost report shall be submitted to the state on or before the September 30 that immediately follows the June 30 year end. The Division of Medical Assistance may grant an extension of time of up to 30 days for filing the cost report, upon showing of just cause in writing by the provider.
- (C) For new facilities a cost report shall be submitted for the period beginning with the date of certification and ending on the following June 30.
- (D) The cost report shall be submitted on the medium and in the format based on the Chart of Accounts specified by the Division of Medical Assistance. All costs shall be shown on the cost reports in accordance with rules established by the Division of Medical Assistance. A cost report that does not meet the requirements of the Division of Medical Assistance is deemed not to be filed.
- (E) Currently filed cost reports shall reflect the decisions and judgments expressed by the Division of Medical Assistance auditors on previous cost reports.
- (F) All related organizations shall file a Medicaid cost statement identifying their costs, adjustments to costs, and allocation of costs along with the ICF-MR facility's cost report. A home office, or parent company, shall be recognized as a related organization. Auditable records to support these costs shall be made available to the Division of Medical Assistance and its designated contract auditors. Undocumented costs shall be disallowed for Medicaid reimbursement.
- (G) Cost reports shall clearly identify related party transactions. Failure to do so may result in the related cost being disallowed for Medicaid reimbursement purposes.
- (H) A combined cost report may only be filed for

facilities that use the same cost settlement methodology and have a uniform rate, as approved by the Division of Medical Assistance.

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

- (1) Each facility providing day treatment services shall be required to submit, in conjunction with the cost report, a separate report itemizing the actual expense attributable to the provision of day treatment services and the actual number of client days associated with said expense.
- (2) Each provider operating a facility, upon the request of the Division of Medical Assistance, shall submit statistical data and other information relevant to the administration and operation of said facility. Such reports shall be submitted within the time frames authorized in the request.
- (3) Each provider that issues an annual report to its shareholders shall file a copy of said report with the Division of Medical Assistance. Said report shall be filed within 30 days of its issuance to the shareholders.
- (4) Each provider that has a compensatory stock option plan shall file a copy of said plan with the Division of Medical Assistance, within 30 days of its implementation.
- (5) A provider shall file an information report with the Division of Medical Assistance within 30 days of receiving notification from either the North Carolina Department of Revenue or the Internal Revenue Service that items, previously reported and allowed on a cost report, have been disallowed on the provider's associated tax return.

(c) Requirements for certification of financial reports.

- (1) Each provider that operates a facility shall complete the required financial reports in accordance with the following rules and in the order of priority stated:
 - (A) Cost shall be represented in accordance with the specific provisions of the plan as set forth in this Rule.
 - (B) Costs shall be reported in conformance with the Medicare Provider Reimbursement Manual, HCFA 15, which is hereby incorporated by reference ~~with including~~ subsequent ~~changes amendments and editions, amendments pursuant to G.S. 150B-14(a)(2)(C).~~ Said manual is commonly referred to as the HIM-15 manual and is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325 at a cost of three hundred fifty seven

dollars (\$357.00). Tel: (202) 783-3238.

- (C) Costs shall be reported in conformance with generally accepted accounting principles.
- (D) Governmental institutions have the option of using the accrual or cash method of accounting.
- (2) Cost reports prepared for facilities shall be certified for their compliance with Subparagraph (c)(1) of this Rule by the provider's executive director or designated officer.
- (3) Budget reports prepared for facilities shall be certified for their fair representation of anticipated disbursements and receipts related to the Medicaid ICF-MR program by the provider's executive director or designated officer.
- (d) Requirements for the revision of financial reports shall include the following:
 - (1) In the event the Division of Medical Assistance determines a cost report does not meet the requirement of the Division of Medical Assistance during a detailed review, the provider shall have 30 days from the date of said notification to submit a revised cost report or additional data. Such revised data or report shall be certified by the provider's executive director or designated officer.
 - (2) In the event that the provider discovers that a report submitted to the Division of Medical Assistance is incomplete, inaccurate or incorrect the provider shall immediately notify the Division of Medical Assistance that such error(s) exist. The provider shall have 30 days from the date of said notification to submit a revised report or additional data. Such data or report shall meet the certification requirements of the report being corrected.
 - (3) Failure to file the corrected reports on a timely basis in accordance to either Subparagraph (d)(1) or (2) of this Rule shall result in the related report being considered not filed and subject to the provisions under this Rule related to the failure to file said reports. However, the Division of Medical Assistance may grant an extension of time of up to 30 days to file said corrected reports, upon the showing of just cause by the provider in writing.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0304 RATE SETTING METHODS FOR NON-STATE FACILITIES

~~—(a) A prospective rate is determined annually for each non-state facility to be effective for dates of service for a 12-month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective~~

rate may be determined after the effective date and paid retroactively to that date. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

- (1) — Group 1 Facilities with six beds or less and provider owns less than 150 total beds in said facilities.
- (2) — Group 2 Facilities with six beds or less and provider owns 150 or more beds in said facilities.
- (3) — Group 3 Facilities with seven to 15 beds.
- (4) — Group 4 Facilities with 16 to 40 beds.
- (5) — Group 5 Facilities with over 40 beds.
- (6) — Group 6 Facilities with medically fragile clients. For rate reimbursement purposes under this plan, medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24 hour a day medical/nursing/health supervision or intervention.

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

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

— (c) Rates are derived from either filed, desk or field audited cost reports for the 1991-1992 base year period. The rate setting impact of a facility filing a less than full year's cost report in the base year shall be fully considered by the Division of Medical Assistance in determining the appropriate per diem rate.

— (d) Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found

to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

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

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

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

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

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

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

— (i) The facility's total per diem rate shall be limited to the lesser of the actual amount incurred in the base year or the sum of the fiftieth percentile of each cost category, achieved by the related facility group in the base year.

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

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

graph (i) of this Rule.

~~(3) Facility Group 4—Cost categories are limited to the cost incurred in the base year by the facility in this category determined to represent fair and reasonable costs for this group as determined by the Division of Medical Assistance.~~

~~(4) Facility Group 5—Cost categories are limited to the weighted average cost incurred by the facilities in this group during the base year.~~

~~(k) If, during a cost reporting period, allowable costs are less than prospective payments that are not based on an appeal, then a provider may retain one half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. If allowable costs are less than prospective payments that are based on an appeal, then all of the unexpended payments during the year of the appeal shall be refunded to the Division of Medical Assistance. For years subsequent to the year of appeal, a provider may retain one half the unexpended payment, up to an amount of five dollars (\$5.00) per patient day, if the appeal rate is at or below the cost cap established for the applicable facility group. However, if the appeal rate is above the applicable cost cap in subsequent years, then all of the unexpended payments shall be returned to the Division of Medical Assistance. Cost in excess of a facility's total prospective payment rate are not reimbursable.~~

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

~~(1) Price level adjustment factors are computed using aggregate base year costs in the following manner:~~

~~(A) Costs shall be separated into three groups:~~

- ~~(i) Labor;~~
- ~~(ii) Non labor;~~
- ~~(iii) Fixed.~~

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

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

~~(i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance.~~

~~(ii) Nonlabor. The percentage change for nonlabor costs is based on the projected~~

~~annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.~~

~~(iii) Fixed. No price level adjustment shall be made for this category.~~

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

~~(m) The initial rate for facilities that have been awarded a Certificate of Need on or after January 1, 1993 is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (l) of this Rule, or the average current rate paid to facilities in the appropriate facility group as determined by Division of Medical Assistance, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year after an audit of the first year of normal operation is completed.~~

~~(1) For facilities that have been awarded a Certificate of Need before January 1, 1993, the initial rate is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (l) of this Rule, or the maximum rate paid to facilities in the appropriate facility group, or the rate currently paid to the owning provider, if the provider has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year after an audit of the first year of normal operation is completed.~~

~~(2) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner.~~

~~(3) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of properly prepared budgets and supporting infor-~~

mation-

FACILITY
DDP SCORE

(4) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certificated by the Medicaid Program.

(n) A provider with more than one facility in a particular facility group, except Group 5, may be allowed to recover costs through a combined uniform rate for all facilities in a particular facility group.

(1) Combined uniform rates for chain providers within a particular facility group may be approved upon written request from the provider and after review by the Division of Medical Assistance.

(2) An approved combined uniform rate must be applied to all facilities owned by the chain provider in a particular facility group.

(3) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.

(4) A combined uniform rate approved for chain providers prior to July 1, 1993, is considered to be void subsequent to July 1, 1993, if the combined uniform rate is inconsistent with the rate setting provisions of this Section.

(a) A prospective rate is determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. The prospective rate may be changed due to a rate appeal under Rule .0308 of this Section or facility reclassification under Paragraph (b) of this Rule. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

- (1) Group 1- Facilities with 32 beds or less.
- (2) Group 2- Facilities with more than 32 beds.
- (3) Group 3- Facilities with medically fragile clients. For rate reimbursement purposes under this Rule medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.
- (4) Facilities in group 1 or 2 in Subparagraph (a)(1) or (2) of this Rule shall be further classified in accordance to the level of disability of the facility's clients, as measured by the Developmental Disabilities Profile (DDP) assessment instrument. A summary of the levels of disability is shown in the following chart:

Level	Low	High
1	200.00	300.00
2	125.00	199.99
3	100.00	124.99
4	75.00	99.99
5	50.00	74.99

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

- (1) When a facility is reclassified, the rate will be adjusted retroactively back to the date of the event that caused the reclassification. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical Assistance.
- (3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.
- (4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each and every facility is properly classified for rate setting purposes.
- (5) A provider shall file any request for facility reclassification in writing with the Division of Medical Assistance no later than 60 days subsequent to the proposed reclassification effective date.
- (6) For facilities certified prior to July 1, 1993, the facility DDP score calculated in the Myers and Stauffer study shall be used to establish proper classification at July 1, 1995.
- (7) For facilities certified after June 30, 1993, the most recent facility DDP score shall be used to establish proper classification.
- (8) A facility reclassification review shall use the most current facility DDP score.
- (9) The DDP score shall be calculated based on the methodology used in the State of Kansas and included in the Myers and Stauffer study.
- (10) A facility's DDP score shall be subject to inde-

pendent validation by the Division of Medical Assistance.

- (11) A new facility that has not had a DDP survey conducted on its clients shall be categorized as a level 2 facility for rate setting purposes, pending completion of the DDP survey. Upon completion of the DDP survey, the facility shall be subject to reclassification and rates will be adjusted retroactively back to the date of certification. Overpayments related to this retroactive adjustment shall be paid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(c) Facility rates under this Rule shall be established at July 1, 1995, under the following:

- (1) For facilities certified prior to July 1, 1993, rates shall be derived from the 1993 cost reports, as reflected in the Myers and Stauffer study.
- (2) For facilities certified during fiscal year 1993-1994, the fiscal year 1994 facility specific cost report shall be used to derive rates.
- (3) For facilities certified during fiscal year 1994-1995, the fiscal year 1995 facility specific cost report shall be used to derive rates.
- (A) Rates for these facilities shall not be adjusted, except for the impact of inflation under Paragraph (k) of this Rule, until the fiscal year 1995 cost report has been properly reviewed. Rates for these facilities shall be adjusted retroactively back to July 1, 1995, once the fiscal year 1995 facility specific cost report has been properly reviewed. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (4) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 shall not have their rates established in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule.
- (A) The rates for these facilities shall remain at the level approved in the rate appeal proceeding adjusted only for inflation, as reflected in Paragraph (k) of this Rule.

(d) For facilities certified after June 30, 1993, rates developed from filed cost reports for fiscal years subsequent to 1993 may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period.

The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

(e) Each prospective rate developed in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule consists of the sum of two components as follows:

- (1) Indirect care rate.
- (2) Direct care rate.

(f) A uniform industry wide indirect care rate is established for each facility category shown under Subparagraph (a)(1), (a)(2), or (a)(3) of this Rule.

- (1) The indirect rate for group 1 facilities is based on the fiftieth percentile of the following costs incurred by all group 1 facilities with six beds or less, except those related by common ownership or control to more than 40 said facilities:

(A) The sum of the cost of property ownership and use, administrative and general, and operation and maintenance of plant, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

- (2) The indirect rate for group 2 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1)(A) of this Rule incurred by the group 2 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

- (3) The indirect rate for group 3 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1)(A) of this Rule incurred by the group 3 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

- (4) The indirect rates established under Subparagraphs (f)(1), (f)(2), and (f)(3) of this Rule shall be reduced as determined based on industry cost analysis by an amount not to exceed four percent to account for expected operating efficiencies.

(g) The direct care rate for facilities certified prior to July 1, 1993, is based on the Myers and Stauffer study performed on the 1993 base year cost reports.

- (1) The direct care rate for all facilities certified during fiscal years subsequent to fiscal year 1993 is based on the first facility specific cost report filed after certification. Based on said cost report, the direct care rate is equal to the sum of all allowable costs reflected in the ICF-MR cost report cost centers, as included in the ICF-MR cost report format effective July 1, 1993, except for the following indirect cost centers:

- (A) Property Ownership and Use
- (B) Operation and Maintenance of Plant and Housekeeping-Non-Labor
- (C) Administrative and General

- (2) The direct care rate shall be limited to the lesser of the actual amount incurred in the base year or

- the cost limit derived from the fiftieth percentile of direct care costs incurred by the related facility group in the fiscal year 1993 base year, based on the Myers and Stauffer study.
- (3) The fiftieth percentile cost limit shall be reduced by one percent each year, for the four year period beginning July 1, 1996, in order to account for expected operating efficiencies, as determined based on industry cost analysis.
- (4) The fiftieth percentile cost limit shall be increased each year by price level changes calculated in accordance with Paragraph (k) of this Rule.
- (h) The indirect rate shall not be subject to cost settlement.
- (1) Costs above the indirect rate shall not be paid to the provider.
- (2) Costs savings below the indirect rate shall not be recouped from the provider.
- (i) The direct care rate shall be subject to cost settlement, based on the cost report, subject to audit, filed with the Division of Medical Assistance.
- (1) Costs above the direct rate shall not be paid to the provider.
- (2) Cost savings below the direct rate shall be recouped from the provider.
- (j) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 may choose to cost settle under the provisions of Paragraphs (h) and (i) of this Rule, or under the following procedure:
- (1) If, during a cost reporting period, total allowable costs are less than total prospective payments, then a provider may retain one-half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. Costs in excess of a facility's total prospective payment rate are not reimbursable.
- (2) The facilities subject to the Paragraph shall make the election on cost settlement methodology on or before the filing of the annual cost report with the Division of Medical Assistance.
- (3) An election to follow the cost settlement procedures of Paragraphs (h) and (i) of this Rule shall be irrevocable.
- (4) Rates established for these facilities during future rate appeal proceedings shall be subject to the cost settlement procedures of Paragraphs (h) and (i) of this Rule.
- (k) To compute each facility's current prospective rate, the direct and indirect rates established by Paragraphs (f) and (g) of this Rule are adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.
- (1) Price level adjustment factors are computed using aggregate costs in the following manners:
- (A) Costs shall be separated into three groups:
- (i) Labor,
- (ii) Non-labor,
- (iii) Fixed.
- (B) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total cost of the three categories.
- (C) Price level adjustment factors for each cost group shall be established as follows:
- (i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance.
- (ii) Nonlabor. The percentage change for nonlabor costs is based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
- (iii) Fixed. No price level adjustment shall be made for this category.
- (D) The weights computed in Part (k)(1)(B) of this Rule shall be multiplied times the rates computed in Part (k)(1)(C) of this Rule. These weighted rates shall be added to obtain the composite inflation rate to be applied to both the direct and indirect rates.
- (l) Effective July 1, 1995, any rate reductions resulting from this Rule shall be implemented based on the following deferral methodology:
- (1) Rates shall be reduced for the excess of current rates over base year costs plus inflation.
- (2) Rates shall be reduced a maximum of 50 percent of the fiscal 1996 inflation rate for the excess of actual costs over applicable cost limits. This reduction shall result in the facility receiving at a minimum 50 percent of the 1996 inflation rate. Any excess reduction shall be carried forward to future years.
- (3) Total reduction in future years related to the excess reduction carried forward from Subparagraph (l)(2) of this Rule, shall not exceed the annual rate of inflation. This reduction shall result in the facility receiving at a minimum the rate established in Paragraph (l)(2) of this Rule. Any excess reduction shall be carried forward to future years, until the established rate equals that generated by Paragraphs (f), (g), and (k) of this Rule.

(4) Rates calculated based on Subparagraphs (l)(2) and (3) of this Rule shall be cost settled based on the provisions of Subparagraph (j)(1) of this Rule until the fiscal year that the facility receives full price level increase under Paragraph (k) of this Rule.

(A) A provider may make an irrevocable election to cost settle under the provisions of Paragraphs (h) and (i) of this Rule during the deferral period.

(B) Once the rates calculated based on Subparagraphs (l)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k), then said fiscal year's rates shall be cost settled based on Paragraphs (h) and (i) of this Rule.

(C) Chain providers are allowed to file combined cost reports, for cost settlement purposes, for facilities that use the same cost settlement methodology and have the same uniform rate.

(D) A provider may request from the Division of Medical Assistance permission to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said request shall be made each year, 30 days prior to the cost report due date.

(m) The initial rate for facilities that have been awarded a Certificate of Need is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application, adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (k) of this Rule, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year an audit of the first year of normal operation is completed.

(1) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner.

(2) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of properly prepared budgets and supporting information.

(3) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certified by the Medicaid Program.

(4) The initial rate for a new facility shall not be entered into the Medicaid payment system until

the facility is properly enrolled in the Medicaid program and a Medicaid identification number has been assigned to the facility by the Division of Medical Assistance.

(n) A provider with more than one facility may be allowed to recover costs through a combined uniform rate for all facilities.

(1) Combined uniform rates for chain providers shall be approved upon written request from the provider and after review by the Division of Medical Assistance.

(2) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.

(o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this plan for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.

(p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.

(q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance may approve an interim rate.

(1) The interim rate shall not exceed the rate cap established under this Section for the applicable facility group.

(2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.

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

(r) In addition to the prospective per diem rate developed under this Section, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart 2, Section 1910.1030 of the Code of Federal Regulations. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Section 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Section 1910.1030 in the prospective rate. This interim add on shall

be removed, upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Section 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.

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

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

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

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

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

(x) The annual prospective rate, effective beginning each

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

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C.

.0305 ALLOWABLE COSTS

(a) To be considered allowable, costs shall not exceed fair and reasonable levels as determined by Division of Medical Assistance, and shall be required to provide necessary client care under the Medicaid Program.

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

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

(c) As determined by the Division of Medical Assistance, expenses or portion of expenses reported by an individual facility that are not reasonably related to the efficient and economical provision of care in accordance to the require-

ments of this Rule, because of either the nature or amount of the item, shall not be allowed.

- (1) Reasonable compensation, as determined by Division of Medical Assistance, of individuals employed by a provider is an allowable cost, provided such employees are engaged in client related functions and that the compensation is reasonable in light of industry historical data. The historical data shall include, but not be limited to, salary levels for similar services in the same market in which the facility is located.
- (2) Payroll records shall be maintained by the provider to substantiate the staffing costs reported to the Division of Medical Assistance. Payroll records shall indicate each employee's classification, hours worked, rate of pay, and the functional area to which the employee was assigned and actually worked. If an employee performs duties in more than one cost center, the provider shall maintain periodic time studies in order to allocate salary and wage costs to the appropriate cost centers, as determined by the Division of Medical Assistance. These periodic time studies shall be maintained in accordance with the Medicare Provider Reimbursement Manual.
- (3) The Division of Medical Assistance shall not reimburse costs related to excess staff.
- (4) Compensation for owners is allowable only for duties which otherwise would require the employment of another individual in the provision of ICF-MR related services. Said compensation shall be limited to a reasonable amount, as determined by the Division of Medical Assistance, not to exceed that paid in the local market place for similar type duties. Compensation for owners is not allowable where the services are not related to the provision of ICF-MR related services.

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

(e) As determined by the Division of Medical Assistance, costs for any interest expense related to funding expenses in excess of a fair and reasonable amount, or penalty imposed by governmental agencies or courts and the costs of insurance policies obtained solely to insure against such penalty, shall not be allowed.

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

(g) As determined by the Division of Medical Assistance, only that portion of dues paid to any professional association which has been demonstrated to be reasonable in amount and attributable to Medicaid Program related expenditures

other than for lobbying or political contributions shall be allowed. The burden of proof shall be on the provider to justify the inclusion of any professional association dues. Association budgets may be considered in determining said justification.

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

- (1) The provider shall file the necessary documentation to support the justification for the proposed expenditure and related financing with the Division of Medical Assistance no later than 90 days prior to the proposed transaction's commencement date.
- (2) The Division of Medical Assistance shall render a decision in writing to the provider on the propriety of the proposed transaction no later than 30 days prior to the proposed transaction's commencement date.
- (3) The time requirements of Subparagraphs (h)(1) and (2) of this Rule may be altered, with just cause shown, by the Division of Medical Assistance.
- (4) For any transaction resulting in a change of ownership, the valuation of the asset shall be limited to the lesser of the allowable acquisition cost of the asset to the first owner of record who has received Medicaid payment for said asset, less any accumulated depreciation, plus any allowable improvements, or the acquisition cost of the asset to the new owner. Payment of rent by the Medicaid enrolled provider to the lessor of a facility shall constitute Medicaid payments under this Rule.
- (5) Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under Medicaid, shall not be allowable for reimbursement.
- (6) An exception may be applied by the Division of Medical Assistance to the requirements of either

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

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

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

- (1) The lease is reviewed by and acceptable to the Division of Medical Assistance.
 - (A) The lease shall not be acceptable if the associated asset(s) are not needed for client care as determined by the Division of Medical Assistance.
 - (B) The lease shall not be acceptable if alternate means of financing is deemed available and more economical. In making this determination all aspects of the economic impact of the lease shall be examined, including length of lease, the cost of the asset to the owner, and the incremental rate of return provided to the lessor. In addition, the lessee's incremental implicit rate of interest and financial position shall be considered.
 - (C) The test of reasonableness shall take into account the agreement between the owner and the tenant regarding the payment of related property costs.
 - (D) Absent clear justification to the contrary, material capital improvements to leased property that are necessary to maintain the asset in its ordinary state of usability at the commencement of the lease, shall be the responsibility of the lessor. Examples of said costs are roof or utility service replacement due to reasons

beyond the prudent control of the lessee.

- (E) Effective July 1, 1993, requests for prior approval of new leases and lease renewals must be submitted whenever possible at least 120 days prior to the last date for the exercise of the lease or lease renewal option. HUD leases with individual ICF-MR clients are not subject to this requirement.
- (F) Failure to acquire prior approval of leases and lease renewals may result in the disallowance of said cost from Medicaid reimbursement.
- (2) The lease shall be considered an arm's-length transaction under HIM-15. Leases failing the HIM-15 arm's-length transaction test shall be reimbursed at the leased asset's reasonable cost of depreciation, interest, if any, and other related expenses, including but not limited to reasonable maintenance costs, as determined by the Division of Medical Assistance. It is the responsibility of the provider to maintain auditable records to document these ownership costs to the Division of Medical Assistance or its designated contract auditors. Undocumented costs may be disallowed.
- (3) The lease amount is comparable to similar leases for properties with similar functions in the same geographical area.
- (4) The lease agreement between unrelated parties shall include the provision that the amount of rental to be paid by the lessee to the lessor shall not, in any event, exceed the amount approved by the Division of Medical Assistance.
- (j) Depreciation shall be an allowable cost when based upon factors of historical costs and useful life. Depreciation shall be subject to the provisions of this Paragraph and Subparagraph (j)(1) of this Rule. For the purpose of this Section:
 - (1) Unless an exception is made by the Division of Medical Assistance, the useful life shall be the higher of the reported useful life or that from the Estimated Useful Lives of Depreciable Hospital Assets (1988 edition), which is incorporated by reference with subsequent changes and amendments. A copy of the Useful Lives of Depreciable Hospital Assets can be obtained by writing to the American Hospital Association, 840 Lake Shore Drive, Chicago Illinois, 60611, at a cost of thirty one dollars and ninety-five cents (\$31.95) per copy. In certain instances, a useful life that is based upon historical experience as shown by documentary evidence and approved by the Division of Medical Assistance may be allowed. Should the provider desire a depreciation rate different from that based on the general Rule in Subparagraph (j)(1) of this Rule, then said provider shall make the request in writing to the Division of Medical Assistance.

Upon review and analysis, the Division of Medical Assistance shall make a determination in writing as to the reasonableness of said request.

- (2) The depreciation method used shall be the straight-line method.
- (3) Unless an exception is granted by the Division of Medical Assistance, depreciated rates shall be applied uniformly and consistently, in accordance with this Rule and generally accepted accounting principles. Should the provider discover that depreciation has been improperly recorded in prior years, then the provider shall within 30 days report the error to the Division of Medical Assistance. The impact of the error on the provider's rate shall be fully considered by the Division of Medical Assistance and a rate adjustment may be made, with due cause shown. Failure to record depreciation properly may result in disallowance for Medicaid reimbursement purposes.
- (4) Depreciation paid to the provider by the Medicaid Program shall be prudently used by said provider to meet the financial requirements of providing adequate service to the ICF-MR clients.
 - (A) Payment to related parties for costs disallowed by this Rule for Medicaid reimbursement may be considered imprudent use of depreciation reimbursement.
 - (B) Imprudent use of Medicaid reimbursement of depreciation may result in the provider being required by the Division of Medical Assistance to fund the depreciation through a qualified independent entity or disallowance of depreciation for Medicaid reimbursement.
- (5) In order to substantiate depreciation expense for Medicaid reimbursement purposes, the property records shall include, at a minimum, all of the following, for assets purchased on or after July 1, 1993:
 - (A) The depreciation method used,
 - (B) A description of the asset,
 - (C) The date the asset was acquired,
 - (D) The cost of the asset,
 - (E) The salvage value of the asset,
 - (F) The depreciation cost,
 - (G) The estimated useful life of the asset,
 - (H) The depreciation expense each year,
 - (I) The accumulated depreciation.
- (6) The recovery of losses associated with the disposal or abandonment of assets used to provide necessary services to the Medicaid program shall be determined on a case by case basis. Requests for recovery shall be made in writing and are subject to prior Division of Medical Assistance approval. Failure to acquire approval

may result in the disallowance of said costs.

- (7) The treatment of gains associated with the disposal of assets used to provide necessary services to the Medicaid program shall be based on this Rule and the HIM-15.
 - (k) Interest cost may be considered an allowable cost subject to the following conditions, and the limits included in Paragraph (k)(1) of this Rule:
 - (1) Interest for capital indebtedness, where the interest expense results from the initial financing of the capital indebtedness and the capital indebtedness represents all or part of the current Division of Medical Assistance approved value of the property. The property shall be necessary for the provision of adequate service, as determined by the Department of Human Resources, to the clients of the ICF-MR facility. The financing shall be prudently incurred.
 - (2) The interest rate shall not be in excess of the amount a prudent borrower would pay at the time the loan was incurred. In determining the reasonableness of the interest rate, all associated factors at the time the loan was incurred shall be considered, including, but not limited to the following:
 - (A) Current market rates of interest in the economy.
 - (B) Industry specific rates of interest.
 - (C) Provider specific financial position.
 - (3) The loan agreement shall be entered into between parties not related through control, ownership, affiliation, or personal relationship as defined in HIM-15, unless this provision is waived in writing by the Division of Medical Assistance. Such waiver shall be based on, but not limited to, a demonstration of need for the indebtedness and cost savings resulting from the transaction. The burden of proof shall be on the provider to provide proper support and justification for such waiver to the Division of Medical Assistance. Loans from a related party must be clearly identified and reported separately on the annual cost report.
 - (4) Interest expense on working capital indebtedness is allowable, subject to the Division of Medical Assistance's approved level of working capital, and subject to the standards listed of this Rule.
 - (A) Interest on excess working capital is specifically denied.
 - (B) Working capital shall be established at the level necessary to support the facility's operations, after taking into full consideration the lead/lag impact of the facility's expenditures and reimbursements.
 - (5) Interest expense for capital indebtedness where the interest expense results from the refinancing of the capital indebtedness, and the refinancing

has the prior approval of the Division of Medical Assistance, shall be allowed in that amount associated with the outstanding principal prior to refinancing. Interest costs may be allowed in excess of the amount associated with the outstanding principal balance prior to refinancing, if the purpose of the debt is to acquire assets to be used for care of persons served by the facility and all other applicable requirements of this Rule are met. Interest expense resulting from the inclusion of the closing costs, such as, but not limited to, attorney's fees, recording costs and points in the refinancing transaction shall be considered allowable.

- (A) The provider should file all necessary documents supporting its request for refinancing prior approval to the Division of Medical Assistance no later than 120 days prior to the proposed refinancing date.
- (B) The Division of Medical Assistance shall render a decision regarding the prior approval request no later than 30 days prior to the proposed refinancing date.
- (C) Based upon just cause shown, the Division of Medical Assistance may waive the time requirements included in Parts (k)(5)(A) and (B) of this Rule, but in all cases there shall be enough time allowed to evaluate the proposed refinancing.
- (6) In all cases, in order for the interest expense to be allowable it shall be necessary to satisfy a financial need related to the adequate provision of recipient care, as determined by the Division of Medical Assistance. Loans which result in excess funds or investments are not considered necessary.
- (7) Interest expense may not be allowable when related to loans that failed to receive prior approval, as required, from the Division of Medical Assistance.
- (8) In no event shall interest expense be allowed on a facility's cost that is deemed to be excessive.
- (I) The annual capital cost or lease expense limitations shall apply:
 - (1) To all facilities with 21 or more beds and to facilities consisting of multiple detached buildings in which at least one contains nine certified beds. The facilities covered by this limit shall have been awarded a Certificate of Need before January 1, 1993. The annual capital cost or lease expense limit shall be the lesser of actual cost or the sum of Parts (A) and (B) as follows:
 - (A) The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars (\$30,000) per bed (capital recovery base) during fiscal year 1982-83 adjusted for changes in the following

cost indexes:

- (i) For the period after 1982-83 and through the period 1991-92 the capital recovery base shall be adjusted for changes in the Dodge Building Cost Index of North Carolina Cities.
- (ii) For the period beginning July 1, 1992 the capital recovery base shall be adjusted for changes in the implicit price deflator for residential structures as provided by the Office of State Budget and Management. Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.
- (B) An interest allowance equal to 10 percent of the capital recovery base used to compute annual depreciation on plant and fixed equipment.
- (C) This annual capital cost or lease expense limit does not apply to leases in effect prior to August 3, 1983.
- (2) To all facilities that have been awarded a Certificate of Need on or after January 1, 1993, the annual capital cost or lease expense shall be limited to the lesser of actual cost or the fair and reasonable depreciation and interest expense calculated on the capital recovery base in effect at the time of certification and enrollment into the Medicaid program.
 - (A) Depreciation expense shall be computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.
 - (B) Interest expense is computed using a 10 percent rate of interest.
 - (C) The capital recovery base is established as thirty thousand dollars (\$30,000) of plant and fixed equipment assets per bed during the fiscal year 1982-83 adjusted for the changes in the cost indexes contained in Subparagraphs (I)(1)(A), (i) and (ii) of this Rule.
 - (D) Recovery of the cost of material additions to plant and fixed equipment subsequent to certification and enrollment in the Medicaid program shall be subject to review on a case by case basis, consistent with the provisions of this Rule.
 - (E) This capital cost or lease expense limitation should be considered the absolute maximum allowable for Medicaid reimbursement. In evaluating the reasonableness of a particular facility's capital cost or lease expense, regional costs of land and construction should be considered. In cases where the reasonable regional costs are less than those derived from

Subparagraph (1)(2)(C) of this Rule, then the regional costs should be used in determining the appropriate capital cost or lease expense limitations.

- (i) Generally, in determining fair and reasonable facility cost, the average cost of similar construction in the same local area should be used. This test of reasonableness should be applied to all components of the facility's construction cost, including square footage and per unit costs.
- (ii) Absent strong, clear justification to the contrary, no six bed facility shall be allowed to recover capital cost and lease expense related to square footage in excess of 3200 square feet.

- (3) Failure to provide supporting evidence of actual facility cost incurred may result in disallowance of said cost.

(m) For providers whose annual reimbursement from the Medicaid program exceeds one million dollars (\$1,000,000,) all contracts with related parties as defined by HIM-15 in the amount of ten thousand dollars (\$10,000) or more shall receive prior approval from the Division of Medical Assistance.

- (1) Failure to file said contracts with the Division of Medical Assistance may result in disallowance of the related cost from Medicaid reimbursement.
- (2) The contracts should be filed with the Division of Medical Assistance 90 days prior to the effective date of said contracts.

~~(n) Restricted funds are funds expended by the facility which include grants, gifts, and income from endowments, whether cash or otherwise, which shall be used only for a specific purpose as designated by the donor or grant instrument. Items purchased with restricted funds are to be excluded from the Medicaid cost report. Unrestricted funds are funds expended by the provider which include grants, gifts, and income from endowments, cash or otherwise, given to a provider without restriction by the donor as to their use. Items purchased with unrestricted funds are to be excluded from the Medicaid cost report.~~

(n) Unrestricted grants, gifts, and income from endowments are funds, cash or otherwise, given to a provider without restriction by the donor as to their use. Restricted or designated grants, gifts and income from endowments are funds, cash or otherwise, which must be used only for a specific purpose designated by the donor. This does not refer to unrestricted grants, gifts, or income from endowments which have been restricted for a specific purpose by the provider.

- (1) Costs reflected on the Medicaid cost report that are supported from unrestricted or restricted funds shall be offset by said funds on the cost report.
- (2) In determining the period in which funds are deemed used, the following shall be considered:

(A) If the terms of the contribution state the period of time during which the funds are to be applied, then said funds shall be deemed used in the designated period.

(B) If the terms of the contribution do not state the period of time during which the funds are to be applied, then said funds shall be deemed used in the year of receipt unless the preponderance of evidence supports a different conclusion. Evidence to be considered on this matter includes, but is not limited to, the following:

- (i) The decision of the Board of Directors or management when to prudently use the funds, consistent with the provider's fiduciary responsibility.
- (ii) Intentions of the contributor.
- (iii) Supporting documentation, including general ledger accounting.

(3) In determining what costs are supported by the funds, the preponderance of evidence shall be considered; including but not limited to, the following:

- (A) The decision of the Board of Directors or management, consistent with the provider's fiduciary responsibility.
- (B) Intentions of the contributor.
- (C) Supporting documentation, including general ledger accounting.

(4) Consistent with the intentions of the contributor, the funds may be used to support any of the following costs:

- (A) Non-Medicaid program costs.
- (B) Medicaid program allowable costs.
- (C) Medicaid program unallowable costs.

(5) Consistent with the intentions of the contributor, and absent the preponderance of evidence to the contrary, the funds shall be deemed used to support Medicaid program allowable costs.

(6) The revenue offset in Subparagraph (1) of this Paragraph may be reduced by the reasonable cost of acquiring the contributed funds.

- (A) Reasonable costs are those incurred by an economic and efficient provider.
- (B) The provider's general ledger and supporting documents should support the level of acquisition cost.
- (C) The revenue offset shall not be reduced below zero.

(7) Providers are encouraged to raise these funds to offset Medicaid allowable costs.

(o) When multiple facilities or operations are owned by a single entity with a central office, the central office records shall be maintained as a separate set of records with costs and revenues separately identified and appropriately allocated to individual facilities. Allocation of central office costs shall be reasonable and conform to the directives of

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

- (1) If a provider has business enterprises other than those reimbursed by Medicaid, then the revenues, expenses, statistical and financial records for such enterprises shall be clearly identifiable from the records of the operations reimbursed by Medicaid.
- (2) If an audit establishes that records are not maintained so as to clearly identify Medicaid information, none of the co-mingled costs shall be recognized as Medicaid allowable costs and the provider's rate shall be adjusted to reflect the disallowance as of the earlier of the commencement of the rate period related to the co-mingled costs, or the commencement of the co-mingling of said costs.
- (3) After the co-mingled costs have been satisfactorily allocated and reported to the Division of Medical Assistance, and based on good cause shown, the Division of Medical Assistance may retroactively adjust the facility's rate.
- (4) Central office costs are generally charged to the Administrative and General cost center. In some cases, however, certain personnel costs which are direct patient care oriented may be allocated to direct care cost centers if time records are maintained to document the performance of direct patient care services. No home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
 - (A) specific time records of work performed at each facility,
 - (B) client days in each facility to which the costs apply relative to the total client days in all the facilities to which the costs apply, or
 - (C) any other allocation method approved by the Division of Medical Assistance.
- (p) All criteria and limitations used by the Division of Medical Assistance to subject individual provider cost data to tests of reasonableness shall be made available to a provider upon written request. In determining reasonableness of costs, the Division of Medical Assistance may compare major cost centers or total costs of similar providers and may request satisfactory documentation from providers whose cost does not appear to be reasonable. Similar providers are those with like levels of client care, size, and geographic location.
- (q) Start-up costs are costs incurred by an ICF-MR facility while preparing to provide services at said facility. It includes the cost incurred by providers to provide services

at the level necessary to obtain certification less any revenue or grants related to start-up. The North Carolina Medicaid Program shall reimburse these start-up costs up to a maximum equal to the facility's rate times its beds times 120 days.

- (1) Effective for all facilities whose Certificate of Need was granted on or after January 1, 1993, the start-up cost reimbursement shall be added to the facility's per diem rate calculated in accordance to the related provisions of this plan. These start-up costs shall be amortized over a 36 month period and shall be reported as administrative and general in the cost report. No advance of these start-up costs shall be made. These costs shall not be included in calculating the facility's total AG/OMP costs for rate setting purposes in accordance with this Rule.
- (2) Effective for all facilities whose CON was granted prior to January 1, 1993, the start-up reimbursement shall be made in addition to the facility's per diem rate. No advance of start-up funds shall be made prior to the submission of the start-up cost report. An interim payment not to exceed 80 percent of the allowable start-up costs can be made at the written request of a provider after a start-up cost report has been filed. The remaining balance of appropriately incurred start-up costs shall be paid after the desk audit of the start-up cost report has been completed. Any balance due to the Medicaid program shall be repaid promptly.
- (3) A start-up cost report shall be filed in accordance to the guidelines established by the Division of Medical Assistance.
 - (A) The start up cost report shall be filed with the Division of Medical Assistance Audit Section.
 - (B) Schedule E of the start up cost report shall be filed with the Division of Medical Assistance's Rate Setting Section.
- (4) Allowable start-up costs may include, but not be limited to:
 - (A) personal services expenses,
 - (B) utility expenses,
 - (C) property taxes,
 - (D) insurance expenses,
 - (E) employee training expenses,
 - (F) housekeeping expenses,
 - (G) repair and maintenance expenses,
 - (H) administrative expenses.
- (5) All costs that are properly identifiable as organization costs shall be classified as such and excluded from start-up costs.
- (6) Cost related to increasing bed capacity in an existing facility shall not be treated as start-up costs.
- (r) Only that portion of management fees that is directly related to client care and is not otherwise functionally

covered by the current staffing pattern is allowable in the calculation of a facility's actual, allowable, and reasonable costs. Management fees on a per diem basis shall be limited to seven percent of the maximum intermediate care rate for nursing facilities enrolled in the Medicaid Program. Management fees are charged to the Administrative and General Cost Center. In some cases, however, a portion of a management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Records to support these costs shall be made available to staff of the Division of Medical Assistance. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:

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

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

- (1) bad debts;
- (2) advertising, except personnel want ads, and one line yellow page (indicating facility address);
- (3) charity, courtesy allowances, discounts, refunds, rebates and other similar items granted by the provider;
- (4) life insurance (except for employee group plans and reasonable key man life insurance premiums required by financial institutions in an outstanding loan agreement);
- (5) prescription drugs and insulin (available to recipients under the State Medicaid Drug Program);
- (6) vending machine expenses;
- (7) state or federal corporate income taxes, plus any penalties and interest;
- (8) telephone, television, or radio for personal use of client;
- (9) retainers, unless itemized services of equal value have been rendered;
- (10) fines or penalties;
- (11) ancillary costs that are billable to Medicare or other third party payors;
- (12) property taxes and other expenses related to real estate deemed by the Division of Medical Assistance to be in excess of the reasonable amount needed for the physical facility;
- (13) property taxes, insurance, maintenance and other expenses related to facility costs deemed by the Division of Medical Assistance to be in excess of the reasonable amount necessary for quality

client care;

- (14) costs associated with lawsuits filed against the Department of Human Resources which are not upheld by the courts;
 - (15) personal use of company assets resulting in unreasonable levels of compensation;
 - (16) meals provided to employees not involved in the modeling process required to meet the clients' habilitation plan;
 - (17) charitable contributions;
 - (18) costs related to excessive or unnecessary levels of care;
 - (19) interest associated with Medicaid overpayment repayment plans agreed to by both the provider and the Division of Medical Assistance;
 - (20) costs related to frivolous appeals;
 - (21) costs resulting from provider negligence;
 - (22) costs related to any illegal activity;
 - (23) costs disallowed on the associated tax return by the Internal Revenue Service or the North Carolina Department of Revenue, unless specifically allowable under this plan;
 - (24) promotional items designed to promote the provider's public image;
 - (25) costs associated with the interests of provider shareholders and not direct care related;
 - (26) costs related to client care incurred in prior years, unless specific approval acquired from the Division of Medical Assistance;
 - (27) country club dues.
- (t) Providers shall use a competitive bidding process in order to purchase or lease vehicles.
- (1) Providers shall explore cost differentials between leasing and purchasing of vehicles and shall choose the least expensive alternative.
 - (2) Daily logs detailing the use of vehicles shall be maintained by the provider.
- (u) Purchase of services, major renovations, capital equipment, and supplies that exceed five thousand dollars (\$5,000) annually per facility shall be reasonably made consistent with the prudent buyer provisions of the HCFA-15.
- (v) Reasonable costs associated with self-insurance programs are allowable, as determined by the Division of Medical Assistance. All material facts related to said programs shall be disclosed to the Division of Medical Assistance. Failure to disclose may result in the disallowance of said costs.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0308 RATE APPEALS

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

more.

- (1) Appeals because of changes in the information used to calculate a facility's prospective rate.
- (2) Appeals for significant increases or decreases in a facility's overall base period operating costs due to, but not limited to, implementation of new programs, changes in staff or service, changes in the characteristics or number of clients, changes in a financing agreement, capital renovations, expansions or replacements which have been either mandated or approved by the Division of Medical Assistance and, except in life-threatening situations, approved in advance by the applicable State agencies.
- (3) In order for said changes to be considered, they shall be consistent with all of the provisions of this plan.
- (4) Upon proper notification to the provider in writing, the Division of Medical Assistance may instigate a proceeding to reduce the provider's rates. A rate reduction proceeding may be initiated upon the determination of just cause by the Division of Medical Assistance. Grounds for just cause may include, but are not limited to, the following:
 - (A) The provider has achieved material over collections of Medicaid funds derived from the prospective rate being greater than reasonable Medicaid costs.
 - (B) Changes in Federal or State laws or regulations resulting in material operational cost savings.
 - (C) Material changes in client profile resulting in the need for less costly services.
 - (D) The burden of proof shall be on the Division of Medical Assistance to prove the need for said rate reduction.
- (5) In determining a fair and reasonable rate under appeal, the Division of Medical Assistance shall take into consideration all funds available to the provider from the Medicaid program and patient liability. Providers are expected to utilize all available funds to provide the services that their clients need.
- (6) Reasonable occupancy factors, as established by the Division of Medical Assistance, shall be utilized in establishing fair and reasonable rates in the appeal process.
- (7) Prospective rates determined under the rate appeal mechanism may be applied retroactively to the later of the beginning of the rate year in which said appeal was filed, or the date of certification of the related facility, or the effective date during the facility's current rate year of the item(s) that caused the need for the change in rates.
- (8) The Division of Medical Assistance shall not pay

interest on the final dollar settlement resulting from the retroactive impact of any rate appeals.

(b) Notification of appeal:

- (1) In order to appeal a rate the facility shall send to the Division of Medical Assistance an appeal application in writing ~~either within 60 days of the facility receiving the rate computation or within 60 days of the beginning of the rate period in question~~ subsequent to the proposed effective date of the appeal rate.
- (2) The appeal application shall set forth the basis for the appeal and the issues of fact. Appropriate documentation shall accompany the application and the Division of Medical Assistance may request in writing such additional documentation as it deems necessary.

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

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

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0309 AUDITS

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

(b) All such records shall be subject to audit for a period of five years from the later of the date on which all required reports were filed with the Division of Medical Assistance or the date on which such reports were due.

- (1) Desk or field audits shall be conducted by the Division of Medical Assistance, its designated contract auditors, or other governmental agencies at a time and place and in a manner determined by said governmental agencies.
- (2) The audits may be performed on any financial or statistical records required to be maintained.
- (3) Any findings of a described audit of this Rule

shall constitute grounds for recoupment at the discretion of the Division of Medical Assistance, provided that such audit finding relates to the allowable costs.

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

- (1) These changes to the Payment for Services Prospective Reimbursement Plan for ICF-MR Facilities will become effective when the Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about July 1, 1995 as #MA 95-03, wherein the Director proposes amendments of the State Plan to amend Payment for Services - Prospective Reimbursement Plan for ICF-MR Facilities.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to adopt rule cited as 11 NCAC 6A .0812.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on June 5, 1995 at the Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Establishes criteria to be in compliance with G.S. 58-33-130(d)(5).

Comment Procedures: Written comments may be sent to George Brown at 430 N. Salisbury Street, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call George Brown at (919) 733-7487.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

.0812 SPECIAL CASES

(a) In addition to the courses in 11 NCAC 6A .0803, the Commissioner may prepare courses to address and remedy deficiencies in licensee professional performance or conduct detected by the Commissioner through analyses of consumer complaints or from Departmental audits or examinations of insurance companies, licensees, or insurance agencies or brokerages.

(b) The Commissioner may require such courses for specific insurance companies, licensees in certain geographic territories, or licensees in general, depending on the types of complaints or the nature of the examination or audit findings.

(c) The Commissioner may require individual licensees to remedial or rehabilitative courses because of complaints or examination or audit findings:

- (1) showing a pattern of irregularities in professional performance or conduct; or
- (2) resulting in the finding of civil violations.

Statutory Authority G.S. 58-2-40; 58-33-130.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission (EMC) - DEHNR intends to amend rule cited as 15A NCAC 2B .0304.

Proposed Effective Date: January 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person may request that the Environmental Management Commission conduct a public hearing on the proposed reclassification by submitting a written request for a public hearing,

postmarked no later than May 30, 1995, to Steve Zoufaly, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.

Reason for Proposed Action: *Stokely Hollow is a small stream located in Madison County. The stream is currently classified as WS-II (water supply) since it was believed that this was a source of drinking water for the Town of Hot Springs. However, it has come to our attention that Stokely Hollow is not used as a raw drinking water source. The proposal is to remove the current WS-II classification and apply a C classification. This action would remove the requirement that Madison County adopt and implement a drinking water supply protection program for Stokely Hollow. In addition, the prohibition for new wastewater dischargers would no longer be applicable as implemented by DEM.*

Comment Procedures: *All persons interested in the proposed reclassification are encouraged to submit written comments. Comments must be postmarked by June 14, 1995, and submitted to Steve Zoufaly, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
Avery County
Buncombe County
Haywood County
Henderson County
Madison County
Mitchell County
Transylvania County
Yancey County
- (2) North Carolina Department of Environment,
Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Tennessee will be classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) October 1, 1989;
- (11) January 1, 1990;
- (12) August 1, 1990;
- (13) August 3, 1992;
- (14) October 1, 1993.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake

Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission (EMC) - DEHNR intends to amend rule cited as 15A NCAC 2B .0316.

Proposed Effective Date: January 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person may request that the Environmental Management Commission conduct a public hearing on the proposed reclassification by submitting a written request for a public hearing, postmarked no later than May 30, 1995, to Steve Zoufaly, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.

Reason for Proposed Action: The City of Washington, Beaufort County, requested the reclassification of Tranter's Creek from its current water supply classification of WS-IV CA (Critical Area) and WS-IV. The City no longer uses Tranter's Creek as a raw water supply source and has converted to groundwater (wells). The proposal would remove the WS-IV classification and consider the watershed for a WS-V or C classification. In either case the local governments having land use jurisdiction within the watershed would not be required to adopt and implement land use requirements for drinking water supply protection. There are no categorical prohibitions on wastewater discharge permits for either a WS-V or C classification.

Comment Procedures: All persons interested in the proposed reclassification are encouraged to submit written comments. Comments must be postmarked by June 14, 1995, and submitted to Steve Zoufaly, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0316 TAR-PAMLICO RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Beaufort County
Dare County
Edgecombe County
Franklin County
Granville County
Halifax County
Hyde County
Martin County
Nash County
Pamlico County
Person County
Pitt County
Vance County
Warren County
Washington County
Wilson County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which will be classified "SC."

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994.

(d) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective August 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranter's Creek from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by the reclassification of

Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-I-(3)] from Class SC NSW to Class SB NSW.

(i) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective January 1, 1996 as follows:

Option Number 1

- (1) Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103-(16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class WS-V Sw NSW.

Option Number 2

- (2) Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103-(16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10B .0202 with changes from the proposed text noticed in the Register Volume 9, Issue 18, pages 1427-1430 and Volume 10, Issue 1, pages 26-35.

Proposed Effective Date: August 1, 1995.

Reason for Proposed Action: To regulate the harvest of bear by setting seasons in Craven and Jones Counties.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from May 15, 1995 through June 15, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.

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

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

.0202 BEAR

(a) Open Seasons shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 16 from the Virginia State line to Wilkesboro and NC 18 from Wilkesboro to the South Carolina State line.
- (2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Beaufort, Camden, ~~Craven~~, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington Counties; counties; and in the following parts of counties; that part of

Bertie: ~~County that part~~ southeast of US 17; ~~and that part of~~

Chowan: ~~County that part~~ north of a line formed by SR 1002, SR 1222 and SR 1221 ~~and in~~

Craven: ~~except Game Lands~~

Currituck: ~~County: except Knotts Island and the Outer Banks that part west of the Intracoastal waterway that is south or west of a line formed by Highway 34 to Silgo, Highway 168 through Bareo, then Highway 158 to the Intracoastal waterway; also that part east of the Intracoastal waterway and west of a line formed through the center of Currituck Sound and North Landing River.~~

Hertford: ~~that part east of NC 45~~

Martin: ~~that part east of US 17~~

Jones: ~~except Game Lands.~~

- (3) Second Monday in November to January 1 in ~~all~~ of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender ~~Counties; counties and in the following parts of counties:~~

~~in that part of Cumberland: County that part south of NC 24 and east of the Cape Fear River;~~

~~and in that part of Sampson: county that part south of NC 24.~~

- (4) Second Monday in December to January 1 in Brunswick and Columbus Counties.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke and Caldwell ~~Counties coun-~~
~~ties~~--Daniel Boone bear sanctuary

Beaufort, Bertie and Washington ~~Counties~~
~~counties~~--Bachelor Bay bear sanctuary

Beaufort and Pamlico ~~Counties counties~~--Gum
Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary

Brunswick County--Green Swamp bear sanctuary

Buncombe, Haywood, Henderson and

Transylvania ~~Counties counties~~--Pisgah bear
sanctuary

Carteret, Craven and Jones ~~Counties coun-~~
~~ties~~--Croatan bear sanctuary

Clay County--Fires Creek bear sanctuary

Currituck County--North River bear sanctuary

Dare County--Bombing Range bear sanctuary

Haywood County--Harmon Den bear sanctuary

Haywood County--Sherwood bear sanctuary

Hyde County--Gull Rock bear sanctuary

Hyde County--Pungo River bear sanctuary

Jackson County--Panthertown-Bonas Defeat bear
sanctuary

Jones and Onslow ~~Counties counties~~--Hofmann
bear sanctuary

Macon County--Standing Indian bear sanctuary

Macon County--Wayah bear sanctuary

Madison County--Rich Mountain bear sanctuary

McDowell and Yancey ~~Counties counties~~--Mt.

Mitchell bear sanctuary

Mitchell and Yancey ~~Counties counties~~--Flat Top
bear sanctuary

Wilkes County--Thurmond Chatham bear sanctu-
ary

(c) Bag limits shall be:

(1) daily, one;

(2) possession, one;

(3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

Statutory Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0003.

Proposed Effective Date: August 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A request for a public hearing must be in writing and submitted to Director's Office, 512 N. Salisbury Street, Raleigh, NC 27604-1188 by May 30, 1995.

Reason for Proposed Action: To regulate hunting and other activities on game lands.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from May 15, 1995 through June 16, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle

on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question.

No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates: For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow

season for deer. Special hunts on other days may also be set up for participants in the Disabled Sportsman Program. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the following Wednesday. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program. Wild turkey hunting is by permit only.)

Caswell County--Caswell Game Land--(Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's backbone.)

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the fourth Saturday after Thanksgiving.) Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanks-

giving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Either sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in this Paragraph for participants in the Disabled Sportsman Program. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Wild turkey hunting is by permit only. Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.)

Robeson County--Robeson Game Land

Robeson County--Bullard and Branch Hunting Preserve Game Land

Sampson County--Sampson Game Lands

Stokes County--Sauratown Plantation Game Land

Wayne County--Cherry Farm Game Land, the use of centerfire rifles and handguns is prohibited

Yadkin County--Huntsville Community Farms Game Land

(3) Any game may be taken on the following game lands during the open season, except that:

- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.

- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries;

- (D) On Croatan, Jordan, and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Anson, Chatham, Jordan, New Lake, Pee Dee River, Pungo River, Shearon Harris and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) On Alcoa southeast of NC 49, Angola Bay, Butner-Falls of Neuse, Goose Creek, Hofmann Forest, Sutton Lake and Uwharrie Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) On Croatan and Neuse River Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Tuesday;
- (K) On Croatan Game Lands in Jones and Craven Counties bear season extends from the second Monday in November to the following Saturday;
- (L) ~~(K)~~ Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only

during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;

(M) ~~(L)~~On the posted waterfowl impoundments on the Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.

(N) ~~(M)~~Additional restrictions or modifications apply as indicated in parentheses following specific designations:

Alexander and Caldwell Counties--Brushy Mountains Game Lands

Anson County--Anson Game Land

Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands (Use of centerfire rifles prohibited in that portion in Anson and Richmond counties N. of US-74.)

Ashe County--Elk Ridge Game Lands

Ashe County--Cherokee Game Lands

Ashe and Watauga Counties--Elk Knob Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Bertie--Bertie County Game Land

Bertie, Halifax and Martin Counties--Roanoke River Wetlands (Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.)

Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land

Brunswick County--Green Swamp Game Land
Burke and Cleveland Counties--South Mountains Game Lands

Caldwell, Watauga and Wilkes Counties--Yadkin Game Land

Carteret, Craven and Jones Counties--Croatan Game Lands

Chatham County--Chatham Game Land

Chatham, Durham, Orange, and Wake Counties--Jordan Game Lands (On areas posted as "archery zones" hunting is limited to bow and

arrow. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)

Chatham and Wake Counties--Shearon Harris Game Land

Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.

Chowan County--Chowan Game Land

Cleveland County--Gardner-Webb Game Land

Craven County--Neuse River Game Land

Currituck County--North River Game Land

Currituck County--Northwest River Marsh Game Land

Dare County--Dare Game Land (No hunting on posted parts of bombing range. The use and training of dogs is prohibited from March 1 through June 30.)

Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land

Davidson County--Linwood Game Land

Davidson, Montgomery and Randolph Counties--Uwharrie Game Land

Duplin and Pender Counties--Angola Bay Game Land

Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)

Gates County--Chowan Swamp Game Land

Henderson, Polk and Rutherford Counties--Green River Game Lands

Hyde County--Gull Rock Game Land

Hyde County--Pungo River Game Land

Hyde and Tyrrell Counties--New Lake Game Land

Jones and Onslow Counties--Hofmann Forest Game Land

Lee County--Lee Game Land

McDowell and Rutherford Counties--Dysartsville Game Lands

Moore County--Moore Game Land

New Hanover County--Sutton Lake Game Land
Pender County--Northeast Cape Fear Game Land

Person County--Person Game Land
 Transylvania County--Toxaway Game Land (Deer of either sex may be taken with a bow and arrow on the Saturday prior to the first segment of the Western bow and arrow season by participants of the Disabled Sportsman Program.)

Tyrrell and Washington Counties--Lantern Acres Game Land

Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)

Wilkes County--Thurmond Chatham Game Land (Deer of either sex may be taken with bow and arrow on the Saturday prior to North-western bow and arrow season by participants of the Disabled Sportsman Program.)

- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:

Thursday and Friday of the week before Thanksgiving Week:

Sandhills east of US 1

Sandhills west of US 1

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) The following game land and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin Counties--Roanoke River Wetlands;

Bertie County--Roanoke River National Wildlife Refuge.

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl

Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge.

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2D .0801.

Proposed Effective Date: September 1, 1995.

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

Reason for Proposed Action: The changes reflect a reorganization in the Division of Highways and the necessity for bidders to requalify biennially rather than annually.

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

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

.0801 PREQUALIFYING TO BID: REQUALIFICATION

(a) In order to ensure that contracts are awarded to responsible bidders, prospective bidders shall prequalify with the Department. The requirements for prequalification are as follows:

- (1) Applicant must submit a completed NCDOT Experience Questionnaire along with any additional supporting information requested by the Department.
- (2) Applicant must demonstrate that he has sufficient ability and experience in related highway con-

struction projects to perform the work specified in NCDOT contracts, including the type and dollar value of previous contracts.

- (3) Applicant must demonstrate a history of successful performance and completion of projects in a timely manner, subject to contractual time adjustments.
- (4) Applicant must demonstrate the financial ability to furnish bonds as specified in G.S. 44A-26.
- (5) Applicant must demonstrate sufficient available equipment to perform highway construction contracts in a timely manner.
- (6) Applicant must demonstrate sufficient available experienced personnel to perform highway construction contracts. The identities and qualifications of both management and labor work force shall be provided.
- (7) Applicant must provide names and addresses of persons for whom the firm has performed related type work. Responses from the references must be on Department of Transportation forms and must be received by the Department prior to evaluating the request for prequalification.
- (8) Applicant must provide any information requested concerning the corporate and operational management structure of the company, the identity of persons or entities owning stock or other equity interest in the company, and the relationship between the applicant and any other company prequalified with the Department or applying for prequalification.

Any prospective bidder, not prequalified, may request a NCDOT Experience Questionnaire form from the State Highway Construction and Materials Contractual Services Engineer, Division of Highways, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The Experience Questionnaire form must be completed in its entirety and signed by an officer of the firm; the officer's signature shall be notarized. In addition to submitting the Experience Questionnaire form as set forth in this Rule, the prospective bidder shall submit supporting information in a format of his/her choosing to address the requirements listed in this Rule. All required statements and documents shall be filed with the State Highway Construction and Materials Engineer by the prospective bidder at least two weeks prior to the date of opening of bids. A bid shall not be opened unless all prequalification requirements have been met by the bidder and have been found to be acceptable by the Chief Engineer-Operations.

(b) Upon a determination by the Department that all prequalification requirements have been met, the applicant shall be assigned a Prequalification Number. This Prequalification Number shall thereafter be assigned to all applicants for prequalification or requalification which the Department determines are under sufficient common ownership and management control to warrant prequalification as a single entity. This determination by the

Department shall be based on the information submitted with the Experience Questionnaire and any other information obtained by the Department.

(c) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in G.S. 87.

(d) All bidders must requalify ~~annually~~ biennially. To requalify, the prospective bidder must submit a completed Experience Questionnaire form, acceptable to the State Highway Construction and Materials Engineer, on or before the anniversary date of the original prequalification. Experience Questionnaire forms shall be furnished approximately 30 days prior to the anniversary date and must be completed and executed in the same manner as the original form. The Experience Questionnaire form shall be submitted to the State Contractual Services Engineer.

Statutory Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143B-350(f).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Certified Public Accountant Examiners intends to amend rules cited as 21 NCAC 8F .0105; 8G .0401; 8J .0005, .0008; 8M .0102, .0104, .0306, .0401; 8N .0203, .0302, .0307; and adopt 21 NCAC 8F .0113.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on June 19, 1995 at the NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Reason for Proposed Action:

21 NCAC 8F .0105 - Establishes the requirements for re-exam candidates affected by statute change.

21 NCAC 8F .0113 - Establishes the time frame for request for a review of an examination.

21 NCAC 8G .0401 - Clarifies a reference within the rule.

21 NCAC 8J .0005 - Changes a reference within the rule.

21 NCAC 8J .0008 - Clarifies the types of information to be included with firm registration.

21 NCAC 8M .0102 - Clarifies the annual SQR registration requirements for firms.

21 NCAC 8M .0104 - Updates the list of quality review programs required by the Board.

21 NCAC 8M .0306 - Clarifies the type of information to be included with an SQR report.

21 NCAC 8M .0401 - Clarifies the types of information to be reviewed by the SQR Committee.

21 NCAC 8N .0203 - Sets out the types of conduct which

are considered discreditable.

21 NCAC 8N .0302 - Clarifies the requirements of a CPA providing ancillary practice services.

21 NCAC 8N .0307 - Clarifies the requirements for firm names and style of practice.

Comment Procedures: Any person interested in these rules may present written comments to the Board office no later than 8:30 a.m. on June 19, 1995. Anyone planning to attend or present oral comments relevant to the action proposed at the public rule-making hearing should notify the receptionist at the Board office by noon on June 2, 1995. Those individuals wishing to make oral comments should indicate which proposals they are speaking to and whether they will speak in favor or against the proposal. Anyone speaking on the proposals will be limited to a total of 10 minutes.

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

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

.0105 CONDITIONING REQUIREMENTS

(a) **Passing Grades.** A candidate shall be required to pass all sections of the examination with a grade of 75 or higher.

(b) **Conditional Credit.** If a candidate does not pass all of the sections in one sitting, conditional credit can be retained for passed sections subject to the following:

- (1) No conditional credit can be retained until the candidate has first passed at least two sections in one sitting;
- (2) To receive conditional credit for any section the candidate must sit for and make a grade of at least 50 on all unpassed sections; and
- (3) The conditional credit is good through the six succeeding times the exam is offered by the Board.

(c) **Military Service.** A candidate who was or is in active military service after receiving conditional credit shall have only those exams for which that candidate applied and was approved during active military service counted as succeeding examinations.

(d) **Section Equivalency.** For purposes of conditional credit, the following pre- and post-May 1994 exam sections are equivalent:

- (1) accounting practice equals accounting and reporting;
- (2) accounting theory equals financial accounting and reporting;
- (3) auditing equals auditing; and
- (4) business law equals business law and profes-

sional responsibilities.

(e) A candidate who has conditional credit prior to January 1, 1997, may continue to apply to sit for the examination as long as the conditional credit is valid. A candidate who no longer has valid conditional credit after January 1, 1997, will be required to meet all education requirements in effect at the time of their subsequent application.

Statutory Authority G.S. 93-12(3); 93-12(5).

.0113 CANDIDATE'S REQUEST TO REVIEW UNIFORM CPA EXAMINATION

The Board will allow a North Carolina candidate to request a review of the Uniform CPA Examination. The request for a review must be made no later than 60 days after the uniform national grade release date of the examination in question.

Statutory Authority G.S. 93-12(3).

SUBCHAPTER 8G - CONTINUING PROFESSIONAL EDUCATION (CPE)

SECTION .0400 - CPE REQUIREMENTS

.0401 CPE REQUIREMENTS FOR CPAS

(a) In order for a CPA to receive CPE credit for a course:

- (1) the CPA must attend or complete the course;
- (2) the course must meet the requirements set out in 21 NCAC 8G .0404(a) or (d); and
- (3) the course must increase the professional competency of the CPA.

(b) The Board approves sponsors of CPE courses and not particular courses. A CPE course provided by an approved sponsor is presumed to meet the CPE requirements set forth in 21 NCAC 8G .0404(a) if the sponsor has indicated that the course meets those requirements. However, it is up to the individual CPAs attending the course and desiring to claim CPE credit for it to assess whether it increases their professional competency.

(c) A course that increases the professional competency of a CPA is a course in an area of accounting in which the CPA practices or is planning to practice in the near future, or in the area of professional ethics or an area related to the profession, and is taught at a level which challenges the CPA.

(d) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA must therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(e) Active CPAs must complete 40 CPE hours, computed in accordance with 21 NCAC 8G .0409, by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in April-June must complete 30 CPE hours during the same calendar year.
 - (2) CPAs having certificate applications approved by the Board in July-September must complete 20 CPE hours during the same calendar year.
 - (3) CPAs having certificate applications approved by the Board in October-December must complete 10 CPE hours during the same calendar year.
- (f) There are no CPE requirements for retired or inactive CPAs.
- (g) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year.
- (h) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 8J .0005 ~~(b)~~ or ~~(e)~~, for reinstatement as set forth in 21 NCAC 8J .0006, or for application for a new certificate as set forth in 21 NCAC 8J .0004 may also be used to satisfy the annual CPE requirement set forth in Paragraph (e) of this Rule.
- (i) It is the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.

Statutory Authority G.S. 93-12(8b).

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0005 RETIRED AND INACTIVE STATUS: CHANGE OF STATUS

(a) A CPA may apply to the Board for change of status to retired status or inactive status provided the CPA meets the description of the appropriate status as defined in 21 NCAC 8A .0301. Application for any status change may be made on the annual certificate renewal form or another form provided by the Board.

(b) A CPA who does not meet the description of inactive or retired as defined in 21 NCAC 8A .0301 may not be or remain on inactive or retired status.

(c) A CPA on retired status may change to active status by:

- (1) paying the certificate renewal fee for the license year in which the application for change of status is received; and
- (2) furnishing the Board with evidence of satisfactory completion of 40 hours of acceptable CPE courses during the 12 month period immediately preceding the application for change of status. Eight of the required hours

must be credits derived from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct contained therein) as set forth in 21 NCAC 8G .0401(a) 8F .0504.

(d) A CPA on retired status may change to inactive status by surrendering his or her certificate.

(e) Any individual on inactive status may change to active status by complying with the requirements of 21 NCAC 8J .0006(c).

Statutory Authority G.S. 93-12(8); 93-12(8b).

.0008 FIRM REGISTRATION

(a) All CPA firms must register with the Board within 30 days after opening a North Carolina office or beginning a new firm unless they are a professional corporation, professional limited liability company, or registered limited liability partnership, in which case they must register prior to formation pursuant to 21 NCAC 8K .0104.

(b) In addition to the initial registration required by Paragraph (a) of this Rule, all CPA firms must register annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

- (1) Either an application for exemption from SQR, a request to be deemed in compliance with SQR or registration for SQR, pursuant to 21 NCAC 8M .0102 and .0104;
- (2) For all firms not exempt from the SQR program, with the registration immediately following its review, the affidavit statement required by 21 NCAC 8M .0102(d);
- (3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;
- (4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
- (5) For all professional limited liability companies, the information set forth in 21 NCAC 8K .0104(d);
- (6) For all incorporated firms, the information set forth in 21 NCAC 8K .0104(d);
- (7) For all firms, the appropriate registration fees as set forth in 21 NCAC 8J .0010; and
- (8) For all new firms, the percentage of ownership held individually by each partner, shareholder, or member:
 - (A) in the new firm; and
 - (B) at the year-end in each firm in which that partner, member, or shareholder was a partner, member, or shareholder during the preceding two years.

(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year-end".

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a firm may file all documents with the Board on behalf of the firm's offices in North Carolina. However, responsibility for compliance with this Rule will remain with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all partners or members of the firm. However, each partner or member shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or

professional limited liability company exists.

(g) Notice that a firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule must be delivered to the Board's office within 30 days after the change or dissolution occurs.

(h) Upon written petition by a firm, the Board may, in its discretion, grant the firm a conditional registration for a period of 60 days or less, if the firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a quality review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second extension under continued extenuating circumstances.

Statutory Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8a); 93-12(8c).

SUBCHAPTER 8M - STATE QUALITY REVIEW PROGRAM

SECTION .0100 - GENERAL SQR REQUIREMENTS

.0102 REGISTRATION REQUIREMENTS

(a) A firm which has not performed any audits, reviews or compilations during the 12 months prior to the year-end of the registration required by 21 NCAC 8J .0008(a) and (b) shall be exempt from the SQR program for the 12 months following the year-end but not from registering with the Board.

(b) Unless exempt under Paragraph (a) of this Rule, each ongoing firm must complete an SQR within 12 months following the year-end of each registration unless it has completed an SQR within 24 months prior to the year-end.

(c) Unless exempt under Paragraph (a) of this Rule, a new firm shall complete its initial SQR within 24 months of the date of its initial registration pursuant to 21 NCAC 8J .0008(a).

(d) Every firm not exempt from SQR by Paragraph (a) of this Rule, after ~~completion of the exit conference~~ of a quality review, must procure ~~an affidavit~~ a statement signed by the review team captain, a statement signed by a member of the firm being reviewed, or letter of acceptance from an approved review program, stating that the firm has completed an SQR or one of the review programs listed or referred to in 21 NCAC 8M .0104. The firm shall submit the ~~affidavit statement~~ or documentation with the annual registration following the review as set forth in 21 NCAC 8J .0008(c)(2).

(e) For purposes of this Rule, an SQR is complete when the review team has delivered its report required by 21 NCAC 8M .0306 to the reviewed firm. Any quality review other than SQR is complete when the review team has delivered its final report to the reviewed firm. If mailed, a report shall be deemed delivered when postmarked.

Note: For example, firm C was incorporated on June 1, year one. During that year it performed accounting and auditing services and, therefore, was not exempt from the SQR program. It continued to do auditing and accounting work for the next three years (years two, three and four) but it did not do any audits, reviews, or compilations in years five and six. In year seven, the firm completed several compilations but, in year eight, it did not issue any audits, reviews, or compilations. In year nine, the corporation dissolved, at which time it notified the Board of its dissolution pursuant to 21 NCAC 8J .0008(g). The following chart shows the history of firm C as it relates to the SQR program, SQR fees it was required to pay pursuant to 21 NCAC 8J .0010, and when and why it was required to complete an SQR pursuant to this Rule.

<u>Year</u>	<u>Audits, Reviews or Compilations Performed</u>	<u>Fee</u>	<u>Completion of SQR Required and Rationale</u>
1	Yes	SQR Fee	A new firm has 24 months to complete SQR – 21 NCAC 8M .0102(c); the firm is required to
2	Yes	SQR Fee	complete SQR before June 1, year 3.
3	Yes	SQR Fee	Completes SQR on May 15, year 3 (within 24 months of its inception) 21 NCAC 8M

			.0102(c).
4	Yes	SQR Fee	Not required to complete SQR in year 5 because the firm completed SQR on May 15, year 3 (within 24 months of year-end of year 4) – 21 NCAC 8M .0102(b).
5	No	Exempt Fee	Will not be required to complete SQR in year 6 because it is exempt – 21 NCAC 8M .0102(a).
6	No	Exempt Fee	Not required to complete SQR in year 7 because it is exempt – 21 NCAC 8M .0102(a).
7	Yes	SQR Fee	Will be required to complete SQR in year 8 because it has not completed SQR within 24 months of year-end of year 7 (last SQR was completed May 15, year 3) – 21 NCAC 8M .0102(b).
8	No	Exempt Fee	Completes SQR pursuant to its registration in year 7 – 21 NCAC 8M .0102(b).
9	Yes	No Fee	Not required to register or pay a fee at year-end of year 9 because firm dissolved during year 9 and properly notified the Board – 21 NCAC 8J .0008(g).

Statutory Authority G.S. 93-12(7b); 93-12(8c).

.0104 FIRMS DEEMED IN COMPLIANCE

(a) Firms which have participated in one of the review programs set forth in either Paragraph (b) of this Rule or the list referred to in Paragraph (c) of this Rule, rather than SQR, within the applicable time period prescribed by 21 NCAC 8M .0102(b) and (c) are deemed to be in compliance with the SQR program.

(b) The following quality review programs are found by the Board to be of the type required by the Board in its SQR program:

- (1) AICPA Division for CPA Firms SEC Practice Section, and
- ~~(2) AICPA Division for CPA Firms Private Companies Practice Section, and~~
- (2) ~~(3)~~ AICPA Quality Peer Review Program.

(c) Other quality review programs may be of the type required by the Board in its SQR program. A list of such programs will be maintained at the Board offices and mailed to any firm upon request.

(d) Pursuant to G.S. 93-12(8c), a firm which contemplates undergoing a quality review program other than the SQR program or those listed or referred to in Paragraphs (b) and (c) of this Rule may request a determination from the Board whether the quality review program is of the type required by the Board in the SQR program. The firm shall supply all information requested of it by the Board and, within two months of the month all

information requested has been received by the Board, the Board shall make its determination and notify the firm.

Statutory Authority G.S. 93-12(8c)(e).

SECTION .0300 - REVIEW TEAM: QUALIFICATIONS AND DUTIES

.0306 REPORTING REQUIREMENTS

(a) The review team shall deliver an SQR report and the ~~affidavit~~ statement required by 21 NCAC 8M .0102(d) to the participating firm within 60 days after all of the engagements which are to be reviewed have been delivered to it. Beginning January 1, 1996, the review team shall also deliver its SQR report to the SQR Advisory Committee by the same date.

(b) The SQR report and a letter of comment, if any, shall be written and issued on the letterhead of the team captain's firm and shall either be unmodified, modified, or adverse.

(c) It is suggested that a letter of comment be issued if the report is modified or adverse. A letter of comment, if issued, shall provide reasonably detailed recommendations for remedial, corrective actions by the participating firm so that the SQR Committee can evaluate whether the firm's response to significant deficiencies noted in the review is a positive one, consistent with the objectives of the SQR program, and whether the actions taken or planned by the

participating firm appear appropriate in the circumstances.

(d) The SQR report shall describe the limited scope of the review and shall not express an opinion or any form of assurance about the reviewed firm's quality control policies and procedures for its accounting practice. It shall state whether anything came to the attention of the review team which caused them to believe that any of the engagements submitted for review did not conform with the requirements of professional standards in all material respects and, if applicable, describe the general nature of significant departures from those standards.

(e) An unmodified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects.

(f) A modified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects with the exception of certain reservations which are noted in the report.

(g) An adverse report includes the review team's conclusion that the participating firm did not have reasonable assurance of conforming with professional standards in the conduct of its accounting practice during the year under review.

Statutory Authority G.S. 93-12(8c).

SECTION .0400 - SQR ADVISORY COMMITTEE

.0401 SQR ADVISORY COMMITTEE - MEMBERS AND DUTIES

(a) The SQR Advisory Committee shall consist of six CPAs appointed by the Board and one Board member appointed by the Board's President.

(b) The SQR Committee shall:

- (1) review all initial firm registrations submitted to the Board pursuant to 21 NCAC 8J .0008(a);
- (2) review all ~~affidavits~~ statements submitted by review team captains to the reviewed firm pursuant to 21 NCAC 8M .0102(d) and submitted to the Board pursuant to 21 NCAC 8J .0008(c)(2);
- (3) beginning January 1, 1996, review all modified and adverse SQR reports and letters of comments, if any, submitted by review team captains under the SQR program;
- (4) consider all objections filed pursuant to 21 NCAC 8M .0402(a); and
- (5) make recommendations to the Board consistent with these Rules concerning each of Subparagraphs (b)(1) through (4).

(c) Prior to making any recommendations to the Board, the Committee shall give notice of its proposed recommendation to the firm to which the recommendation pertains.

(d) The Committee shall also recommend remedial action to participating firms receiving modified or adverse reports which, if followed, could increase the participating firm's ability to perform quality services in the public practice of accounting.

(e) The Committee shall report at least annually to the Board on its activities and, further, at any time the Board requests a special report.

Statutory Authority G.S. 93-12(2); 93-12(8c).

SUBCHAPTER 8N - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RULES APPLICABLE TO ALL CPAs

.0203 DISCREDITABLE CONDUCT PROHIBITED

(a) Discreditable Conduct. A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited Discreditable Conduct. Discreditable conduct includes but is not limited to:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA in other respects; ~~or~~
- (2) stating or implying an ability to improperly influence a governmental agency or official; ~~or official~~
- (3) failing to comply with any order issued by the Board.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

SECTION .0300 - RULES APPLICABLE TO ALL CPAs WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

.0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA shall not directly or indirectly offer or render accounting services (including tax and management advisory services) to clients except through a duly authorized CPA sole proprietorship, partnership of CPAs, CPA Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Partners. A CPA shall not engage in the public practice of accountancy with a partner who is anyone other than the holder of an unrevoked and currently valid CPA certificate.

(c) Ancillary Practice. A CPA may, through another lawful form of professional practice, offer or render such non-attest accounting services as are ancillary to another learned profession regulated by a statutorily authorized licensing board in this state; further provided, the CPA is licensed by the respective licensing board and offers or renders those services through a business form authorized

by the respective licensing board and does not hold out the non-CPA firm as CPA firm. Any such CPA must nevertheless register for SQR as an exempt individual practitioner.

(d) Firm Registration Required. A CPA shall not engage in the public practice of accountancy through a firm which is in violation of the registration requirements of 21 NCAC 8J .0008, 8J .0010, or the SQR requirements of 21 NCAC 8M .0102.

(e) Supervision of CPA Offices. Every CPA office or CPA firm in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0307 FIRM NAMES

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive.

(b) Style of Practice. It is considered misleading if a firm practices under a name or style which would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company of more than one shareholder or member or an association when in fact there is no partnership nor is there more than one shareholder or member in the firm. For example, no firm having just one owner may have as a part of its name the words "associates" or "company" or their abbreviations.

(c) Assumed Names Subject to Approval. Before any firm uses an assumed name (as described in G S. 66-68) it must submit the proposed name for Board approval.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Chiropractic Examiners intends to amend rule cited as 21 NCAC 10 .0203.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 12:00 (noon) on June 10, 1995 at the Holiday Inn Four Seasons, 3121 High Point Road at I-40, Greensboro, NC 27407.

Reason for Proposed Action: To bring the North Carolina chiropractic examination into conformity with changes in the examination given to all licensure applicants by the National Board of Chiropractic Examiners.

Comment Procedures: Interested parties may file written

comments through June 14, 1995. Comments should be addressed to:

Vance C. Kinlaw, Attorney
N.C. Board of Chiropractic Examiners
201 W. Market Street, Suite 409
Greensboro, NC 27401.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SECTION .0200 - PRACTICE OF CHIROPRACTIC

.0203 EXAMINATIONS

(a) Eligibility. Only those applicants who meet the requirements of G.S. 90-143, or in the case of reciprocity applicants, G.S. 90-143.1, and who have submitted a timely and complete written application pursuant to 21 NCAC 10 Rule .0202 shall be allowed to take the examination.

(b) Date of Examination. The examination shall be given twice annually. The spring examination shall commence on the first Saturday after the first Tuesday in June. The fall examination shall commence on the first Saturday after the first Tuesday in November. Applicants eligible for examination will be notified of the exact date, time and location of the examination as soon as possible after their written applications have been approved by the Board.

~~(c) Structure of Examination. The examination shall be given over a two day period. It shall consist of a written portion and an oral portion:~~

~~(1) The written portion shall include questions on the mandatory studies listed in G.S. 90-143, and may include questions on the following additional subjects: chiropractic analysis, symptomology, spinography, nutrition, x ray, ethics, chiropractic procedures, and physiological therapeutics.~~

~~(2) The oral portion is intended to test the applicant's proficiency in the practical aspects of chiropractic and to augment the information submitted in his written application. The oral portion may include questions on the following subjects: x ray, general office practice, chiropractic analysis, procedure, examination, diagnosis, and treatment.~~

~~(3) The oral portion may be given at any time during the examination period. If an applicant has not completed the written portion at the time he is called for oral examination, he shall be allowed to resume the written portion at the point where he was interrupted.~~

~~(4) No portion of the examination is open book, and no reference material of any kind shall be allowed in the examination area.~~

(c) National Boards. In order to be eligible to take the North Carolina examination, an applicant must first have taken and passed each of the following examinations given by the National Board of Chiropractic Examiners: Part 1,

Part 2, Part 3, Physical Therapy. It shall be the applicant's responsibility to arrange for his test results from the National Board examinations to be reported to the North Carolina Board in advance of examination weekend.

~~(d) Acceptance of Diplomates. The written examination given by the North Carolina Board of Examiners is prepared by the National Board of Examiners and is a duplication of the national examination with the exception of questions in x ray, jurisprudence, physiological therapeutics and diagnosis. Therefore, an applicant who has already passed the national examination and been accorded the status of Diplomate may omit all of the North Carolina written examination except those questions pertaining to x ray, jurisprudence, physiological therapeutics and diagnosis. However, the Diplomate must take the oral examination in its entirety.~~

~~(1) Diplomates seeking exemption from duplicative portions of the written examination shall certify their status to the Board prior to the date of examination.~~

~~(2) Unless released early by the Board, Diplomates must be present during the entire two day testing period so that their oral examinations may be given without disrupting the examination schedule.~~

(d) Nature of Examination. The North Carolina examination is intended to test an applicant's proficiency in the practical aspects of chiropractic and to augment the information submitted in his written application. The examination is administered orally and may include questions on the following subjects: x-ray; general office practice; and chiropractic analysis, procedure, examination, diagnosis and treatment. No portion of the examination is open-book, and no reference material of any kind shall be allowed in the examination area.

(e) Passing Grade. To pass the examination, an applicant must answer correctly a minimum of 65 percent of the questions on each subject and must also answer correctly an average of 75 percent of all the questions on the examination. An applicant who fails because of a deficiency in only one subject may be re-examined in that subject the next time the examination is given and shall not be required to pay another application fee. An applicant who fails the examination for any other reason must re-take the entire examination and pay another application fee.

(f) Review of Examination Results. An applicant who has been denied licensure because of failing examination grades may request a review of his answers provided his request is made in writing and received by the secretary not later than 20 days after issuance of the examination results. The review shall be limited to a re-tabulation of the applicant's test scores to make certain no clerical errors were made in grading. Applicants shall not be permitted to discuss their examinations with Board members, graders or test administrators.

Statutory Authority G.S. 90-142; 90-143.

CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners for Nursing Home Administrators intends to amend rules cited as 21 NCAC 37 .0101 and .0904.

Proposed Effective Date: August 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any request for a public hearing on these rules must be made in writing and directed to Jane Abernathy, Executive Director, N. C. State Board of Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, NC 27612 by 4:00 p.m. on May 31, 1995.

Reason for Proposed Action:

21 NCAC 37 .0101 - To remove unnecessary language regarding providing a copy of Board rules to candidates for licensure, since a copy of such rules is included in the application package.

21 NCAC 37 .0904 - To increase the fee required for biennial licensure renewal.

Comment Procedures: Written comments must be submitted to the Board office by 9:00 a.m. on June 14, 1995.

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

SECTION .0100 - GENERAL PROVISIONS

.0101 COPIES OF RULES

Copies of the Rules in this Chapter may be obtained from the Office of Administrative Hearings, Raleigh, N.C., for a small charge for duplication purposes. The Board will provide one free copy to each licensed administrator ~~and candidates for licensure.~~

Statutory Authority G.S. 90-285.

SECTION .0900 - LICENSES

.0904 BIENNIAL REGISTRATION REQUIREMENTS

(a) Upon making application for a new certificate of registration a licensee shall pay a biennial licensure fee of ~~two hundred fifty dollars (\$250.00)~~ three hundred dollars (\$300.00).

(b) Such licensee shall provide documentation of the completion of 30 hours of continuing education approved

by the Board during each biennial period.

Statutory Authority G.S. 90-280; 90-285; 90-286.

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 .0403, .0503 and .0505. The italicized text in 21 NCAC .58A .0505(a) is proposed to be deleted from the rule effective July 1, 1995 and was published in Volume 10, Issue 2 of the North Carolina Register. (10:2 NCR 157-166, April 17, 1995)

Temporary: *These Rules were filed as temporary amendments effective April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on June 6, 1995 at the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC.

Reason for Proposed Action: *To codify changes in requirements and procedures concerning license examinations and license renewal fees in light of the General Assembly's ratification of House Bill 33 on April 4, 1995.*

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, P.O. Box 17100, Raleigh, NC 27619-7100, so as to be received by June 14, 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 .0400 - EXAMINATIONS

.0403 RE-EXAMINATION

If an applicant fails to pass the initial examination for which he has been scheduled, he will be re-scheduled without additional fee for one re-examination at a time and place designated by the executive director. If an applicant fails to pass his re-examination an examination or fails to appear for and take any examination for which he has been scheduled, he shall make written application to the Commission upon a prescribed form accompanied by the appropriate

fee, if he wishes to obtain a real estate license.

Statutory Authority G.S. 93A-4(b),(d).

SECTION .0500 - LICENSING

.0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate broker, salesman or corporate broker licenses issued by the Commission under Article 1, Chapter 93A of the General Statutes shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of ~~twenty-five dollars (\$25.00)~~.

(b) Beginning in 1995, any person desiring to renew his license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(d) Any person or corporation which engages in the business of a real estate broker or salesman while his or its license is expired is subject to the penalties prescribed in Chapter 93A of the General Statutes.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(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) required~~ 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. ~~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.

CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Refrigeration Examiners intends to amend rules cited as 21 NCAC 60 .0102, .0204, .0314, and .1102.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on June 9, 1995 at 410 Oberlin Road, Suite 410, Raleigh, NC 27605.

Reason for Proposed Action:

21 NCAC 60 .0102 .1102 - corrects address.

21 NCAC 60 .0204 - redefines grade to pass examination.

21 NCAC 60 .0314 - clarifies use of license.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The State Board of Refrigeration Examiners will receive mailed written comments postmarked no later than June 14, 1995. More information may be obtained by contracting the Board Office, P.O. Box 30693, Raleigh, NC 27622, 919-781-1602.

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

SECTION .0100 - ORGANIZATION AND DEFINITIONS

.0102 OFFICE OF BOARD

The Board's office is located at ~~3716 National Dr., Suite 420~~ 410 Oberlin Road, Suite 410, Raleigh, North Carolina. The Board's mailing address is P.O. Box ~~30693~~ 10666, Raleigh, North Carolina ~~27622~~ 27605. The Board's rules are available for inspection at this office during regular office hours. The materials used in rule-making decisions will be available for inspection at said office.

Statutory Authority G.S. 87-54; 150B-11(2).

SECTION .0200 - EXAMINATIONS

.0204 SCORING EXAMINATIONS

Refrigeration contractor examinations are divided into four parts, "A," "B," "C" and "D." Each part of the examination carries an equal weight of 25 percent of the total grade score. Each applicant must ~~make an average grade of at least successfully complete~~ 70 percent of each part to pass an examination. Each candidate who passes an examination is issued a refrigeration contractor's license. Each person who fails an examination is notified of his average score and the parts of the examination which he failed.

Statutory Authority G.S. 87-54; 87-58.

SECTION .0300 - LICENSES AND FEES

.0314 USE OF LICENSE

(a) The licensed contractor shall not permit the use of his license by any other person.

(b) All refrigeration contracting business, including all business advertising and the submission of all documents and papers by a licensee of the Board shall be conducted in the exact name in which the refrigeration contracting license is issued.

Statutory Authority G.S. 87-54; 87-57.

SECTION .1100 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

.1102 PREFERRING CHARGES

Any person who believes that any refrigeration contractor is in violation of the provisions of G.S. 87-59 may prefer charges against such contractor by setting forth the charges in writing with particularity including, but not limited to, the date and place of the alleged violation. Such charges shall be signed and sworn to by the party preferring such charges and filed with the Executive Director of the State Board of Refrigeration Examiners at the office of the Board, ~~3716 National Drive~~ 410 Oberlin Road, Suite 410, P.O. Box ~~30693~~ 10666, Raleigh, North Carolina ~~27622~~ 27605.

Statutory Authority G.S. 87-59.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rules cited as 25 NCAC 1C .0402-.0408; 1D .0201, .0205, .0207, .0211, .0808, .1001, .1009, .1201, .1204, .1401, .1801 - .1802, .2001; 1E .0804; 1K .0312;

and repeal 25 NCAC 1C .0207.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on June 8, 1995 at the State Personnel Development Center, 101 West Peace Street, Raleigh, NC 27604.

Reason for Proposed Action: These Rules are proposed to be amended in order to provide clarification to state agencies and universities on appointments, i.e. probationary, trainee, permanent, time-limited, temporary, permanent part-time, temporary part-time and intermittent. The rules relating to extended duty are proposed to be amended in order to provide for physicians, as well as other medical personnel which are approved by the Office of State Personnel, to be employed for extended duty. These rules are also proposed to be amended in order to extend the provision for paying additional straight-time for extended duty to all medically related areas for positions that are exempt from the Fair Labor Standards Act and limits the number of extended duty hours to 20 hours per week.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, NC 27603.

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

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .0200 - GENERAL EMPLOYMENT POLICY

.0207 MEDICAL EXAMINATIONS

(a) An employee will not be required to separate from state services because of age alone prior to reaching retirement age. However, earlier retirement or termination may be necessary if, through established medical examination procedures, an employee is found not physically fit for the performance of his duties.

(b) If the agency head has reason to believe that an employee is not physically capable of properly performing his assigned duties, he may require the employee to have a physical examination. In such cases, the following procedures will apply:

- (1) Upon request by an agency head, the Office of State Personnel, in cooperation with North Carolina Memorial Hospital, will designate an internist located in reasonable proximity to the employee's place of residence.

- (2) The agency head, upon receiving notice of the designated internist, will make an appointment for the examination and inform the employee as to the place and time.
- (3) The agency head shall prepare a detailed statement of the duties and responsibilities required of the employee and will forward such information to the North Carolina Memorial Hospital.
- (4) Upon receipt of the internist's examination report by Memorial Hospital, a review and evaluation of the examination report will be made, taking into consideration the physical requirements of the job. Based upon this review, Memorial Hospital will forward to the agency the results of their evaluation. This information will be included as part of the administrative evaluation in reaching a decision concerning the employee's fitness for continued employment.
- (5) Members of the State Highway Patrol are subject to the physical fitness requirements as provided under the Medical Evaluation Program.
- (6) The cost of such physical examinations will be paid by the state agency.

Statutory Authority G.S. 126-4.

SECTION .0400 - APPOINTMENT

.0402 PERMANENT APPOINTMENT

(a) Permanent - A permanent appointment is a permanent full-time appointment to a permanent full-time established position. A permanent appointment shall be given when:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements, or
- (3) a time-limited appointment extends beyond three years.

(b) A time-limited permanent appointment may be made to: Time-limited Permanent - A time-limited permanent appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited permanent position, that has an established duration of no more than two years. If an employee is retained in a time-limited permanent position beyond three years, the employee shall be designated as having a permanent appointment.

Such appointment shall not be made for less than six months. The appointment may be extended up to one additional year upon written request of the employing agency [on Form PD-105 for (1) of this Subsection; and on

~~Forms PD-105 and PD-118 for (2) of this Subsection] and approval of the State Personnel Director. This type of appointment is distinguished from a temporary appointment by the longer length of time, and from a regular permanent appointment by its limited duration. (See 25 NCAC 11, Section .1500 — Forms, in reference to Forms PD-105 and PD-118.)~~

(c) Individuals receiving original appointments in state government must first serve a probationary appointment before being eligible for any permanent appointment.

(d) Individuals receiving original appointments in state government must first serve in a probationary time-limited appointment before being eligible for a time-limited permanent appointment.

(e) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration.

(f) Employees with a time-limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.

Statutory Authority G.S. 126-4.

.0403 TRAINEE APPOINTMENTS

(a) A trainee appointment may be made to a permanent position when:

- (1) in any class for which the job specification includes special provisions for a trainee progression leading to regular appointment,
- (2) recruitment efforts fail to attract qualified candidates,
- (3) operating need warrants a trainee, or
- (4) the recommended applicant fails to meet minimum State education and experience requirements.

(b) The trainee appointment, like the probationary period, is also an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards.

(c) Employees with a trainee appointment earn leave, and receive total state service credit, retirement and health benefits. When applicable, trainees who have completed six months of service or who had a permanent appointment prior to entering a trainee appointment may receive severance pay and priority reemployment consideration.

Statutory Authority G.S. 126-4.

.0404 PROBATIONARY APPOINTMENTS

(a) Individuals receiving original appointments to permanent or time-limited permanent positions must serve a probationary period. The probationary periods is an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of

those whose performance will not meet acceptable standards. The maximum length of the probationary period shall be not less than three nor more than nine months of either full-time or part-time employment from the actual date of employment. Within 90 days of employment, prior to the granting of permanent status, credentials and application information provided by the employee must be verified. Agencies shall inform applicants in writing that credentials must be verified prior to the granting of a permanent or time-limited appointment status.

(b) Employees with a probationary appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay or priority reemployment consideration.

Statutory Authority G.S. 96-29; 126-4.

.0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is an appointment for a limited term, normally not to exceed three to six months, to a permanent or temporary position. When sufficiently justified, a longer period of time may be requested; but in no case shall the temporary employment period exceed 12 consecutive months. (Exceptions for students and retired employees: Students are exempt from the 12-months maximum limit. If retired employees sign a statement that they are not available for nor seeking permanent employment, they may have temporary appointments for more than 12 months. "Retired" is defined as drawing a retirement income and/or social security benefits.)

(b) Employees with a temporary appointment do not earn leave, or receive total state service credit, health benefits, retirement credit, severance pay, or priority reemployment consideration.

Statutory Authority G.S. 126-4.

.0406 PERMANENT PART-TIME

(a) A permanent part-time appointment is an appointment of less than full-time to a permanent full-time position or to a permanent part-time budgeted position on a continuing basis. (Employees with appointments less than full-time 20 hours per week earn no benefits.)

(b) Employees with permanent appointments that are 20 hours per week or more earn leave benefits (pro-rated), total state service credit, and when applicable, severance pay and priority reemployment consideration. They do not receive retirement credit or health benefits; however, they may belong to the group health plan by paying their own premiums.

(c) Employees with permanent appointments that are 30 hours per week or more for at least 9 months per year earn leave benefits (prorated), total state service credit, retirement credit, health benefits and when applicable, severance pay and priority reemployment consideration.

Statutory Authority G.S. 126-4.

.0407 TEMPORARY PART-TIME APPOINTMENT

A temporary part-time appointment is an appointment of less than full-time for a limited term normally not to exceed three to six months. When sufficiently justified, a longer period of time may be requested; but in no case shall the temporary employment period exceed 12 consecutive months. (Exception for students and retired employees: Students are exempt from the 12-months maximum limit. If retired employees sign a statement that they are not available for nor seeking permanent employment, they may have temporary appointments for more than 12 months. "Retired" is defined as drawing a retirement income and/or social security benefits.) Employees with temporary appointments receive no benefits.

Statutory Authority G.S. 126-4.

.0408 INTERMITTENT APPOINTMENT

An intermittent appointment may be made to positions needed only for intermittent periods of time. The intermittent service of an individual shall not exceed a total of nine months during any continuous 12-month period except during extreme emergencies when such periods of time shall be extended for the duration of the emergency. ~~Such duration of time shall be at the discretion of the State Personnel Director retroactive to April 11, 1975.~~ Employees with intermittent appointments receive no benefits.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1D - COMPENSATION

SECTION .0200 - NEW APPOINTMENTS

.0201 INITIAL EMPLOYMENT

(a) A new appointment is the initial employment of an individual to a position or the re-employment of individuals who are either not eligible for reinstatement or, at the agency's option, are not offered reinstatement.

(b) An employee entering into state service in a permanent or time-limited permanent position shall be given a probationary or trainee appointment unless the employee is eligible for and the agency chooses to make reinstatement to permanent appointment status. The probationary and trainee appointment periods are intended to serve as an extension of the selection process and are used to determine whether the person will be able to meet acceptable performance standards for the work for which employed. The employee will earn all the benefits of ~~a an employee with a permanent appointment employee~~ during this time.

(c) The duration of a probationary appointment shall be not less than three nor more than nine months of either full-time or part-time employment. The determination of the appropriate length will generally depend on the complexity of the position and the rate of progress of the employee. (This probationary period is not the same as the probationary period prescribed for criminal justice officers in 12

NCAC 5 .0401.) The duration of the trainee appointment is established for each regular classification to which trainee appointment is made.

(d) The conditions of the probationary and trainee appointments shall be clearly conveyed to the applicant prior to appointment. During the probationary or trainee period, the supervisor has a responsibility to work closely with the employee in counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee should be reviewed during discussions between the employee and the supervisor. Following the probationary period when the supervisor in consultation with other appropriate administrators determines that the employee's performance indicated capability to become a satisfactory performer and merits retention in the position, the employee shall be given a permanent appointment to the class. If the determination is that the employee's performance indicates that the employee is not suited for the position and cannot be expected to meet acceptable standards, it is expected that the employee would be separated from that position. Employees may also be separated during a probationary or trainee appointment for causes related to performance of duties or unacceptable personal conduct. Except in cases of discrimination, a dismissal under these conditions is not subject to the right of appeal to the State Personnel Commission.

Statutory Authority G.S. 126-4.

.0205 EFFECTIVE DATE

(a) A new employee may begin work on any scheduled workday in a pay period. When the first day of a pay period falls on a non-workday and the employee begins work on the first workday of a pay period, the date to begin work will be shown as the first of the pay period.

(b) The effective date for change to permanent appointment status shall be the date that it is determined that the employee meets acceptable performance standards, but not less than three months from the date of employment.

Statutory Authority G.S. 126-4.

.0207 QUALIFICATIONS

The employee must possess at least the minimum education and experience requirements, or their equivalent, as set forth in the class specification. This applies to full-time and part-time permanent, probationary, trainee, time-limited and temporary, appointments. ~~part time and where training requirements have been established in specific areas.~~

Statutory Authority G.S. 126-4.

.0211 SALARY RATE

(a) The hiring rate of pay for a class, or trainee rate where applicable shall normally be paid a qualified new employee. When a special entry rate has been authorized, that rate may be paid a qualified new employee if the

agency has made a decision to use the new rate.

(b) A salary above the hiring rate (or applicable special entry rate) may be requested on the initial appointment ~~or at the time the appointment is made permanent, but not to exceed the maximum salary published in the vacancy announcement, when:~~

- ~~(1) extensive recruitment efforts have not produced qualified applicants; or~~
- (1) warranted by operational needs or equal pay considerations; and
- (2) the applicant possesses exceptional qualifications above the hiring requirements of the class specification, and operational needs exist which justify filling the position at the salary above the minimum of the range. The additional experience and training must be in the same or closely related area to that stated as acceptable in the class specification minimum requirements which are in the same or a closely related area. Generally, up to five percent above the minimum rate may be considered for each qualifying year of directly related experience or education above the minimum requirements.

(c) Appointments above the hiring rate are to be avoided if salary inequities would be created. This shall be considered carefully in order to avoid present or future inequities.

(d) If a specific salary limitation is published in the vacancy announcement because of lack of funds or equity considerations, the initial salary cannot be higher than posted. However, if it is determined that a higher salary is warranted based on qualification, the agency may state this on the PD-105 and if funds are available at the time a permanent appointment is given, the salary may be adjusted at that time.

~~(e)(f)~~ When an employee is given a permanent appointment after successful completion of either the probationary period or the trainee period, if the initial salary is at the hiring rate or trainee rate, it shall be increased to the minimum rate of the range and may be increased to a higher rate if the conditions in Paragraph (b) of this Rule are met.

~~(e)(f)~~ If the salary is at an authorized special entry rate, it may be increased by five percent above the special entry rate.

~~(f)(g)~~ If the employee is hired at a salary below an authorized special entry rate because the lower salary is sufficient to attract applicants but not sufficient to retain the employee once experience is gained, an adjustment up to the special entry rate may be made during or at the end of the probationary period or at such time as performance indicated that it is justified.

~~(g)(h)~~ If the initial salary is above the hiring rate, the agency may elect to increase the salary by 5% or to a higher rate if the conditions in Paragraph (b) of this Rule are met.

~~(h)(i)~~ Only with the prior approval of the State Personnel Director and in well-documented cases which involve circumstances such as severe labor market conditions or extraordinary qualifications will salaries be considered

which exceed the limits of this Section.

Statutory Authority G.S. 126-4(2).

SECTION .0800 - INITIAL CLASSIFICATION

.0808 SALARY RATE

(a) If the employee is given probationary status and the salary is below the hiring rate for the range assigned, it shall be adjusted to the new hiring rate. If the employee is given a permanent or time-limited permanent appointment status and the salary is below the minimum rate, it shall be adjusted to the minimum rate of the range assigned.

(b) If the employee's salary falls within the range assigned to the position, it shall remain unchanged.

Statutory Authority G.S. 126-4.

SECTION .1000 - REINSTATEMENT

.1001 DEFINITION

Reinstatement is:

- (1) the reemployment ~~in~~ with a permanent appointment status of a former employee with a permanent full-time or permanent part-time (20 hours or more), permanent, trainee or time-limited appointment ~~employee~~ with a break in service and within five years following the date of separation. Although the employee is eligible for reinstatement to permanent appointment status, the agency head may choose to offer reemployment with a probationary appointment. The employee will meet all requirements of the probationary period the same as for original appointments;
- (2) the return to a nonpolicy-making position of an employee who transferred to or occupied a position designated as policy-making exempt.

Statutory Authority G.S. 126-4.

.1009 VETERANS

Veterans. Employees with a permanent, Permanent or probationary, or trainee appointment ~~employees~~ who resigned or were granted leave without pay to serve in the Armed Services of the United States are eligible from reinstatement to the same position or one of like status, seniority and pay regardless of length of previous service. If, during military service, an employee is disabled to the extent that duties of the original position cannot be performed, the employee shall be reinstated to a position with duties commensurate with the disability, if any such position is available.

Statutory Authority G.S. 126-4.

SECTION .1200 - LONGEVITY PAY

.1201 PURPOSE

The purpose of longevity pay is to recognize long-term service of ~~permanent~~ full-time and ~~permanent~~ part-time (half-time or more) employees with a permanent, probationary, trainee or time-limited appointment who have served at least ten years with the state.

Statutory Authority G.S. 126-4.

.1204 ELIGIBILITY REQUIREMENTS

(a) An employee shall have at least ten years of total qualifying state service before being eligible for any longevity payments.

(b) The employee must have a full-time permanent probationary, trainee or time-limited appointment.

(c) An employee's earliest possible date of eligibility for a longevity payment is the date when ten years of total state service has been completed. If on the effective date of this policy an employee has completed the qualifying length of service but is somewhere between eligibility dates, longevity payment will not be made until the next longevity anniversary date. In succeeding years, a longevity payment will be made annually in the pay period in which the employee's longevity anniversary date falls. Periods of leave without pay in excess of one-half the workdays and holidays in a pay period with the exception of military leave and workers' compensation leave) will delay the longevity anniversary date.

(d) Credit for the total service requirement shall not be given for temporary full-time or temporary part-time employment and periods of leave without pay in excess of one-half the workdays and holidays in a pay period, with the exception of military leave and workers' compensation leave.

(e) Upon change of appointment to temporary or exempt (except as provided by statute), the employee is ineligible for continued longevity pay; hence, if the employee has worked part but not all of one year since the last annual longevity payment, a pro rata payment shall be made as if the employee were separating from state service provided the change is not of a temporary nature. If an employee goes on leave without pay, longevity shall not be paid until the employee returns and completes the full year. If, however, the employee should resign while on leave without pay, then the pro rata amount for which the employee is eligible is paid. Exceptions:

- (1) An employee going on leave without pay due to short-term disability may be paid the prorata amount for which the employee is eligible;
- (2) An employee going on extended military leave without pay shall be paid the prorata amount for which eligible;
- (3) An employee on workers' compensation leave shall be paid longevity as if working.

(f) Partial Payments:

- (1) If an employee separates from a state agency and receives a partial longevity payment and is

reinstated in another state agency, the balance of the longevity payment shall be made upon completion of additional service totaling 12 months since the last full longevity payment. The balance due is computed on the annual salary being paid at the completion of the 12 months.

- (2) If an employee comes to work in a position that is subject to the Personnel Act from a system (such as judicial, county, public schools, etc.) that has longevity policy which allows partial payments, it is the responsibility of the receiving state agency to verify that such payment was or was not made. Then the state agency would pay the remainder of the payment when the employee is eligible.

(g) Total state service is the time of full-time or part-time (half-time or over) employees with a permanent, trainee, probationary or provisional time-limited appointment employment, whether subject to or exempt from the State Personnel Act. If an employee so appointed is in pay status or is on authorized military leave for one-half of the regularly scheduled workdays and holidays in a ~~in a~~ pay period, credit shall be given for the entire pay period. Employees will receive full credit for each pay period they are in pay status for one-half of their regularly scheduled workdays and holidays. Credit shall also be given for:

- (1) Employment with other governmental units which are now State agencies (Examples: county highway maintenance forces, War Manpower Commission, Judicial System).
- (2) Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the State military leave policies.
- (3) Employment with the county Agricultural Extension Service, Community College system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year (credit for a partial year is given on a month for month basis of the actual months worked).
- (4) Employment with a local Mental Health, Public Health, Social Services or Emergency Management agency in North Carolina if such employment is subject to the State Personnel Act.
- (5) Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted. The full legislative terms of the members will also be counted.

Statutory Authority G.S. 126-4(5), (10).

SECTION .1400 - SHIFT PREMIUM PAY

.1401 PURPOSE

It is a policy of the state to provide additional compensation for non-medically related employees through salary grade 69, for all employees in the position of Ferry Captain II in salary grade 70, and for medically related employees through salary grade 75 who are regularly scheduled to work on either an evening or night shift:

- (1) An employee with a A permanent, probationary, ~~or trainee or time-limited appointment~~ employee who is eligible for shift premium pay shall receive premium pay for all hours in a shift worked in which more than half of the scheduled working hours occur between 4:00 p.m. and 8:00 a.m. on a regular recurring basis.

(Exception: Employees in medically-related occupations who have a regularly recurring work schedule in excess of 8 hours each day shall be paid shift premium pay for the hours actually worked between 4:00 p.m. and 8:00 a.m., but only when determined necessary for classes to be competitive with relevant labor markets.)

Interpretation: "Regularly recurring" shall be interpreted to mean a position that requires a daily schedule that is repeated at specified intervals for an indefinite period of time. In addition, an employee required to substitute in a position because of vacancy or the incumbent's absence that is eligible for shift premium shall receive such payment for time worked in that position. Shift premium pay shall not be paid to employees temporarily placed on a shift or to employees temporarily employed to work on a shift that normally receives such pay.

- (2) Employees shall not receive shift premium pay for hours not actually worked. This exclusion includes such time periods as vacation leave, holidays, sick leave, jury duty, and military leave.
- (3) Shift premium pay shall be granted in addition to any other premium pay to which the employee may be entitled, such as holiday pay.
- (4) Shift premium pay is not considered as a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary. However, under the state's policy on hours of work and overtime compensation, shift premium pay must be included in the calculation of the regular hourly rate of pay for the purposes of computing overtime.
- (5) Split Shifts. An employee working a regularly recurring split shift shall receive premium pay in accordance with this Rule if more than half of the hours occur between 4:00 p.m. and 8:00 a.m. If, however, only half or less of the hours are in the stated period, the employee will receive shift premium pay only for the actual hours worked between 4:00 p.m. and 8:00 a.m.

Statutory Authority G.S. 126-4; S.L. 1987, c. 738, s. 9; S.L. 1988, c. 1086, s. 100.

SECTION .1800 - EMPLOYMENT OF PHYSICIANS FOR EXTENDED DUTY

.1801 PURPOSE

~~Because of the critical~~ Critical shortage of coverage on evening and weekend shifts in certain medically related areas sometimes make it ~~physicians~~, it is sometimes impossible to maintain an adequate staff of physicians to meet all workload requirements. In order to meet such workloads, ~~a physician who is an employee of the state who is exempt from the hours of work and overtime provisions of FLSA~~ may, if he agrees, be scheduled to work additional hours beyond his regular work schedule. A list of professional medically related classed eligible to receive straight-time for extended duty beyond forty hours per week will be approved and maintained within the Office of State Personnel.

Statutory Authority G.S. 126-4.

.1802 PAYMENT

(a) If such additional duty involves primarily the direct care and treatment of patients or other activities which can be performed only by the employee approved for extended duty ~~a physician~~, the employee may be paid for such additional time on a straight time basis at a rate of pay to be determined by the nature of the duties to be performed. Thus, an employee's rate of pay during the additional hours of work may be either higher, lower, or the same as his established rate of pay.

(b) Usually the source of funds for payment for such additional employment will be the funds provided for a vacant position. Such a position will have been planned with specific work assignments and will have a proper classification and pay level. In other cases, there may be available budgeted special funds for additional hours of such service. In these cases, it may become necessary to determine specifically what the work assignments are to be and to arrive, through proper evaluation, at the correct rate of pay for those duties.

Statutory Authority G.S. 126-4.

SECTION .2000 - UNEMPLOYMENT INSURANCE

.2001 COVERAGE

Effective January 1, 1978, the North Carolina General Assembly provided unemployment insurance coverage for all ~~temporary and permanent~~ state employees including temporary, except those exempted by G.S. 96-8(6)l.

Statutory Authority G.S. 96-8(6)j; 96-8l.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0800 - MILITARY LEAVE

.0804 PERIODS OF ENTITLEMENT FOR ALL RESERVE COMPONENTS

(a) Military leave with pay shall be granted to full-time or part-time ~~permanent~~ employees with a permanent, trainee, or probationary appointment ~~trainee and probationary employees~~ for up to 120 working hours (prorated for part-time employees) during the Federal fiscal year beginning October 1 and ending on September 30, for any type of active military duty for members not on extended active duty.

(b) Although regularly scheduled unit assemblies occurring on weekends and referred to as "drills" do not normally require military leave, the employing agency is required to excuse an employee for all regularly scheduled military training duty. If necessary the employee's work schedule shall be appropriately rearranged to enable the employee to attend these assemblies. To determine the dates of these regularly scheduled unit assemblies, the employing agency may require the employee to provide a unit training schedule which lists training dates for a month or more in advance. Military leave with pay [from Paragraph (a) of this Rule] or vacation may be used if "drills" occur on weekdays.

(c) An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to membership in a reserve component without charge to leave.

Statutory Authority G.S. 126-4(5).

SUBCHAPTER 1K - PERSONNEL TRAINING

SECTION .0300 - EDUCATIONAL ASSISTANCE PROGRAM

.0312 ELIGIBILITY

(a) Eligible Employees. Full-time or part-time employees who have ~~gained~~ a permanent appointment status are eligible for this program. Trainees may be determined as eligible by management after satisfactory performance for a period of not less than three months.

(b) Ineligible Employees. Employees ~~in~~ with a temporary and or probationary appointment status or who do not meet the minimum educational and experience requirements for the job are not eligible for educational assistance. Work-study requirements for trainees shall be administered in accordance with the extended educational leave policy.

(c) Eligible Sources. Any accredited high school, business, community college, technical institute, college, university, correspondence school or other educational source approved by the State Personnel Director is eligible for selection.

(d) Academic courses which are audited are eligible for educational assistance; however, an employee may be reimbursed for the same course or course equivalent only once. Reimbursement requires a statement written on school letterhead and signed by the instructor that the employee attended at least 85 percent of the scheduled class meetings during the academic term.

Statutory Authority G.S. 126-4.

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

Key:

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

NORTH CAROLINA ADMINISTRATIVE CODE

APRIL 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
4	Commerce	17	Revenue
7	Cultural Resources	18	Secretary of State
10	Human Resources	21	Occupational Licensing Boards
13	Labor		12 - General Contractors
15A	Environment, Health, and Natural Resources		18 - Electrical Contractors
16	Public Instruction		42 - Optometry
			58 - Real Estate Commission
		23	Community Colleges

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4 NCAC 31 .0101		✓		✓		05/01/95	
.0201		✓		✓		05/01/95	
.0202 - .0203			✓			05/01/95	
.0204		✓		✓		05/01/95	
.0205 - .0206	✓			✓		05/01/95	
.0301		✓		✓		05/01/95	
.0401		✓				05/01/95	
.0402		✓		✓		05/01/95	
.0403		✓				05/01/95	
.0405 - .0406		✓		✓		05/01/95	
.0501		✓		✓		05/01/95	
.0502		✓				05/01/95	
.0503		✓		✓		05/01/95	
.0601 - .0602		✓				05/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4	NCAC	31	.0702 - .0703		✓				05/01/95	
			.0705		✓		✓		05/01/95	
7	NCAC	2E	.0301		✓		✓		05/01/95	
10	NCAC	22J	.0308		✓		✓		05/01/95	
		22R	.0201		✓				05/01/95	
			.0202		✓		✓		05/01/95	
		26H	.0102		✓		✓		05/01/95	
13	NCAC	7F	.0501		✓				05/01/95	
15A	NCAC	2D	.0104		✓		✓		05/01/95	
			.0501					✓		
			.0902		✓		✓		05/01/95	
			.0907		✓				05/01/95	
			.0910 - .0911		✓				05/01/95	
			.0950		✓				05/01/95	
			.0952		✓				05/01/95	
			.0954		✓		✓		05/01/95	
			.0955 - .0956					✓		
			.1206					✓		
			.1405 - .1408					✓		
			.1501					✓		
		2K	.0502					✓		
		2Q	.0112					✓		
		10B	.0113		✓				07/01/95	
			.0204 - .0206		✓				07/01/95	
			.0209		✓		✓		07/01/95	
		10C	.0203		✓		✓		07/01/95	
			.0205		✓		✓		07/01/95	
			.0305		✓				07/01/95	
			.0305		✓		✓		07/01/95	
			.0401		✓				07/01/95	
			.0401		✓		✓		07/01/95	
			.0404		✓				07/01/95	
			.0407		✓				07/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	10D	.0003 - .0004		✓		✓		07/01/95	
		10E	.0004		✓		✓		07/01/95	
		10F	.0330		✓		✓		05/01/95	
		10H	.0801		✓				05/01/95	
			.0807 - .0808		✓				05/01/95	
		10K	.0002		✓				05/01/95	
		11	.0104		✓		✓		05/01/95	
			.0117		✓				05/01/95	
			.0343		✓		✓		05/01/95	
			.0350 - .0351		✓				05/01/95	
			.0356	✓			✓		05/01/95	
			.0357	✓					05/01/95	
			.0502		✓				05/01/95	
			.0503		✓		✓		05/01/95	
			.0504 - .0509		✓				05/01/95	
			.0510 - .0512		✓		✓		05/01/95	
			.0513 - .0514		✓				05/01/95	
			.0515		✓		✓		05/01/95	
			.0517 - .0520		✓				05/01/95	
			.0521 - .0523	✓					05/01/95	
			.1625		✓				05/01/95	
16	NCAC	6C	.0207		✓		✓		07/01/95	
17	NCAC	1C	.0504 - .0505		✓				05/01/95	
		7B	.1123		✓				05/01/95	
			.5445			✓			05/01/95	
		9G	.0202			✓			05/01/95	
		9J	.0204			✓			05/01/95	
18	NCAC	6	.1201		✓				05/01/95	
			.1210		✓				05/01/95	
21	NCAC	12	.0208	✓					05/01/95	
			.0506		✓				05/01/95	
		18B	.0901					✓		
		42B	.0107		✓				05/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	42B	.0110		✓				05/01/95	
		58A	.0403		✓				04/24/95	180 DAYS
			.0503 - .0504		✓				04/24/95	180 DAYS
23	NCAC	2E	.0604	✓			✓		05/01/95	

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).

DEPARTMENT OF COMMERCE

Banking Commission

4 NCAC 31 .0101 - Definitions; Filings	RRC Objection	04/20/95
Agency Revised Rule	Obj. Removed	04/20/95
4 NCAC 31 .0402 - Annual Statement	RRC Objection	04/20/95
Agency Revised Rule	Obj. Removed	04/20/95

DEPARTMENT OF CULTURAL RESOURCES

Art Works in State Buildings Program

7 NCAC 12 .0002 - Transfer of Funds		
Rule Withdrawn by Agency		03/16/95
7 NCAC 12 .0003 - Program Administration		
Rule Withdrawn by Agency		03/16/95
7 NCAC 12 .0005 - Selection, Installation, and Maintenance		
Rule Withdrawn by Agency		03/16/95
7 NCAC 12 .0006 - Maintenance, Repair and Conservation		
Rule Withdrawn by Agency		03/16/95

Division of State Library

7 NCAC 2E .0301 - Qualifications for Grants	RRC Objection	04/20/95
Agency Revised Rule	Obj. Removed	04/20/95

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .0104 - Co-Payments	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95
15A NCAC 16A .0109 - Covered Services	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95

Coastal Management

15A NCAC 7H .0308 - Specific Use Standards For Ocean Hazard Areas	RRC Objection	03/16/95
Agency Revised Rule	Obj. Cont'd	04/20/95
Rule Returned to Agency		04/20/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/04/95
15A NCAC 7M .0202 - Policy Statements	RRC Objection	03/16/95
Rule Returned to Agency	Obj. Cont'd	04/20/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/04/95

Environmental Health

15A NCAC 18A .2801 - Definitions	RRC Objection	01/19/95
Rule Approved as Written	Obj. Removed	02/16/95
15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children	RRC Objection	01/19/95
Agency Revised Rule	Obj. Removed	02/16/95
15A NCAC 18A .3204 - Sewage Disposal	RRC Objection	03/16/95

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 18A .3209 - Tattooing Procedures	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
Environmental Management		
15A NCAC 2D .0902 - Applicability	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
15A NCAC 2D .1204 - Reporting and Recordkeeping	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 2D .1404 - Recordkeeping: Reporting: Monitoring	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 2D .1407 - Non-Utility Boilers and Process Heaters	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 2D .1414 - Tune-Up Requirements	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 2K .0501 - Definitions	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 2D .0502 - Required Minimum Flow for Dams (Not Small Hydro Projects)	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
Parks and Recreation Area Rules		
15A NCAC 12K .0103 - Funding Cycle	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 12K .0104 - Application Schedule	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 12K .0105 - Evaluation of Applications	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 12K .0106 - Grant Agreement	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
15A NCAC 12K .0111 - Program Acknowledgment	RRC Objection	03/16/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/16/95</i>
Radiation Protection		
15A NCAC 11 .0104 - Definitions	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
15A NCAC 11 .0503 - Equipment Radiation Level Limits	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
Wildlife Resources and Water Safety		
15A NCAC 10C .0205 - Public Mountain Trout Waters	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
15A NCAC 10F .0330 - Carteret County	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
15A NCAC 10K .0001 - Course Requirements		
<i>Rule Withdrawn by Agency</i>		04/20/95
HUMAN RESOURCES		
Aging		
10 NCAC 22R .0202 - County Funding Plans	RRC Objection	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

Facility Services

10 NCAC 3R .3030 - Facility and Service Need Determinations	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95
10 NCAC 3U .1001 - Seat Restraints	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95

Medical Assistance

10 NCAC 26H .0104 - Cost Reporting: Auditing and Settlements		
Rule Withdrawn by Agency		04/20/95
10 NCAC 26M .0301 - Program Definition	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0302 - Access to Care	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0303 - Patient Informing	RRC Objection	04/20/95
10 NCAC 26M .0304 - Relationship with Carolina Access	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0305 - Relationship with EPSDT program	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0306 - Relationship with Sub-Contractors	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0307 - Utilization Review Requirements	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0308 - Enrollee and Sub-Contractor Appeals and Grievances	RRC Objection	04/20/95

INSURANCE

Actuarial Services Division

11 NCAC 16 .0601 - Definitions	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95
11 NCAC 16 .0602 - HMO General Filing Requirements	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95
11 NCAC 16 .0607 - HMO Incurred Loss Ratio Standards	RRC Objection	03/16/95
Agency Revised Rule	Obj. Removed	03/16/95

LICENSING BOARDS AND COMMISSIONS

Board of Cosmetic Art Examiners

21 NCAC 14F .0014 - Salon Renewal	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95
21 NCAC 14I .0401 - App. for Lic. by Individuals Who Have Been Convicted of a Felony	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95
21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95

Board of Examiners of Electrical Contractors

21 NCAC 18B .0901 - Applicants Convicted of Crimes	RRC Objection	01/19/95
No Response from Agency	Obj. Cont'd	02/16/95
Agency Revised Rule	Obj. Removed	03/16/95

Licensing Board for General Contractors

21 NCAC 12 .0701 - Improper Practice
Rule Withdrawn by Agency

04/20/95

Board of Opticians

21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration
Agency Revised Rule
No Response from Agency
Agency Responded
No Response from Agency
Rule Returned to Agency

RRC Objection 11/17/94
Obj. Cont'd 11/17/94
Obj. Cont'd 12/15/94
Obj. Cont'd 01/19/95
Obj. Cont'd 02/16/95
03/16/95

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans
Agency Responded
Agency Revised Rule

RRC Objection 02/16/95
Obj. Cont'd 03/16/95
Obj. Removed 04/20/95

REVENUE

Sales and Use Tax

17 NCAC 7B .1123 - Certain Sales to Commercial Livestock and Poultry Farmers
17 NCAC 7B .5436 - Farmer's Certificate Form: E-599
Agency Repealed Rule
17 NCAC 7B .5437 - Veterinarian's Certificate Form: E-567
Agency Repealed Rule
17 NCAC 7B .5445 - Commercial Swine, Livestock/Poultry Farmers' Cert. Form: E-599S
Agency Repealed Rule
17 NCAC 7B .5462 - Ice Certificate Form
Rule Withdrawn by Agency

RRC Objection 03/16/95
Obj. Removed 04/20/95
RRC Objection 03/16/95
Obj. Removed 03/16/95
RRC Objection 03/16/95
Obj. Removed 03/16/95
RRC Objection 03/16/95
Obj. Removed 04/20/95
03/16/95

SECRETARY OF STATE

Notary Public Division

18 NCAC 7 .0301 - Approved Course of Study
No Response from Agency
Rule Returned to Agency
18 NCAC 7 .0302 - Instructors
No Response from Agency
Rule Returned to Agency

RRC Objection 12/15/94
Obj. Cont'd 01/19/95
Obj. Cont'd 02/16/95
RRC Objection 12/15/94
Obj. Cont'd 01/19/95
Obj. Cont'd 02/16/95

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.

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 OSP 0937

MARK MORGAN,
Petitioner

vs.

WAKE COUNTY,
Respondent.

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RECOMMENDED DECISION

STATEMENT OF THE CASE

The above-captioned matter was heard before Administrative Law Judge Dolores O. Nesnow, on March 6, 1995, in Raleigh, North Carolina.

APPEARANCES

Petitioner: Mark Morgan, Petitioner
Pro se.

Respondent: Margaret R. Martin, Esq.
Melissa Tripp, Esq.
Assistant Wake County Attorneys
Attorneys for Respondent.

ISSUE

Did the Respondent err in Reducing-in-Force ("RIFing") Petitioner?

WITNESSES

For Petitioner: Mark Morgan - Petitioner

For Respondent: Carol Lee - Wake County Personnel Dir.
Steve Cline - Wake County Health
Director for Chronic & Communicable Diseases
Leah Devlin - Wake County Health Dir.

Based upon careful consideration of the testimony and evidence presented at the hearing, and the documents and exhibits received into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was a Public Health Dentist I in the Dental Health Program of Wake County Department of Health and had been so employed for seven years.
2. Petitioner was a permanent State employee.
3. The Dental Health Program is divided into three sections: Dental Health Promotion, Pediatric Clinical Program, Adult Clinical Program.
4. Petitioner worked in the Pediatric Clinical Program and was assigned, as a Clinical Dentist, to the dental van which primarily circulated among elementary schools serving the indigent population.

5. The dental van operation was limited to school hours. Although attempts had been made to schedule dental visits before school and during the after-school hours, those attempts were unsuccessful because the population being served rode the school bus and could not arrive early or leave late.
6. After the dental van completed a day at the elementary schools, Petitioner would return to the Department of Health where he would complete the day working in the dental clinic.
7. In the Spring of 1994, the Wake County Department of Health was informed that the Wake County Commissioners had decided that the budget of the Department of Health would be reduced by approximately 1.3 million dollars for fiscal year 94/95.
8. The Department of Health subsequently made reductions in its budget by cutting services in the areas of Administration, Environmental Health, Chronic and Communicable Disease, Maternal and Child Health, and the Dental Health Program.
9. The Respondent determined that since the Adult Dental Treatment Program was separately funded through Wake County Medical Center, any reductions in that area would not meet the goal of reducing its budget.
10. Respondent also determined that forty-one thousand dollars (\$41,000) could be saved by eliminating the dental van and RIFing Petitioner's Public Health Dentist I position.
11. Prior to August 1994, the Health Director was Leah Devlin, the Deputy Director was Steve Cline, and the Director of Dental Health was Joanna Irvin.
12. On June 1, 1994, Petitioner received a memorandum from Steve Cline and Joanna Irvin informing him that in order to meet the required reductions, the Dental Van Program would be eliminated. That memo further informed him that effective August 31, 1994, his position was being RIF'd.
13. The Dental Health Program employed three full-time Clinical Dentists:
 - Petitioner (Dentist I)
 - Dr. Joanna Irvin (Dentist III, Director of Dental Health Program)
 - Dr. Sam Rudd (Dentist II, Director of Adult Clinical Program)
14. Dr. Rudd was hired in February of 1994 and, at the time of the RIF, was a probationary employee.
15. At the time Dr. Rudd was hired, he was engaged to be married to Wanda Bass, a hygienist in the Dental Health Section. They subsequently married in July of 1994.
16. Dr. Cline, the Deputy Director, testified, and it is found as fact, that employees of the Health Department are probationary up to one year. He testified that in his experience he had not known an employee who remained on probationary status for less than one full year.
17. Petitioner had, on several occasions, acted as the Clinical Adult Dentist, filling the position held by Dr. Rudd whenever that position was empty.
18. Petitioner had not applied for Dr. Rudd's position because his preference was the treatment of children.
19. Petitioner testified that since the Dental Van Program was limited to school days, a one year work schedule review showed that he had worked one-third of his time in the dental van and two-thirds of his time in the clinic.
20. Petitioner further testified that his position as a Dentist I was as a children's dentist but that position had never been identified solely with the dental van.
21. Respondent's RIF Policy provides for appeals subsequent to a RIF. Petitioner followed the steps of appeal.

22. On August 15, 1994, Petitioner received a letter from Richard Y. Stevens, the County Manager. That letter informed Petitioner that Mr. Stevens was upholding the determination to RIF the Petitioner. The letter further stated the following:

"Because you are an employee of the Wake County Department of Health you are subject to the State Personnel Act. According to Chapter 8- C.2 of the Personnel Administration Manual, it is your right to file an appeal with the Office of Administrative Hearings now that you have exhausted Wake County's internal process. You would need to make this appeal within thirty (30) days."

23. Petitioner filed a timely Petition for a Contested Case with the Office of Administrative Hearings.

24. N.C. Gen. Stat. 126-11(a) provides that a county may adopt its own personnel policy if it submits that policy to the State Personnel Commission and if a determination is made that the policy is substantially equivalent to the State policy.

25. Respondent testified, and it is found as fact, that Wake County submitted its Reduction-in-Force Policy to State Personnel and a determination was made that the policy was substantially equivalent to the State Personnel RIF Regulations.

26. The Wake County RIF Policy (Policy) provides the following:

The County Manager will identify the area of layoff in which a Reduction-in-Force (RIF) will occur. The area of layoff may include all or any part of county government; a department, a division, or any organizational or program sub-unit of a department or division. The RIF may further be defined by classification within the designated area of layoff.

27. The Policy further provides that in order for there to be an equitable basis for determining the order of retention, all affected employees in the "area of layoff" are to be evaluated against one another to determine their retention standing.

28. The Policy further states the following:

All non-status employees (i.e. emergency, temporary, limited term, etc.), including those who have not completed their probationary period, shall be separated first from county employment.

29. The State Personnel Rules which apply to non-county State employees, at 25 NCAC 11.2005(3), provide that no permanent employee shall be separated while there are.... probationary employees serving in the same or related class unless the permanent employee is not willing to transfer to the position held by the non-permanent employee or the permanent employee does not have the knowledge or skill to perform the duties of the position of the non-permanent employee.

30. The Respondent presented evidence to show that once it had determined that the area of layoff was the dental van, there was only one Public Health Dentist position assigned to that program. The Respondent asserts that it was not required to proceed with a retention analysis since there was only one employee in the "area of layoff."

31. Petitioner testified that he is currently employed and does not seek to be reinstated to his position with Wake County.

32. Petitioner testified that he seeks monetary compensation for one month of unemployment, the costs of one month's dental health insurance coverage, dental liability insurance, subsidy to his 401K, and medical insurance. Petitioner also seeks one thousand dollars (\$1,000) in employment search expenses and one hundred and ten dollars (\$110.00) in legal fees.

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

CONCLUSIONS OF LAW

1. The Wake County Department of Health was informed that a reduction of 1.3 million dollars must be made in their budget.

No "area of layoff" was identified by the County Manager but the administration of the Department of Health determined that a forty-one thousand dollar (\$41,000) cut would be made to the Dental Health Program. Although the Policy contemplates that the County Manager would define the "area of layoff," the administration identified the "area of layoff" as the dental van.

Given arguendo that the Department of Health appropriately designated the Dental Program and also appropriately designated the dental van, the Department then made a critical decision. The Department determined that the policy provisions relating to retention of employee was not applicable since only one Public Health Dentist (a classification) worked in the dental van.

The Wake RIF Policy, however, provides that an equitable basis for determining the order of layoff is to evaluate the employees against one another. The Policy also provides that all non-status employees including those who have not completed their probationary period shall be separated first from county employment.

Since the Wake RIF Policy must be substantially equivalent to the State Policy, the State regulations have been examined for clarification. Those regulations clearly provide that no permanent State employee will be RIF'd while there is a probationary employee in the same class.

The State RIF Policy further provides that the position of a temporary employee in the affected class shall be offered to the permanent State employee in the same class if that employee has the ability to do the job.

The Wake RIF Policy makes no provision for offering a permanent employee the vacancy of a probationary employee who has been RIF'd. However, the Wake RIF Policy clearly provides that probationary employees shall be separated first.

In the instant case, there were three employees in the classification title of Public Health Dentist. Petitioner, Joanna Irvin, and Samuel Rudd, a probationary employee.

Although Dr. Rudd's program was partially funded through Wake Medical Center, that funding would not have been lost if Petitioner's position was RIF'd and Petitioner were offered the position of Dr. Rudd, a probationary employee.

Although Dr. Rudd was a Public Health Dentist II and Petitioner was a Public Health Dentist I, Petitioner had filled Dr. Rudd's position on various occasions. More importantly, Dr. Rudd was a probationary employee. While the Wake RIF Policy does not overtly provide for permanent State employees to be offered positions of probationary employees, it does clearly require that a probationary employee be RIF'd before a permanent State employee.

2. Based upon the above, it is concluded that the RIF conducted by the Respondent was improper in that a probationary employee in the same classification was retained while a permanent State employee was RIF'd.

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

RECOMMENDATION

That Respondent, in lieu of reinstatement, give the Petitioner the remedies requested in Finding of Fact Number 32.

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 Office of State Personnel.

This the 27th day of April, 1995.

Dolores O. Nesnow
Administrative Law Judge

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

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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
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13	Labor	Foresters	20
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16	Public Education	Landscape Architects	26
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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12 NCAC 09A .0204	10:02 NCR 122	08/01/95				
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.0201 - .0202	10:02 NCR 122	08/01/95				
.0205 - .0206	10:02 NCR 122	08/01/95				
.0210	10:02 NCR 122	08/01/95				
.0212 - .0214	10:02 NCR 122	08/01/95				
.0226 - .0228	10:02 NCR 122	08/01/95				
.0232 - .0233	10:02 NCR 122	08/01/95				
09C .0401	10:02 NCR 122	08/01/95				
.0601	10:02 NCR 122	08/01/95				
09D .0102	10:02 NCR 122	08/01/95				
.0104 - .0106	10:02 NCR 122	08/01/95				
LABOR						
13 NCAC	10:01 NCR 10	01/01/96				Notice on Subject Matter
	10:01 NCR 12	01/01/96				Notice on Subject Matter
	10:02 NCR 149	10/01/95				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	02/01/96				Notice on Subject Matter
	10:03 NCR 196	01/01/96				Notice on Subject Matter
	10:03 NCR 197	01/01/96				Notice on Subject Matter
12 .0101	10:02 NCR 142	08/01/95				
.0303 - .0315	10:02 NCR 142	08/01/95				
.0501 - .0502	10:02 NCR 142	08/01/95				
.0803 - .0808	10:02 NCR 142	08/01/95				
LIST OF RULES CODIFIED						
	10:02 NCR 167					Rules Filed 03/95
	10:04 NCR 272					Rules Filed 04/95
MEDICAL EXAMINERS						
21 NCAC 32H .0102	10:02 NCR 151	07/01/96				
.0201	10:02 NCR 151	07/01/96				
.0203	10:02 NCR 151	07/01/96				
.0408	10:02 NCR 151	07/01/96				
.0506	10:02 NCR 151	07/01/96				
.0601	10:02 NCR 151	07/01/95				
.0602	10:02 NCR 151	07/01/96				
.0801	10:02 NCR 151	07/01/96				
.1001	10:02 NCR 151	07/01/96				
321 .0003 - .0004	10:02 NCR 151	07/01/95				
NURSING HOME ADMINISTRATORS						
21 NCAC 37 .0101	10:04 NCR 262	08/01/95				
.0302	10:03 NCR 206	08/01/95				
.0404	10:03 NCR 206	08/01/95				
.0502	10:03 NCR 206	08/01/95				
.0603	10:03 NCR 206	08/01/95				
.0904	10:04 NCR 262	08/01/95				
.0912	10:03 NCR 206	08/01/95				
.0914	10:03 NCR 206	08/01/95				

CUMULATIVE INDEX

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		

PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0402	10:01 NCR 39	09/01/95
.0505	10:01 NCR 39	09/01/95

PROFESSIONAL COUNSELORS

21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95
.0301	10:01 NCR 40	07/01/95
.0305 - .0310	10:01 NCR 40	07/01/95
.0403 - .0405	10:01 NCR 40	07/01/95
.0601 - .0604	10:01 NCR 40	07/01/95

REAL ESTATE COMMISSION

21 NCAC 58A .0110	10:02 NCR 157	07/01/95
.0403	10:04 NCR 263	08/01/95
.0503	10:04 NCR 263	08/01/95
.0504 - .0506	10:02 NCR 157	07/01/95
.0505	10:04 NCR 263	08/01/95
.1703	10:02 NCR 157	07/01/95
.1707 - .1708	10:02 NCR 157	07/01/95
.1710 - .1711	10:02 NCR 157	07/01/95
58E .0103	10:02 NCR 157	07/01/95
.0203 - .0204	10:02 NCR 157	07/01/95
.0303 - .0305	10:02 NCR 157	07/01/95
.0406 - .0407	10:02 NCR 157	07/01/95
.0506	10:02 NCR 157	07/01/95
.0515	10:02 NCR 157	07/01/95

REFRIGERATION EXAMINERS

21 NCAC 60 .0102	10:04 NCR 264	08/01/95
.0204	10:04 NCR 264	08/01/95
.0314	10:04 NCR 264	08/01/95
.1102	10:04 NCR 264	08/01/95

REVENUE

Tax Review Board	10:01 NCR 03	
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STATE PERSONNEL

25 NCAC 01C .0207	10:04 NCR 264	08/01/95
.0402 - .0408	10:04 NCR 264	08/01/95
01D .0201	10:04 NCR 264	08/01/95
.0205	10:04 NCR 264	08/01/95
.0207	10:04 NCR 264	08/01/95
.0211	10:04 NCR 264	08/01/95
.0808	10:04 NCR 264	08/01/95
.1001	10:04 NCR 264	08/01/95
.1009	10:04 NCR 264	08/01/95
.1201	10:04 NCR 264	08/01/95
.1204	10:04 NCR 264	08/01/95
.1401	10:04 NCR 264	08/01/95
.1801 - .1802	10:04 NCR 264	08/01/95
.2001	10:04 NCR 264	08/01/95
01E .0804	10:04 NCR 264	08/01/95
01K .0312	10:04 NCR 264	08/01/95

TRANSPORTATION

19A NCAC 02D .0801	10:04 NCR 254	09/01/95
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BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	201 00 00	\$63.00	\$90.00
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
Title 2 - Dept. of Agriculture - Full Title	202 00 00	\$98.00	\$140.00
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
Title 3 - Dept. of State Auditor - Full Title	203 00 00	\$7.00	\$10.00
Title 4 - Dept. of Commerce - Full Title	204 00 00	\$87.50	\$125.00
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 08	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
Title 5 - Dept. of Corrections - Full Title	205 00 00	\$56.00	\$80.00
Division of Prisons	205 15 02	\$24.50	\$35.00
Title 6 - Council of State - Full Title	206 00 00	\$21.00	\$30.00
Title 7 - Dept. of Cultural Resources - Full Title	207 00 00	\$21.00	\$30.00
Title 8 - State Board of Elections - Full Title	208 00 00	\$7.00	\$10.00
Title 9 - Offices of the Governor & Lt. Governor - Full Title	209 00 00	\$31.50	\$45.00
Title 10 - Dept. of Human Resources - Full Title	210 00 00	\$346.50	\$495.00
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
Title 11 - Dept. of Insurance - Full Title	211 00 00	\$63.00	\$90.00
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
Title 12 - Dept. of Justice - Full Title	212 00 00	\$63.00	\$90.00
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
Title 13 - Dept. of Labor - Full Title	213 00 00	\$77.00	\$110.00
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	214 00 00	\$31.50	\$45.00
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	215 00 00	\$276.50	\$395.00
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$36.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$25.00
Title 16 - Dept. of Public Instruction - Full Title	216 00 00	\$21.00	\$30.00
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
Title 17 - Dept. of Revenue - Full Title	217 00 00	\$91.00	\$130.00
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
Title 18 - Secretary of State - Full Title	218 00 00	\$21.00	\$30.00
Securities Division	218 10 06	\$21.00	\$30.00
Title 19A - Dept. of Transportation - Full Title	219 00 00	\$63.00	\$90.00
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
Title 20 - Dept. of the State Treasurer - Full Title	220 00 00	\$31.50	\$45.00
Title 21 - Occupational Licensing Boards - Full Title	221 00 00	\$143.50	\$205.00
Title 22 - Administrative Procedures Act - Repealed	222 00 00	\$0.00	\$0.00
Title 23 - Dept. of Community Colleges - Full Title	223 00 00	\$7.00	\$10.00
Title 24 - Independent Agencies - Full Title	224 00 00	\$7.00	\$10.00
Title 25 - Office of State Personnel - Full Title	225 00 00	\$42.00	\$60.00
Title 26 - Office of Administrative Hearings - Full Title	226 00 00	\$7.00	\$10.00
Title 27 - North Carolina State Bar - Full Title	227 00 00	\$42.00	\$60.00
North Carolina Administrative Code - Full Code	299 99 98	\$375.00	\$750.00
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CD-ROM North Carolina Administrative Code	266 50 00	- -	\$250.00
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