

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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January 2, 2002

This issue contains documents officially filed through December 6, 2001.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/00/02	03/04/02	03/20/02	05/00/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/00/02	03/18/02	03/20/02	05/00/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/00/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/00/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings 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 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

U.S. Department of Justice

Civil Rights Division

JDR:DHH:AS:jdh:nj
DJ 166-012-3
2001-2608

*Voting Section
PO. Box 66128
Washington, D.C. 20035-6128*

October 24, 2001

Robert E. Hornik, Jr., Esq.
The Brough Law Firm
1829 East Franklin Street, Suite 800-A
Chapel Hill, NC 27514

Dear Mr. Hornik:

This refers to the annexation (Ordinance No. 01-21) to the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 28, 2001; supplemental information was received on November 19, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:SMC:cp:jdh
DJ 166-012-3
2001-2862

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

November 2, 2001

Mr. Gary O. Bartlett
Director, State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-353, which provides procedures for filling vacancies, registration procedures for military/overseas voters, absentee ballot printing, municipal incorporation procedures, precinct and polling place change notification, the repeal of a statute regarding political ad labeling, provision of curtailed or otherwise private areas for ballot casting, and election administration; and Session Law 2001-398, which provides for initial ballot counting procedures, rules for protesting elections, recount procedures, tie-vote events, procedures for calling new elections, and certifying election results, for the State of North Carolina submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 13, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:RPL:HCL:baw
DJ 166-012-3
2001-2868

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

November 7, 2001

Mr. Gary O. Bartlett
Executive Secretary-Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-337, which eliminates all requirements that a voter have an excuse to vote absentee; and Session Law No. 2001-396, which requires the removal of a voter's address from the public record under certain circumstances for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 13, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:CKD:SLL:par
DJ 166-012-3
2001-2873
2001-2931

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

November 8, 2001

Mr. Gary O. Bartlett
Executive Secretary-Director
Don Wright, Esq.
General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Messrs. Bartlett and Wright:

This refers to Session Law 2001-403, which establishes a residency requirement for candidates to the superior court, requires that district court judges be elected in nonpartisan elections, provides procedures for filling district court vacancies after December 1, 2002, and candidate qualifications for district court judges, establishes tie vote procedures for district court elections, and authorizes write-in candidacies for nonpartisan district court elections in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on September 13, 2001; supplemental information was received on October 22, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:NG:par
DJ 166-012-3
2001-3255

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

November 9, 2001

Mr. Gary O. Bartlett
Executive Secretary-Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-374, which abolishes municipal boards of elections, transfers the authority to conduct municipal elections to the county board of elections, and prohibits municipal councils from conducting elections if the State Board of Elections has designated the county board of elections as the permanent agency to conduct municipal elections for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights act, 42 U.S.C. 1973c. We received your submission on September 13, 2001; supplemental information was received on October 22, and November 1, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES

Pursuant to G.S. 90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board:

Carbamazepine:	all oral dosage forms
Cyclosporine:	all oral dosage forms
Digoxin:	all oral dosage forms
Ethosuximide	
Levothyroxine sodium tablets	
Lithium (including all salts):	all oral dosage forms
Phenytoin (including all salts):	all oral dosage forms
Procainamide	
Theophylline (including all salts):	all oral dosage forms
Warfarin sodium tablets	

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

A.C. Furniture Company, Inc.

Pursuant to G.S. 130A-310.34, A.C. Furniture Company, Inc. has filed with the North Carolina Department of Environment and Natural Resources (DENR) a Notice of Intent to Redevelop a Brownfields Property (Property) in Eden, Rockingham County, North Carolina. The Property consists of approximately 3.679 acres and is located at 655 E. Meadow Road. Environmental contamination exists on the Property in groundwater. A.C. Furniture Company, Inc. has committed itself to use of the Property exclusively for furniture frame assembly and upholstering activities. In light of previous investigation activities conducted on the Property, the land use restrictions included in the proposed Notice of Brownfields Property referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and A.C. Furniture Company, Inc., which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Eden at 308 East Stadium Street, Eden, NC 27288 by contacting Kim Scott, Eden City Clerk, at that address, or at (336) 623-2110, or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Rule-making Proceedings is hereby given by Social Services Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 49. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143B-153; P.L. 104-193

Statement of the Subject Matter: Rules in the current Chapter are relevant to the Aid to Families With Dependent Children (AFDC) Program. Changes are proposed in the Chapter to bring the rules into compliance with the North Carolina Temporary Assistance to Needy Families (TANF) State Plan.

Reason for Proposed Action: The temporary adoption, amendment or repeal of rules in 10 NCAC 49 is needed to update and to bring the Chapter into compliance with the North Carolina Temporary Assistance to Needy Families (TANF) State Plan, as approved in Session Law 2001-424.

Comment Procedures: If you wish to make comments please contact Ms. Sharnese Ransome, APA Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401; (919) 733-3055. Verbal comments may be presented at the public hearing.

CHAPTER 36 – BOARD OF NURSING

Notice of Rule-making Proceedings is hereby given by the North Carolina Board of Nursing in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 36 .0211, .0218 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-171.23(b); 90-171.29; 90-171.30; 90-171.32; 90-171.33; 90-171.37; 90-171.37(1); 90-171.48

Statement of the Subject Matter:
21 NCAC 36 .0211 - Sets the criteria by which an applicant is eligible for licensure by examination.
21 NCAC 36 .0218 - Set the criteria by which an applicant is eligible for licensure without examination by endorsement.

Reason for Proposed Action:
21 NCAC 36 .0211 - Clarifies eligibility requirements for licensure by examination including criminal history records checks.
21 NCAC 36 .0218 - Clarifies eligibility requirements for licensure by endorsement including criminal history records checks.

Comment Procedures: Written comments should be sent to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 05 – DEPARTMENT OF CORRECTION

SECTION .0300 - INMATE USE OF THE MAILS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Correction intends to repeal the rules cited as 05 NCAC 02C .0901; 02D .0310, .0501, .0503, .0802; 02E .0101-.0102, .0201, .0210, .0221, .0223, .0226-.0228, .0234, .0701, .1301, .1401-.1404, .1406; 02F .0103, .0105-.0107;.0208, .0401-.0403, .0504, .0506, .1503-.1507, .2001, .2007, .2304, .2501, .2504, .2601-.2602; 02G .0208, .0304, .0306, .0308-.0309, .0311-.0312, .0401; 02H .0101-.0102, .0104-.0105. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: July 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person requesting a public hearing must submit a written request to Jane Garvey, 4201 Mail Service Center, Raleigh, NC 27699-4201 by January 17, 2002.

Reason for Proposed Action: Routine review of existing procedures and policies revealed the existence of many rules which either are not required to be codified or which have no substantive content.

Comment Procedures: Written comment should be directed to Jane Garvey, 4201 Mail Service Center, Raleigh, NC 27699-4201. Comments must be received no later than February 1, 2002.

- Fiscal Impact
 State
 Local
 Substantive (>\$5,000,000)
 None

CHAPTER 02 – DIVISION OF PRISONS

SUBCHAPTER 02C - CLASSIFICATION

SECTION .0900 - ADMISSION CUSTODY GRADE ASSIGNMENT

05 NCAC 02C .0901 GENERAL

The Division of Prisons shall assign each offender to an appropriate custody classification upon admission until such time as intake processing is completed and the resulting recommendations for assignment can be considered by the appropriate reviewing and approving classification authorities.

Authority G.S. 148-11.

SUBCHAPTER 02D - PUBLIC COMMUNICATIONS

05 NCAC 02D .0310 MAIL RECORDS

The mail officer shall keep a record on Form DC-218 showing the source and destination of all legal mail, packages and items of monetary value mailed by an inmate. Check and money order numbers shall also be recorded on Form DC-218. The mail officer opening packages and items of monetary value mailed by or to an inmate shall sign his name at the beginning of each day's entries and place his initials beside each entry. The mail officer distributing such mail to inmates shall sign his name at the beginning of each day's entries and place his initials beside the signature of each inmate receiving such mail.

Authority G.S. 148-11.

SECTION .0500 - PUBLIC RELATIONS

05 NCAC 02D .0501 GENERAL

Prisons are public institutions, operated at public expense for the protection of the public. All citizens of North Carolina have a right and a duty to know about conditions and operations of the state prison system. The governing authorities of this system desire to promote interest in and knowledge of our prisons and the care and treatment provided for the people in our custody. Our general policy is to facilitate access of the general public and mass media representatives to such knowledge by every practicable means, including visits to prisons and contacts with members of the state correction service and with the people in our custody. In doing so, however, due consideration will be given to factors which might threaten security, disrupt orderly administration, damage morale, or militate against the effectiveness of correctional treatment.

Authority G.S. 143B-261.1.

05 NCAC 02D .0503 AUTHORIZATION

The Director of Prisons may authorize particular individuals to visit and inspect units of the state prison system, to talk to personnel and inmates, and to discuss particular or all phases and activities of prison operations. He may issue identification cards or provide other credentials for this purpose.

Authority G.S. 148-11.

SECTION .0800 - INMATE ACCESS TO TELEPHONES

05 NCAC 02D .0802 RESPONSIBILITY

SECTION .0200 - HEALTH CARE POLICY

~~(a) The Director of the Division of Prisons shall designate a staff coordinator to assist in telephone program management requirements. Coordination of telephone requirements with Department of Correction Purchasing, Division of Prisons Budget and Legal Sections, and Division operations are essential requirements.~~

~~(b) The facility superintendent is responsible for developing specific telephone procedures that comply with the minimum standards established by this policy and procedures. The Superintendent shall designate a telephone program coordinator who is responsible for the management of the facility inmate telephone program.~~

~~(c) Program/Case Management staff will provide assistance in the management of inmate access to telephones.~~

Authority G.S. 148-11.

SUBCHAPTER 02E - TREATMENT

SECTION .0100 - DIETARY POLICY

05 NCAC 02E .0101 GENERAL

~~All inmates will be served foods sufficient to meet basic nutritional needs. If physical ailments prevent inmates from eating food on the regular menu, alterations may be ordered by the unit physician.~~

Authority G.S. 148-11.

05 NCAC 02E .0102 MENU

~~A master menu will be posted in the dining room at each unit and institution. All food containing pork will be clearly marked with an asterisk on the menu. Inmates whose religious beliefs prohibit consumption of pork must notify the unit superintendent or institution head in writing. Those inmates who have given such written notice will be served as follows:~~

- ~~(1) When pork is the meat item on the menu, no other substitute meat will be allowed. However, to meet basic nutritional needs, other food items containing equivalent amounts of protein will be served to replace the pork meat, such as cheeses, dried beans and peas, eggs, and peanut butter;~~
- ~~(2) When any non-meat food items containing pork or pork seasoning are served, sufficient quantities of that same item will be served without pork or pork seasoning;~~
- ~~(3) Utensils used for the preparation and serving of pork items shall be thoroughly washed before using to prepare and serve non-pork items;~~
- ~~(4) At least one of the three daily meals will contain a non-pork meat as the main meat item; and~~
- ~~(5) Pack-out lunches shall follow the same dietary requirements as the master menu, and shall be subject to the exceptions above.~~

Authority G.S. 148-11.

05 NCAC 02E .0201 STATUTORY RESPONSIBILITY

~~General Statute 148-19, Health Services, specifies that the Department of Correction shall provide health services to prisoners which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis for all types of patients. In compliance with that statute, the Director, Division of Prisons is charged with the responsibility to provide each inmate the medical, dental, and mental health services necessary to maintain basic health.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0210 HOSPITALIZATION

~~Inmates requiring acute care hospitalization will be provided that service at Central Prison Hospital or by licensed community hospitals in accordance with procedures developed by the Chief of Health Services.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0221 INITIAL HEALTH CARE SCREENING

~~Health care screening shall be performed by trained staff on all inmates including transfers within the system immediately upon arrival at a facility and before placement in the general population or housing unit. The purpose of the screening will be to prevent newly arrived inmates who pose a health or safety threat to themselves or others from being admitted to the facility's general population and to insure continuity of care for inmates who are presently undergoing health care treatment. The scope of the initial health care screening will be determined by the Chief of Health Services.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0223 DENTAL SERVICES

~~Dental care will be provided to all inmates in need of such care by dentists licensed by the State of North Carolina. Dental screening, dental examinations and dental treatment will be accomplished in accordance with procedures developed by the Chief of Health Services in coordination with the Senior Correctional Dentist.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0226 HEALTH CARE ORIENTATION

~~At the time of admission to a prison facility, each inmate will receive written and verbal instructions explaining the procedures for gaining access to health services. Inmate complaints regarding the delivery of health services will be processed through the normal grievance procedures.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0227 SICK CALL

~~Sick calls is the system through which each inmate reports and receives individualized and appropriate medical services for non-emergency illness or injury. Every inmate shall be provided access to sick call. The warden, institution head, or unit~~

~~superintendent in conjunction with the responsible health authority shall establish regularly scheduled sick call hours according to procedures developed by the Chief of Health Services.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0228 INMATES IN DISCIPLINARY SEGREGATION

~~Each inmate placed in disciplinary segregation shall be given a medical screening by a health professional within 48 hours after placement in segregation except for weekends and then within 72 hours. This examination shall be adequate to evaluate the physical well being of the inmate and verify his capacity to undergo segregation. In addition, health care professionals shall be required to visit each inmate in segregation at least three times a week to determine if the inmate has unattended health complaints.~~

Authority G.S. 148-11; 148-19.

05 NCAC 02E .0234 ADMINISTRATIVE TRANSFERS

~~Prior to the administrative transfer of an inmate from one facility to another facility within the Division of Prisons, either the inmate or his health care records will be evaluated to determine suitability for travel. When travel is approved, pertinent data including medications will be documented in a manner readily accessible and understood by transportation staff and others who may be called upon to attend to the inmate during his travel and upon arrival at his receiving facility. It is essential that the individual's health records and appropriate medications accompany the inmate during the transfer process.~~

Authority G.S. 148-11; 148-19.

SECTION .0700 - WORK RELEASE

05 NCAC 02E .0701 PURPOSE

~~The Work Release Program provides selected inmates the opportunity for employment in the community during the period of incarceration. The Department of Correction operates the Work Release Program to:~~

- ~~(1) Respond to statutory requirements, by:

 - ~~(a) Establishing rules and regulations for work release;~~
 - ~~(b) Designing units for quartering work release inmates;~~
 - ~~(c) Ensuring consideration and placement for inmates court ordered or court recommended for work release; and~~
 - ~~(d) Managing and disbursing work release earnings as required by statute or court order.~~~~
- ~~(2) Respond to the transitional needs of soon to be released inmates and the program and maintenance needs of longer term inmates.~~
- ~~(3) Respond to community labor needs.~~
- ~~(4) Respond to the need to support inmate families and to reduce the economic costs of prison.~~

Authority G.S. 148-11; 148-33.1.

SECTION .1300 - STUDY RELEASE

05 NCAC 02E .1301 GENERAL

~~(a) This Rule sets forth the requirements, conditions, and procedures for inmate participation in the study release program. (b) Study release is a community based program of rehabilitation that includes any situation in which an inmate participates in an academic or vocational training program away from the correctional facility and is not supervised during the classroom training period by a correctional employee or an agent of the Department of Correction. Study release program activities include such programs as: sheltered workshops, on the job training, learning lab activities, specialized enrichment programs, and community college or university level course work leading to a certificate or degree. Authority to grant approval for inmates to participate in the study release program has been extended to Command Managers, Area Administrators and Institution Heads from the secretary through the Director of Prisons.~~

Authority G.S. 148-11; 148-13.

SECTION .1400 - MANDATORY EDUCATION PROGRAM

05 NCAC 02E .1401 MANDATORY EDUCATION PROGRAM

~~The purpose of the Mandatory Education Program is to ensure that all capable inmates committed to the Department of Correction are provided with the opportunity to improve their basic literacy skills while incarcerated, in an effort to improve their prospects of becoming law-abiding and self-supporting upon their release from prison.~~

Authority G.S. 148-11; 148-22.1.

05 NCAC 02E .1402 CRITERIA FOR MANDATORY PARTICIPATION

~~(a) The unit superintendents and institutions heads are authorized to require all inmates without a high school diploma or general educational certification who function below the sixth grade achievement level to participate in an adult basic education/general education development (ABE/GED) program. Mandatory inmate participation in educational programs is restricted to full-time and part-time ABE/GED programs. (b) Sessions for mandatory inmate participation are not to exceed 90 days, and no inmate will be required to participate in more than one session. However, if an inmate is transferred before completing a mandatory school program, such inmate may be required to complete any remainder of the session. Inmates completing the mandatory session may voluntarily remain in the program after 90 days or may request an alternate assignment. (c) Any inmate having a high school diploma who is tested with the Wide Range Achievement Test (WRAT) as functioning below the sixth grade achievement level may also be required to participate in a 90 day ABE/GED program.~~

Authority G.S. 148-11; 148-22.1.

05 NCAC 02E .1403 IDENTIFICATION OF INMATES WITH EDUCATIONAL DEFICIENCIES

~~The diagnostic centers shall be responsible for identifying inmates with educational deficiencies as specified in Rule 2E-1402. The Wide Range Achievement Test (WRAT) shall be the primary test instrument for determining achievement levels.~~

Authority G.S. 148.11; 148-22.1.

05 NCAC 02E .1404 ASSIGNMENT OF INMATES TO ABE/GED PROGRAMS

~~The appropriate unit or institution classification committee shall be responsible for recommending the assignment of inmates to the mandatory education program. The unit superintendent/institution head shall be the final approving authority for such assignments.~~

Authority G.S. 148-11; 148-22.1.

05 NCAC 02E .1406 DISCIPLINARY ACTION

~~(a) Any inmate assigned to the mandatory education program who refuses to attend class shall be subject to disciplinary action for disobeying a lawful order.~~

~~(b) In the classroom, any inmate who becomes a disruptive force by failing to follow the instructions of the teacher shall be subject to disciplinary action for disobeying a lawful order.~~

Authority G.S. 148-11; 148-22.1.

SUBCHAPTER 02F - CUSTODY AND SECURITY

SECTION .0100 - SEARCH AND SEIZURE

05 NCAC 02F .0103 SEARCHES OF INMATES

~~(a) Complete Searches. A complete search shall include a strip search (the removal of all of the inmate's clothing), a search of the inmate's effects, and a visual search of the inmate's body cavities to look for contraband. The following rules apply to complete searches:~~

- ~~(1) Posts that routinely involve complete searches should be staffed by correctional officers of the same sex as the inmates under their supervision. Under normal operations, complete searches of inmates should be conducted by trained staff of the same sex as the inmate. During an emergency operation, the commander may order complete searches of inmates by Criminal Justice Certified staff regardless of sex.~~
- ~~(2) The receiving facility will conduct a complete search on all inmates upon commitment to the Department of Correction, on return from escape or court, upon transfer from another facility, or placement on segregation (disciplinary, administrative, maximum custody, etc.).~~
- ~~(3) All inmates entering or leaving maximum, close or medium security facilities will be completely searched.~~

~~(4) Inmates classified as maximum custody will be completely searched before and after visiting. General population inmates in close or medium custody will be completely searched after visiting.~~

~~(5) Minimum custody inmates assigned to facilities other than minimum security facilities will be completely searched after visiting.~~

~~(6) Upon the discretion of the Superintendent or Officer In Charge and as indicated in the unit's Standard Operating Procedures, all or a random selection of minimum custody inmates will be searched daily upon the return from community based program activities. Such activities include but are not limited to Work Release, Study Release, Home Leave, Community Volunteer Leave, and Outside Work Assignments, etc.~~

~~(b) Routine Searches. Routine searches are pat and frisk searches with the person clothed. A routine search may also include searches of personal effects. The following rules apply to routine searches:~~

- ~~(1) Correctional staff of either sex may conduct routine searches of male and female inmates.~~
- ~~(2) Where complete searches are not required, routine searches of minimum custody inmates shall be conducted upon the inmates leaving and returning to the facility for authorized outside activities.~~
- ~~(3) Where complete searches are not required before or after visiting, routine searches shall be conducted.~~

~~(c) Body Cavity Searches. Body cavity searches are the probing of body orifices in search of contraband. These searches are authorized by the superintendent/warden or his/her designee when there is probable cause to believe an inmate has concealed contraband in a body orifice. Body cavity searches are authorized only if a complete search has not produced the suspected concealed contraband. Body cavity searches shall be done by medical personnel of the Division of Prisons in a medical setting pursuant to procedures in the Health Care Procedures Manual. If medical personnel of the Division of Prisons are not available, the procedure may be done by outside medical providers. An Incident Report (DC 432) must be completed to document a body cavity search.~~

~~(d) Searches of Inmate's Quarters and Effects. Complete shakedown searches of inmate quarters and effects are authorized, regardless of whether there is reason to suspect any particular inmate of concealment of contraband. Searches of inmate quarters and effects are to be conducted randomly daily. Staff conducting the search should avoid any unnecessary scattering, disruption, or disarray of the inmate's personal possessions during the search. Inmate's living quarters may be searched without the inmate being present. Normally, inmates will be present when their locker is searched.~~

Authority G.S. 14-258.1; 15A-404; 148-4; 148-11.

05 NCAC 02F .0105 SEARCHES OF EMPLOYEES

PROPOSED RULES

~~(a) All employees of the Department of Correction may be subjected to a routine search of their person or their effects upon entering or leaving a facility or any time they are within the confines of a facility. Such searches are authorized at the discretion of the Officer In Charge. Appropriate documentation shall be made to the Superintendent.~~

~~(b) Routine searches of employees will be conducted as a result of individualized suspicion. Routine searches of employees must be conducted by an officer or the same sex as the employee. Whenever possible, more than one staff person should be present for such searches. If an officer of the same sex as the employee is not available to conduct the routine search, employees suspected of carrying contraband on their person must be denied entry into the secured area of the facility. An employee may be ordered to remain in a designated area until such time as an officer of the same sex or local law enforcement officer of the same sex is available.~~

~~(c) If the employee refuses to submit to a routine search or refuses to remain in the area as ordered, the employee shall be denied access to the facility. The employee shall be notified that the employee is considered to be on leave without pay and that appropriate disciplinary action will be initiated.~~

~~(d) A routine search may also include searches of personal effects carried on the person such as handbags, boxes, briefcases, and other items if the item is within the immediate control or access of the person being searched.~~

~~(e) Upon individualized suspicion and subject to approval by the Officer In Charge, employee offices may also be searched for contraband.~~

~~(f) Complete searches of employees will be conducted only after the issuance of a Search Warrant by the appropriate judicial official.~~

~~(g) Body cavity searches of employees will be conducted only after the issuance of a Search Warrant by the appropriate judicial official.~~

~~(h) Employee vehicles parked on Division property are subject to external inspections by Department staff and or Narcotic Detection Canines. Employee vehicles on Division property may be searched if consent is given by the employee, or a Search Warrant has been properly issued and is being served by a law enforcement agency, or under some other legal justification for a search as determined by local law enforcement officials.~~

Authority G.S. 14-258.1; 15A-404; 148-4; 148-11.

05 NCAC 02F .0106 COMPLETE FACILITY SEARCH

~~A complete search of each facility shall be conducted not less than once each six months.~~

Authority G.S. 14-258.1; 15A-404; 148-4; 148-11.

05 NCAC 02F .0107 DISPOSITION OF CONTRABAND

~~Disposition of contraband shall be in compliance with 5 NCAC 2F .0802(e) and G.S. 114-18.1.~~

Authority G.S. 14-258.1; 15A-404; 148-4; 148-11.

SECTION .0200 - PROGRAM MANAGEMENT

05 NCAC 02F .0208 PROHIBITED ORGANIZATIONS

~~No employee of the Department shall authorize the use of departmental facilities for any prohibited organization.~~

Authority G.S. 148-4; 148-11.

SECTION .0400 - EMERGENCY LEAVE

05 NCAC 02F .0401 GENERAL

~~This policy establishes specific procedures for granting emergency leave to inmates within the North Carolina Division of Prisons pursuant to General Statute 148-4.~~

Authority G.S. 148-4; 148-11.

05 NCAC 02F .0402 APPROVING AUTHORITY

~~The Director of the Division of Prisons has been designated by the Secretary of Correction as the approving authority under circumstances requiring an extension of the limits of the place of confinement of any inmate confined within the North Carolina Division of Prisons. The Director will exercise this authority in accordance with the following regulations:~~

~~(1) In State Emergency Leaves. The authority of the Director of Prisons to extend the limits of the place of confinement shall be delegated for medium and minimum custody inmates only as follows:~~

~~(a) Minimum Custody Inmates. Area administrators and institution heads shall have the authority to extend the limits of confinement for minimum custody inmates requesting emergency leaves in state.~~

~~(b) Medium Custody Inmates. Area administrators and institution heads shall be authorized to extend the limits of confinement for medium custody inmates requesting in state emergency leaves only under the supervision of a minimum of one trained correctional officer.~~

~~(c) Maximum and Close Custody Inmates. The Director of the Division of Prisons or his designated representative shall be the approving authority for maximum and close custody inmates. The designated representative of the Director of Prisons shall be the Deputy Director of Prisons or, in his absence, the Division of Prisons Duty Officer available through the Central Prison switchboard.~~

~~(2) The Director of the Division of Prisons or his designated representative shall be the sole approving authority for inmates in all custody classifications requesting out of state emergency leaves.~~

Authority G.S. 148-4; 148-11.

05 NCAC 02F .0403 EMERGENCY LEAVE

~~(a) Emergency leaves may be granted up to a maximum of 72 hours for minimum custody inmates and 24 hours for medium, close, and maximum custody inmates by the approving authority in accordance with Rule .0402 for the following reasons:~~

~~(1) Critical illness of an immediate family member. The nature of the illness of an immediate family member shall be verified by competent medical authority. The meaning of the word "critical" implies probable death within a short period of time. The birth of a child will not be regarded as a critical illness unless the attending physician advises that the wife's condition is abnormal or that unusually serious factors are involved.~~

~~(2) Death of an Immediate Family Member. Verification of the death of an immediate family member may be verified by law enforcement officials (Sheriff or Chief of Police), a physician, undertaker, or Director of Social Services. The immediate family will be limited to father, mother, brother, sister, husband, wife, child, foster parents, or other persons who have acted in the place of parents where such relationships can be verified.~~

~~(b) Emergency Leaves Outside the State of North Carolina. Emergency leaves outside the State of North Carolina shall be limited to minimum custody inmates subject to the approval of the Director of Prisons or his designee. Minimum custody inmates authorized to leave the State of North Carolina shall be required to post a cash bond of \$500 with the superintendent or institution head. The posting of the bond shall be mandatory. Additionally, each minimum custody inmate authorized to leave the State of North Carolina shall be required to sign the necessary waiver of extradition forms prior to his departure on emergency leave.~~

Authority G.S. 148-4; 148-11.

SECTION .0500 - INMATE PERSONAL PROPERTY

05 NCAC 02F .0504 DISPOSITION OF UNAUTHORIZED PERSONAL PROPERTY

~~(a) Upon commitment of an inmate to the custody of the Department of Correction, the receiving officer shall retain any items of personal property in the possession of the inmate which are not authorized by this Section (5 NCAC 2F .0500). Unauthorized funds shall be deposited to the inmate's trust fund account. Other items of unauthorized personal property may be turned over to local law enforcement authorities for criminal prosecution, if appropriate, or mailed at the inmate's expense to an addressee designated by the inmate. However, if the inmate is without funds, such items may be mailed to the designated addressee with mailing costs paid from the Inmate Welfare Fund. If the inmate is unwilling or unable to designate an addressee to whom the prohibited property may be sent, the prohibited items will be donated to a charitable organization or otherwise disposed of as surplus property. The Division of Prisons will not assume responsibility for the maintenance or handling of prohibited items. A reception inventory will be completed as provided by Rule .0505 of this Section on each~~

~~occasion an inmate is admitted to a correctional facility for housing purposes.~~

~~(b) Items of personal property found in the possession of an inmate which are not authorized by this Section shall be confiscated and disposed of as follows:~~

~~(1) weapons, controlled substances, and other items which are of no value or practical use shall be destroyed;~~

~~(2) items of personal property, such as clothing, may be sold as surplus property, donated to a charitable organization, or retained by the Division of Prisons for the use of prisoners in the prison population;~~

~~(3) unauthorized funds or the proceeds from the sale of items of personal property shall be deposited to the Inmate Welfare Fund.~~

~~No unauthorized personal property shall be confiscated and disposed of as provided herein except upon the initiation of disciplinary proceedings against the inmate for possession of such property. In the case of possession by an inmate of unauthorized property where disciplinary proceedings are not commenced, such property shall be disposed of as provided by Paragraph (a) of this Rule.~~

Authority G.S. 148-11; 148-13; 148-18.1.

05 NCAC 02F .0506 RETURN OF PERSONAL PROPERTY UPON RELEASE

~~The inmate will be required to sign a receipt for all personal property on the back of Form DC 160 before being released. The Division of Prisons assumes no liability for items that are damaged or stolen, or for items lost due to the negligence of the inmate. If the inmate believes that property of value belonging to him has been lost due to negligence or intentional acts of personnel of the Division of Prisons, he may appeal directly to the Director of Prisons or his designated representative. If the Director determines that the inmate's appeal is meritorious, the inmate will be reasonably compensated for the items lost.~~

Authority G.S. 148-4; 148-11; 148-13.

SECTION .1500 - USE OF FORCE

05 NCAC 02F .1503 PURPOSE

~~The purpose of this policy is to provide Division of Prisons' personnel direction in the use of non deadly and deadly force, documentation requirements, and reporting procedures for use of force incidents.~~

Authority G.S. 148-11; 148-46.

05 NCAC 02F .1504 POLICY

~~The following general guidelines apply to the use of force in the Division of Prisons.~~

~~(1) The use of force shall be permissible only to the extent reasonably necessary for a proper correctional objective. Excessive force is prohibited. This prohibition shall not be construed to mean that staff must suffer an assault upon their person before taking appropriate defensive action or that the use of~~

~~force by another must be met with strictly equal force on the part of the staff.~~

- ~~(2) An officer is authorized to use whatever degree of force reasonably appears to be necessary to defend the officer or a third party from imminent assault. Reasonable force is authorized in order to prevent an escape or to ensure compliance with a lawful order or to protect property or to return an escapee to custody. When time and circumstances permit, a sergeant or supervisor of higher rank should be present to supervise anticipated use of force or situations likely to result in use of force. An officer should attempt non forceful methods of inmate control, but only to the extent reasonably possible under the circumstances as they appear to that officer.~~
- ~~(3) An officer may lawfully utilize deadly force to: prevent the escape of a convicted felon, prevent or stop a life threatening assault on themselves or another person, or to prevent escape of a pre-trial detainee awaiting felony charges. Deadly force may not be used solely to protect property or ensure compliance with a lawful order that does not implicate personal safety.~~
- ~~(4) An officer is prohibited from using force solely as a result of verbal provocation. An officer shall not strike or attempt to strike an inmate who has abandoned his resistance or who is effectively restrained. The use of force as punishment is strictly prohibited.~~
- ~~(5) When employing any degree of force, the officer shall use reasonable care to ensure that uninvolved persons are not endangered by such use of force.~~
- ~~(6) Each facility will designate the post approved to be routinely issued batons.~~
- ~~(7) The long and short batons are the only impact tools authorized for duty use by division personnel.~~
- ~~(8) Firearms will be limited to those approved by the Director of Prisons. Personal firearms are prohibited. All firearms must be the property of the Division of Prisons.~~
- ~~(9) If an inmate complains of a use of force in a grievance and a Use of Force Report was not completed, the Officer In Charge will investigate. The investigation should begin with a medical examination as soon as possible. If the Officer In Charge determines that a Use of Force Report should have been completed, the responsible officer will be subject to disciplinary action.~~
- ~~(10) Escapes.~~
 - ~~(a) An escapee is any individual attempting to leave the custody of the Division of Prisons without prior authorization.~~
 - ~~(b) Deadly force is not authorized against a misdemeanor escapee, a pretrial~~

~~detainee awaiting misdemeanor charges or in the apprehension of these persons except where there is an imminent threat of death or serious bodily injury presented.~~

- ~~(c) Deadly force is authorized against a felon escapee or a pretrial detainee awaiting felony charges.~~

Authority G.S. 148-11; 148-46.

05 NCAC 02F .1505 PROCEDURES

(a) Hands on Physical Force.

- ~~(1) Hands on physical force, including approved unarmed self defense techniques, is authorized to restrain or otherwise control an inmate when control through communication has failed or is not feasible.~~
- ~~(2) Hands on physical force may be used to defend the officer or a third party from imminent assault, or to prevent an escapee, or to protect property, or to ensure compliance with a lawful order or to return an escapee to custody.~~

(b) Chemical Mace.

- ~~(1) Chemical mace may be used to the extent necessary to control or deter violent or aggressive acting inmates.~~
- ~~(2) An officer should attempt to avoid discharging mace into direct contact with an inmate's face.~~
- ~~(3) An inmate subjected to mace should be moved to a ventilated area and should be afforded an opportunity to shower and change clothes once control has been restored. An inmate's refusal of the opportunity to shower and change clothes shall be documented in the Use of Force Report.~~

(c) Individual Control Devices (Long Baton, Short Baton).

- ~~(1) Individual control devices may be used to control violent or aggressive inmates.~~
- ~~(2) Intentional powered strikes with a baton to vital areas are prohibited unless reasonably necessary to defend oneself or others from imminent threat of death or serious bodily injury. Vital areas include the head, throat, neck, plexus, spine, kidneys, or coccyx. However, in extreme circumstances, staff members are expected to use any means available to protect themselves from assault and injury.~~

(d) Mechanical Restraints.

- ~~(1) Approved Division of Prisons' mechanical or physical restraints to immobilize an inmate, may be used to control inmates who have demonstrated behavior that presents a significant risk of injury to self or others. Interim steps such as hand cuffs, wrist chains, and leg cuffs may be used to attempt to control the inmate before immobilizing.~~
- ~~(2) The Officer In Charge may authorize the use of restraints to immobilize an inmate for up to~~

four hours. If the inmate is immobilized with the use of restraints, the Officer In Charge should immediately notify the Area, Institution or Correctional Center Duty Officer, Psychological Services staff, and Medical staff.

- (3) ~~The Area/Complex Administrator, Institution Head, or designee may authorize immobilization of an inmate for up to 48 hours. Immobilization beyond four hours is not authorized except at prison locations which have 24-hour Health Care staffing and single cell facilities. Reasonable effort will be made to avoid undue physical hardship for restrained inmates. Restrained inmates will be temporarily released from immobilization every three hours during the first and second shifts, so they may eat, drink, and take care of their bodily functions. During the third shift, an inmate may not be temporarily released, unless the inmate requests release to take care of bodily functions. Periodic observation will be required every 15 minutes while immobilized and will be documented.~~
- (4) ~~Immobilization for longer than 48 hours shall require transfer to Central Prison, or to the North Carolina Correctional Institution for Women for appropriate treatment and supervision. Transfer of a male inmate under the age of 18 to Central Prison will require approval of the Command Manager or the Division Duty Officer.~~
- (5) ~~The approving authority for the use of restraints for immobilization should consult with the facility Medical staff as well as the facility or Area Mental Health staff, one of whom will examine the inmate as soon as possible, and at least every four hours thereafter, and will document those examinations in the inmate's medical record.~~
- (6) ~~The use of therapeutic restraints as part of mental health treatment is outlined in the Health Care Procedures Manual.~~

~~(e) Tear Gas.~~

- (1) ~~Tear gas canisters and other tear gas weapons will be used only if an exit is available to a ventilated area or can be made available to a ventilated area for the inmates following the return of control.~~
- (2) ~~Affected inmates will be given the opportunity to shower and receive clean clothes once control has been established.~~
- (3) ~~Only the Officer In Charge of the correctional facility may authorize the use of tear gas.~~

~~(f) Firearms.~~

- (1) ~~The use of firearms are authorized in the deadly force situations described in this Section.~~
- (2) ~~In an emergency, the Emergency Response Commander may authorize the use of firearms to assure compliance with a lawful order when~~

~~failure to comply jeopardizes the safety of the public, staff, or other inmates to the extent that serious injury or death is likely to occur. No firearms of any description shall be allowed at any time in a correctional facility except as directed by the Emergency Response Commander.~~

- (3) ~~No firearm is to be left unattended or unsecured at any time or in any place accessible to the public or inmates, either directly or indirectly.~~
- (4) ~~In a pursuit situation outside the confines of the facility, officers should avoid firing at or from a moving vehicle.~~
- (5) ~~An officer should avoid firing warning shots but when good judgment dictates their use, care shall be taken to not injure other persons or property.~~
- (6) ~~An officer should not cock revolvers; the firing of revolvers should be double action at all times.~~

Authority G.S. 148-11; 148-46.

05 NCAC 02F .1506 MEDICAL RESPONSE

- (a) ~~A medical evaluation will be conducted on each inmate involved in a use of force incident.~~
- (b) ~~The Officer In Charge will determine whether or not immediate medical attention is required for an inmate. Application of one or more of the following circumstances will require medical evaluation and treatment immediately:~~
 - (1) ~~The inmate complains of injury;~~
 - (2) ~~Staff observe any injury;~~
 - (3) ~~Staff employed a firearm, mace, a baton or any other device likely to cause injury; or~~
 - (4) ~~The amount of force used has rendered the inmate immobile, unconscious or unable to communicate.~~

~~If no trained medical staff is available at the facility and the Officer In Charge determines the inmate requires immediate medical attention, the inmate will be transported to an appropriate medical facility.~~

- (c) ~~An inmate's refusal of treatment shall be documented on both the use of force report and the medical record.~~
- (d) ~~Any injury to staff should be evaluated, documented and treatment provided.~~

Authority G.S. 148-11; 148-46.

05 NCAC 02F .1507 REPORTING PROCEDURES

- (a) ~~Each correctional staff member involved in an incident requiring the use of force will immediately make a comprehensive report to the Officer In Charge of the facility. The report will include all relevant facts including the time and place of the incident, the names of all staff and inmate participants and witnesses, specific nature, description, and duration of the use of force, and an explanation of the circumstances that made use of force necessary.~~
- (b) ~~The Officer In Charge will report to the Director of Prisons or Division Duty Officer through the chain of command, or the Division Duty Officer structure, any use of force incident~~

~~involving firearms or any use of force resulting in serious injury to inmates or staff (See 5 NCAC 2F .2400, Reporting Procedures).~~

~~(c) The Officer In Charge or designee will then investigate to determine whether the reports of the involved staff are accurate and complete and will order additional reports and information as necessary.~~

~~(d) As part of the investigation, the Officer In Charge or designee shall:~~

- ~~(1) Obtain a statement from the involved inmate to allow an explanation of his version of the incident;~~
- ~~(2) Obtain statements from staff and inmate witnesses;~~
- ~~(3) Obtain a statement from the facility health authority or other medical personnel who examined or treated the inmate and/or staff; and~~
- ~~(4) Make a determination as to whether the force used was in accordance with this policy.~~

~~(e) The Officer In Charge or designee will report the results of the investigation on Form DC 422, Use of Force Report, and submit the report through the chain of command to the appropriate Command Manager. Written statements of all witnesses should be attached.~~

~~(f) Use of Force Reports should be completed within five working days. Extensions may be granted by the Area/Complex Administrator or Institution Head.~~

Authority G.S. 148-11; 148-46.

SECTION .2000 - G.S. 148-4.1 EARLY PAROLE

05 NCAC 02F .2001 PURPOSE

~~This policy establishes a procedure for the early parole of inmates as provided in G.S. 148-4.1.~~

Authority G.S. 148-4.1; 148-11.

05 NCAC 02F .2007 SUPERVISION

~~Whenever an inmate is paroled in accordance with these procedures, the Parole Commission may impose all the conditions listed in G.S. 15A-1374. These conditions will apply throughout the period of parole supervision.~~

Authority G.S. 15A-1380.2; 148-4.1; 148-11.

SECTION .2300 - INMATE MATERNITY LEAVE

05 NCAC 02F .2304 DESIGN AND EVALUATION

~~(a) The Superintendent of the North Carolina Correctional Center for Women shall be responsible for design and evaluation of training and treatment components of the Inmate Maternity Leave Program. The superintendent shall prepare an annual evaluation report for the Director of Prisons which shall be due one month after the end of the calendar year.~~

~~(b) This report shall include, but need not be limited to, the following statistical information:~~

- ~~(1) Number of pregnant inmates admitted to the North Carolina Department of Correction during the year by length of sentence, by~~

~~month and day of pregnancy upon commission of the crime for which sentenced, by month and day of pregnancy when arrested, by month and day of pregnancy upon sentencing and commitment, by county, and by area of origin;~~

- ~~(2) Number and percentage of pregnant inmates admitted during the year who applied for maternity leave;~~
- ~~(3) Number of inmates, of those who applied for inmate maternity leave, who were awarded inmate maternity leave by county and area of origin;~~
- ~~(4) Of those inmates who were denied inmate maternity leave, the number and percentage who were ineligible on the basis of each of the Grounds for Denial listed herein or for other reasons;~~
- ~~(5) Number and percentage of inmates whose inmate maternity leaves were terminated prematurely and reasons for these terminations;~~
- ~~(6) Number and percentage of pregnant inmates who were awarded inmate maternity leave, prior to delivery, on the basis of Division of Prisons Health Care Policy 710.~~

Authority G.S. 148-4; 148-11.

SECTION .2500 - SMOKING - NO SMOKING

05 NCAC 02F .2501 PURPOSE

~~To reduce the health and safety risks that may be associated with the effects of smoke, the Division of Prisons is establishing smoking/no smoking areas within its facilities. For this policy, smoking is defined as the use or carrying of any lit tobacco product.~~

Authority G.S. 148-11.

05 NCAC 02F .2504 ENFORCEMENT

~~Inmates are subject to disciplinary action for smoking in a properly designated "no smoking" area. It is a misdemeanor to sell or give away cigarettes or tobacco to any minor under the age of 17 years.~~

Authority G.S. 14-313; 148-11.

SECTION .2600 - INMATE DRUG AND ALCOHOL TESTING

05 NCAC 02F .2601 PURPOSE

~~The purpose of this policy is to specify the conditions and procedures for conducting drug testing of inmates. The Division of Prisons has a responsibility to protect the public, to provide a safe environment for staff and inmates, and to enforce the rules and regulations governing inmate conduct. The goal of the Division of Prisons is to preserve order and maintain security. Drug use presents a threat to the safety of staff and inmates. Drug testing of inmates combined with appropriate sanctions is an effective means of suppressing drug use, drug trafficking, and drug-related infractions, including institutional violence.~~

Authority G.S. 148-11.

05 NCAC 02F .2602 RESPONSIBILITY

- ~~(a) The Chief of Security is responsible for establishing and monitoring the drug testing program for inmates in the Division of Prisons and monitoring test results.~~
- ~~(b) The superintendent/warden is responsible for the implementation of the drug testing program at that facility.~~
- ~~(c) Facility medical staff are responsible for reviewing medication orders for inmates who have tested positive for drugs.~~
- ~~(d) Staff involved in the drug testing program at the facility are responsible for carrying out their duties according to the standard operating procedures for the drug testing program.~~
- ~~(e) All staff of the Division of Prisons is responsible for reporting to the facility superintendent or designee any evidence and observations that suggest illegal drug use or other drug-related activity.~~
- ~~(f) Drug testing technicians are responsible for testing urine samples and reporting results, and maintaining all drug testing forms and test data.~~

Authority G.S. 148-11.

SUBCHAPTER 02G - COURT RELATED PROCEEDINGS

SECTION .0200 - ACCESS TO THE COURTS

05 NCAC 02G .0208 LEGAL MATERIALS

~~An inmate may possess legal texts and materials consistent with 5 NCAC 2F .0503 and 5 NCAC 2D .0100. However, such items will not be provided by the Department.~~

- ~~(1) The amount of legal materials and texts which an inmate may be permitted to keep at the prison facility will be limited based upon the following:

 - ~~(a) The amount of personal storage space provided, based upon the inmate's custody classification;~~
 - ~~(b) The amount of personal storage space available within the prison facility's physical plant; and~~
 - ~~(c) The security, safety, sanitation and fire hazard considerations affecting the orderly operation of the prison facility.~~~~
- ~~(2) Items of personal property, including legal materials, which exceed the amount the prison facility can reasonably accommodate, will be disposed of in accordance with 5 NCAC 2F .0504(a). The inmate may mail the items to an addressee of his/her choice at the inmate's expense. Indigent inmates may have items mailed through the Inmate Welfare Fund.~~

Authority G.S. 148-11.

SECTION .0300 - ADMINISTRATIVE REMEDY PROCEDURE

05 NCAC 02G .0304 SUBMISSION OF GRIEVANCES

- ~~(a) Any inmate in the custody of the Department of Correction may submit a written grievance on Form DC-410.~~
- ~~(b) An inmate may submit a new grievance once the initial grievance has completed Step 2 review or has been resolved.~~
- ~~(c) If more than one inmate files a grievance concerning the application of general policies or practices, or acts arising out of the same incident, these grievances will be processed as a group. Each grievance shall be logged in individually; however, the same response will be provided to each grievant.~~
- ~~(d) Grievances of an emergency nature will be handled in accordance with Rule .0308.~~

Authority G.S. 148-118.1.

05 NCAC 02G .0306 REJECTION OF GRIEVANCES

- ~~(a) A grievance filed pursuant to these regulations shall be rejected at any level if it:

 - ~~(1) Seeks to challenge matters already decided by a State or Federal court;~~
 - ~~(2) Challenges a Parole Commission decision;~~
 - ~~(3) Challenges a disciplinary action; or~~
 - ~~(4) Challenges matters beyond the control of the Department.~~~~
- ~~(b) In accordance with Rule .0310, a grievance may be rejected at any level if:

 - ~~(1) The grievance concerns an action not yet taken or a decision which has not been made.~~
 - ~~(2) There has been a time lapse of more than one year between the event and submission of the grievance.~~
 - ~~(3) The inmate has requested a remedy for another inmate.~~
 - ~~(4) The inmate has requested a remedy for more than one incident (see Rule .0304).~~
 - ~~(5) The inmate's grievance directs toward any person language that is generally considered profane, vulgar, abusive, contemptuous, or threatening. Inmates who violate this rule may be subject to disciplinary action. The grievance may be resubmitted for processing once the objectionable language has been eliminated.~~
 - ~~(6) Rules and procedures established herein have not been followed.~~~~

Authority G.S. 148-118.1.

05 NCAC 02G .0308 EMERGENCY GRIEVANCES

- ~~(a) Emergency grievances shall be defined as matters which present a substantial risk of physical injury or other serious and irreparable harm to the grievant if regular time limits are followed. Emergency grievances shall be forwarded immediately, without substantive review, to the Superintendent, Institution Head or to the level at which corrective action can be taken.~~
- ~~(b) Any inmate who is in need of urgent medical care may present himself to a member of the medical or custodial staff, who shall handle the matter according to emergency health care procedures set out in the Health Care Manual. If an inmate fears for his personal safety, he may contact the officer in charge or~~

any other custodial official. Any request for protective custody will be handled in accordance with departmental regulations.

~~(c) Matters relating to administrative transfers, time computation disputes, and family illness or death are not to be treated as emergencies for the purposes of this procedure, but shall be handled expeditiously and compassionately by the Superintendent or Institution Head or their designee where appropriate.~~

~~(d) For emergency situations other than medical or protective custody, an inmate may submit the grievance directly to the screening officer or the officer in charge, who shall forward the grievance to the level at which corrective action may be taken. The request shall be handled as expeditiously as possible, and shall be reviewed by the appropriate command manager.~~

Authority G.S. 148-118.1.

05 NCAC 02G .0309 CONFIDENTIAL GRIEVANCES

~~If an inmate is of the opinion that a grievance is of a confidential nature, his grievance may be filed directly with the Director of Prisons and mailed as legal mail. The inmate must clearly explain the nature of the complaint and the reasons for not following the regular grievance procedure. If the Director determines that the grievance is not of a confidential nature, the grievance shall be returned to the inmate with instructions to submit it in accordance with the procedure set forth in Rule .0310. After consideration of the grievance and determination that it is of a confidential nature, the Director shall order any necessary investigation. If the investigation indicates that action should be taken, the Director shall cause the appropriate steps to be taken to resolve the grievance.~~

Authority G.S. 148-118.1.

05 NCAC 02G .0311 TRANSFERS DURING GRIEVANCE PROCESS

~~(a) If an inmate who has filed a grievance is transferred to another Division of Prisons facility while his grievance is being considered at Step 1, the Superintendent or Institution Head at the sending unit will assure that review at Step 1 is completed and will forward the grievance to the superintendent or institution head at the receiving unit for further processing.~~

~~(b) If an inmate is transferred during the period of Step 2 review, the Superintendent or Institution Head at the sending unit will assure that when review is completed at Step 2, the grievance is immediately sent to the superintendent or institution head at the receiving unit for further processing.~~

~~(c) If an inmate who has filed a grievance is no longer in custody of the Division of Prisons or is otherwise unavailable, the reviewing authority shall complete review at the current step. Processing shall then be considered complete and the Form DC 410 will be distributed appropriately. Grievances not fully processed due to the unavailability of the inmate may be re-filed upon the inmate's return.~~

Authority G.S. 148-118.1.

05 NCAC 02G .0312 RECORD MAINTENANCE AND CONFIDENTIALITY

~~(a) Records regarding the filing and disposition of grievances shall be collected and maintained systematically. Summaries of~~

~~grievances appealed to Step 3 shall be submitted quarterly to the Grievance Resolution Board by the Executive Director. Copies of each filed grievance shall be maintained for a minimum of three years after final disposition.~~

~~(b) No copies of grievances shall be placed in an inmate's official unit or central file.~~

~~(c) Employees of the Department of Correction and the Inmate Grievance Examiners that are participating in the disposition of a grievance shall have access to all relevant records developed by the Department of Correction.~~

~~(d) Prison files and records gathered in the Administrative Remedy Procedure other than official responses contained on Form DC 410, and the final response to the inmate at Step 3 are confidential, and will not be released to inmates or any other unauthorized persons. Such records will not be discussed with inmates or unauthorized persons.~~

Authority G.S. 148-118.1.

SECTION .0400 - COURT ORDERED TOURS FOR PROBATIONERS

05 NCAC 02G .0401 PURPOSE

~~The following guidelines have been developed in regard to court ordered tours for probationers. The focus of these programs is educational and informative and will not use emotional and intentionally intimidating approaches. The use of profane language, harassing behavior, or physical contact is strictly prohibited.~~

Authority G.S. 15A-1343(b)(11); 148-11.

SUBCHAPTER 02H - RELIGIOUS PRACTICE

SECTION .0100 - ISLAMIC SERVICES AND PRACTICES

05 NCAC 02H .0101 GENERAL

~~The purpose of this policy is to provide information and guidelines for administration and staff on the practice of the Islamic faith by those holding such beliefs within the Division of Prisons. The basic tenets and practices of the Islamic faith include:~~

- ~~(1) Declaration of Faith;~~
- ~~(2) Prayer;~~
- ~~(3) Charity;~~
- ~~(4) Fasting; and~~
- ~~(5) Pilgrimage (not permitted during confinement).~~

Authority G.S. 148-11; 148-24.

05 NCAC 02H .0102 MEMBERSHIP

~~A written Declaration of Faith for purposes of religious identification may be made voluntarily by any inmate in the Division of Prisons who desires to be a Muslim. The inmate making the declaration may obtain declaration forms from the Office of Islamic Services Coordinator, with one copy placed on file in the Office of Islamic Services Coordinator or the Unit Chaplain's office for religious purposes.~~

Authority G.S. 148-11; 148-24.

05 NCAC 02H .0104 ISLAMIC DIET

~~Dietary policy for Islamic inmates whose religious beliefs prohibit the consumption of pork and pork derivatives are codified in 5 NCAC 2E .0102.~~

Authority G.S. 148-11; 148-24.

05 NCAC 02H .0105 APPROVED RELIGIOUS PROPERTY

~~(a) Prayer Rugs — Muslim inmates shall be allowed to purchase with their own funds a prayer rug not to exceed 22 inches by 44 inches. Approved order forms and distributors will be utilized for the purchase.~~

~~(b) Religious Headcoverings — Inmates may possess and wear kufi prayer caps and yarmulkes as a part of daily dress throughout the Division of Prisons. Other religious headcoverings must be submitted for approval to the Director of Prisons. Religious headcoverings may be worn at all times, except they shall be required to be removed for searches. Inmates may purchase religious headcoverings with their own funds, as with other approved personal clothing items.~~

Authority G.S. 148-11; 148-24.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance/Manufactured Housing Board intends to adopt the rules cited as 11 NCAC 08 .1401-.1432. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 17, 2002

Time: 9:00 a.m.

Location: NC Department of Insurance, 410 N. Boylan St., Raleigh, NC

Reason for Proposed Action: The adoption of these Rules carries out statutory authorization.

Comment Procedures: Written comments may be sent to Patrick Walker, c/o the NC Department of Insurance, Manufactured Housing Board, 410 N. Boylan Ave., Raleigh, NC. Comments will be received through February 1, 2002.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 08 - ENGINEERING AND BUILDING CODES

SECTION .1400 – MANUFACTURED HOUSING BOARD CONTINUING EDUCATION

11 NCAC 08 .1401 DEFINITIONS

As used in this Section:

- (1) "Board" means the North Carolina Manufactured Housing Board or its staff.
- (2) "CE Administrator" means a person designated by the Board to receive all applications for course approval, course reports, course application and renewal fees, etc., on behalf of the Board for the CE program.
- (3) "Continuing Education" or "CE" means any educational activity approved by the Board to be a continuing education activity.
- (4) "Course" means a continuing education course directly related to manufactured housing principles and practices or a course designed and approved for licensees.
- (5) "Credit hour" means at least 50 minutes of continuing education instruction.
- (6) "Licensee" means a manufactured housing salesperson or set-up contractor who holds a license issued by the Board in accordance with G.S. 143-143.11.
- (7) "Qualifier" means the person or persons having passed the written Set-Up Contractor's Examination as administered by the Board and authorized in G.S. 143-143.11(h), and as defined in 11 NCAC 08 .0912(e), or a person who meets the requirements of 11 NCAC 08 .0912(e) and is designated by a licensee to obtain CE credits.
- (8) "Sponsor" means an organization or individual who has submitted information to the Board as specified in this Section and has been approved by the Board to provide instruction for the purpose of CE.
- (9) "Staff" means designated employees of the Manufactured Building Division of the Department of Insurance who are authorized to act on behalf of the Board with regard to continuing education matters.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1402 CE COURSES -- GENERAL

(a) Credit shall only be given for courses that have been approved by the Board. No other continuing education hours for other State occupational licenses shall be used by a licensee to satisfy the continuing education requirements in this Section.

(b) The Board may award CE credit for a course or related educational activity that has not been approved in accordance with 11 NCAC 08 .1405(c). Licensees who wish to have the Board consider an unapproved course or educational activity for possible CE credit shall provide documentation to the Board consisting of not less than the information required in 11 NCAC 08 .1405(a), together with a fee of fifty dollars (\$50.00) for each course or educational activity to be reviewed. Fees shall be paid by check, money order, VISA, or MasterCard, made payable to the North Carolina Manufactured Housing Board, and are nonrefundable.

(c) The minimum number of credit hours that a licensee must obtain during the license year before renewal is as follows:

Salespersons -- six credit hours;
Set-up Contractors -- four credit hours.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1403 SPONSOR ADVANCE APPROVAL REQUIRED

A prospective sponsor of a CE course shall obtain written approval from the Board to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct a CE course shall be granted by the Board for any reason.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1404 SPONSOR NAME

(a) The official name to be used by any course sponsor in connection with the offering of an approved CE course shall clearly distinguish the sponsor from any other previously approved CE course sponsor.

(b) Any advertisement or promotional material used by an approved course sponsor shall include the course sponsor's official name only.

(c) Violations of this Section may result in revocation of course approval.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1405 ACCREDITATION STANDARDS

(a) Prospective sponsors of CE courses shall apply for approval from the Board by submitting the following information to the Board for consideration:

- (1) The nature and purpose of the course;
- (2) The course objectives or goals;
- (3) The outline of the course, including the number of training hours for each segment;
- (4) Copies of all handouts and materials to be furnished to students;
- (5) The identity, qualifications, and experience of each instructor and
- (6) Inclement weather policies for courses conducted outdoors.

(b) A nonrefundable fee of one hundred fifty dollars (\$150.00), in the form of check, money order, VISA, or MasterCard, payable to the North Carolina Manufactured Housing Board, must be received by the Board for each course submitted for approval. The Board will not review a prospective course application before receiving the fee.

(c) To determine if a course will receive approval, the Board shall complete the following review:

- (1) The course shall be referred to the staff for review;
- (2) The staff shall review the course to determine if the course is pertinent to the industry, if the course meets its stated objectives, and if the instructor(s) is qualified to teach the subject matter; and
- (3) The staff shall issue written documentation of approval to the course sponsor, with copies to

the Board, for all courses deemed to be acceptable. A written report shall be issued to the course sponsor for all courses found not to be acceptable, documenting specific reasons for the disapproval. A course sponsor may appeal the staff's disapproval of a course to the Board and be heard at the next scheduled meeting of the Board.

(d) Once a course has been approved, neither the content of the course nor any handouts or any teaching aids may be changed without prior written approval from the staff.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1406 CE COURSE SUBJECT MATTER

(a) CE courses shall help assure that licensees possess the knowledge, skills, and competence necessary to function as manufactured home salespersons and set-up contractors in a manner that protects and serves the public interest. The knowledge or skills taught in a CE course shall enable licensees to better serve manufactured home consumers and the subject matter shall be directly related to manufactured sales and set-up operations.

(b) If there are unique North Carolina laws, codes, rules, customary practices, or approved methods that are relevant to a topic being addressed in a CE course, and if the course is to be conducted in North Carolina or primarily for the benefit of North Carolina licensees, then the course shall accurately and completely address such North Carolina laws, codes, rules, customary practices, or approved methods.

(c) Instructors shall not communicate any misinformation about or contradiction of any regulation, rule, or interpretation that has been issued by the Board or its staff.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1407 SCHEDULING

Courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day, including breaks for each class session. The maximum permissible class session without a break is 90 minutes. Courses scheduled for more than four hours in any given day shall include a meal break of at least one hour.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1408 NOTICE OF SCHEDULED COURSES

(a) A sponsor shall provide the Board with written notice of each scheduled course offering not later than 10 days before a scheduled course date. The notice shall include the name and assigned number for the sponsor, the name and assigned number for the course, the scheduled date and time, specific location, and name of the instructor(s).

(b) A sponsor shall notify the Board of any schedule changes or course cancellations at least five calendar days before the original scheduled course date. If a change or cancellation is necessary because of some unforeseen circumstance, the sponsor shall notify the Board as soon as the sponsor effects the change or cancellation.

(c) A sponsor shall notify the Board as soon as it becomes apparent to the sponsor that enrollment in a planned class session will exceed 100 students.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1409 ADVERTISING AND PROVIDING COURSE INFORMATION

(a) Course sponsors shall not use advertising of any type that is false or misleading. If the number of CE credit hours awarded by the Board for an approved CE course is less than the number of scheduled hours for the course, any course advertisement or promotional materials that indicate the course is approved for CE credit shall specify the number of CE credit hours awarded by the Board for the course.

(b) Any flyers, brochures, or other medium used to promote a CE course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies. Such policies shall be in accordance with 11 NCAC 08 .1411.

(c) A sponsor of a CE course shall, upon request, provide any prospective student with a description of the course content.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1410 SOLICITATION OF STUDENTS

Sponsors and instructors may make available for purchase by students unapproved materials, pamphlets, and brochures that belong to the sponsor, instructor, or some other person. However, class time shall not be used to promote or sell any materials or to solicit affiliation or membership in any business or organization. Unapproved materials shall not be used as teaching aids during the class.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1411 CANCELLATION AND REFUND POLICIES

Course sponsors shall administer course cancellation and fee refund policies in a non-discriminatory manner. Such policies shall be clearly defined in course advertising and information as outlined in 11 NCAC 08 .1409. If a scheduled course is canceled, a sponsor shall notify preregistered students of the cancellation. All prepaid fees received from preregistered students shall be refunded within 30 days after the date of cancellation or, with the student's permission, applied toward the fees for another course.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1412 DENIAL OR WITHDRAWAL OF APPROVAL OF COURSE OR COURSE SPONSOR

(a) The Board or its staff shall deny or withdraw approval of any course or course sponsor upon finding that:

- (1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of the approval.
- (2) The course sponsor or any official or instructor employed by or under contract with the course sponsor has refused or failed to comply with any of the provisions of this Section

(3) The course sponsor or any official or instructor employed by or under contract with the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board.

(4) The course sponsor has engaged in a pattern of consistently canceling scheduled courses.

(5) The course sponsor has knowingly paid fees to the Board with a check that was dishonored by a bank.

(6) An instructor employed by or under contract with the course sponsor fails to conduct approved courses in a manner that demonstrates compliance with the instructor requirements described in 11 NCAC 08 .1418.

(7) Any court of competent jurisdiction has found the course sponsor or any official or instructor employed by or under contract with the course sponsor to have violated, in connection with the offering of CE courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(8) The course sponsor has failed to comply with cancellation and refund policies as outlined in 11 NCAC 08 .1411.

(b) Any course sponsor who has had approval denied or withdrawn under this Rule may appeal to the Board and be heard at the next regularly scheduled meeting.

(c) If a licensee who is an approved course sponsor or an instructor employed by or under contract with an approved course sponsor engages in any dishonest, fraudulent, or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-143.13.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1413 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all CE courses and course sponsors expires one year following the date of approval. In order to assure continuous approval, renewal applications shall be accompanied by the prescribed renewal fee and filed on a form prescribed by the Board not later than 30 days prior to the date of expiration. Any incomplete renewal application received 30 days or more prior to the date of expiration that is not completed within 10 days after notice of the deficiency, as well as any renewal application received less than 30 days prior to the date of expiration, shall not be accepted. For renewal applications received less than 30 days prior to the date of expiration, the sponsor shall file an application for original approval in accordance with 11 NCAC 08 .1405 on or after July 1 in order to be reapproved. Fees as prescribed in 11 NCAC 08 .1405 shall apply for all such reapprovals.

(b) The fee for renewal of Board approval shall be seventy-five dollars (\$75.00) for each CE course for sponsors meeting the deadlines specified in Paragraph (a) of this Rule. Fees shall be paid by check, money order, or Visa/MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1414 SPONSOR CHANGES DURING APPROVAL PERIOD

(a) Course sponsors shall give prior written notice to the Board in writing of any change in business name, Continuing Education Coordinator, address, or business telephone number.

(b) Course sponsors shall obtain prior approval from the Board for any proposed changes in the content or number of hours for CE courses. The Board shall approve the changes if they satisfy the accreditation requirements of 11 NCAC 08 .1405. Changes in course content that are solely for the purpose of assuring that information provided in a course is current, such as code amendments, changes in regulations, etc., need not be reported until the time the sponsor requests renewal of course approval as specified in 11 NCAC 08 .1413. Requests for approval of changes shall be in writing and in a form prescribed by the Board.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1415 CE REQUIREMENTS

(a) In order to renew an active manufactured housing salesperson or set-up contractor license for license periods beginning on or after July 1, 2003, and in accordance with G.S. 143-143.11B(a), a licensee shall have completed the number of credit hours specified by the Board, not to exceed eight, by June 30 of the previous license year. The Board has specified the following minimum credit hours per license year:

Salespersons: Six credit hours
Set-up Contractors: Four credit hours

If a licensee exceeds the annual number credit hours specified by the Board, the excess credit hours may be carried forward into the next license year, but the number of carry over credit hours may not exceed the number specified by the Board for a given license year.

(b) For set-up contractors originally licensed on or after July 15, 1999, the person obtaining the required credit hours must be a qualifier. If a set-up contractor licensed on or after July 15, 1999 has more than one qualifier, each qualifier must obtain the required number of CE credits for the license period. For set-up contractors originally licensed prior to July 15, 1999, the licensee shall designate an individual, known as the "qualifier", who is associated with the licensee and is actively engaged in the work of the licensee for a minimum of 20 hours per week or a majority of the hours operated by the licensee, whichever is less. The qualifier shall be the person who obtains CE credits on behalf of the licensee. Each licensee shall notify the Board in writing within 10 days after the qualifier no longer meets the preceding requirements. If a qualifier has obtained excess credit hours which may be carried over into the subsequent license year, and no longer meets the requirements of this Section, the

carry over credits shall not apply to the licensee. If the qualifier becomes employed by another licensee and meets the requirements of this Section, the qualifier's carry over credit hours may be applied to the licensee with whom the qualifier is newly employed for the current license year. A licensee whose qualifier no longer meets the requirements of this Section must designate another qualifier who shall obtain the required credit hours for the subsequent license year.

(c) A licensee who is initially licensed on or after January 1 in any license year is exempt from this Section for the license period expiring on the next June 30.

(d) A licensee who is qualified as an instructor in accordance with 11 NCAC 08 .1418 and who serves as an instructor for an approved CE course shall receive the maximum credits awarded to a student for the course. However, teaching credit is valid for teaching an approved CE course or seminar for the first time only.

(e) Credit shall only be given for classes that have been pre-approved by the Board. Continuing education hours used to satisfy continuing education training for other state required licenses, such as an electrical license, shall not be used to satisfy the continuing education requirements set forth in this document.

(f) The Board may award CE credit for a course or related educational activity that has not been approved in accordance with 11 NCAC 08 .1405(c). Licensees who wish to have the Board consider an unapproved course or educational activity for possible CE credit shall provide documentation to the Board consisting of not less than the information required in 11 NCAC 08 .1405(a), together with a fee of fifty dollars (\$50.00) for each course or educational activity to be reviewed. Fees shall be paid by check, money order, or Visa/MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1416 CONTINUING EDUCATION COORDINATOR

Every sponsor of a CE course shall designate one person to serve as the Continuing Education Coordinator for all Board-approved continuing education courses offered by the sponsor. The designated Coordinator shall serve as the official contact person for the sponsor and shall be responsible for the following:

- (1) Monitoring the attendance and conduct of students in accordance with 11 NCAC 08 .1417 and 11 NCAC 08 .1419 at the sponsor's Board-approved CE courses;
- (2) Signing the course completion certificates provided by the sponsor to licensees completing courses; and
- (3) Submitting to the Board all required fees, rosters, reports, and other information.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1417 MONITORING ATTENDANCE

(a) Designated coordinators shall monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course have attended at least 90 percent of the scheduled classroom hours, regardless of the length of the course. Students shall not be admitted to a class

session after 10 percent of the scheduled classroom hours have been conducted. A student shall not be allowed to sign a course attendance roster report, shall not be issued a course completion certificate, and shall not be reported to the Board as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors shall not make any exceptions to the attendance requirement for any reason.

(b) Sponsors shall assure that, if necessary, adequate personnel in addition to the instructor are present during all class sessions to assist the instructor in monitoring attendance and performing the administrative tasks associated with conducting a course. Sponsors shall assure that time required for necessary administrative tasks does not interfere with designated minimum instruction time.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1418 INSTRUCTOR REQUIREMENTS

(a) Instructors shall assure that class sessions are started on time and are conducted for the full amount of time that is scheduled. Instructors shall also assure that each CE course is taught according to the course outline and plan that was approved by the Board, including the furnishing of approved student materials.

(b) Instructors shall possess the ability to:

- (1) Communicate through speech, with the ability to speak clearly, and with voice inflection, using proper grammar, and vocabulary;
- (2) Present instruction in a thorough, accurate, logical, orderly and understandable manner;
- (3) Use varied instructional techniques in addition to straight lecture, such as class discussion, role-playing, or other techniques;
- (4) Use instructional aids, such as the overhead projector, to enhance learning; and
- (5) Interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1419 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his or her attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction;
- (2) A student shall refrain from engaging in any activities that are distracting to other students or the instructor, or that otherwise disrupt the orderly conduct of a class; and
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to

providing information needed to properly report completion of a course by the student.

(b) Instructors and sponsors may dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall a sponsor include the name of that student on a report verifying completion of a CE course. A sponsor shall submit to the Board with the report for the class session a written statement that includes the name and license number of each student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1420 STUDENT FEE FOR CE COURSES

The sponsor of an approved CE course may establish the amount of the fee to be charged to students taking the course. The established fee shall be an all-inclusive fee, and no separate or additional fee may be charged to students for providing course materials as described in 11 NCAC 08 .1405(a)(4), providing course completion certificates, reporting course completion to the Board, or for recouping similar routine administrative expenses. The total amount of any fees to be charged shall be included in any advertising or promotional materials for the course.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1421 MINIMUM CLASS SIZE

The minimum class size for any session of an approved CE course shall be five students, as determined by the sponsor's preregistration records. The minimum class size requirement shall not apply to class sessions when the sponsor notifies the Board in writing of the scheduled class session as provided in 11 NCAC 08 .1408 and advertises in advance the scheduled class session in the community where the class session is to be held. A sponsor who conducts a class session for fewer than five students shall submit a copy of the advertisement for the class session with the reports verifying completion of the course plus a statement or other documentation indicating the date of the advertisement and the advertising method.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1422 CLASSES OPEN TO ALL LICENSEES

All class sessions of approved CE courses shall be open to all licensees on a first-come, first-served basis. The sponsor of a course that has a bona fide education or experience prerequisite may refuse admission to a licensee who does not satisfy the prerequisite. A sponsor may contract with an organization such as a manufactured home set-up company, dealership, or trade organization to conduct approved CE courses for licensees affiliated with the organization.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1423 CLASSROOM FACILITIES

A classroom in which a course is provided shall:

- (1) Accommodate all enrolled students;
- (2) Be equipped with student desks, worktables, with chairs, or other seating arrangement which provides a sufficient surface whereby each student can sit and write;
- (3) Have adequate light, heat, cooling, and ventilation;
- (4) Have, if required, a public address system such that all students can hear the instructor clearly;
- (5) Provide a direct, unobstructed line of sight from each student to the instructor and all teaching aids; and
- (6) Be free of distractions that would disrupt class sessions.

Items (2) and (3) of this Rule are not required if the course is conducted in a field setting.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1424 STUDENT CHECK-IN

Upon initially checking in for a class session, sponsors and instructors shall require licensees to provide their manufactured housing salesperson license number or set-up contractor license number and qualifier number, and shall provide to each student any printed information regarding continuing education requirements and guidelines that may be specified by the Board for this purpose. Student identity shall be verified by photo ID. The CE Administrator shall verify information reported in accordance with 11 NCAC 08 .1426(a) regarding each student's license number, qualifier number, and current license status. Any student providing false information to a course sponsor shall not receive CE credits for the course, shall not be entitled to a refund of course fees, and may be subject to disciplinary action by the Board.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1425 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Course sponsors may deviate from Board rules concerning the conduct of CE courses, such as rules addressing classroom facilities, minimum class size, and instructional methods, as may be necessary in order for the sponsor to comply with the Americans with Disabilities Act or other laws requiring sponsors to accommodate persons with disabilities. A sponsor providing a special accommodation for a licensee with a disability that requires the sponsor to deviate from Board rules shall notify the Board in writing of the accommodation at the time reports are submitted for the class session attended by the licensee.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1426 COURSE COMPLETION REPORTING

(a) The Continuing Education Coordinator designated by the sponsor in accordance with 11 NCAC 08 .1416 shall prepare and submit to the Board reports verifying completion of a CE course

for each licensee who satisfactorily completes the course according to the criteria in 11 NCAC 08 .1417 AND 11 NCAC 08 .1419. The reports shall be submitted in the manner and format as prescribed by the Board. Sponsors shall submit these reports to the attention of the CE Administrator such that receipt by the Board within 15 calendar days following the course is assured, but in no case later than June 1 for courses conducted before that date. The report shall be submitted to the attention of the CE Administrator. For each course taken, such report shall include a certificate of course completion that is signed by at least one course instructor and shall indicate the name and license number of the licensee who completed the course, the date of course completion, and the number of credit hours granted to the licensee. A fee of five dollars (\$5.00) per credit hour per licensee must be provided by the sponsor with this information, and shall be by check, money order, or Visa/MasterCard made payable to the North Carolina Manufactured Housing Board. The same course shall not be repeated and reported for credit by a licensee within any three year period. No refund of required fees shall be issued for any course credits that are rejected for this reason. The sponsor shall make a separate fee payment for each separate class session.

(b) Course sponsors shall provide licensees enrolled in each CE course an opportunity to complete an evaluation of each approved CE course on a form prescribed by the Board. Sponsors shall submit the completed evaluation forms to the Board along with the reports that verify completion of a CE course. Evaluation forms shall be reviewed to determine course problem areas and to verify compliance with these Rules.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved CE course according to the criteria in 11 NCAC 08 .1417 and 11 NCAC 08 .1419 a course completion certificate on a form approved by the Board. Sponsors shall provide the certificates to licensees within 15 calendar days following the course, but in no case later than June 1 for any course completed before that date. The certificate may be retained by the licensee as proof of having completed the course.

(d) When a licensee does not comply with the participation standards in 11 NCAC 08 .1419, the course sponsor shall advise the Board of this matter in writing at the time the sponsor submits the reports verifying completion of the course as specified in Paragraph (a) of this Rule. The sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards in 11 NCAC 08 .1417 and 11 NCAC 08 .1419 shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education. Such persons shall be reported to the CE Administrator as specified in 11 NCAC 08 .1419(c).

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1427 RETENTION OF COURSE RECORDS

All course sponsors shall retain records of student registration, attendance, and course completion for each session of a CE course for five years. All course sponsors shall make these records available to the Board upon request.

PROPOSED RULES

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1428 REQUEST FOR VIDEO OF AN ELECTIVE COURSE

If concerns about the quality of a course or instructor are made known to the Board, the Board shall, through written request, require that the sponsor of an approved CE course submit to the Board a video depicting the course being taught by a particular instructor or instructors specified by the Board. If not already available, the video shall be produced at the next scheduled course offering. A video produced within a 12-month period preceding the date of submittal shall be acceptable. All videos shall include a label that clearly identifies the instructor and the date of the video presentation, and shall be 45-60 minutes in length. The video shall depict a continuous block of instruction concerning manufactured home salesperson requirements or set-up contractor operations, shall be unedited, shall show at least a portion of the audience, and shall have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. Videos requested by the Board shall be shipped within 10 calendar days of receiving the request or within two weeks after course completion. The cost of producing and shipping such videos shall be borne solely by the course sponsor.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1429 CHANGE IN SPONSOR OWNERSHIP

The approval granted to a course sponsor may be transferred to a new or different person, firm, or corporation only with the prior approval of the Board. The Board shall approve the transfer if the transferee satisfies the accreditation requirements as specified in 11 NCAC 08 .1405. If the ownership of an approved course sponsor is to be sold or otherwise changed, the sponsor shall obtain Board approval of the ownership change. The Board shall approve the ownership change if the proposed new owner satisfies the requirements of the rules in this document. All requests for Board approval of transfers or changes in ownership shall be in writing and shall be accompanied by a fee of one hundred fifty dollars (\$150.00). Fees shall be paid by check, money order, or Visa/MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1430 COURSE MONITORS

A course sponsor shall admit authorized representatives of the Board to monitor any CE class without prior notice. Board representatives shall not be required to register or pay any fee and shall not be reported as having completed the course.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1431 NON-RESIDENT LICENSEES AND CE CREDITS

A non-resident licensee may obtain required CE credits as set forth in this Section. If a non-resident licensee resides in a state requiring continuing education for a manufactured housing license, the courses or educational activities offered in the state of residence may be considered by the Board for sanctioning in

North Carolina on an individual course basis. Licensees who wish to have the Board consider courses or educational activities offered in states other than North Carolina for possible CE credit shall provide documentation to the Board consisting of not less than the information required in 11 NCAC 08 .1405(a), together with a fee of fifty dollars (\$50.00) for each course or educational activity to be reviewed. Fees shall be paid by check, money order, or Visa/MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

Authority G.S. 143-143.10; 143-143.11B.

11 NCAC 08 .1432 NON-COMPLIANCE

If a licensee fails to complete the CE requirements specified in these Rules by June 30 of a given license year, his or her license shall not be renewed. A licensee may renew at any time prior to the following June 30, but may not operate as either a manufactured housing salesperson or set-up contractor until such time as documentation of having completed the CE requirements is furnished to the Board and the license has been formally renewed. A licensee who has not completed the CE requirements within one year of the original expiration shall be required to pass written State examinations in order to be re-licensed. It is illegal for a licensee to operate while the license has expired, and doing so may result in disciplinary action by the Board.

Authority G.S. 143-143.10; 143-143.11B.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rule cited as 11 NCAC 12 .0307. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 18, 2002

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The amendment reflects changes made in the law.*

Comment Procedures: *Written comments may be sent to Charles Swindell, NC Department of Insurance, Property & Casualty Division, PO Box 26387, Raleigh, NC 27611. Comments will be received through February 1, 2002.*

Fiscal Impact

- State
- Local
- Substantive (\geq \$5,000,000)
- None

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 – GENERAL PROVISIONS

11 NCAC 12 .0307 FILING APPROVAL: LIFE: ACCIDENT AND HEALTH FORMS

(a) The following procedure shall be used in filing life, annuity, and accident and health and health maintenance organization forms for approval by the Department:

- (1) A filing letter shall be submitted in duplicate with the Federal Employee Identification Number (FEIN); forms shall be listed by number and descriptive title; the filer shall indicate if the form is new and briefly describe the use of the form; if the form is a revision the filer shall identify the form being replaced by its number and approval date;
(2) If riders, endorsements or certificates are filed separately, the filer shall indicate policy forms with which they are used;
(3) Forms shall be submitted in duplicate and each form shall be identified by a form number in the lower left-hand corner of the first page. Forms filed for Medicare supplement insurance shall be filed in triplicate. For the purposes of approval all forms shall be in final print. The Commissioner shall not accept photocopies as final print;
(4) All forms shall be completed with specimen data;
(5) Rates by age and mode of payment including the actuarial memorandum shall be attached to each form requiring a premium;
(6) The filer shall submit evidence of approval of the subject identical filing by the filer's state of domicile;
(7) The filer shall submit a listing of states in which any subject identical filing has been submitted and a listing of states that have:
(A) approved; or
(B) disapproved, including the reasons for disapproval;
(8) The filer shall submit copies of any endorsements, riders or changes in the subject filing required by any other jurisdiction as a condition of approval;
(9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers;
(10) The filer shall submit copies of sales promotion material to be used in North Carolina for annuities, interest-sensitive life, Medicare supplement, and long-term care products. All such advertisements shall be identified by a unique form number in the lower left-hand corner of the first page.

(b) Individual accident and health premium rate revisions for which Department approval is required by General Statute Chapter 58 must be filed in triplicate and include evidence of the Department's approval of that policy's most recent rate revision.

(c) Remittance of the filing fee shall be made within 45 days after the date of the filing fee notice or the file will be closed.

(d) If the status of a pending rate or form filing is desired, a written request for such status must be made by the filer no earlier than 60 days after the date of the filing letter.

(e)(c) A written notice must be given to the Department by the filer before forms or rates are deemed by statute to be approved.

(d) If the filer does not respond to a forms filing disapproval letter within 90 days of disapproval the file is closed.

Authority G.S. 58-2-40; 58-51-1; 58-54-35; 58-55-30; 58-58-1; 58-65-1; 58-65-40; 58-67-50; 58-67-150.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rules cited as 11 NCAC 12 .1027-.1029 and amend the rules cited as 11 NCAC 12 .1002, .1004, .1006, .1013-.1015, .1017-.1018, .1026. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 18, 2002

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: Needed to comply with NAIC Model Regulation changes in long-term care insurance.

Comment Procedures: Written comments may be sent to Theresa Shackelford, Life & Health Division, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be accepted through February 1, 2002.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1000 - LONG-TERM CARE INSURANCE

11 NCAC 12 .1002 DEFINITIONS

(a) As used in this Section, "insurer" means an entity licensed under G.S. 58 that writes long-term care insurance.

(b) As used in this Section, "exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified: due to changes in laws or regulations applicable to long-term care coverage in this State; or due to increased and unexpected utilization that affects the majority of insurers of similar products. Except as provided in 11 NCAC 12 .1028, exceptional increases are subject to the same requirements as other premium rate schedule increases. The Commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase. The

Commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.

(c) As used in 11 NCAC 12 .1028(k), "incidental" means that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(d) As used in this Section, "qualified actuary" means a member in good standing of the American Academy of Actuaries.

(e) As used in this Section, "similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in G.S. 58-55-20(3)a are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

~~(b)~~(f) The definitions contained in G.S. 58-1-5 and in G.S. 58-55-20 are incorporated in this Section by reference.

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

11 NCAC 12 .1004 POLICY PRACTICES AND PROVISIONS

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

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

(c) The term "level premium" may only be used when the insurer does not have the right to change the premium.

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

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

- (1) preexisting conditions as specified in G.S. 58-55-30;
- (2) mental or nervous disorders, except for Alzheimer's Disease;
- (3) alcoholism and drug addiction;
- (4) illness, treatment, or medical condition arising out of:
 - (A) war or act of war (whether declared or undeclared);

- (B) participation in a felony, riot, or insurrection;
 - (C) service in the armed forces or units auxiliary thereto;
 - (D) suicide, attempted suicide, or intentionally self-inflicted injury; or
 - (E) aviation activity as a nonfare-paying passenger;
- (5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare (unless otherwise required by law), under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by a member of the insured's immediate family; and services for which no charge is normally made in the absence of insurance;
 - (6) exclusions and limitations for payment for services provided outside the United States; and
 - (7) legitimate variations in benefit levels to reflect differences in provider rates.

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

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

11 NCAC 12 .1006 REQUIRED DISCLOSURE PROVISIONS

~~(a) Individual policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This Paragraph does not apply to policies that do not contain a renewability provision and under which the right to not renew is reserved solely to the policyholder.~~

~~(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual policy, all riders or endorsements added to an individual policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the increased benefit or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider, or endorsement.~~

~~(c) A policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and~~

customary", or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a policy contains any permitted limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and shall be labeled as "Preexisting Condition Limitations".

(e) Life insurance that provides an accelerated benefit for long-term care shall include a disclosure notice, which shall be displayed on the face of the rider or the policy to which the rider is attached. The notice shall be in bold faced print and shall read as follows:

~~BENEFITS PAID UNDER THIS RIDER MAY BE TAXABLE. IF SO, YOU OR YOUR BENEFICIARY MAY INCUR A TAX OBLIGATION. AS WITH ALL TAX MATTERS, YOU SHOULD CONSULT A PROFESSIONAL TAX ADVISOR TO ASSESS THE EFFECT OF THIS BENEFIT. BENEFITS OF THIS RIDER ARE NOT PAYABLE IF THE POLICY TO WHICH IT IS ATTACHED IS NOT IN EFFECT.~~

(a) Renewability. Individual long-term care insurance policies shall contain a renewability provision.

- (1) This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision shall not apply to policies that do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder. This provision applies to long-term care policies which are part of or combined with life insurance policies.
- (2) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(b) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement.

(c) Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(d) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph

of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(e) Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in 11 NCAC 12 .1008 and G.S. 58-55-30 shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

(f) Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This paragraph shall not apply to qualified long-term care insurance contracts.

(g) Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this Section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(h) Tax Qualified. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 11 NCAC 12 .1015(e) that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(i) Tax Non-Qualified. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 11 NCAC 12 .1015(e) that the policy is not intended to be a qualified long-term care insurance contract.

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

11 NCAC 12 .1013 LOSS RATIO

(a) Benefits under individual policies long-term care insurance policies, except those subject to 11 NCAC 12 .1014 or 11 NCAC 12 .1028, shall be deemed to be reasonable in relation to premiums, provided that the expected loss ratio is at least 60 percent for individual policies and 75 percent for group policies, and is calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- (1) statistical credibility of incurred claims experience and earned premiums;
- (2) the period for which rates are computed to provide coverage;
- (3) experienced and projected trends;
- (4) concentration of experience within early policy duration;

- (5) expected claim fluctuation;
- (6) experience refunds, adjustments, or dividends;
- (7) renewability features;
- (8) all appropriate expense factors;
- (9) interest;
- (10) experimental nature of the coverage;
- (11) policy reserves;
- (12) mix of business by risk classification; and
- (13) product features such as long elimination periods, high deductibles, and high maximum limits.

(b) Paragraph (a) of this Rule shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

- (1) The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
- (2) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of G.S. 58-58-55;
- (3) The policy meets the disclosure requirements of G.S. 58-55-30;
- (4) Any policy illustration meets the applicable requirements of 11 NCAC 04.0500; and
- (5) An actuarial memorandum is filed with the Commissioner that includes:
 - (A) A description of the basis on which the long-term care rates were determined;
 - (B) A description of the basis for the reserves;
 - (C) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - (D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - (E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - (F) The estimated average annual premium per policy and the average issue age;
 - (G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as

medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

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

11 NCAC 12 .1014 FILING REQUIREMENT

(a) Before an insurer offers a group policy to a resident of North Carolina pursuant to G.S. 58-55-25, it shall file with the Commissioner evidence that the group policy has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those of North Carolina.

(b) This Rule applies to any long-term care policy issued in this State on or after January 1, 2003. An insurer shall provide the information listed in this Paragraph to the Commissioner 45 days prior to making a long-term care insurance form available for sale:

- (1) A copy of the disclosure documents required in 11 NCAC 12 .1027; and
- (2) An actuarial certification consisting of at least the following:
 - (A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
 - (B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;
 - (C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;
 - (D) A complete description of the basis for contract reserves that are anticipated to be held under the form to include:
 - (i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;
 - (ii) A statement that the assumptions used for reserves contain reasonable

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- margins for adverse experience;
- (iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and
- (iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Commissioner may request a demonstration based on a standard age distribution; and
- (E) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(c) The Commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(d) In the event the Commissioner asks for additional information under this provision, the period in Paragraph (b) of this Rule does not include the period during which the insurer is preparing the requested information.

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

11 NCAC 12 .1015 STANDARD FORMAT OUTLINE OF COVERAGE

- (a) The outline of coverage shall be a free-standing document, using no smaller than ten point type; and shall contain no material of an advertising nature.
- (b) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to such capitalization or underscoring.
- (c) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
- (d) Format for outline of coverage:

~~"[COMPANY NAME]~~
~~[ADDRESS—CITY AND STATE]~~
~~[TELEPHONE NUMBER]~~
~~LONG TERM CARE INSURANCE~~
~~OUTLINE OF COVERAGE~~

~~[Policy Number or Group Master Policy and Certificate Number]~~

~~[Except for policies or certificates that are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]~~

~~Caution: The issuance of this long term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address:~~

~~[insert address]~~

~~1. This policy is [an individual policy of insurance] ([a group policy] that was issued in [indicate jurisdiction in which group policy was issued]).~~

~~2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverages for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!~~

~~3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.~~

- (a) [Provide a brief description of the right to return—"free look" provision of the policy.]
- (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. ~~THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.~~

- (a) [For agents] Neither [company name] nor its agents represent Medicare, the federal government, or any state government.
- (b) [For direct response] [company name] is not representing Medicare, the federal government, or any state government.

5. ~~LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.~~

~~This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]~~

6. ~~BENEFITS PROVIDED BY THIS POLICY.~~

- (a) [Covered services, related deductible (s), waiting periods, elimination periods and benefit maximums]
- (b) [Institutional benefits, by skill level]
- (c) [Non-institutional benefits, by skill level]
- [Any benefit screens must be explained in this Section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. ~~LIMITATIONS AND EXCLUSIONS.~~

- [Describe:
- (a) Preexisting conditions;
- (b) Non-eligible facilities or providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions or exceptions;
- (e) Limitations.]
- [This Section should provide a brief specific description of any policy provisions that limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

~~THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.~~

8. ~~RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:~~

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. ~~TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.~~

- [a) Described the policy renewability provisions;
- (b) For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;
- (c) Describe waiver of premium provisions or state that there are not such provisions;
- (d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ~~ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.~~

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision that provides preconditions to the availability of policy benefits for such an insured.]

11. ~~PREMIUM.~~

- [a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium that corresponds to each benefit option.]

12. ~~ADDITIONAL FEATURES.~~

- [a) Indicate if medical underwriting is used;
- (b) Describe other important features.]"

- (a) The outline of coverage shall be a free-standing document, using no smaller than 10 point type.
- (b) The outline of coverage shall contain no material of an advertising nature.
- (c) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.
- (d) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
- (e) Format for outline of coverage:

[COMPANY NAME]
[ADDRESS - CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage:]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance][a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. Terms Under Which the Policy OR Certificate May Be Continued in Force or Discontinued.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Co mpany Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy:]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return—"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

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- (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]
9. BENEFITS PROVIDED BY THIS POLICY.
- (a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]
- (b) [Institutional benefits, by skill level.]
- (c) [Non-institutional benefits, by skill level.]
- (d) Eligibility for Payment of Benefits
[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]
[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]
10. LIMITATIONS AND EXCLUSIONS.
[Describe:
- (a) Preexisting conditions;
- (b) Non-eligible facilities and provider;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]
[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]
THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.
11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:
- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]
12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]
13. PREMIUM.
[(a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]
14. ADDITIONAL FEATURES.
[(a) Indicate if medical underwriting is used;
- (b) Describe other important features.]
15. CONTACT THE NORTH CAROLINA SENIORS' HEALTH INSURANCE INFORMATION PROGRAM (SHIP) IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

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

11 NCAC 12 .1017 REQUIREMENTS FOR ADVERTISING

~~Every person advertising long-term care insurance through any medium must file the advertising material with the insurer and~~

~~receive written confirmation that the advertisement has been accepted by the Commissioner under 11 NCAC 12 .0536.~~

Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this State shall provide a copy of any long-term care insurance advertisement intended for

use, whether through written, radio or television medium, to the Commissioner for approval. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

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

11 NCAC 12 .1018 STANDARDS FOR MARKETING

~~(a) Every insurer providing long-term care insurance in this State directly or through its agents, shall:~~

- ~~(1) Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate.~~
- ~~(2) Establish marketing procedures to assure excessive insurance is not sold or issued.~~
- ~~(3) Display prominently on the cover page of every policy or outline of coverage the following cautionary notice in bold face print stating:
"NOTICE TO BUYER: THIS POLICY {OR RIDER} MAY NOT COVER ALL OF THE COSTS ASSOCIATED WITH LONG TERM CARE INCURRED BY YOU DURING THE PERIOD OF COVERAGE. YOU ARE ADVISED TO CAREFULLY READ AND REVIEW ALL POLICY {OR RIDER} LIMITATIONS."~~
- ~~(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.~~
- ~~(5) Every insurer marketing long-term care insurance shall establish auditable procedures for verifying compliance with marketing standards.~~
- ~~(6) Every insurer providing long-term care insurance in this State shall at the time of solicitation provide the address and toll free telephone number of the North Carolina Seniors' Health Insurance Information Program (SHIIP).~~

~~(b) The following acts and practices are prohibited:~~

- ~~(1) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force; fright; threat, whether express or implied; or through undue pressure to purchase or recommend the purchase of insurance.~~
- ~~(2) Cold lead advertising. Making direct or indirect use of any method of marketing that fails to clearly disclose that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an agent or insurer.~~

(a) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

- (1) Establish marketing procedures and agent training requirements to assure that:
 - (A) Any marketing activities, including any comparison of policies, by its agents or other producers will be fair and accurate; and
 - (B) Excessive insurance is not sold or issued.
- (2) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
- (3) Provide copies of the disclosure forms required in 11 NCAC 12 .1027(d) to the applicant.
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.
- (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this Rule.
- (6) Every insurer providing long-term care insurance in this State shall at the time of solicitation provide the address and toll-free telephone number of the North Carolina Seniors' Health Insurance Information Program (SHIIP).
- (7) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to this Section.
- (8) Provide an explanation of contingent benefit upon lapse as provided for in 11 NCAC 12 .1026.

(b) In addition to the practices prohibited in G.S. 58, Article 63, the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.
- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to

induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(4) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(c) With respect to the obligations set forth in this Rule, the primary responsibility of an association, as defined in G.S. 58-55-20(3)(c), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold. The insurer shall file with the Commissioner the following material:

- (1) The policy and certificate;
- (2) A corresponding outline of coverage; and
- (3) All advertisements requested by the Commissioner.

(d) The association shall disclose in any long-term care insurance solicitation:

- (1) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members;
- (2) A brief description of the process under which the policies and the insurer issuing the policies were selected;
- (3) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members; and
- (4) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(e) The association shall also:

- (1) At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;
- (2) Actively monitor the marketing efforts of the insurer and its agents;

(3) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates; and

(4) Paragraphs (e)(1) through (e)(3) of this Rule shall not apply to qualified long-term care insurance contracts.

(f) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the Commissioner the information required in this Rule.

(g) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this Rule.

(h) Failure to comply with the filing and certification requirements of this Rule constitutes an unfair trade practice in violation of G.S. 58, Article 63.

Authority G.S. 58-2-40(1); 58-55-30(a); 58-63-15(9).

11 NCAC 12 .1026 NONFORFEITURE BENEFIT REQUIREMENTS

(a) G.S. 58-55-31(a) does not apply to insurers issuing life insurance that accelerates benefits for long-term care.

(b) Nonforfeiture benefits shall not exceed the maximum benefits that would have been payable before the policy lapse.

(c) Premiums charged for a policy containing nonforfeiture benefits shall be subject to the loss ratio requirements of the policy as a whole.

(d) This Rule applies only to policies newly issued on and after April 1, 1999.

(a) This rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(b) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions G.S. 58-55-31:

- (1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Paragraph (h) of this Rule; and
- (2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(c) If the offer required to be made under G.S. 58-55-31 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Rule.

(d) After rejection of the offer required under G.S. 58-55-31, for individual and group policies without nonforfeiture benefits issued after the effective date of this Section, the insurer shall provide a contingent benefit upon lapse.

(e) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate-holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

PROPOSED RULES

(f) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy

or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
<u>29 and under</u>	<u>200%</u>
<u>30-34</u>	<u>190%</u>
<u>35-39</u>	<u>170%</u>
<u>40-44</u>	<u>150%</u>
<u>45-49</u>	<u>130%</u>
<u>50-54</u>	<u>110%</u>
<u>55-59</u>	<u>90%</u>
<u>60</u>	<u>70%</u>
<u>61</u>	<u>66%</u>
<u>62</u>	<u>62%</u>
<u>63</u>	<u>58%</u>
<u>64</u>	<u>54%</u>
<u>65</u>	<u>50%</u>
<u>66</u>	<u>48%</u>
<u>67</u>	<u>46%</u>
<u>68</u>	<u>44%</u>
<u>69</u>	<u>42%</u>
<u>70</u>	<u>40%</u>
<u>71</u>	<u>38%</u>
<u>72</u>	<u>36%</u>
<u>73</u>	<u>34%</u>
<u>74</u>	<u>32%</u>
<u>75</u>	<u>30%</u>
<u>76</u>	<u>28%</u>
<u>77</u>	<u>26%</u>
<u>78</u>	<u>24%</u>
<u>79</u>	<u>22%</u>
<u>80</u>	<u>20%</u>
<u>81</u>	<u>19%</u>
<u>82</u>	<u>18%</u>
<u>83</u>	<u>17%</u>
<u>84</u>	<u>16%</u>
<u>85</u>	<u>15%</u>
<u>86</u>	<u>14%</u>
<u>87</u>	<u>13%</u>
<u>88</u>	<u>12%</u>
<u>89</u>	<u>11%</u>
<u>90 and over</u>	<u>10%</u>

(g) On or before the effective date of a substantial premium increase as defined in Paragraph (f) of this Rule, the insurer shall:

- (1) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;
- (2) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Paragraph (h) of this Rule. This option may be elected at any time during the 120-day period; and

(3) Notify the policyholder or certificate-holder that a default or lapse at any time during the 120-day period shall be deemed to be the election of the offer to convert.

(h) The insurer shall select one or more of the following benefits continued as nonforfeiture benefits, including contingent benefits, upon lapse:

- (1) For purposes of this Paragraph, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age 50 and at least three percent per year beyond age 50.

- (2) For purposes of this Paragraph, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (h)(3) of this Rule.
- (3) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Paragraph (j) of this Rule.
- (4) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter. For a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of the end of the tenth year following the policy or certificate issue date; or the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(i) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(j) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

(k) There shall be no difference in the minimum nonforfeiture benefits as required under this Rule for group and individual policies.

(l) The requirements set forth in this Rule shall become effective 12 months after adoption of this provision and shall apply as follows:

- (1) Except as provided for in Subparagraph (1)(2) of this Paragraph, the provisions of this Rule apply to any long-term care policy issued in this state on or after the effective date of this Rule.
- (2) For certificates issued on or after the effective date of this Rule, under a group long-term care insurance policy as defined in G.S. 58-55-20(3), which policy was in force at the time this Rule became effective, the provisions of this Rule shall not apply.

(m) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be

subject to the loss ratio requirements of 11 NCAC 12 .1013 treating the policy as a whole.

(n) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Paragraph (f) of this Rule, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(o) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

- (1) The nonforfeiture provision shall be disclosed;
- (2) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and
- (3) The nonforfeiture provision shall provide at least one of the following:
- (A) Reduced paid-up insurance;
- (B) Extended term insurance;
- (C) Shortened benefit period; or
- (D) An offering approved by the Commissioner.

Authority G.S. 58-2-40(1); 58-55-30(a); 58-55-31.

11 NCAC 12 .1027 REQUIRED DISCLOSURE OF RATING PRACTICES TO CONSUMERS

(a) This Rule shall apply as follows:

- (1) To any long-term care policy or certificate issued in this State on or after January 1, 2003, except as provided in Paragraph (a)(2) of this Rule.
- (2) For certificates issued on or after the effective date of this Rule under a group long-term care insurance policy as defined in G.S. 58-55-20(3), which policy was in force at the time this Rule became effective, the provisions of this Rule shall apply on the policy anniversary following July 1, 2003.

(b) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this Paragraph to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all required disclosure to the applicant no later than at the time of delivery of the policy or certificate. Required disclosure is as follows:

- (1) A statement that the policy may be subject to rate increases in the future;
- (2) An explanation of potential future premium rate revisions, and the policyholder's or certificate-holder's option in the event of a premium rate revision;

- (3) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;
- (4) A general explanation for applying premium rate or rate schedule adjustments that shall include:
 - (A) A description of when premium rate or rate schedule adjustments will be effective on either the next anniversary date or the next billing date; and
 - (B) The right to a revised premium rate or rate schedule as provided if the premium rate or rate schedule is changed;
- (5) Information regarding history of rate increases:
 - (A) Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this State or any other state that, at a minimum, identifies:
 - (i) The policy forms for which premium rates have been increased;
 - (ii) The calendar years when the form was available for purchase; and
 - (iii) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.
 - (B) The insurer shall provide, upon request, additional explanatory information related to the rate increases.
 - (C) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other non-affiliated insurers or the long-term care policies acquired from other non-affiliated insurers when those increases occurred prior to the acquisition.
 - (D) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from non-affiliated insurers on or before the later of the effective date of this Section or the end of a 24 month period following the acquisition of the block or policies, the acquiring insurer may exclude

that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with this Rule.

- (E) If the acquiring insurer referenced in Paragraph (b)(5)(D) of this Rule files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Paragraph (b)(5)(D) of this Rule, the acquiring insurer must make all disclosures required by this Rule, including disclosure of the earlier rate increase.

(c) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under this Rule. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(d) An insurer shall use the NAIC Model forms identified as Appendices B and F to the Long-Term Care Insurance Model Regulation to comply.

(e) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate-holders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required under this Rule when the rate increase is implemented.

Authority G.S. 58-2-40(1); 58-55-30(a); 58-63-15(9).

11 NCAC 12 .1028 PREMIUM RATE SCHEDULE INCREASES

(a) This Rule shall apply as follows:

- (1) Except as provided in Paragraph (a)(2) of this Rule, this Rule applies to any long-term care policy or certificate issued in this State on or after January 1, 2003; and
- (2) For certificates issued on or after the effective date of this Rule under a group long-term care insurance policy as defined in G.S. 58-55-20(3), which policy was in force at the time this Rule became effective, the provisions of this Rule shall apply on the policy anniversary following July 1, 2003.

(b) An insurer shall request approval of a pending premium rate schedule increase, including an exceptional increase, from the Commissioner at least 90 days prior to the notice to the policyholders and shall include:

- (1) Information required by 11 NCAC 12 .1027;
- (2) Certification by a qualified actuary that:
 - (A) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions,

- are realized, no further premium rate schedule increases are anticipated;
and
- (B) The premium rate filing is in compliance with the provisions of this Rule;
- (3) An actuarial memorandum justifying the rate schedule change request that includes:
- (A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:
- (i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;
- (ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
- (iii) The projections shall demonstrate compliance with Paragraph (c) of this Rule; and
- (iv) For exceptional increases:
- (I) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
- (II) In the event the Commissioner determines, as provided in 11 NCAC 12 .1002 that offsets may exist, the insurer shall use appropriate net projected experience;
- (B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
- (C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what
- other actions taken by the company have been relied on by the actuary;
- (D) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and
- (E) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates.
- (4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the Commissioner; and
- (5) All projected premium rate schedule increases shall be filed with the Commissioner for review and approval.
- (c) All premium rate schedule increases shall be determined in accordance with the following requirements:
- (1) Exceptional increases shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
- (2) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:
- (A) The accumulated value of the initial earned premium times 58 percent;
- (B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;
- (C) The present value of future projected initial earned premiums times 58 percent; and
- (D) 85 percent of the present value of future projected premiums not in Paragraph (c)(2)(C) of this Rule on an earned basis;
- (3) In the event that a policy form has both exceptional and other increases, the values in Paragraphs (c)(2)(B) and (c)(2)(D) of this Rule will also include 70 percent for exceptional rate increase amounts; and
- (4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 11 NCAC 11F .0207(c). The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(d) For each rate increase that is implemented, the insurer shall file for review and approval by the Commissioner the updated projections, as defined in Paragraph (b)(3)(A) of this Rule, annually for the next three years and include a comparison of actual results to projected values. The Commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Paragraph (l) of this Rule, the projections required by this Paragraph shall be provided to the policyholder in lieu of filing with the Commissioner.

(e) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in Paragraph (b)(3)(A) of this Rule, shall be filed for review and approval by the Commissioner every five years following the end of the required period in Paragraph (d) of this Rule. For group insurance policies that meet the conditions in Paragraph (l) of this Rule, the projections required by this Rule shall be provided to the policyholder in lieu of filing with the Commissioner.

(f) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Paragraph (c) of this Rule, the Commissioner may require the insurer to implement any of the following:

- (1) Premium rate schedule adjustments; or
- (2) Other measures to reduce the difference between the projected and actual experience.

It is to be expected that the actual experience will not exactly match the insurer's projections. During the period that projections are monitored as described in Paragraphs (d) and (e) of this Rule, the Commissioner should determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order. In determining whether the actual experience adequately matches the projected experience, consideration should be given to Paragraph (b)(3)(E) of this Rule, if applicable.

(g) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

- (1) A plan, subject to Commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Commissioner may impose the condition in Paragraph (i) of this Rule; and
- (2) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Paragraph (c) of this Rule had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in

Paragraphs (c)(2)(A) and (c)(2)(C) of this Rule.

(h) For a rate increase filing that meets the following criteria, the Commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

- (1) The rate increase is not the first rate increase requested for the specific policy form or forms;
- (2) The rate increase is not an exceptional increase; and
- (3) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(i) In the event significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the Commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the Commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

- (1) The offer shall:
 - (A) Be subject to the approval of the Commissioner;
 - (B) Be based on actuarially sound principles, but not be based on attained age; and
 - (C) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(2) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

- (A) The maximum rate increase determined based on the combined experience; and
- (B) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10 percent.

(j) If the Commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the Commissioner may, in addition to the provisions of Paragraph (i) of this Rule, prohibit the insurer from either of the following:

- (1) Filing and marketing comparable coverage for a period of up to five years; or
- (2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(k) Paragraphs (a) through (j) of this Rule shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in 11 NCAC 12 .1002, if the policy complies with all of the following provisions:

- (1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
- (2) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following: G.S. 58-58-55; G.S. 58-58-60; and 11 NCAC 12 .0436.
- (3) The policy meets the disclosure requirements of 11 NCAC 12 .1006 and 11 NCAC 12 .1206;
- (4) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:
 - (A) Policy illustrations as required by 11 NCAC 04 .0500;
 - (B) Disclosure requirements in 11 NCAC 12 .1212;
 - (C) Disclosure requirements in 11 NCAC 12 .0420 and 11 NCAC 12 .0422;
 - (D) Disclosure requirements in G.S. 58-7-95; and
 - (E) Disclosure requirements in G.S. 58-60-15.
- (5) An actuarial memorandum is filed with the Commissioner that includes:
 - (A) A description of the basis on which the long-term care rates were determined;
 - (B) A description of the basis for the reserves;
 - (C) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - (D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - (E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - (F) The estimated average annual premium per policy and the average issue age;
 - (G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or

types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(l) Paragraphs (f) and (h) of this Rule shall not apply to group insurance policies as defined in G.S. 58-55-20(3) where:

- (1) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
- (2) The policyholder, and not the certificate-holders, pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Authority G.S. 58-2-40; 58-2-210.

11 NCAC 12 .1029 SCOPE AND APPLICATION

(a) Except as otherwise specifically provided, this Section applies to all long-term care insurance policies and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in this State on or after the effective date by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations, prepaid health plans; health maintenance organizations and all similar organizations.

(b) Additionally, this Section is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance if:

- (1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;
- (2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or
- (3) Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

Authority G.S. 58-2-40; 58-2-210.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rule cited as 13 NCAC 07F .0201. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 29, 2002

Time: 10:00 a.m.

Location: 4 W. Edenton Street, DOL Training Room, Raleigh, NC

Reason for Proposed Action: Effective January 18, 2002, the North Carolina Department of Labor Division of Occupational Safety and Health has adopted verbatim the new federal steel erection standard. The Department proposes to make two amendments to the verbatim adoption. First, the Department will narrow the scope of the definition of steel erection in order to enhance safety for North Carolina steel workers. Second, the Department proposes to permit shop installed shear connectors. In conjunction with this alteration, enhanced fall protection standards will be established in order to ensure the North Carolina rule is at least as effective as the federal rule.

Comment Procedures: All interested parties are encouraged to submit written comments to the attention of Ms. Barbara A. Jackson, General Counsel, North Carolina Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601. Comments will be accepted through February 1, 2002.

Fiscal Impact

- State
Local
Substantive (>\$5,000,000)
None

CHAPTER 07 - OSHA

SUBCHAPTER 07F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

13 NCAC 07F .0201 CONSTRUCTION

The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of January 19, 2001 and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, 1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment (as described in §1926.28) in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."
(2) Subpart D -- Occupational Health and Environmental Controls:
(a) Addition to 29 CFR 1926.54, Nonionizing radiation, after subpart (a) to read:

"(a1) This standard shall apply to all direct or reflected laser equipment except unmodified Class I equipment maintained in accordance with the manufacturer's recommendations. Class I equipment is defined as intrinsically safe lasers having less than 0.001 milliwatt power and lasers which cannot create eye damage if viewed accidentally or which present no direct ocular hazard, diffuse ocular hazard or fire hazards."

(b) Incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1926.59(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"

(3) Subpart E --Personal Protective and Life Saving Equipment -- addition of (g) to 1926.104 Safety belts, lifelines, and lanyards, as follows:

"(g) Snaphooks shall be a locking type designed and used to prevent disengagement of the snaphook keeper by the connected member. Locking type snaphooks have self-closing, self-locking keepers which remain closed and locked until unlocked and pressed open for connection or disconnection."

(4) Subpart R--Steel Erection - additions and amendments to 29 CFR 1926.750 Scope, through 1926.754 Definitions applicable to this subpart, as follows:

"Section 1926.750 Scope:
(b)(1) Steel erection activities include hoisting, laying out, placing, connecting, welding, burning, guying, bracing, bolting, plumbing and rigging structural steel, steel joists, bridge steel girders and metal buildings; installing metal decking and moving point-to-point while performing these activities.

(b)(2) There may be activities that occur during and are part of steel erection where conventional fall protection methods may not offer adequate protection for employees. The employer has the burden of establishing and determining when to implement employee fall protection measures as described in 1926.760 or the more protective measures described in 1926.502 "Fall Protection Systems Criteria and Practices". Where non-traditional steel or iron workers (employees not meeting

requirements of 1926.761(c) are engaged in leading edge work activities six feet or more above lower levels, those employees shall be protected from falling by guardrail systems, personal fall arrest systems or safety nets. Such leading edge work activities include, but are not limited to off loading, stacking, laying out and fastening steel floor decking and metal and non-metal roof decking; positioning and securing exterior curtain walls, window walls, exterior siding systems; and moving from point to point while performing these activities.

1926.754(c)(1)(i) Tripping hazards. Employees shall be protected from falls due to tripping hazards created by shear connectors (including, but not limited to headed steel studs, steel bars or steel lugs), reinforcing bars, deformed anchors, or threaded studs attached to the top flanges of beams, joists or beam attachments. Such protection from falls may be accomplished by any of the following:

- (1) Shear connectors that project vertically or horizontally across the top flange of a member not being welded or applied until the metal decking or other walking/working surface is installed (field-installed shear connectors).
- (2) All employees working on members with shop or pre-installed shear connectors shall be protected from falling hazards greater than six feet by suitable, as defined in 1926.32(s), fall protection systems, including guardrail systems, personal fall arrest systems, or safety nets.
- (3) Shop or pre-installed connectors that project vertically from or horizontally across the top flange of the member shall be covered by a temporary decking, metal or wood box until the metal decking, or other suitable walking/working surface, is installed or until final construction covers the shear connectors.

~~(4)(5)~~ Subpart U--Blasting and Use of Explosives – additions and amendments to 29 CFR 1926.900 *General Provisions*, through 1926.914 *Definitions applicable to this subpart, as follows:*

"Section 1926.900 General provisions:

- (a) The employer shall permit only persons qualified pursuant to §1926.901 to handle and use explosives. A blaster shall be in charge of each blasting operation; hereafter, referred to as the Blaster-in-Charge.
- (b) Smoking, firearms, sparks, open flame or heat producing devices shall be prohibited where explosives are being stored, handled, transported or used. Exception: This does not apply to devices specifically designed to initiate detonation.
- (c) See 1926.901(b).
- (d) All explosives shall be accounted for at all times. Explosives not being used and not attended shall be kept in a magazine or container that meets the U.S. Bureau of Alcohol, Tobacco and Firearms (hereafter, ATF) storage and access requirements contained in 27 CFR Part 55, which is incorporated herein by reference, including any subsequent amendments and editions. Each employer shall maintain an inventory and use record of all explosives in that employer's possession. The employer, or employer authorized person, shall comply with all applicable local, State and federal laws and regulations requiring notification of any loss, theft, or unauthorized entry into a magazine or container.
- (g) Original containers, ATF Type 2, Type 3, Type 4 or Type 5 magazines or Institute of Makers of Explosives (hereafter, IME) - 22 containers, shall be used for taking detonators and other explosives from storage magazines to the blast site.
- (h) In proximity to people, a structure, railway, highway or any other installation, the blaster shall take additional precautions to control the throw of fragments and to prevent bodily injury to employees and people not working directly on the blasting operation. Such additional precautions shall be taken in the loading, delaying, initiation and confinement of each blast and shall include confinement with mats or with mats and other methods.
- (i) All blast site employees shall follow the directions of the Blaster-in-Charge. All blast site employees shall use and adhere to every precaution to ensure employee safety

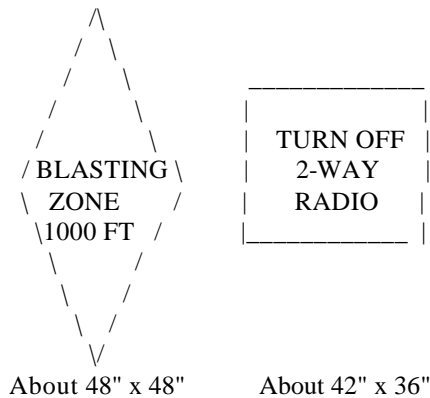
including, but not limited to, visual and audible warning signals, flags, or barricades.

(k) Precautions shall be taken to prevent accidental discharge of electric detonators from current induced by radar, radio transmitters including 2-way radios and mobile telephones, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:

- (1) See Section 1926.906(a) and (b).
- (2) At the approach and progress of an electric storm, blasting operations shall be suspended and personnel removed to an area safe from concussion (shock wave), flying material, or gases from an explosion.
- (3) (i) The prominent display of adequate signs, warning against the use of mobile radio transmitters, (e.g., telephones and 2-way radios) on all roads within 1,000 feet of electric blasting operations. If adherence to the 1,000-foot distance

would create an operational handicap, then a competent person (as defined in 29 CFR 1926 Subparts L and P) shall be consulted to evaluate the particular situation, and alternative provisions may be made which are designed to prevent any premature firing of electric detonators. A description of any such alternatives shall be reduced to writing and shall be certified by the competent person consulted as meeting the purposes of this subdivision. The description shall be maintained at the construction during the duration of the work, and shall be available for inspection by representatives of the Commissioner of Labor.

(ii) Examples of signs which would meet the requirements of paragraphs (i) and (k)(3) of this section are the following:



- (4) Ensuring that mobile transmitters including telephones and 2-way radios which are less than 100 feet away from electric detonators, in other than original containers, shall be de-energized and effectively prevented from operating, (e.g., locked);
- (5) The Blaster-in-Charge shall comply with the recommendations of IME with regard to blasting in the vicinity of radio transmitters

as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, 2000, which is incorporated herein by reference, including any subsequent amendments and editions.

- (1) Empty boxes and associated paper and fiber packing materials, which have previously contained explosives, shall not be used for any purpose,

other than that associated with the blasting operation. Such boxes, paper and packing materials shall be disposed of in a manner that prevents reuse and does not constitute a hazard, i.e., burned. The method used for disposal shall comply with all applicable local, State or federal laws.

- (n) Delivery and issue of explosives shall only be made by and to authorized persons (as defined in 27 CFR Part 55) and into magazines or temporary storage or handling areas that meet the ATF storage requirements contained in 27 CFR Part 55.
- (o) Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not commence until the operators or owners have been notified and measures for safe control have been taken.
- (q) All loading and firing shall be directed and supervised by the Blaster-in-Charge.
- (r) All blasts shall be fired under the control of a blaster, with an initiation system in accordance with manufacturer's recommendations. All blasts shall be fired in accordance with the manufacturer's recommendations.
- (s) Buildings used for the mixing of blasting agents or water-based explosives shall conform to the requirements of this section.
 - (3) All fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will be contained and will not drain toward the mixing plant building.
 - (4) The building shall be adequately ventilated to prevent explosive or hazardous substance hazards.
 - (5) Heating units may be used in the building if they do not depend on combustion processes, and are properly designed and located to prevent explosive or other hazards. All direct sources of heat shall be provided exclusively from units

located outside the mixing building.

- (6) All internal-combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be isolated by a firewall and shall be properly ventilated to prevent explosive or exhaust gas hazards to employees. The exhaust systems on all such engines shall be located so any heat or spark generated or emitted cannot be a hazard to any materials in or adjacent to the plant.
- (t) See .900(s).
 - (1) See .900(s)(1).
 - (2) See .900(s)(2).
 - (3) See .900(s)(3).
 - (4) See .900(s)(4).
 - (5) See .900(s)(5).
 - (6) See .900(s)(6).
- (u) To guard against unauthorized entry or initiation of a blast, a blast site shall be attended if loading is suspended or loaded holes are awaiting firing. Additionally, the blast site shall be barricaded, posted, and flagged as necessary to prevent unauthorized access.
- (v) No one shall carry explosives or explosives detonating materials (e.g., blasting caps, detonators, fuse, primers) of any kind on his or her person. This does not prohibit hand-carrying or passing such materials when a hole is being loaded."

"1926.901 Blaster qualifications:

 - (a) Blasters shall be able to understand and give written and oral orders.
 - (b) Blasters and others authorized to handle or transport explosive materials or conduct blast site activities shall be in sufficiently good physical condition to perform the work safely and not be addicted to, or under the influence of, narcotics, intoxicants, or similar types of drugs.
 - (c) Blasters shall be qualified, by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives, and have a working knowledge of State, federal and local laws and regulations which pertain to explosives.
 - (d) Blasters shall be required by the employer to furnish evidence satisfactory to the employer of

- (e) competency in handling explosives and performing in a safe manner the type of blasting that will be required. Blasters shall be knowledgeable in the use of each type of blasting method used.
- (f) Pursuant to 29 CFR 1926.21(b), the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to the employee's work and work environment."

"Section 1926.902 Surface transportation of explosives:

- (a) Surface transportation of explosives and blasting agents shall be in accordance with applicable U.S. Department of Transportation (hereafter, DOT) regulations. Where DOT regulations do not normally apply (e.g., off-road vehicles), compliance shall be in accordance with either the directly related DOT regulation or §1926.902(b) through §1926.902(1), as applicable. Where DOT regulations do not exist, §1926.902(b) through §1926.902(1) apply.
- (b) Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver. The driver shall be familiar with the local, State, and Federal regulations governing the transportation of explosives.
- (d) Explosives, blasting agents, and blasting supplies shall not be transported with other materials or cargoes. Blasting caps and detonators shall not be transported in the same vehicle with other explosives unless the provisions of the IME Safety Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," which is incorporated herein by reference including subsequent amendments and editions, are followed.
- (f) When explosives are transported by a vehicle with an open body, an ATF Type 2, ATF Type 3, IME 22 or original manufacturer's container shall be securely attached to the vehicle to contain the cargo.
- (h) Every motor vehicle or conveyance used for transporting explosives shall be marked or placarded on both sides,

the front, and the rear with the word "Explosives" in red letters, not less than 4 inches in height, on white background. The motor vehicle or conveyance may also display, in such a manner that it will be readily visible from all directions, a red flag 18 inches by 30 inches, with the word "Explosives" painted, stamped, or sewed thereon, in white letters, at least 6 inches in height.

- (i) Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition (as described in 29 CFR 1926.150). An extinguisher, approved by a nationally recognized testing laboratory, of not less than 10-ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on the vehicle.
- (j) Motor vehicles or conveyances carrying explosives or blasting agents, shall not be taken inside a garage or shop for repairs or servicing.
- (l) In order to prevent explosives hazards, explosive materials shall be transported to the storage or blast site without delay."

"Section 1926.903 Underground transportation of explosives:

- (a) In order to prevent explosives hazards, all explosives or blasting agents in transit underground shall be taken to the place of use or storage without delay.
- (b) The quantity of explosives or blasting agents taken to an underground loading area shall not exceed the amount estimated by the Blaster-in-Charge to be necessary for the blast.
- (h) Vehicles containing explosive material shall be occupied only by persons necessary for handling the explosive material while in transit.
- (m) Any powder car or conveyance used for transporting explosives or blasting agents shall bear a reflecting sign on each side with the word "Explosives". The sign's letters shall be a minimum of 4 inches in height and shall be on a background of sharply contrasting color.
- (n) Compartments for transporting detonators and explosives in the same car or conveyance shall meet IME-22 container specifications or shall be physically separated by a distance of

- 24 inches or by a solid partition at least 6 inches thick.
- (q) Explosives or blasting agents, not in original containers, shall be placed in a nonconductive, closed container when transported manually."
- "Section 1926.904 Storage of explosives and blasting agents:
- (a) Explosives and blasting agents shall be stored in magazines or containers that meet the applicable provisions of the regulations contained in 27 CFR Part 55, Commerce in Explosives.
 - (b) Blasting caps and other detonators shall not be stored in the same magazine or container with other explosives or blasting agents. Surplus primers shall be disassembled and components stored separately.
 - (c) Smoking and open flames shall not be permitted within 50 feet of explosives, detonators, or blasting agents storage.
 - (d) No explosives or blasting agents shall be permanently stored in any underground operation until the operation has at least two modes of exit.
 - (e) Permanent underground explosive materials storage shall be at least 300 feet from any shaft, adit, or active underground working area.
 - (f) Permanent underground explosive materials storage containing detonators shall not be located closer than 50 feet to any storage containing other explosives or blasting agents."
- "Section 1926.905 Loading of explosives or blasting agents:
- (a) Procedures that permit safe and efficient loading shall be established by the Blaster-in-Charge or the employer before loading is started.
 - (b) Drill holes shall be sufficiently large to admit easy insertion of the cartridges of explosives.
 - (c) Tamping shall be done only with non-metal, non-sparking tamping poles without exposed metal parts, except that nonsparking metal connectors may be used for jointed poles. Violent tamping shall be prohibited. The primer shall never be tamped.
 - (d) No holes shall be loaded except those to be fired in the next round of blasting. After loading, remaining explosives and detonators shall be promptly moved to a safe location and attended or stored pursuant to ATF storage requirements contained in 27 CFR Part 55.
 - (e) Drilling shall not be started until all visible butts of old holes are examined for unexploded charges, and if any are found, they shall be disposed of in accordance with §1926.911, before work proceeds.
 - (h) Machines, personnel and tools not required for the blasting operation shall be removed from the blast site before explosives are removed from storage or transportation vehicles. Blasting operation related vehicles or equipment shall not be driven over, or near enough to, explosive material or initiation systems to come into contact with the explosive material or initiation systems. Equipment not needed for the final blast shall not be operated within 50 feet of loaded holes.
 - (i) During loading the only activity permitted within the blast site shall be that required to successfully and safely load the hole.
 - (j) Powerlines and portable electric cables for equipment being used shall be kept a safe distance from explosives or blasting agents. The blaster shall assure that cables in the proximity of loaded holes are deenergized and locked out. Additionally, when using electric detonators, the provisions of 1926.906(b) apply.
 - (k) Holes shall be checked prior to loading to determine depth and conditions. Only those holes determined by the Blaster-in-Charge to be satisfactory shall be loaded.
 - (l) When loading a line of holes with more than one loading crew, the crews shall be separated by practical distance consistent with safe and efficient operation and supervision of crews.
 - (m) No explosive shall be loaded or used underground in the presence of combustible gases or combustible dusts, unless the work is performed in accordance with the Mine Safety and Health Administration (MSHA) standards at 30 CFR 75 related to such environments, which are incorporated herein by reference, including subsequent amendments and editions, and unless the explosives have been approved as permissible explosives for use in

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- (n) gassy or dusty environments by MSHA.
 - (n) No explosives other than those in IME Fume Class 1 shall be used. However, explosives complying with the requirements of IME Fume Class 2 and IME Fume Class 3 may be used if adequate ventilation has been provided to prevent explosive or hazardous substance hazards to employees.
 - (q) A bore hole shall never be sprung when there is a risk of a premature detonation of a loaded hole.
 - (s) Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, and barricaded, posted, or flagged as needed to guard against unauthorized entry or initiation.
 - (t) The blaster shall keep an accurate, up-to-date record of explosives, blasting agents, and blasting supplies used in each blast and shall keep an accurate running inventory of all explosives and blasting agents in the blaster's custody.
 - (u) When loading blasting agents pneumatically over electric detonators, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.
 - (v) Primers shall be made up just before their time of use and at the point of use.
 - (w) Holes shall not be drilled in a manner that disturbs or intersects a loaded hole."
- "Section 1926.906 Initiation of explosive charges -electric blasting:
- (a) Electric detonators shall not be used where sources of extraneous electricity make the use of electric detonators dangerous. Except during testing, electronic detonator leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.
 - (b) If the presence of extraneous electricity is possible, the blaster shall conduct a stray current survey. No holes shall be loaded using electric detonators until the danger of extraneous electricity is eliminated.
 - (c) In any single blast using electric detonators, all detonators shall be of the same style or function, and of the same manufacture.
 - (d) Electric initiation shall be carried out by using blasting machines or power circuits in accordance with the manufacturer's recommendations.
 - (e) When firing a circuit of electric detonators, an adequate quantity of delivered current must be available, in accordance with the manufacturer's recommendations.
 - (h) When firing electrically, the insulation on all firing lines shall be in good condition and shall be adequate to prevent voltage leaks.
 - (i) A power circuit used for firing electric detonators shall not be grounded.
 - (k) In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.
 - (n) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.
 - (o) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.
 - (p) A blaster shall be in charge of the blasting machines.
 - (q) A blaster shall test blasting circuits for:
 - (1) Continuity of electric detonator in the blast hole prior to stemming and connection of the blasting line.
 - (2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.
 - (3) Continuity of blasting lines prior to the connection of electric detonator series.
 - (4) Total blasting circuit resistance prior to connecting to the power source. A blasting galvanometer, or other instrument specifically designed for testing blasting circuits, shall be used to conduct these tests.

- (r) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live powerline by the force of an explosion, the total length of wires shall be kept too short to hit the lines, or the wires shall be securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.
- (s) The blaster shall assure that all connections are made from the bore hole back to the source of firing current, and that the leading wires remain shorted, except during testing, and not connected to the blasting machine or other source of current until the blast is to be fired. Only the blaster, or a qualified person (as described in §1926.900(a) and §1926.901) under the direct control of the blaster, shall make lead wire connections or fire the shot."

"Section 1926.907 Use of safety fuse:

- (a) A safety fuse that has been hammered or injured in any way shall not be used.
- (d) Only a cap crimper shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.
- (h) Safety fuses of at least the following minimum lengths shall be used:
 - (1) At least a 36-inch length for 40-second-per-foot safety fuse and
 - (2) At least a 48-inch length for 30-second-per-foot safety fuse.
- (i) At least two people shall be present when multiple cap and fuse blasting is done by hand lighting methods."

"Section 1926.908 Use of detonating cord and shock tube:

- (a) A detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives shall be used.
- (b) Detonating cord shall be handled and used in the same manner as other explosives.
- (d) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up. Shock tube shall never be pulled, stretched, kinked, twisted, mashed or abused in

- any way which could cause the tube to break or otherwise malfunction.
- (e) Detonating cord connections, shock tube connections and splices shall be competent and positive in accordance with the manufacturer's recommendations. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry. Down-the-hole shock tube splices are prohibited.
- (g) All detonating cord connections, shock tube connections and splices shall be inspected before firing the blast.
- (h) When detonating cord or shock tube millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord or shock tube, the practice shall conform strictly to the manufacturer's recommendations.
- (i) When connecting a detonator to detonating cord or shock tube, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.
- (k) Shock tube shall not be connected to the initiation device until the blast is to be fired.

"Section 1926.909 Firing the blast:

- (a) The Blaster-in-Charge shall establish a code of blasting signals and all blast site employees shall familiarize themselves with and conform to the code. As a minimum, the code shall:
 - (1) contain audible pre-blast and audible all clear signals, and
 - (2) contain an emergency method for guards, flagmen, or other authorized employees to signal "do not fire", and
 - (3) prohibit sounding of the all clear signal until the blaster has checked the blast site for misfires. Table U-1 is an example of a code of blasting signals that would meet these requirements. Further, the Blaster-in-Charge shall require the placement of Danger signs and posting of the blasting signals when personnel not

- associated with the blasting operation are within the blast area.
- (b) Before a blast is fired, the Blaster-in-Charge shall make certain that all surplus explosives are in an area meeting the ATF explosive storage requirements contained in 27 CFR 55 and that all persons are at a safe distance, or under sufficient cover.
- (c) Flagmen shall be safely stationed on highways which pass through the blast area so as to stop traffic during blasting.
- (d) The Blaster-in-Charge shall fix the time of blasting.
- (e) Before firing an underground blast, warning shall be given, and all possible entries into the blast area, and any entrances to any working place where a drift, raise, or other opening is about to hole through, shall be carefully guarded to prevent entry into the area. The Blaster-in-Charge shall make sure that all surplus employees have been removed from the blast area and that all personnel are out of the blast area."

"Section 1926.910 Inspection after blasting:

- (b) Sufficient time shall be allowed, not less than 15 minutes in tunnels, for the smoke and fumes to dissipate before returning to the blast site. Subsequently, the blaster shall inspect the blast site and surrounding rubble for signs of misfires. If a misfire is found, employee access to the blast area shall be controlled pursuant to §1926.911. Where fumes, fire, or dust are a potential hazard (e.g., in tunnels), the muck pile shall be wetted down prior to general employees returning to the blast site."

"Section 1926.911 Misfires:

- (a) If a misfire is found, the Blaster-in-Charge shall invoke sufficient safeguards to exclude all employees from the potential blast area.
- (b) No work shall be done except that necessary to remove the hazard of the misfire. Only those employees necessary to do the work shall enter the potential blast area. Only the Blaster-in-Charge, and the absolute minimum number of competent, personnel (as defined in 29 CFR 1926 Subparts Land P), necessary to assess

- the situation shall approach the hole to inspect the misfire.
- (c) The Blaster-in-Charge shall determine the safest steps for removing the hazard of the misfire. During development and implementation of these steps, the Blaster-in-Charge shall comply with the manufacturer's recommendations. Further, the guidelines of the Safety in the Transportation, Storage, Handling and Use of Explosive Materials, IME Safety Library Publication No. 17, which is incorporated herein by reference, including any subsequent amendments and editions, shall be utilized.
- (d) If there are any misfires while using safety fuse and blasting cap, all employees shall remain out of the potential blast area for at least 30 minutes. If electric detonators, shock tube, gas tube or detonating cord systems or materials were used and a misfire occurred, the waiting period may be reduced to 15 minutes. In either case, the Blaster-in-Charge shall assess the circumstances and invoke a safe waiting period before allowing any personnel to enter the potential blast area. All lines shall be carefully traced and a search made for unexploded charges.
- (e) No drilling, digging, or picking shall be permitted until all misfires have been detonated or the Blaster-in-Charge approves the work."

"Section 1926.912 Underwater blasting:

- (a) In underwater blasting, no shot shall be fired without the approval of the Blaster-in-Charge.
- (c) Only water-resistant detonators and detonating cords shall be used for all marine blasting. Loading shall be done through a nonsparking loading tube when tube is necessary.
- (d) No blast shall be fired while any vessel under way is closer than 1,500 feet to the blast site. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired. Note: The warning signals and personnel safety provisions of 1926.909 also apply.
- (g) The storage and handling of explosives aboard vessels used in underwater blasting operations shall be in accordance with the provisions

- of this Standard on handling and storing explosives.
- (h) Prior to firing the blast, the blaster shall determine the method(s) that will be used for detecting misfires and take preparatory steps (e.g., noting obvious indications of misfire, attaching float(s) that will be released by the firing, staging underwater cameras, or other appropriate means). Misfires shall be handled in accordance with the requirements of §1926.911."
- "Section 1926.913 Blasting in excavation work under compressed air:
- (b) When detonators or explosives are brought into an air lock, the only employees who shall be permitted to enter the airlock are the powderman, blaster, lock tender and the employees necessary for carrying the detonators or explosives. No other material, supplies, or equipment shall be locked through with the explosives.
- (d) See §1926.900(a) and §1926.901.
- (f) The explosives suitable for use in wet holes shall be water-resistant and shall be IME Fume Class 1."
- "Section 1926.914 Definitions applicable to this subpart:
- (a) "American Table of Distances" (also known as Quantity Distance Tables)--the current edition of the American Table of Distances for Storage of Explosives approved by IME.
- (b) "Approved storage facility"-A facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under authority of the ATF. (See 27 CFR Part 55.)
- (c) "Blast area" - The area within the influence of flying debris, gases, and concussion from an explosion that may cause injury to property or persons.
- (e) "Blasting agent" - A blasting agent is a mixture consisting of a fuel and oxidizer used for blasting where the finished (mixed) product cannot be detonated with a No. 8 test blasting cap when confined.
- (j) "Detonator"- Blasting caps, electric blasting caps, electric delay blasting caps, and non-electric delay blasting caps.
- (k) "Electric detonator" - A detonator designed for and capable of detonation by means of an electric current.
- (l) "Electric blasting circuitry"
- (1) Bus wire. An expendable wire, used in parallel or series, in parallel circuits, to which are connected the leg wires of electric detonators.
- (2) Connecting wire. An insulated expendable wire used between electric detonators and the leading wires or between the bus wire and the leading wires.
- (3) Lead wire. An insulated wire used between the electric power source and the electric detonator circuit.
- (4) Permanent firing line. A permanently mounted insulated wire used between the electric power source and the electric detonator circuit.
- (m) "Electric delay detonators" - Detonators designed to detonate at a predetermined period of time after energy is applied to the ignition system.
- (n) "Explosives"
- (1) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified by the U.S. Department of Transportation (USDOT).
- (2) Any material designated as a Class 1 Explosive by the USDOT. Under the USDOT classification system, Class 1 materials are divided into the following six divisions:
 Division 1.1 - Mass exploding (Formerly Class A)
 Division 1.2 - Projection hazard (Formerly Class A or B)
 Division 1.3 - Fire hazard, minor blast or projection hazard (Formerly Class B)
 Division 1.4 - Minor explosion hazard, not mass

- detonating (Formerly Class C)
 Division 1.5 - Insensitive explosives, very little probability of initiation or transition from burning to detonation during transport. (Formerly Blasting Agent).
 Division 1.6 - Insensitive articles which do not mass detonate. (No commercial explosives in this division)
- (p) "Magazine" - Any container, building or structure, other than an explosives manufacturing building, used for the storage of explosives.
 - (s) "Non-electric delay detonator" - A detonator with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from miniaturized detonating cord or shock tube.
 - (v) "Safety fuse" - A flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing detonators.
 - (x) "Stemming" - An inert incombustible material or device used to confine or separate explosives in a drill hole, or to cover explosives in mud-capping.
 - (z) "Water-based explosives" - Explosive materials that contain substantial quantities of water in their formulation. They may be bulk or packaged products and may be cap sensitive or non cap sensitive (blasting agents). Examples of water-based explosives include emulsions, slurries and water gels.
 - (bb) "Appropriate authorities" or "Authorities having jurisdiction" - local, State and federal law enforcement authorities required to be notified by law or permit or this Standard.
 - (cc) "Blaster-in-Charge" - The person who meets the qualifications contained in §1926.901 and who is authorized to oversee the blasting operations and to use explosives for blasting purposes.
 - (dd) "Blast site" - The area where explosive material is handled during loading, including the perimeter formed by loaded blast holes, and 50 feet (15.2 meters) in all directions from loaded holes. A minimum distance of 30 feet (9.1 meters) may replace the 50 feet (15.2 meters) if the perimeter of loaded holes is demarcated with a barrier. The 50 feet (15.2 meters) and alternative 30 feet (9.1 meters) requirements also apply in all directions along the full depth of the holes. In underground mines, 15 feet of solid rib or pillar may be substituted for the 50 feet distance.
 - (ee) "Shock tube" - A small diameter plastic tube used for initiating detonators. Shock tube contains a limited amount of reactive material so that the energy transmitted through the tube by means of detonation wave is guided through, and confined within, the walls of the tube.
 - (ff) "Blasting operation" - Any work or activities associated with the use of explosives on a blast site.
 - (gg) "Attended" - Presence of an individual or continuous monitoring to prevent unauthorized entry or access."
- ~~(5)(6)~~ Subpart V -- Power Transmission and Distribution -- 1926.950(c)(1)(i) is rewritten to read as follows:
 "(i) The employee is insulated or guarded from the energized part (insulating gloves or insulating gloves with sleeves rated for the voltage involved shall be considered insulation of the employee only with regard to the energized part upon which work is being performed), or"
- ~~(6)(7)~~ Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030, excluding subparagraph (e) HIV and HBV Research Laboratories and Production Facilities, into the Safety & Health Regulations for Construction at 29 CFR 1926.1130. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- Hepatitis B Vaccine Declination (Mandatory) -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of Occupational Exposure under subsection (b) Definitions:
 "Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, or repair, including painting and decorating."

Authority G.S. 95-131; 150B-21.6.

PROPOSED RULES

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Martin Agricultural Center, 2900 Hwy 125 South, Williamston, NC.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03K .0207 and amend the rules cited as 15A NCAC 03I .0101, .0120; 03J .0111; 03K .0101, .0103-.0104, .0107, .0205, .0302; 03O .0201, .0208, .0501. Notice of Rule-making Proceedings was published in the Register on November 1, 2000 for 15A NCAC 03I .0120; 03K .0101, .0103-.0104, .0107, .0205, .0207, .0302; 03O .0201, .0208, .0501 and May 15, 2001 for 15A NCAC 03I .0101; 03J .0111.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: February 6, 2002

Time: 7:00 p.m.

Location: Hilton Wilmington Riverside, 301 N. Water St., Wilmington, NC

Public Hearing:

Date: February 26, 2002

Time: 7:00 p.m.

Location: Duke University Marine Lab, Pivers Island, Beaufort, NC

Public Hearing:

Date: March 19, 2002

Time: 7:00 p.m.

Location: College of the Albemarle, Room 202 – B Building, 1208 N. Road St., Elizabeth City, NC

Public Hearing:

Date: April 22, 2002

Time: 7:00 p.m.

Location: Bob Martin Agriculture Center, 2900 Hwy 125 South, Williamston, NC

Reason for Proposed Action: *The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the Marine Fisheries Commission to adopt rules to implement the provisions of the Fishery Management Plans. Final approval of the Oyster Fishery Management Plan and the Clam Fishery Management Plan adopted under the authority of the Fisheries Reform Act of 1997 was made at the August 16-17, 2001 Marine Fisheries Commission meeting. These Rule changes are requirements of those plans.*

Comment Procedures: *Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the four public hearings which will begin at 7 p.m. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The public comment period will end on April 22, 2002. The Marine Fisheries Commission will consider the public comments in regard to adoption of these Rules as permanent rules at a business session scheduled for April 23-24, 2002 at the Bob*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (A) Seines less than 30 feet in length;
 - (B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
 - (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (G) Cast Nets;
 - (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
 - (I) Up to two minnow traps.
- (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
- (4) Possess. Any actual or constructive holding whether under claim of ownership or not.

PROPOSED RULES

- (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (6) Use. Employ, set, operate, or permit to be operated or employed.
- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
 - (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
 - (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
- (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important fish species.
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

PROPOSED RULES

- (B) Shellfish producing habitats are those areas in which shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
 - (A) Animals:
 - (i) Sponges (Phylum Porifera);
 - (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
 - (iii) Bryozoans (Phylum Bryozoa);
 - (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
 - (v) Mussel banks (Phylum Mollusca:Gastropoda);
 - (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
 - (A) Fire corals and hydrocorals (Class Hydrozoa);
 - (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
 - (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
 - (i) Sea fans (Gorgonia sp.);
 - (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
 - (iii) Sea pansies (Renilla sp.).
- (26) Shellfish production on leases and franchises:
 - (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support such trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.

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- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:
 - (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferral to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- (48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting peeler crabs to a permitted shedding operation.
- (51) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is

completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

- (52) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

Authority G.S. 113-134; 143B-289.52.

15A NCAC 03I.0120 POSSESSION OR TRANSPORTATION LIMITS

- (a) It is unlawful to possess any species of fish which is subject to size or harvest restrictions, while actively engaged in a fishing operation, unless all fish are in compliance with the restrictions for the waterbody and area being fished.
- (b) It is unlawful to import into the state species of fish native to North Carolina for sale in North Carolina that do not meet established size limits, except as provided in 15A NCAC 03K ~~.0202 (e)~~, .0202(c), 03K .0207, and 03K .0305.

Authority G.S. 113-134; 113-170; 113-170.4; 113-170.5; 113-182; 143B-289.52.

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0111 FYKE OR HOOP NETS

- (a) It is unlawful to use fyke or hoop nets in coastal fishing waters without:
- (1) the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net; or net-
 - (2) when a stake is not used, each net is marked by attaching a floating buoy or a buoy or each end of the line, when multiple nets are connected by a line. Buoys shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy.
 - (3) Such identification must include the gear owner's current motorboat registration number and or- the gear owner's last name and initials.
- (b) It is unlawful to use a fyke or hoop net within 200 yards of any operational pound net set.
- (c) It is unlawful to use a fyke or hoop net within 150 yards of any railroad or highway bridge.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 - SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

- (a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 03K .0103, .0104, .0107, ~~.0104~~, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; (252) 726-7021.
- (b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.
- (c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.
- (d) It is unlawful to possess or sell oysters, clams, or mussels taken from the waters of North Carolina except as provided in G. S. 113-169.2 (i) without a harvest tag affixed to each container of oysters, clams or mussels. Harvest tags shall be affixed by the harvester and shall meet the following criteria:
- (1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
 - (2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. Bulk shipments in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealers tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
 - (3) Tags shall contain legible information arranged in the specific order as follows:
 - (A) The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.
 - (B) The date of harvest.

- (C) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
- (D) Type and quantity of shellfish.
- (E) The following statement will appear in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52.

15A NCAC 03K .0103 SHELLFISH OR SEED MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet any of the following criteria. The area has:

- (1) Conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) Shellfish populations or shellfish enhancement projects which may produce commercial quantities of shellfish at ten bushels or more per acre;
- (3) Shellfish populations or shellfish enhancement projects which may produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) polluted areas.

(b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Shellfish/Seed Management area, area which has been designated by proclamation. These areas will be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take oysters or clams from any Shellfish Shellfish/Seed Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of oysters or and clams and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(d) It is unlawful to take oysters or clams from Seed Management Areas for planting on shellfish leases or franchises private bottoms without first obtaining a Permit to Transplant Oysters from Seed Management Areas permit from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03K .0104 PERMITS FOR PLANTING SHELLFISH FROM PROHIBITED/POLLUTED AREAS

(a) It is unlawful to take oysters or clams from prohibited (polluted) polluted public waters for planting on leases and

franchises except as private bottoms except: (1) — As authorized by G.S. 113-203, provided such person shall first obtain a permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b)(2) The season for relaying clams shall be between Between April 1 and through May 15 for clams and the season for relaying oysters shall be for a specified six week period between the date of beginning at the statewide closure of oyster season and June 30, as determined by the Fisheries Director, season.

(c) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule may not apply.

(d)(b) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds for which the owner has obtained a permit to relay oysters and clams from prohibited (polluted) polluted public waters.

Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.52.

15A NCAC 03K .0107 DEPURATION OF SHELLFISH

(a) It is unlawful to take clams or clams, oysters or mussels from the public or private prohibited (polluted) waters of the state for the purpose of depuration in an approved depuration operation except when the harvest will utilize shellfish that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the direct supervision of the Division of Marine Fisheries or and/or the Division of Environmental Health.

(b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters shellfish for depuration:

- (1) Specify species;
- (2) Specify areas except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) Specify harvest days;
- (4) Specify time period
- (5) Specify quantity and/or size;
- (6) Specify harvest methods;
- (7) Specify record keeping requirements.

(c) Depuration Harvest permits:

- (1) It is unlawful for individuals to harvest All persons harvesting clams, clams or oysters or mussels from prohibited (polluted) waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on shall first obtain a Depuration Permit permit from the Division of Marine Fisheries and Division of Environmental Health setting forth the method of harvest to be employed. Permits will be issued to licensed North Carolina Clam or Oyster Dealers only. Permittees and designees harvesting under Depuration Permits must have a current Shellfish License or Shellfish

- Endorsement on a Standard or Retired Standard Commercial Fishing License.
- (2) In addition to information required in 15A NCAC 03M .0501, the permit application shall provide the name, address, location and telephone number of the depuration operation where the shellfish will be depurated.
- (3) Clam or Oyster Dealers ~~Persons~~ desiring to obtain prohibited (polluted) clams or oysters harvest polluted shellfish for depuration shall apply for a depuration harvest permit at least 15 days prior to initiation of operation, harvest.
- (d) Transport of clams or clams, oysters ~~or mussels~~ for depuration:
- (1) Clams or Clams, oysters ~~or mussels~~ harvested from prohibited (polluted) waters for depuration in an approved depuration operation located within the State of North Carolina shall be transported under the direct supervision of the Division of Marine Fisheries and/or the Division of Environmental Health.
- (2) Clams or Clams, oysters ~~or mussels~~ harvested from prohibited (polluted) waters for depuration in an approved depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.
- (e) It is unlawful to ship clams or oysters, shellfish harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.
- (f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

Authority G.S. 113-134; 113-182; 113-201; 143B-289.52.

SECTION .0200 - OYSTERS

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM PRIVATE SHELLFISH BOTTOMS

- (a) It is unlawful to take, possess, buy, or sell oysters from shellfish leases or franchises private beds during the open season unless such oysters have been culled in accordance with Rule 15A NCAC 03K .0202.
- (b) ~~It is unlawful to take, possess, or sell oysters from private beds without first securing from the Fisheries Director a permit showing the name of the person or persons taking the oysters, the location of the private bed, the daily quantity to be taken, and the method of harvest.~~ It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder permittee delivering to the purchaser or other recipient a certification, on a form provided by the Division, certification that the oysters were taken from a valid shellfish lease or franchise, pursuant to a valid permit. Certification forms shall be furnished by the Division to lease and franchise

~~holders upon request. Department to each permittee upon issuance of a permit.~~

- (c) It is unlawful for lease or franchise holders or their designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from shellfish leases or franchises.

Authority G.S. 113-134; 113-182; 113-201; 143B-289.52.

15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT EXEMPTION

Possession and sale of oysters by a hatchery or oyster aquaculture operation and purchase and possession of oysters from a hatchery or oyster aquaculture operation shall be exempt from bag and size limit restrictions set under authority of 15A NCAC 03K .0201 and 03K .0202. It is unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture Operations Permit.

Authority G.S. 113-134; 113-182; 143B-289.52.

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0302 MECHANICAL HARVEST SEASON

(a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom except that the Fisheries Director may, by proclamation, open and close the season at any time in the Atlantic Ocean and only between December 1 through March 31 in internal waters for the use of mechanical clam harvesting gear. The Fisheries Director is further empowered to impose any or all of the following restrictions:

- (1) specify number of days;
- (2) specify areas;
- (3) specify time period;
- (4) specify quantity or and/or size; and
- (5) specify means/methods. Any proclamation specifying means or and/or methods must be approved by the Marine Fisheries Commission prior to issuance.

(b) The Fisheries Director may, by proclamation, open only areas in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC" Marker at Topsail Beach which have been opened at any time from January, 1979, 1977, through September, 1988, to the harvest of clams by mechanical methods, 1988, and The Fisheries Director may, by proclamation, open the Atlantic Ocean and the area or any portion of the area in Pamlico Sound bounded by a line beginning at a point 35° 01.5000' N - 76° 10.5000' W; running to a point at 35° 01.5000' N - 76° 06.0000' W; thence to a point at 35° 06.0000' N - 76° 06.0000' W; thence to a point at 35° 06.0000' N - 76° 10.0000' W; thence back to the point of beginning to the harvest of clams by mechanical methods. Other areas opened for purposes as set out in 15A NCAC 03K .0301(b) will open only for those purposes.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03O - LICENSES, LEASES, AND

FRANCHISES

SECTION .0200 - LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

(a) All areas of the public bottoms underlying coastal fishing waters ~~shall meet shall:~~

~~(1) Meet~~ the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish purposes:

~~(1)(A)~~ The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.

~~(2)(B)~~ The lease area must not be closer than 100 feet to a developed shoreline. In an area bordered by undeveloped shoreline, no minimum setback is required. When the area to be leased borders the applicant's property or borders the property of riparian owners who have consented in a notarized statement, the Secretary may reduce the distance from shore required by this Rule.

~~(3)(C)~~ Unless the applicant can affirmatively establish a necessity for greater acreage through the management plan that is attached to the application and other evidence submitted to the Secretary, the lease area shall not be less than one-half acre and shall not exceed:

~~(A)(i)~~ 10 acres for oyster culture;

~~(B)(ii)~~ 5 acres for clam culture; or

~~(C)(iii)~~ 5 acres for any other species.

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination of the leasehold, shellfish bottom leases shall:

~~(1) Produce and market 10 25 bushels of shellfish per acre per year; and year to meet the minimum commercial production requirement or plant 25 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. Planting effort shall be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after March 1, 1994.~~

~~(2) Plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.~~

~~(3) The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of this Paragraph:~~

~~(A) Only shellfish planted, produced or marketed according to the definitions~~

in 15A NCAC 03I .0101 (26), (27) and (28) shall be submitted on production/utilization forms for shellfish leases and franchises.

(B) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.

(C) Production and marketing information and planting effort information are compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet ~~either~~ the production requirement ~~and or~~ the planting effort requirement within the dates set forth to be judged in compliance with these standards.

(D) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

(i) 300 oysters, 400 clams, or 400 scallops equal one bushel;

(ii) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell and 90 pounds of fossil stone equal one bushel.

(E) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

(F) These production and marketing rates shall be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates shall be averaged over the first five year period for initial leases and over the most recent

~~three year period thereafter. Three year averages for production and marketing rates shall be computed irrespective of transfer of the shellfish lease or franchise.~~

~~(G)(F)~~ All bushel measurements shall be in U.S. Standard Bushels.

~~(c)(b)~~ Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

~~(d)(e)~~ Water columns superjacent to duly recognized perpetual franchises shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

~~(e)(d)~~ Water column leases must produce and market ~~40~~ ~~100~~ bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year ~~as determined by Division biologists~~ to meet commercial production by planting effort. ~~Planting effort shall be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after March 1, 1994.~~ The ~~standards~~ ~~rules~~ for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph ~~(b)(a)~~ of this ~~Rule except that either the produce and market requirement or the planting requirement must be met.~~ ~~Rule.~~

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52.

15A NCAC 030 .0208 CANCELLATION

(a) In addition to the grounds established by G.S. 113-202, the Secretary shall begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish in accordance with 15A NCAC 030 .0201 at the following rates:

- ~~(1) For shellfish bottom leases and franchises, 25 bushels per acre per year.~~
- ~~(2) For water column leases, 100 bushels per acre year.~~

~~These production and marketing rates shall be averaged over the most recent three year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates shall be averaged over the first five year period for initial leases and over the most recent three year period thereafter. Three year averages for production and marketing rates shall be computed irrespective of transfer changes of ownership of the shellfish lease or franchise.~~

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.

(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 03P .0102.

(e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 03P .0102.

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52.

SECTION .0500 – PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application must be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles, ~~state identification card~~, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and their designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;

PROPOSED RULES

- (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
- (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information may also be required by the Division for specific permits.
- (b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
 - (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.
- (c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
 - (1) Permit to Transplant (Prohibited) Polluted Shellfish;
 - (2) Permit to Transplant Oysters from Seed Management Areas;
 - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) ~~Areas; Areas-~~
 - (5) Depuration Permit.
- (d) A permittee must hold a valid:
 - (1) ~~valid~~ Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that ~~category; and category.~~
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
 - (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (g) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K

- .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.
- (h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
 - (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
 - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- (j) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.
- (k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
- (l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 03.
- (m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (o) Permit applications shall be available at all Division Offices.
- (p) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .1703 and repeal the rule cited as 15A NCAC 07K .0203. Notice of Rule-making Proceedings was published in the Register on September 17, 2001 for 15A NCAC 07H .1703 and for 15A NCAC 07K .0203, was published in the Register on September 15, 1999 and September 17, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 23, 2002

Time: 4:30 p.m.

Location: K.C. White Center, Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC

Reason for Proposed Action:

15 NCAC 07H .1703 - This Rule is proposed for amendment because at present, there is no charge for sandbag placement authorized under the general permit for emergency work [15A NCAC 07H .1700]. This is inconsistent with the amount of staff time and effort necessary in permitting and monitoring sandbags. Although the number of general permits for sandbags is not significant on a yearly basis, the record-keeping effort and complexity of enforcement issues are. The Coastal Management staff proposed the fee to offset future monitoring and record-keeping costs. For this reason, the staff also recommended that the fee be higher than other Coastal Area Management Act (CAMA) general permits (\$250 instead of \$100 or \$50). Other emergency work authorized under the general permit would not be subject to the fee.

15A NCAC 07K .0203 - This rule is proposed for repeal because currently, there is no fee for bulkheads, riprap and piers that meet certain exemption criteria [15A NCAC 07K .0203]. But the staff time involved in authorizing these structures is similar to that of a general permit. A site visit is always required, and proper written authorization must be given to the applicant. If the CRC does away with the exemption, projects that currently qualify for it could be authorized under a CAMA general permit. Staff does not issue many exemptions for bulkheads, riprap or piers, so eliminating this type of authorization should not create any significant hardship to the public. Staff estimates that only 5 percent of bulkhead, riprap and pier projects are authorized under the exemption. The remaining 95 percent are authorized by permit. General permits for these projects cost \$100.

Comment Procedures: Comments may be submitted to Charles S. Jones, Assistant Director, Division of Coastal Management, 151-B, HWY 24, Hestron Plaza II, Morehead City, NC 28557. 252-808-2808. Comments will be accepted through February 1, 2002.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

15A NCAC 07H .1703 PERMIT FEE

The agency shall not charge a fee for permitting work necessary to respond to emergency situations except in the case when a temporary erosion control structure is used. In those cases, the applicant must pay a permit fee of two hundred and fifty dollars (\$250.00) made payable to the Department.

Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119.

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

15A NCAC 7K .0203 PRIVATE BULKHEADS: RIPRAP: AND PIERS EXEMPTED

~~(a) The NC Coastal Resources Commission hereby exempts from the Coastal Area Management Act permit requirement work in the estuarine shoreline, public trust shoreline, and public trust waters areas of environmental concern necessary to maintain, repair, and construct private bulkheads with backfill, and to place riprap material along shorelines, and construct piers or mooring facilities in waters of North Carolina. This exemption is subject to the following conditions and limitations:~~

- ~~(1) The activities exempted by this Rule shall be private, non-commercial activities conforming to the standards and conditions contained in this Rule. This exemption does not apply to development associated with multi-unit residential developments larger than duplexes or to marinas, commercial harbors, community or neighborhood boat access, fish houses or similar commercial activities.~~
- ~~(2) This exemption is applicable only along estuarine and public trust shorelines void of wetland vegetation types described in G.S. 113-229, or where all construction is to be accomplished landward of such vegetation, or where the pier is elevated above said wetlands.~~
- ~~(3) This exemption only applies to bulkheads, riprap, and piers in non-oceanfront areas.~~
- ~~(4) This exemption does not eliminate the need to obtain any other required federal, state, or local authorization.~~
- ~~(5) Before beginning any work under this exemption the Department of Environment and Natural Resources representative must be notified of the proposed activity to allow on-site review of the bulkhead, riprap material, or pier alignment. Notification may be by telephone, in person, or in writing. Notification must include:

 - ~~(A) the name, address, and telephone number of landowner and location of work including county, nearest community, and water body;~~~~

~~(B) — the dimensions of the proposed pier, bulkhead with backfill, or the area dimensions to be covered by placement of riprap material;~~

~~(C) — confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work. (These statements do not have to be presented at the time of notification of intent to perform work, but the permittee must make it available to CRC agents at their request.)~~

~~(6) — The landowner must agree to perform the work authorized in this Rule in a manner so as to conform with standards for development in the estuarine or public trust shoreline area of environmental concern.~~

~~(b) Bulkheads and Riprap: Conditions~~

~~(1) — The permittee shall maintain structure of areas of riprap material authorized in this Rule in good condition.~~

~~(2) — Bulkhead with backfill, and placement of riprap material exempted by this Rule shall be limited to a maximum shoreline length of 200 feet.~~

~~(3) — The bulkhead backfill and riprap materials must be obtained from an upland source.~~

~~(4) — No excavation is exempted under this Rule except that which may be required for installation of the riprap, bulkhead all, deadmen, cables, or pilings.~~

~~(5) — The proposed bulkhead alignment or area for placement of riprap material must be staked or flagged by the landowner in consultation with, or approved by, a state or federal permit officer prior to any construction activity. The bulkhead must be positioned so as not to extend more than an average distance of two feet waterward of the normal high water line or normal water line; in no place shall the bulkhead be more than five feet waterward of the normal high water line or normal water line. Construction activities must begin 90 days after approval of the alignment or area.~~

~~(6) — The bulkhead must be solid structure constructed of treated wood, concrete slabs, metal sheet piles, corrugated asbestos sheeting, or similar materials. A structure made of organic material, tires, car bodies, or similar materials is not considered a bulkhead.~~

~~(7) — The bulkhead must be structurally tight so as to prevent seepage of backfill materials through the bulkhead. The bulkhead must be constructed prior to any backfilling activities.~~

~~(8) — Riprap material must consist of clean rock or masonry materials such as marl, brick, or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs,~~

~~wood debris, organic material or similar material are not considered riprap.~~

~~(c) Piers: Conditions~~

~~(1) — Exemptions for pier construction along natural shorelines are available only for lots with shoreline lengths 75 feet or greater. Exemptions may be used on shorelines in human-made canals and basins regardless of shoreline length.~~

~~(2) — Piers and mooring facilities must not exceed 100 feet in total length off shore; must not be within 150 feet of the edge of a federally-maintained channel; must not extend past the four foot normal low water contour line (four foot depth at normal low water) of the water body; must not exceed six feet in width; must not include an enclosed structure; and must not interfere with established navigation rights of other users of the water body and must have a minimum setback of 15 feet between any part of the pier and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The four foot normal low water restriction shall not apply to piers constructed in canals and basins dredged from areas above normal high water (NHW) or normal water level (NWL).~~

~~(3) — This exemption shall not apply to docks and piers being built within shellfish franchises or leases unless the applicant for authorization to construct can provide written confirmation of no objections to the proposal from the lessee.~~

~~(4) — Piers authorized by this exemption shall be for the exclusive use of the land owner, and shall not provide either leased or rented docking space or any other commercial services. Piers and mooring facilities designed to provide docking space for more than two boats shall, because of their greater potential for adverse impacts, be reviewed through the permitting process, and, therefore, are not authorized by this exemption.~~

~~(5) — Piers and docks shall in no case extend more than 1/4 the width of a natural water body, canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor longer than 1/3 the width of the water body.~~

- ~~(6) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.~~
- ~~(7) Any portion of a pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.~~
- ~~(8) "T"s, finger piers, platforms, and decks of piers must not exceed a combined total area of 200 square feet.~~
- ~~(9) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.~~

21 NCAC 36 .0227 APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

(a) Definitions:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Only a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the nurse practitioner, by virtue of RN licensure, is independently accountable for those nursing acts which he or she may perform.
- (5) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Part (c)(2)(D) of this Rule.
- (6) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (7) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for on-going supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (8) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision, consultation, collaboration and evaluation of the medical acts performed by the nurse practitioner as defined in the site specific written protocols.
 - (A) The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the site specific written protocols.
 - (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.

Authority G.S. 113A-103(5)c; 113A-118(a).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0227, .0301-.0302, .0321 - .0322, and repeal the rules cited as 21 NCAC 36 .0310, .0315, .0325. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 24, 2002

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 3724 National Drive, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0227 – To provide an equitable distribution of fees based on costs of nurse practitioner services by the Board of Nursing and the Medical Board.

21 NCAC 36 .0301-.0302, .0310, .0315, .0321 - .0322, .0325 – The Board has been evaluating all of its regulatory activities and making changes to become more cost efficient in carrying out our responsibilities. Because the Board's statutory authority does not require Board approval of clinical agencies for use by nursing education programs, an estimated \$100,000.00+ in annual savings would be recognized as a result of the proposed changes to these Rules.

Comment Procedures: *Written comments should be submitted to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129, by February 1, 2002.*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

- (C) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation if fully licensed.
- (9) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall be held accountable for the supervision, consultation, collaboration and evaluation of medical acts by the nurse practitioner in accordance with the site specific written protocols when the Primary Supervising Physician is not available.
- (A) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
- (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (C) A physician in a graduate medical education program who is also practicing in a non-training situation may be a back-up supervising physician to a nurse practitioner in the non-training situation if fully licensed and has signed an agreement with the nurse practitioner and the primary supervising physician.
- (10) "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.
- (11) "Written protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting. Clinical practice issues that are not covered by the written protocols require nurse practitioner/physician consultation, and documentation related to the treatment plan.
- (12) "Volunteer practice" means practice without expectation of compensation or payment (monetary, in kind or otherwise) to the nurse practitioner either directly or indirectly.
- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (14) "Interim Status" means the privilege granted by the Boards to a graduate of an approved nurse practitioner education program or a registered nurse seeking initial approval in North Carolina with limited privileges, as defined in Part (c)(2)(D) of this Rule while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed 18 months while awaiting notification of successful completion of the national certification examination.
- (16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the National Certification Board of Pediatric Nurse Practitioners and Nurses (PNP/N).
- (b) Scope of Practice. The nurse practitioner shall be responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner shall be educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Paragraph (i) of this Rule. These services include but are not restricted to:
- (1) promotion and maintenance of health;
 - (2) prevention of illness and disability;
 - (3) diagnosing, treating and managing acute and chronic illnesses;
 - (4) guidance and counseling for both individuals and families;
 - (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
 - (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
 - (7) evaluating health outcomes.
- (c) Nurse Practitioner Approval.
- (1) Qualifications for nurse practitioner approval. A registered nurse shall be approved by the Medical Board and the Board of Nursing before the applicant may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an applicant who:
 - (A) is duly licensed to practice as a registered nurse in North Carolina;
 - (B) has successfully completed an approved educational program as outlined in Paragraph (d) of this Rule; or, as of January 1, 2000, meets the certification requirements set forth in Subparagraph (d)(2) of this Rule;

- (C) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;
 - (D) submits any information deemed necessary to evaluate the application;
 - (E) has a collaborative practice agreement with a primary supervising physician; and
 - (F) pays the appropriate fee.
- (2) Application for nurse practitioner approval.
- (A) Application for nurse practitioner approval shall be made upon the appropriate forms and shall be submitted jointly by the nurse practitioner and primary supervising physician(s).
 - (B) Applications for first-time approval in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:
 - (i) the Board of Nursing will verify compliance with Parts (c)(1)(A) - (D) of this Rule;
 - (ii) the Medical Board will verify compliance with Parts (c)(1)(D) - (F) of this Rule; and
 - (iii) the appropriate Board will notify applicant of final approval status.
 - (C) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:
 - (i) addition or change of primary supervising physician shall be submitted to the Medical Board;
 - (ii) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee; and
 - (iii) the appropriate Board will notify applicant of final approval status.
 - (D) Interim status for nurse practitioner applicant may be granted to: a registered nurse who is a new graduate of an approved nurse practitioner educational program as set forth in Paragraph (d) of this Rule; or a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational requirement as set forth in Paragraph (d) of this Rule with the following limitations:
 - (i) no prescribing privileges;
 - (ii) primary or back-up physicians shall be continuously available for appropriate ongoing supervision, consultation, collaboration and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
 - (iii) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Part (i)(4)(D) of this Rule; and
 - (iv) may not exceed period of six months.
 - (E) Beginning January 1, 2000, first time applicants who meet the qualifications for approval, but are awaiting certification from a national credentialing body approved by the Board of Nursing, may be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed 18 months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.
 - (F) The registered nurse who was previously approved to practice as a nurse practitioner in this state shall:
 - (i) meet the nurse practitioner approval requirements as stipulated in Parts (c)(1)(A), (C) - (F) of this Paragraph;
 - (ii) complete the appropriate application;
 - (iii) receive notification of approval; and
 - (iv) meet the consultation requirements as outlined in Parts (i)(4)(C) - (D) of this Rule.
 - (G) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, the Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved

- in accordance with this Subchapter. Special consideration may be given in an emergency situation.
- (H) Volunteer Approval for Nurse Practitioners. The Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications as outlined in Parts (c)(1)(A) - (F) and (2)(A) - (G) of this Rule.
- (d) Requirements for Approval of Nurse Practitioner Educational Programs.
- (1) A nurse practitioner applicant who completed a nurse practitioner educational program prior to December 31, 1999 shall provide evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.
- (A) The core curriculum shall contain as a minimum the following components:
- (i) health assessment and diagnostic reasoning including:
 - (I) historical data;
 - (II) physical examination data;
 - (III) organization of data base;
 - (ii) pharmacology;
 - (iii) pathophysiology;
 - (iv) clinical management of common health care problems and diseases related to:
 - (I) respiratory system;
 - (II) cardiovascular system;
 - (III) gastrointestinal system;
 - (IV) genitourinary system;
 - (V) integumentary system;
 - (VI) hematologic and immune systems;
 - (VII) endocrine system;
 - (VIII) musculoskeletal system;
 - (IX) infectious diseases;
 - (X) nervous system;
 - (XI) behavioral, mental health and substance abuse problems;
 - (v) clinical preventative services including health promotion and prevention of disease;
- (vi) client education related to Parts (d)(1)(A)(iv) and (v) of this Rule; and
- (vii) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.
- (B) Nurse practitioner applicants who may be exempt from components of the core curriculum requirements listed in Subparagraph (d)(1)(A) of this Rule are:
- (i) Any nurse practitioner approved in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
 - (ii) A nurse practitioner certified by a national credentialing body who also provides evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall be exempt from core curriculum requirements in Parts (d)(1)(A)(iv) - (vii) of this Rule. Evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall include, but may not be limited to:
 - (I) a narrative of course content; and
 - (II) contact hours.
 - (iii) A nurse practitioner seeking initial approval after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in his/her specialty by a national credentialing body when initial certification was obtained after January 1, 1998.
 - (iv) A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (d)(1) of this Rule, may appeal to the Joint Subcommittee on the basis of other education and experience.
- (2) Instead of educational program approval, all nurse practitioner applicants who are applying for or have received, first time approval to practice as a nurse practitioner on or after January 1, 2000 shall be certified by a national credentialing body approved by the Board of

Nursing or be awaiting initial certification by a national credentialing body approved by the Board of Nursing for a period not to exceed 18 months from date temporary approval is granted.

(e) Annual Renewal.

- (1) Each registered nurse who is approved as a nurse practitioner in this state shall annually renew each approval with the Medical Board no later than 30 days after the nurse practitioner's birthday by:
 - (A) Verifying current RN licensure;
 - (B) Submitting the fee required in Paragraph (l) of this Rule; and
 - (C) Completing the renewal form.
- (2) For the nurse practitioner who had first time approval to practice after January 1, 2000, provide evidence of certification or recertification by a national credentialing body.
- (3) If the nurse practitioner has not renewed within 60 days of the nurse practitioner's birthday, the approval to practice as a nurse practitioner will lapse.

(f) Continuing Education (CE). In order to maintain nurse practitioner approval to practice beginning no sooner than two years after initial approval has been granted, the nurse practitioner shall earn 30 hours of continuing education every two years. At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME) or other national credentialing bodies. Documentation shall be maintained by the nurse practitioner at each practice site and made available upon request to either Board.

(g) Inactive Status.

- (1) Any nurse practitioner who wishes to place his or her approval on an inactive status may notify the Boards by completing the form supplied by the Boards.
- (2) The registered nurse with inactive nurse practitioner status shall not practice as a nurse practitioner.
- (3) The registered nurse with inactive nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval as stipulated in Parts (c)(1)(A), (c)(1)(C) - (F) and Part (c)(2)(A) of this Rule; and shall provide documentation to the Boards of 30 contact hours of practice relevant continuing education during the preceding two years.

(h) Prescribing Authority.

- (1) The prescribing stipulations contained in this Paragraph apply to writing prescriptions and ordering the administration of medications.
- (2) Prescribing and dispensing stipulations are as follows:

(A) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the written protocols as outlined in Paragraph (i), Subparagraph (2) of this Rule.

(B) Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in written protocols, providing all of the following requirements are met:

- (i) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
- (ii) dosage units for schedules 2, 2N, 3 and 3N are limited to a 30 day supply; and
- (iii) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled.

(C) The nurse practitioner may prescribe a drug not included in the site-specific written protocols only as follows:

- (i) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
- (ii) the verbal or written order as described in Subpart (h)(2)(C)(i) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.

(D) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which may not be refilled.

(E) Each prescription shall be noted on the patient's chart and include the following information:

- (i) medication and dosage;
- (ii) amount prescribed;
- (iii) directions for use;
- (iv) number of refills; and
- (v) signature of nurse practitioner.

(F) The prescribing number assigned by the Medical Board to the nurse

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- practitioner shall appear on all prescriptions issued by the nurse practitioner.
- (G) Prescription Format:
 - (i) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;
 - (ii) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Paragraph (h) Part (B) of this Rule; and
- (3) The nurse practitioner may obtain approval to dispense the drugs and devices included in written protocols for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.
- (i) Quality Assurance standards for a Collaborative Practice Agreement.
 - (1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
 - (2) Written Protocols:
 - (A) Written protocols shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site.
 - (B) Written protocols shall be reviewed at least yearly, and this review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the written protocol and available for inspection by members or agents of either Board.
 - (C) The written protocols shall include the drugs, devices, medical treatment, tests and procedures that may be prescribed, ordered and implemented by the nurse practitioner consistent with Paragraph (h) of this Rule, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.
- (D) The written protocols shall include a pre-determined plan for emergency services.
- (E) The nurse practitioner shall be prepared to demonstrate the ability to perform medical acts as outlined in the written protocols upon request by members or agents of either Board.
- (3) Quality Improvement Process.
 - (A) The primary supervising physician and the nurse practitioner shall develop a process for the on-going review of the care provided in each practice site to include a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems; and
 - (B) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time -frame.
 - (C) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
 - (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Part (i)(3)(B) of this Rule, and recommendations, if any, for changes in treatment plan(s);
 - (ii) be signed and dated by those who attended; and
 - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (4) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):
 - (A) The nurse practitioner with temporary approval shall have:
 - (i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement.

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(ii) This time-frame includes the period of interim status. face-to-face consultation with the primary supervising physician on a weekly basis for one month after temporary approval is achieved and at least monthly throughout the period of temporary approval.

(B) The nurse practitioner with first time approval to practice shall have:

(i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement. This time-frame includes the period of interim status.

(ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after full approval is received and at least monthly for a period no less than the succeeding five months.

(C) The nurse practitioner previously approved to practice in North Carolina who changes Primary supervising physician shall have face-to-face consultation with the primary supervising physician weekly for one month and then monthly for the succeeding five months.

(D) Documentation of consultation shall:

- (i) identify clinical issues discussed and actions taken;
- (ii) be signed and dated by those who attended; and
- (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.

(j) Method of Identification. The nurse practitioner shall wear an appropriate name tag spelling out the words "Nurse Practitioner."

(k) Disciplinary Action. The approval of a nurse practitioner may be restricted, denied or terminated by the Medical Board and the registered nurse license may be restricted, denied, or terminated by the Board of Nursing, if after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, the appropriate Board shall find one or more of the following:

- (1) that the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician;
- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the written protocols and collaborative practice agreement;
- (3) that the nurse practitioner has been convicted in any court of a criminal offense;
- (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (5) that the nurse practitioner has failed to comply with any of the provisions of this Rule.

(l) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice. ~~All initial, subsequent and volunteer application fees shall be equally divided between the Board of Nursing and the Medical Board. No other fees are shared.~~ Application fee shall be twenty dollars (\$20.00) for volunteer approval.
- (2) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (3) The fee for annual renewal of volunteer approval, shall be ten dollars (\$10.00).
- (4) No portion of any fee in this Rule is refundable.
- (5) Fees shall be divided between the Board of Nursing and the Medical Board based on a mutually agreed upon formula for equitable distribution of costs.

(m) Practice During a Disaster. A nurse practitioner approved to practice in this State or another state is authorized to perform medical acts, tasks, or functions as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared. The nurse practitioner shall notify the Boards in writing of the names, practice locations and telephone numbers for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a nurse practitioner during the disaster. Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required pursuant to Paragraphs (h) and (i) of this Rule.

Authority G.S. 90-6; 90-18(c)(13),(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.36; 90-171.37; 90-171.42; 90 171.83.

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0301 APPROVAL BODY

The North Carolina Board of Nursing is designated as the legal approval body for nursing ~~programs, programs and clinical facilities~~. The Board is required to evaluate periodically each program ~~and facility~~ in light of requirements of the Law and Standards set forth by the Board. To fulfill this responsibility, the Board's designated representative(s) visit and survey nursing ~~programs, programs and clinical facilities~~. The Board or its designated representatives reviews the report of survey and other records relating to the program ~~or facility~~ and determines whether the program ~~or facility~~ complies with the Law and Standards as required by the Board. The Board expects programs ~~and facilities~~ to be in compliance with Law and Standards at all times. If it comes to the attention of the Board or its designated representatives, that a program ~~or facility~~ is not complying with Law and Standards, further action shall be taken according to Rules and Statutes.

Authority G.S. 90-171.23(b)(8); 90-171.23(b)(9); 90-171.23(b)(10); 90-171.38; 90-171.39; 90-171.40.

21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

(a) At least 12 months prior to the proposed enrollment of students in a nursing program, the administrative officer of the parent institution considering establishing a nursing program shall submit a feasibility study documenting the following:

- (1) approval of the program by the governing body of the parent institution or written evidence that the approval is in process;
- (2) evidence of an educational need which cannot be met by existing nursing programs or extensions of those programs;
- (3) proposed student population;
- (4) projected student enrollment;
- (5) potential employment opportunities for graduates;
- (6) available clinical resources and maximum numbers of students that can be accommodated in clinical areas;
- (7) evidence from existing nursing programs of the potential impact of the proposed program on clinical resources; and
- (8) a plan with a specified time frame for availability of:
 - (A) qualified faculty as specified in Standards;
 - (B) adequate financial resources;
 - (C) adequate physical facilities to house the program; and
 - (D) support services available to the program from the institution.

(b) The feasibility study will be presented at the next regular Education Committee meeting. If the Education Committee determines there is a need for the program and the plan includes the availability of the necessary resources to establish a program, the Education Committee will recommend to the Board that the institution be approved to proceed with the development of the program. The recommendation to proceed will be contingent upon approval by the governing body.

(c) If the Board determines that a program is approved for development, a minimum of six months prior to the proposed

starting date, the institution shall employ a qualified program director and nurse faculty member(s) to develop the proposed program.

(d) The director and faculty shall prepare an application to establish a nursing program, which shall include:

- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution;
- (2) a general overview of the proposed total curriculum that includes:
 - (A) program philosophy, purposes, and objectives;
 - (B) master plan of curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
 - (C) course descriptions and course objectives for all courses; and
 - (D) course syllabi as specified in 21 NCAC 36 .0321(h) for all first-year nursing courses;
- (3) student policies consistent with Standards for admission, progression, and graduation of students;
- (4) curriculum vitae for employed nursing faculty members whose numbers and qualifications are consistent with assigned responsibilities in the development of the program; and
- (5) proposed agreements with clinical agencies, including types of units available and number of students that can be accommodated in each area at one time.

(e) The completed application shall be submitted to the Board not less than 90 days prior to a regular meeting of the Board to allow for:

- (1) survey of the proposed ~~program; program and agencies~~;
- (2) preparation of the report of the survey;
- (3) response to the survey report by persons from the proposed program; and
- (4) review by the Education Committee of the Board for recommendations to the Board.

(f) The Board shall consider all evidence, including the application, survey report, and recommendations of the Education Committee. Representatives of the petitioning institution may speak at the meeting. The Board shall act upon the data available at the meeting.

(g) If the Board finds, from the evidence presented, that the resources and plans meet all Standards and requirements for establishing a new nursing program and that the petitioning institution is able and willing to maintain support and resources essential to meet the Standards of the Board, and if the first class of students is enrolled within one year after this finding, the Board shall grant initial approval. If the Board determines that a proposed program does not comply with all Standards, initial approval will be denied. Following the Initial Approval, if the first class of students is not enrolled within one year, the approval will be rescinded. The period of time a program may retain initial approval status shall be influenced by the length of time necessary for full implementation of the program. A program shall be considered eligible for removal from Initial

Approval status and placement on Full Approval status following a survey during the final term of total curriculum implementation.

- (h) Programs with initial approval shall be surveyed as follows:
- (1) annually during the specified period of initial approval;
 - (2) during the final term of complete implementation of the program; and
 - (3) as directed by the Board when a decision has been made that the program is not complying with Law or Standards.

(i) Following any survey the Board will act upon data from the following:

- (1) a report of the survey;
- (2) response from the program representatives to the survey report; and
- (3) recommendations from the Education Committee.

(j) If at any time it comes to the attention of the Board or its designated representative(s) that the program is not complying with all Standards or the Law, the program shall correct the area of noncompliance and submit written evidence or submit a written plan for correction to the Board for review and action. Failure to respond shall result in further Board action.

(k) Upon finding by the Board that the program complies with the Law and Standards, the Board shall direct that the program remain on the Initial Approval status. If, following the survey during the final term for total curriculum implementation, the Board finds that the program is complying with the Law and all Standards, the Board shall direct that the program be placed on Full Approval status and resurveyed within three years. Upon a request for deferral of the resurvey, the Board or its designated representative may extend the approval period.

(l) Upon finding by the Board that the program does not comply with the Law or all Standards by the final academic term of initial approval, the Board shall:

- (1) provide the program with written notice of the Board's decision;
- (2) upon written request from the program submitted within 10 business days of the Board's written notice, schedule a hearing. Such hearing will be held not less than 20 business days from the date on which the request was received.

(m) Following the hearing and consideration of all evidence provided, the Board shall assign the program Full Approval status or shall enter an Order removing the Initial Approval status, which shall constitute discontinuance of the program.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0310 AGENCY APPROVAL PROCESS – INITIAL SURVEY

~~(a) At least 30 days prior to planned use, a program or agency representative shall submit an Application for a New Clinical Resource to the designated representative of the Board. The application shall include:~~

- ~~(1) Organizational Chart;~~
- ~~(2) Position descriptions for nursing personnel;~~
- ~~(3) Census and staffing report;~~
- ~~(4) Impact statement(s); and~~

~~(5) Contractual agreement, if appropriate.~~

~~(b) A survey of the agency is conducted. The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified in 21 NCAC 36 .0315.~~

~~(c) At its meeting, the Board shall consider all evidence, including the survey report, response from the agency and recommendations of the Education Committee.~~

~~(d) If the Board finds that the agency complies with the Law and Standards, the Board shall assign the agency Full Approval status and approve for student use.~~

~~(e) If the Board finds that the agency substantially complies with Law and Standards, the Board shall assign the agency Approval with Stipulations status and approve for student use.~~

Authority G.S. 90-171.39.

21 NCAC 36 .0315 FULL APPROVAL/APPROVAL WITH STIPULATIONS

~~(a) Designated representatives of the Board will survey approved agencies at least every five years. Surveys may be conducted at shorter intervals upon the Board's direction or upon request from the agency.~~

~~(b) The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified in Rule .0303(3)(A)(B) of this Section.~~

~~(c) If the Board through its designated representative determines that an agency has complied with the Law and all Standards, the agency shall be continued on Full Approval status.~~

~~(d) If the Education Committee determines from consideration of all evidence, that an agency has substantially complied with the Law and all Standards, the Education Committee shall make a recommendation to the Board that the agency be Approved with Stipulations. The Board shall specify stipulations which shall be met by the agency within a designated period of time, which shall not exceed 12 months and shall direct that the agency be assigned Approval with Stipulations status.~~

Authority G.S. 90-171.39.

21 NCAC 36 .0321 CURRICULUM

(a) The curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives; and
- (3) be consistent with the Law and administrative rules governing the practice of nursing.

(b) The curriculum shall include, but not necessarily be limited to, instruction in:

- (1) biological, physical, and social science principles;
- (2) components of basic nursing practice as legally defined for the licensure level; and
- (3) utilization of the nursing process in the care of individuals and families throughout the life cycle including the following areas:
 - (A) maternal and child health;

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- (B) common medical and surgical conditions; and
- (C) aging populations.

Instruction in nursing care in all areas named shall include both theory and clinical learning experiences.

(c) The curriculum for a nursing program designed to prepare persons for registered nurse licensure shall also include instruction in the nursing care of persons with mental, emotional, or psychiatric disorders. Instruction shall include both theory and clinical learning experiences.

(d) The curriculum for a baccalaureate nursing program shall also include public health nursing. Instruction shall include both theory and clinical learning experiences.

(e) The curriculum for a nursing program designed to prepare persons for practical nurse licensure shall include basic mental health principles and therapeutic communication.

(f) Learning opportunities shall be planned in logical sequence so that prerequisite knowledge is provided prior to the experience to which that knowledge is basic. Corequisites must be placed concurrently with the experience(s) [course(s)] to which they relate.

(g) Objectives for each course shall indicate the knowledge and skills expected of the students. These objectives shall be stated to:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical laboratory experience;
- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

(h) Student course syllabi shall include, in addition to the objectives described in Paragraph (g) of this Rule, a description and outline of content, learning environments and activities, course placement, allocation of time, and methods of evaluation of student performance, including clinical evaluation tools.

(i) There shall be evidence that each course is implemented in accordance with the student course syllabus.

(j) Nurse faculty shall demonstrate that they have authority and responsibility for:

- (1) teaching and evaluating all classroom and clinical experiences, including precepted experiences;
- (2) planning and implementing learning experiences so that objectives for each course are met; and
- (3) providing placement and logical sequencing of clinical learning experiences to support application of theory and attainment of knowledge and skills.

(k) There shall be a written plan for total program evaluation and documentation of ongoing implementation of the plan. The evaluation components shall include administration, faculty, students, curriculum, facilities, and records and reports. The process of evaluation shall include faculty, student, and graduate involvement.

(l) Requests for approval of changes in, or expansion of, the program accompanied by all required documentation shall be submitted at least 30 days prior to implementation for approval by the Board through its designated representatives. Approval is required for:

- (1) increase in enrollment which may exceed the maximum approved by the Board. Requests for expansion are considered only for programs with Full Approval status;
- (2) major changes in curriculum related to philosophy, purpose, or focus of the ~~program;~~ ~~program; and~~
- (3) alternative or additional program ~~schedules;~~ ~~and schedules.~~
- ~~(4) addition of clinical resources.~~

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0322 FACILITIES

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

- (1) Classrooms, practice laboratories, audio and video tutorial laboratories, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable.
- (2) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.
- (3) The library facilities shall be readily accessible to students and faculty, and must offer adequate resources and services.
 - (A) Active library services shall include a librarian and a system of cataloging.
 - (B) A system of acquisition and deletion shall exist that ensures currency and appropriateness of holdings including audio and video tutorial resources that support implementation of the nursing curriculum.
 - (C) Library space for use by students and faculty shall be adequate to accommodate the program.
 - (D) Library hours shall meet the needs of the students in the program.

(b) ~~Other-Clinical~~ facilities shall support the ~~program-program curriculum as outlined in 21 NCAC 36 .0321.~~

- ~~(1) Clinical agencies shall include:~~
 - ~~(A) hospital(s) that provide inpatient care in medicine, surgery, obstetrics, pediatrics, and geriatrics;~~
 - ~~(B) agencies serving patients across the lifespan who present problems arising from common pathological or maturational conditions;~~
 - ~~(C) patient census in hospitals and agencies with sufficient numbers and varieties of conditions, including varying degrees of acuity, to accommodate the number of students and provide learning experiences mandated by the curriculum.~~

- ~~(2) Clinical agencies for programs leading to registered nurse licensure shall include psychiatric and mental health services with sufficient patient census in community sites or inpatient services at which psychiatric or mental health care is a primary focus. Patient census must be representative of the range of DSM diagnoses.~~
- ~~(3) Clinical agencies for baccalaureate nursing programs shall include public or community health services within voluntary or official agencies.~~
- ~~(4) Each clinical agency shall:

 - ~~(A) have approval of the Board;~~
 - ~~(B) have a registered nurse with authority and responsibility for administration of nursing within the agency;~~
 - ~~(C) have staffing and written operational policies and procedures designed to ensure the legal practice of nursing, as defined in Article 9A and 9C, Chapter 90 of the General Statutes (Nursing Practice Act) and Administrative Code, Title 21, Chapter 36, and demonstrates compliance with agency policies at a rate of no less than 85 percent;~~
 - ~~(D) make records of those served available for use by faculty and students;~~
 - ~~(E) have equipment and supplies that are suitable in quantity and quality, properly maintained, and available for use; and~~
 - ~~(F) have a current contractual agreement with the program if the clinical resource is not a constituent of the parent institution.~~~~
- ~~(5) The clinical agencies shall file with the Board such records, data, and reports as may be required in order to furnish information regarding policies, position descriptions, and census and staffing reports to ensure the legal practice of nursing and that are reflective of opportunities for effective learning.~~
- ~~(6) Schedules for use by one or more nursing programs shall demonstrate feasibility for such use and reflect cooperative planning by the programs and the agency.~~

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0325 REMOVAL OF APPROVAL

- ~~(a) Upon notification of practice(s) inconsistent with nursing laws and standards in board approved facilities, the Board of Nursing shall conduct an investigation to substantiate complaint(s).~~
- ~~(b) Once a complaint is substantiated, the Board shall:

 - ~~(1) notify the facility of the violations in writing;~~
 - ~~(2) specify time frame for correction of violation(s);~~
 - ~~(3) specify actions necessary by the facility to verify compliance;~~
 - ~~(4) provide written notice to all appropriate agencies and approved programs utilizing the facility for nurse or unlicensed personnel educational experiences of the non-compliance; and~~
 - ~~(5) conduct a survey with a minimum of two consultants, one of whom shall be an education consultant, to verify nursing is consistent with law and standards.~~~~
- ~~(c) If findings at the time of the survey are that nursing care is consistent with law and standards, the approval status of the facility shall remain unchanged. The facility and all agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive written notice that the facility is in compliance with law and standards.~~
- ~~(d) If findings following the survey are that nursing care is in continuing non-compliance with law and standards, the Executive Director shall summarily suspend approval status for student use. The facility shall be notified in writing of the findings and all appropriate agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive written notice of the facility's non-compliance with law and standards and loss of approval.~~
- ~~(e) Facilities desiring re-approval for student use shall:

 - ~~(1) provide written documentation or present substantial evidence to demonstrate compliance with law and standards; and~~
 - ~~(2) request a survey revisit by the Board of Nursing.~~~~

Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40; 90-171.42(b).

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for MHDDSAS*

Rule Citation: *10 NCAC 14V .3601-.3602, .3604*

Effective Date: *December 3, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 122C-26; 143B-147*

Reason for Proposed Action: *The Department of Health and Human Services and the Substance Abuse and Mental Health Services Administration (SAMHSA) are issuing final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. This final rule repeals the existing narcotic treatment of regulations enforced by the Food and Drug Administration (FDA), and creates new regulatory system based on an accreditation model. In addition, this final rule shifts administrative responsibility and oversight from FDA to SAMHSA. This rulemaking initiative follows a study by the Institute of Medicine (IOM) and reflects recommendations by the IOM and several other entities to improve opioid addiction treatment by allowing for increased medical judgment in treatment. The final rule became effective March 19, 2001. It is necessary to amend the current rules to reflect these changes as these regulations represent a significant departure from the previous regulations for Opioid Maintenance and Detoxification Treatment in many specific areas.*

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446.*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to amend the rules cited as 10 NCAC 14V .3601-.3602, 3604. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: *August 1, 2002*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any interested person may request a public hearing by submitting a written request within 15 days after publication of this notice. The request should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446.*

Fiscal Impact

- State**
- Local**
- Substantive** (\geq \$5,000,000)
- None**

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .3600 - OUTPATIENT OPIOID TREATMENT

10 NCAC 14V .3601 SCOPE

(a) An outpatient ~~narcotic addiction~~ opioid treatment facility provides periodic services designed to offer the individual an opportunity to effect constructive changes in his lifestyle by using methadone or other medications approved for use in ~~narcotic addiction~~ opioid treatment in conjunction with the provision of rehabilitation and medical services.

(b) Methadone and other medications approved for use in ~~narcotic addiction~~ opioid treatment are also tools in the detoxification and rehabilitation process of ~~a narcotic-an opioid~~ dependent individual.

(c) For the purpose of detoxification, methadone and other medications approved for use in ~~narcotic addiction~~ opioid treatment are administered in decreasing doses for a period not to exceed 180 days.

(d) For individuals with a history of being physiologically addicted to ~~a narcotic-an opioid drug~~ for at least one year before admission to the service, methadone and other medications approved for use in ~~narcotic addiction~~ opioid treatment may also be used in maintenance treatment. In these cases, methadone and other medications approved for use in ~~narcotic addiction~~ opioid treatment may be administered or dispensed in excess of 180 days and shall be administered in stable and clinically established dosage levels.

History Note: Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. December 3, 2001.

10 NCAC 14V .3602 DEFINITIONS

In addition to terms defined in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

- (1) "Capacity management system" is a computerized database, maintained at the Office of the North Carolina State Authority for governing treatment of ~~narcotic-opioid~~ addiction with ~~a narcotic-an opioid~~ drug, which ensures timely notification of the State whenever a program reaches 90 percent of its capacity to treat intravenous drug users, and to

make any excess treatment capacity available. The requirement to have a capacity management system is referenced in 45 C.F.R. Part 96.126(a), the Substance Abuse Prevention and Treatment Block Grant. The referenced material shall include subsequent amendments and editions and may be obtained from the Substance Abuse Services Section of DMH/DD/SAS, 325 N. Salisbury Street, Albemarle Building, 11th Floor, Raleigh, NC 27603-5906, 3007 Mail Service Center, Raleigh, NC 27699-3007. The computerized system shall ensure that a continuous updated record of all such reports is maintained and that excess capacity information shall be available to all other programs.

- (2) "Central registry" is a computerized patient database, maintained at the Office of the North Carolina State Authority for governing treatment of ~~narcotic-opioid~~ addiction with a ~~narcotic-an opioid~~ drug. The purpose of the database is to prevent multiple methadone treatment program enrollments; thereby lessening the possibility of methadone diversion for illicit use.
- (3) "Waiting list management system" is a component of the capacity management system whereby systematic reporting of treatment demand is maintained. The data required for the waiting list management component of the capacity shall include a unique patient identifier for each intravenous drug user seeking treatment, the date initial treatment was requested, and the date the drug user was removed from the waiting list. The waiting list management system requirement is referenced in 45 CFR 96.126(c) and includes subsequent amendments and editions of the referenced material. It may be obtained from the Substance Abuse Services Section of DMH/DD/SAS, 325 N. Salisbury Street, Albemarle Building, 11th Floor, Raleigh, NC 27603-5906, 3007 Mail Service Center, Raleigh, NC 27699-3007.
- (4) "~~Methadone~~—hydrochloride—"Methadone hydrochloride" (hereafter referred to as methadone) is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine, most prominent of which involves the central nervous system and organs composed of smooth muscle. The principal actions of therapeutic value or analgesia and sedation are detoxification or temporary maintenance in narcotic addiction. The methadone abstinence syndrome, although quantitatively similar to that of morphine differs in that the onset is slower, the course more prolonged, and the symptoms are less severe.
- (5) "Other medications approved for use in ~~narcotic addiction-opioid~~ treatment" ~~means are~~

those medications approved by the Food and Drug Administration for use in ~~narcotic addiction-opioid~~ treatment and also approved for accepted medical uses under the North Carolina Controlled Substances Act.

- (6) "Program compliance for purposes of take-home eligibility" is determined by:
 - (a) absence of recent drug abuse;
 - (b) clinic attendance;
 - (c) absence of behavioral problems at the clinic;
 - (d) stability of the patient's home environment and social relationships;
 - (e) length of time in comprehensive maintenance treatment;
 - (f) assurance that take-home medication can be safely stored within the patient's home; and
 - (g) evidence the rehabilitative benefit the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.
- (7) "Recent drug abuse for purposes of determining program compliance" is established by evidence of the misuse of either opioids, methadone, cocaine, barbiturates, amphetamines, delta-9-tetrahydrocannabinol (hereafter referred to as THC), benzodiazepines or alcohol documented in the results of two random drug tests conducted within the same 90-day period of continuous treatment.
- (8) "Counseling session in Outpatient Opioid Treatment" is a face-to-face or group discussion of issues related to and of progress toward a client's treatment goals that is conducted by a person as specified in Rule .3603, Paragraph (a) of this Section.

History Note: Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. February 7, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. December 3, 2001.

10 NCAC 14V .3604 OPERATIONS

- (a) Hours. Each facility shall operate ~~seven at least six~~ days per week, 12 months per year. Daily, weekend and holiday medication dispensing hours shall be scheduled to meet the needs of the client.
- (b) Compliance With FDA/NIDA-The Substance Abuse and Mental Health Services Administration (SAMHSA) or The Center for Substance Abuse Treatment (CSAT) Regulations. Each facility shall be approved-certified by the Food and Drug Administration-a private non-profit entity, or from a State agency, that has been approved by the SAMHSA of the United State Department of Health and Human Services and shall be in compliance with all ~~Food and Drug Administration/National Institute on Drug Abuse Narcotic Addiction Treatment~~

~~regulations in 21 C.F.R. 291.505, SAMSHA Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Addiction regulations in 42 CFR Part 8, incorporated by reference to include subsequent amendments and editions. These regulations are available from the Food and Drug Administration, CSAT, SAMHSA, Rockwall II, 5600 Fishers Lane, Rockville, Maryland 20857 at no cost.~~

(c) Compliance With DEA Regulations. Each facility shall be currently registered with the Federal Drug Enforcement Administration and shall be in compliance with all Drug Enforcement Administration regulations pertaining to ~~narcotic addiction-opioid~~ treatment programs codified in 21 C.F.R., Food and Drugs, Part 1300 to end, incorporated by reference to include subsequent amendments and editions. These regulations are available from the United States Government Printing Office, Washington, D.C. 20402 at a cost of four dollars and fifty cents (\$4.50) per copy.

(d) Compliance With State Authority Regulations. Each facility shall be approved by the North Carolina State Authority for ~~Narcotic Addiction-Opioid~~ Treatment, DMH/DD/SAS, ~~325 N. Salisbury Street, Raleigh, N.C. 27603-5906, 3007 Mail Service Center, Raleigh, NC 27699-3007,~~ which is the person designated by the Secretary of Health and Human Services to exercise the responsibility and authority within the state for governing the treatment of ~~narcotic-addiction~~ with a ~~narcotic-an opioid~~ drug, including program approval, for monitoring compliance with the regulations related to scope, staff, and operations, and for monitoring compliance with Section 1923 of P.L. 102-321. The referenced material may be obtained from the Substance Abuse Services Section of DMH/DD/SAS, ~~325 N. Salisbury Street, Albemarle Building, 11th Floor, Raleigh, NC 27603-5906, 3007 Mail Service Center, Raleigh, NC 27699-3007.~~

(e) The State Authority shall base program approval on the following criteria:

- (1) compliance with all state and federal law and regulations;
- (2) compliance with all applicable standards of practice;
- (3) program structure for successful service delivery; and
- (4) impact on the delivery of ~~narcotic addiction-opioid~~ treatment services in the applicable population.

~~(f) Take-Home Eligibility. Any client in comprehensive maintenance treatment who requests unsupervised or take-home use of methadone or other medications approved for treatment of opioid addiction must minimally meet the specified requirements for time in continuous treatment. The client must also minimally meet all the requirements for continuous program compliance and must demonstrate such compliance during the specified time periods immediately preceding any level increase. In addition, during the first year of continuous treatment a patient must attend a minimum of two counseling sessions per month. After the first year and in all subsequent years of continuous treatment a patient must attend a minimum of one counseling session per month.~~

- (1) Levels of Eligibility are subject to the following conditions:
 - (A) Level 1. During the first 90 days of continuous treatment, the take-home

~~supply is limited to a single dose each week and the client shall ingest all other doses under supervision at the clinic;~~

~~(B) Level 2. After a minimum of 90 days of continuous program compliance, a client may be considered for a maximum of three take-home doses and shall ingest all other doses under supervision at the clinic each week;~~

~~(C) Level 3. After 180 days of continuous treatment and a minimum of 90 days of continuous program compliance, at Level 2, a client may be considered for a maximum of four take-home doses and shall ingest all other doses under supervision at the clinic each week;~~

~~(D) Level 4. After 270 days of continuous treatment and a minimum of 90 days of continuous program compliance, at Level 3, a client may be considered for a maximum of five take-home doses and shall ingest all other doses under supervision at the clinic each week;~~

~~(E) Level 5. After 364 days of continuous treatment and a minimum of 180 days of continuous program compliance, at Level 4, a client may be considered for a maximum of six take-home doses and shall ingest at least one dose under supervision at the clinic each week;~~

~~(F) Level 6. After two years of continuous treatment and a minimum of one year of continuous program compliance, at Level 5, a client may be considered for a maximum of 13 take-home doses and shall ingest at least one dose under supervision at the clinic every 14 days; and~~

~~(G) Level 7. After four years of continuous treatment and a minimum of three years of continuous program compliance, at Level 6, a client may be considered for a maximum of 30 take-home doses and shall ingest at least one dose under supervision at the clinic every month.~~

~~(2) Criteria for Reducing, Losing and Reinstatement of Take-Home Eligibility:~~

~~(A) A client's take-home eligibility is reduced or suspended for evidence of recent drug abuse. A client who tests positive on two drug screens within a 90-day period shall have an immediate reduction of eligibility by one level of eligibility;~~

~~(B) A client who tests positive on three drug screens within the same 90-day~~

- ~~period shall have all take-home eligibility suspended; and~~
- (C) ~~The reinstatement of take-home eligibility shall be determined by each Outpatient Opioid Treatment Program.~~
- (3) Exceptions to Take-Home Eligibility:
- (A) A client in the first two years of continuous treatment who is unable to conform to the applicable mandatory schedule because of exceptional circumstances such as illness, personal or family crisis, travel or other hardship may be permitted a temporarily reduced schedule by the State authority, provided she or he is also found to be responsible in handling opioid drugs. Except in certain instances involving a client with a verifiable physical disability, there is a maximum of 13 take-home doses allowable in any two-week period during the first two years of continuous treatment.
- (B) A client who has a verifiable physical disability because of exceptional circumstances such as work, travel, illness, personal or family crisis or other hardship may be permitted additional take-home eligibility by the State authority. Clients who are granted additional take-home eligibility due to a verifiable physical disability may be granted up to a maximum 30-day supply of take-home medication and shall make monthly clinic visits.
- (4) Take-Home Supplies Dosages For Holidays: Take-home dosages of methadone or other medications approved for the treatment of opioid addiction for holidays shall be authorized by the facility physician on an individual client basis according to the following:
- (A) An additional one-day supply of methadone or other medications approved for the treatment of opioid addiction may be dispensed to each eligible client (regardless of time in treatment) for Independence Day, Thanksgiving, Christmas, New Year's and other official state holidays.
- (B) No more than a three-day supply of methadone or other medications approved for the treatment of opioid addiction may be dispensed to any eligible client because of holidays. This restriction shall not apply to a client-clients who is-are receiving a six-day take-home supply of

- ~~methadone, medications at Level 4 or above.~~
- (g) Withdrawal From Medications For Use In Narcotic Addiction Treatment. The risks and benefits of withdrawal from methadone or other medications approved for use in ~~narcotic addiction opioid~~ treatment shall be discussed with each client at the initiation of treatment and annually thereafter.
- (h) Random Testing. Random testing for alcohol and other drugs shall be conducted on each active narcotic addiction opioid treatment clients, client with a minimum of one random drug test each month of continuous treatment. Additionally, in two out of each three-month period of a client's continuous treatment episode, at least one random drug test will be observed by program staff. Drug testing is to include at least the following: opioids, methadone, cocaine, barbiturates, amphetamines, THC, benzodiazepines and alcohol. Alcohol testing results can be gathered by either urinalysis, breathalyzer or other alternate scientifically valid method.
- (i) Client Discharge Restrictions. No client shall be discharged from the facility while physically dependent upon methadone or other medications approved for use in narcotic addiction treatment unless the client is provided the opportunity to detoxify from the drug.
- (j) Dual Enrollment Prevention. All licensed outpatient ~~narcotic opioid~~ addiction treatment facilities which dispense Methadone, ~~LAAM, Levo-Alpha-Acetyl-Methadol (LAAM)~~ or any other pharmacological agent approved by the Food and Drug Administration for the treatment of ~~narcotic opioid~~ addiction subsequent to November 1, 1998, are required to participate in a computerized Central Registry or ensure that clients are not dually enrolled by means of direct contact or a list exchange with all opioid treatment programs within at least a 75-mile radius of the admitting program. Programs are also required to participate in and a computerized Capacity Management and Waiting List Management System as established by the North Carolina State Authority for ~~Narcotic Addiction Opioid~~ Treatment.
- (k) Diversion Control Plan. Outpatient Addiction Opioid Treatment Programs in North Carolina are required to establish and maintain a diversion control plan as part of program operations and shall document the plan in their policies and procedures. A diversion control plan shall include the following elements:
- (1) dual enrollment prevention measures that consist of client consents, and either program contacts, participation in the central registry or list exchanges;
 - (2) call-in's for bottle checks, bottle returns or solid dosage form call-in's;
 - (3) call-in's for drug testing;
 - (4) drug testing results that include a review of the levels of methadone or other medications approved for the treatment of opioid addiction;
 - (5) client attendance minimums; and
 - (6) procedures to ensure that clients properly ingest medication.

History Note: Authority G.S. 122C-26; 143B-147; 21C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. February 7, 2000;

Amended Eff. April 1, 2001;
Temporary Amendment Eff. December 3, 2001.

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 26H .0213, .0215, .0304

Effective Date: December 10, 2001

Findings Reviewed and Approved by: Beecher R. Gray

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

Reason for Proposed Action:

10 NCAC 26H .0213 – This amendment allows the Division of Medical Assistance to use the most current available information to determine hospital qualification for disproportionate share hospital payments.

10 NCAC 26H .0215 – This amendment adopts the Medicare discharge policy when the patient discharged is assigned to a qualifying diagnosis-related group. Said discharge policy applies when the discharge is to hospital or distinct part hospital unit excluded from the DRG reimbursement system, or skilled nursing facility, or to home under a written plan of care for the provision of home health services from a home health agency and those services begin within three days after the date of discharge.

10 NCAC 26H .0304 – This amendment allows the Division of Medical Assistance to rebase rates and allows for rate reductions if necessary in order to prevent payment rates from exceeding upper payment limits established by federal regulations.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.

CHAPTER 26 – MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

10 NCAC 26H .0213 DISPROPORTIONATE SHARE HOSPITALS (DSH)

(a) Hospitals that serve a disproportionate share of low-income patients and have Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance (Division) on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share

hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective ~~July 1~~ of any particular year are based on most current available information, each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
 - (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
 - (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or
 - (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
 - (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State; or
 - (6) It is a Psychiatric hospital operated by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.
- (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage

point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(c) An additional one time payment for the 12-month period ending September 30th, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the Public hospitals that are the primary affiliated teaching hospitals for the University of North Carolina Medical Schools less payments made under authority of Paragraph (d) of this Rule. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments shall not exceed the limits on DSH funding as set for the State by HCFA.

(d) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule shall be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

- (1) An eligible hospital shall receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (a)(5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (a)(5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (a)(5) of this Rule divided by three. In Subparagraph (d)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided. Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made. Disproportionate share payments to

hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923(g), limit on amount of payment to hospitals.

(e) Subject to the availability of funds, hospitals licensed by the State of North Carolina shall be eligible for disproportionate share payments for such services from a disproportionate share pool under the following conditions and circumstances:

- (1) For purposes of this Paragraph eligible hospitals are hospitals that for the fiscal year for which payments are being made and either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director:
 - (A) qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule;
 - (B) operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs;
 - (C) incur unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000.00); and
 - (D) meet the definition of qualified public hospitals set forth in Subparagraph (7) of this Paragraph;
- (2) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
- (3) Payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule, and may cover periods within the fiscal year preceding or following the payment date.
- (4) For the 12-month period ending September 30, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients.
- (5) In subsequent 12-month periods ending September 30th of each year, the percentage payment shall be ascertained and established

- by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.
- (6) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f).
- (7) For purposes of this Paragraph, a qualified public hospital is a hospital that:
- (A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (a)(5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (D) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payments;
 - (E) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as shall be determined by the Director; and
- (F) Submits to the Division on or before 10 working days prior to the date any such payments under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 CFR. 433.51(b).
- (8) To ensure that the estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments established by applicable federal law and regulation described in Subparagraph (6) of this Paragraph, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. If any hospital received payments pursuant to this Paragraph in excess of the percentage established by the Director under Subparagraphs (4) or (5) of this Paragraph, ascertained without regard to other disproportionate share hospital payments that may have been received for services during the 12-month period ending September 30th for which such payments were made, such excess payments shall promptly be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement.
- (9) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).
- (f) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals licensed by the State of North Carolina. For purposes of this Paragraph, a qualified public hospital is a hospital that:
- (1) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (2) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (3) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (4) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payment;

- (5) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director; and
- (6) Submits to the Division on or before 10 working days prior to the date of any such payment under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
 - (A) The payments to qualified public hospitals pursuant to this Paragraph for any given period shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. Payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.
 - (B) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any other disproportionate share hospital payments that may have been or may be paid by the Division for the same fiscal year.
 - (C) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.
 - (D) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part C of this Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Part C of this Subparagraph will be promptly repaid. Subject to the availability of funds, and to the upper limits described in Part C of this Subparagraph, additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital-specific upper limit for each such hospital.
 - (E) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A -55 (c).
- (g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of State Agencies are considered to be a Disproportionate Share Hospital (DSH) when the following conditions are met:
 - (1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and
 - (2) The State Agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and
 - (3) The inpatient and outpatient services are authorized by the State Agency for which the uninsured client meets the program requirements.

- (A) For purposes of this Paragraph, uninsured patients are those clients of the State Agency that have no third parties responsible for any hospital services authorized by the State Agency.
- (B) DSH payments are paid for services to qualified uninsured clients on the following basis:
 - (i) For inpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.
 - (ii) For outpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid outpatient payment methodology as stated in Section 24 of Chapter 18 of the 1996 General Assembly of North Carolina.
 - (iii) No federal funds are utilized as the non-federal share of authorized payments unless the federal funding is specifically authorized by the federal funding agency as eligible for use as the non-federal share of payments.
- (C) Based upon this Subsection, DSH payments as submitted by the State Agency, shall be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments shall not exceed the limits on Disproportionate Share Hospital funding as set forth for the state by HCFA.

(h) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that qualify for disproportionate share hospital status under Subparagraph (a)(1) through (a)(5) of this Rule and provide inpatient or outpatient hospital services to Medicaid Health Maintenance Organization (HMO) enrollees during the period for which payments under this Paragraph are being ascertained.

- (1) For purposes of this Paragraph, a Medicaid HMO enrollee is a Medicaid beneficiary who receives Medicaid services through a Medicaid HMO; a Medicaid HMO is a Medicaid managed care organization, as defined in the

Social Security Act, Title XIX, Section 1903(m)(1)(A), that is licensed as an HMO and provides or arranges for services for enrollees under a contract pursuant to the Social Security Act, Title XIX, Section 1903 (m)(2)(A)(i) through (xi).

- (2) To qualify for a DSH payment under this Paragraph, a hospital shall also file with the Division at least 10 working days prior to the date of any payment under this Paragraph, by use of a form prescribed by the Division, a certification of its charges for inpatient and outpatient services provided to Medicaid HMO enrollees either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director.

(A) The payments to qualified hospitals pursuant to this Paragraph for any given period shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director to be converted by the Division to cost by multiplying charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division shall be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent as a percentage of reasonable cost to the Medicaid Supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of 10 NCAC 26H .0212. Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

- (B) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require

on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.

- (C) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph 2 of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (D) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A -55(c).

(i) Additional disproportionate share hospital payments for the 12 month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals licensed by the State of North Carolina.

- (1) For purposes of this Paragraph a large free-standing inpatient rehabilitation hospital is a hospital licensed for more than 100 rehabilitation beds.
- (2) For purposes of this Paragraph a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the

- (D) period for which payments under this Paragraph are being ascertained; and Verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Paragraph that is still valid as of the date of any such payment.

Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

- (3) Payments authorized by this Paragraph for any given period shall be based on and shall not exceed for the 12 month period ending September 30th of the year for which payments are made the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:
 - (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of 10 NCAC 26H .0212.
 - (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received
- (4) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by an analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant
- (5) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require

on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year for which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.

- (6) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph 3 of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(j) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that: are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the period to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid patients; and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).

- (1) Qualification for 12-month periods ending September 30th shall be based on the most recent cost report data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
- (2) Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually, may cover periods within the fiscal year preceding or following the payment date, and shall be calculated, paid and cost settled after any other Medicaid payments of any kind to which a hospital may be entitled for the same fiscal year.
- (3) Payments to qualified hospitals under this Paragraph for any period shall be based on and shall not exceed the "Medicaid Deficit" for

each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:

- (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212.
- (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
- (C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.
- (D) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH hospital funding as established for this State by HCFA in

accordance with the provisions of the Social Security Act, Title XIX, Section 1923 (f) for the fiscal year in which such payments are made.

- (E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part D of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost for the fiscal year for which such payments are made. No additional payments shall be made in connection with such cost settlement.
- (F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; Eff. February 1, 1995; Amended Eff. July 1, 1995; Filed as a Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Filed as a Temporary Amendment Eff. September 29, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 1996; Temporary Amendment Eff. September 25, 1996; Temporary Amendment Eff. April 15, 1997; Temporary Amendment Eff. September 30, 1997; Temporary Amendment Eff. September 16, 1998; Temporary Amendment Expired on June 13, 1999; Temporary Amendment Eff. September 22, 1999; Temporary Amendment Expired on July 11, 2000; Temporary Amendment Eff. September 21, 2000; Temporary Amendment Eff. June 2, 2001; Temporary Amendment Eff. December 10, 2001.

10 NCAC 26H .0215 SPECIAL SITUATION

(a) In order to be eligible for inpatient hospital reimbursement under Section .0200 of this Subchapter, a patient must be admitted as an inpatient and stay past midnight in an inpatient bed. The only exceptions to this requirement are those admitted inpatients who die or are transferred to another acute care hospital on the day of admission. Hospital admissions prior to 72 hours after a previous inpatient hospital discharge are subject to review by the Division of Medical Assistance. Services for patients admitted and discharged on the same day and who are discharged to home or to a non-acute care facility must be billed as outpatient services. In addition patients who are admitted to observations status do not qualify as inpatients, even when they stay past midnight. Patients in observation status for more than 30 hours must either be discharged or converted to inpatient status.

(b) Outpatient services provided by a hospital to patients within the 24 hour period prior to an inpatient admission in the same hospital that are related to the inpatient admission shall be bundled with the inpatient billing.

(c) When a patient is transferred between hospitals, the discharging hospital shall receive a pro-rated payment equal to the normal DRG payment multiplied by the patient's actual length of stay divided by the geometric mean length of stay for the DRG. When the patient's actual length of stay equals or exceeds the geometric mean length of stay for the DRG, the transferring hospital receives full DRG payment. Transfers are eligible for cost outlier payments. The final discharging hospital shall receive the full DRG payment.

(d) For discharges occurring on or after October 1, 2001, a discharge of a hospital inpatient is considered to be a transfer under Paragraph (c) of this Rule when the patients discharge is assigned to one of the following qualifying diagnosis-related groups, DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483 and the discharge is made under any of the following circumstances:

- (1) To a hospital or distinct part hospital unit excluded from the DRG reimbursement system; or
- (2) To a skilled nursing facility; or
- (3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within three days after the date of discharge.

~~(d)~~(e) Days for authorized skilled nursing for intermediate care level for service rendered in an acute care hospital shall be reimbursed at a rate equal to the average rate for all such Medicaid days based on the rates in effect for the long term care plan year beginning each October 1.

Days for lower than acute level of care for ventilator dependent patients in swing-bed hospitals or that have been down-graded through the utilization review process may be paid for up to 180 days at a lower level ventilator-dependent rate if the hospital is unable to place the patient in a lower level facility. An extension may be granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance of the patient. A single all inclusive prospective per diem rate is paid, equal to the average rate paid to nursing facilities for ventilator-dependent services. The hospital must actively seek placement of the patient in an appropriate facility.

~~(e)~~(f) The Division of Medical Assistance may make a retrospective review of any transfers to a lower level of care prior to the expiration of the average length of stay for the applicable DRG. The Division of Medical Assistance may adjust the DRG payment if the transfer is deemed to be inappropriate, based on the preponderance of evidence of a case by case review.

~~(f)~~(g) In state-operated hospitals, the appropriate lower level of care rates equal to the average rate paid to state operated nursing facilities, are paid for skilled care and intermediate care patients awaiting placement in a nursing facility bed.

~~(g)~~(h) For an inpatient hospital stay where the patient is Medicaid eligible for only part of the stay, the Medicaid program shall pay the DRG payment less the patient's liability or deductible, if any, as provided by 10 NCAC 50B .0406 and .0407.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447 Subpart C; Eff. February 1, 1995; Temporary Amendment Eff. December 10, 2001.

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

10 NCAC 26H .0304 RATE SETTING METHOD FOR NON-STATE FACILITIES

(a) A prospective rate shall be 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 is based on the base year period to be selected by the state. 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

FACILITY DDP SCORE

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 shall 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 facility is properly classified for rate setting 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) copyrighted assessment instrument which along with the scoring instrument are hereby incorporated by reference, including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603 at a cost of twenty cents (\$.20) per page. A summary of the levels of disability is shown in the following chart:

- (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 for fiscal year 1993 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) A facility's DDP score shall be subject to independent validation by the Division of Medical Assistance.
- (10) 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 shall 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.
- (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. 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 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. 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 shall be 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. 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 Subparagraph (f)(1) 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 Subparagraph (f)(1) 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, shall be 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 this 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 shall be 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 based upon market analysis.

- (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 by 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.

- (2) If necessary, the Division of Medical Assistance shall adjust the annual inflation factor or rates in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.

(1) 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 (1)(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 (1)(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 (1)(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 (1)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k) of this Rule, 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 elect to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said election 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 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.
- (3) A chain provider with facility(s) that fall under Paragraphs (h) and (i) of this Rule and with facility(s) that fall under Subparagraph (1)(4) of this Rule may elect to include the facilities in a combined cost report and elect to cost settle under either Paragraphs (h) and (i) or Subparagraph (1)(4) of this Rule. The cost settlement election shall be made each year, 30 days prior to the cost report due date.

(o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this Rule 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 Rule 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 Rule, 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, Rule 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 Rule 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 Rule 1910.1030 in the prospective rate. This interim add on shall be removed, upon 10

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days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Rule 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 cause related to patient care 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.

(y) Effective for fiscal years beginning on or after fiscal year 1998, installation cost of Fire Sprinkler Systems in an ICF-MR Facility shall be reimbursed in the following manner.

(1) Upon receipt of the documentation listed in Parts (A) through (E) of this Subparagraph, the Division of Medical Assistance shall reimburse directly to the provider 90 percent of the verified cost.

(A) All related invoices.

(B) Verification from the Division of Facility Services that the Sprinkler System is needed to maintain certification for participation in the Medicaid program.

(C) Statement from appropriate authorities that the Sprinkler System has been installed. Examples of appropriate authorities for this purpose would include local building inspectors, fire/safety inspectors, insurance company inspectors, or the construction section of the Division of Facilities Services.

(D) Three bids to install the system.

(E) Prior approval from the Division of Medical Assistance for any installation projected to cost more than twenty-five thousand dollars (\$25,000). Prior approval shall be granted based upon determination by the Division of Medical Assistance that the cost is reasonable considering the specifics of the installation. The burden to provide adequate documentation that the cost is reasonable is the responsibility of the provider.

(2) The unreimbursed installation cost shall be reimbursed after audit through the annual Cost Settlement Process. This portion shall be offset by profits, after taking into consideration any indirect profits and direct losses. Any overpayments determined after audit shall be returned to the program by the provider through the annual cost settlement process.

(3) The installation of the Sprinkler System is subject to Prudent Buyer Standards contained in the HCFA-15.

(4) The Sprinkler System's installation costs shall be recorded on the provider's ICF-MR Cost Report.

History Note: Filed as a Temporary Amendment Eff. July 8, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C; Eff. December 1, 1984; Amended Eff. August 1, 1995; November 1, 1993; March 1, 1988; January 1, 1987;

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Temporary Amendment Eff. September 8, 1999; August 7, 1998; Amended Eff. March 19, 2001; August 1, 2000; Temporary Amendment Eff. December 10, 2001.

Rule-making Agency: Social Services Commission

Rule Citation: 10 NCAC 49G .0101

Effective Date: December 10, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143B-153

Reason for Proposed Action: The General Assembly allocated \$180,000 of Temporary Assistance For Needy Families (TANF) Block Grant to DHHS for the 2001-2002 fiscal year for Individual Development Accounts (IDA) for TANF eligible individuals or families. The development of an IDA can be a powerful strategy for assisting working individuals and families to achieve long-term self-sufficiency, to utilize and build comprehensive community partnerships that support asset building in low-wealth communities. The funds allocated may only be used as matching funds for personal savings of TANF eligible participants selected to participate. The temporary adoption of 10 NCAC 49G .0101 is necessary in order that the Division moves forward with the IDA Program required to be established within the Department of Health and Human Services, Division of Social Services. The temporary rule will do the following: establish participant criteria, set the responsibilities of county departments of social services, establish the match rate and describe the use of funds.

Comment Procedures: If you wish to make a comment please contact Ms. Sharnese Ransome, APA Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, 919-733-3055.

CHAPTER 49 – AFDC

SUBCHAPTER 49G – INDIVIDUAL DEVELOPMENT ACCOUNTS PROGRAM

SECTION .0100 - INDIVIDUAL DEVELOPMENT ACCOUNTS PROGRAM

10 NCAC 49G .0101 CRITERIA

The purpose of the Individual Development Accounts (IDA) Program is to offer Temporary Assistance to Needy Families (TANF) eligible families and individuals the opportunity to build assets and promote self-sufficiency through assets accumulation. Within the limits of available funding, the following criteria shall establish the IDA within the Department of Health and Human Services, Division of Social Services.

- (1) Participant Criteria: (a) The participant must be a TANF eligible family or individual.

- (b) The participant must sign a contractual agreement with his/her resident county.
(c) The participant must participate in Financial Literacy Classes arranged by county departments of social services.
(d) The minimum contribution shall be thirty dollars (\$30.00) per month per participant.
(e) The participant is limited to one withdrawal of participant's contributions during the contract period.
(f) The participant must designate a beneficiary, in case of death, of the participant's contributions.
(g) A participant must be in the Program for at least eight months in order to make a one time maximum lump-sum payment of three hundred dollars (\$300.00) to the account during the remainder of the contract period.
(h) The participant's contribution to the account must come from the following source(s): earned income, alimony, child support, pension, interest, social security, tax refunds, and income from assets.
(2) County departments of social services' responsibilities include but are not limited to: (a) Determining the participant's eligibility for participation in the Program (b) Arrange for the monitoring of participants contribution; and (c) Arrange Financial Literacy Classes to the participant.
(3) Match Rate: (a) The match rate is 2:1. The maximum contribution to each participant's account from the funds allocated to the Division of Social Services is two thousand dollars (\$2000.00) per contract. (b) County departments of social services may use county funds or other private funds to provide the additional match.
(4) Eligible use of funds: (a) Home ownership; (b) Post secondary education; (c) Start or expand business; and (d) Vehicle purchase.

History Note: Authority G.S 143B-153; S.L. 2001-424, Sec. 5.1(aa); Temporary Adoption Eff. December 10, 2002.

TITLE 11 – DEPARTMENT OF INSURANCE

TEMPORARY RULES

Editor's Note: This publication will serve as Notice of Rulemaking Proceedings for permanent rulemaking and as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).

Rule-making Agency: NC Department of Insurance/ Manufactured Housing Board

Rule Citation: 11 NCAC 08 .1401-.1414

Effective Date: February 18, 2002

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: 143-143.10, 143-143.11B, 150B-21.1(a6)

Reason for Proposed Action: The rules are needed to give the Board authority to approve courses before the continuing education program begins on July 1, 2002.

Comment Procedures: Written comments may be sent to Patrick Walker, The North Carolina Department of Insurance, Manufactured Housing Board, 410 N. Boylan Avenue, Raleigh, NC.

CHAPTER 08 - ENGINEERING AND BUILDING CODES

SECTION .1400 - MANUFACTURED HOUSING BOARD CONTINUING EDUCATION

11 NCAC 08 .1401 DEFINITIONS

As used in this Section:

- (1) "Board" means the North Carolina Manufactured Housing Board or its staff.
(2) "CE Administrator" means a person designated by the Board to receive all applications for course approval, course reports, course application and renewal fees, etc., on behalf of the Board for the CE program.
(3) "Continuing education" or "CE" means any educational activity approved by the Board to be a continuing education activity.
(4) "Course" means a continuing education course directly related to manufactured housing principles and practices or a course designed and approved for licensees.
(5) "Credit hour" means at least 50 minutes of continuing education instruction.
(6) "Licensee" means a manufactured housing salesperson or set-up contractor who holds a license issued by the Board in accordance with G.S. 143-143.11.
(7) "Sponsor" means an organization or individual who has submitted information to the Board as specified in this Section and has been approved by the Board to provide instruction for the purpose of CE.
(8) "Staff" means designated employees of the Manufactured Building Division of the Department of Insurance who are authorized to

act on behalf of the Board with regard to continuing education matters.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1402 CE COURSES - GENERAL

- (a) Credit shall only be given for courses that have been approved by the Board. No other continuing education hours for other State occupational licenses shall be used by a licensee to satisfy the continuing education requirements in this Section.
(b) The Board may award CE credit for a course or related educational activity that has not been approved in accordance with 11 NCAC 08 .1405(c). Licensees who wish to have the Board consider an unapproved course or educational activity for possible CE credit shall provide documentation to the Board consisting of not less than the information required in 11 NCAC 08 .1405(a), together with a fee of fifty dollars (\$50.00) for each course or educational activity to be reviewed. Fees shall be paid by check, money order, VISA, or MasterCard, made payable to the North Carolina Manufactured Housing Board, and are nonrefundable.
(c) The minimum number of credit hours that a licensee must obtain during the license year before renewal is as follows:
Salespersons - six credit hours;
Set-up Contractors -- four credit hours.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1403 SPONSOR ADVANCE APPROVAL REQUIRED

A prospective sponsor of a CE course shall obtain written approval from the Board to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct a CE course shall be granted by the Board for any reason.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1404 SPONSOR NAME

- (a) The official name to be used by any course sponsor in connection with the offering of an approved CE course shall clearly distinguish the sponsor from any other previously approved CE course sponsor.
(b) Any advertisement or promotional material used by an approved course sponsor shall include the course sponsor's official name only.
(c) Violations of this Section may result in revocation of course approval.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1405 ACCREDITATION STANDARDS

- (a) Prospective sponsors of CE courses shall apply for approval from the Board by submitting the following information to the Board for consideration:
(1) The nature and purpose of the course;
(2) The course objectives or goals;
(3) The outline of the course, including the number of training hours for each segment;

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- (4) Copies of all handouts and materials to be furnished to students;
- (5) The identity, qualifications, and experience of each instructor; and
- (6) Incident weather policies for courses conducted outdoors.

(b) A nonrefundable fee of one hundred fifty dollars (\$150.00), in the form of check, money order, VISA, or MasterCard, payable to the North Carolina Manufactured Housing Board, must be received by the Board for each course submitted for approval. The Board will not review a prospective course application before receiving the fee.

(c) To determine if a course will receive approval, the Board shall complete the following review:

- (1) The course shall be referred to the staff for review.
- (2) The staff shall review the course to determine if the course is pertinent to the industry, if the course meets its stated objectives, and if the instructor(s) is qualified to teach the subject matter.
- (3) The staff shall issue written documentation of approval to the course sponsor, with copies to the Board, for all courses deemed to be acceptable. A written report shall be issued to the course sponsor for all courses found not to be acceptable, documenting specific reasons for the disapproval. A course sponsor may appeal the staff's disapproval of a course to the Board and be heard at the next scheduled meeting of the Board.

(d) Once a course has been approved, neither the content of the course nor any handouts or any teaching aids may be changed without prior written approval from the staff.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1406 CE COURSE SUBJECT MATTER

(a) CE courses shall help assure that licensees possess the knowledge, skills, and competence necessary to function as manufactured home salespersons and set-up contractors in a manner that protects and serves the public interest. The knowledge or skills taught in a CE course shall enable licensees to better serve manufactured home consumers and the subject matter shall be directly related to manufactured sales and set-up operations.

(b) If there are unique North Carolina laws, codes, rules, customary practices, or approved methods that are relevant to a topic being addressed in a CE course, and if the course is to be conducted in North Carolina or primarily for the benefit of North Carolina licensees, then the course shall accurately and completely address such North Carolina laws, codes, rules, customary practices, or approved methods.

(c) Instructors shall not communicate any misinformation about or contradiction of any regulation, rule, or interpretation that has been issued by the Board or its staff.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1407 SCHEDULING

Courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day, including breaks for each class session. The maximum permissible class session without a break is 90 minutes. Courses scheduled for more than four hours in any given day shall include a meal break of at least one hour.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1408 NOTICE OF SCHEDULED COURSES

(a) A sponsor shall provide the Board with written notice of each scheduled course offering not later than 10 days before a scheduled course date. The notice shall include the name and assigned number for the sponsor, the name and assigned number for the course, the scheduled date and time, specific location, and name of the instructor(s).

(b) A sponsor shall notify the Board of any schedule changes or course cancellations at least five calendar days before to the original scheduled course date. If a change or cancellation is necessary because of some unforeseen circumstance, the sponsor shall notify the Board as soon as the sponsor effects the change or cancellation.

(c) A sponsor shall notify the Board as soon as it becomes apparent to the sponsor that enrollment in a planned class session will exceed 100 students.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1409 ADVERTISING AND PROVIDING COURSE INFORMATION

(a) Course sponsors shall not use advertising of any type that is false or misleading. If the number of CE credit hours awarded by the Board for an approved CE course is less than the number of scheduled hours for the course, any course advertisement or promotional materials that indicate the course is approved for CE credit shall specify the number of CE credit hours awarded by the Board for the course.

(b) Any flyers, brochures, or other medium used to promote a CE course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies. Such policies shall be in accordance with 11 NCAC 08 .1411.

(c) A sponsor of a CE course shall, upon request, provide any prospective student with a description of the course content.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1410 SOLICITATION OF STUDENTS

Sponsors and instructors may make available for purchase by students unapproved materials, pamphlets, and brochures that belong to the sponsor, instructor, or some other person. However, class time shall not be used to promote or sell any materials or to solicit affiliation or membership in any business or organization. Unapproved materials shall not be used as teaching aids during the class.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1411 CANCELLATION AND REFUND POLICIES

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Course sponsors shall administer course cancellation and fee refund policies in a non-discriminatory manner. Such policies shall be clearly defined in course advertising and information as outlined in 11 NCAC 08 .1409. If a scheduled course is canceled, a sponsor shall notify preregistered students of the cancellation. All prepaid fees received from preregistered students shall be refunded within 30 days after the date of cancellation or, with the student's permission, applied toward the fees for another course.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1412 DENIAL OR WITHDRAWAL OF APPROVAL OF COURSE OR COURSE SPONSOR

(a) The Board or its staff shall deny or withdraw approval of any course or course sponsor upon finding that:

- (1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of the approval.
- (2) The course sponsor or any official or instructor employed by or under contract with the course sponsor has refused or failed to comply with any of the provisions of this Section
- (3) The course sponsor or any official or instructor employed by or under contract with the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board.
- (4) The course sponsor has engaged in a pattern of consistently canceling scheduled courses.
- (5) The course sponsor has knowingly paid fees to the Board with a check that was dishonored by a bank.
- (6) Any court of competent jurisdiction has found the course sponsor or any official or instructor employed by or under contract with the course sponsor to have violated, in connection with the offering of CE courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.
- (7) The course sponsor has failed to comply with cancellation and refund policies as outlined in 11 NCAC 08 .1411.

(b) Any course sponsor who has had approval denied or withdrawn under this Rule may appeal to the Board and be heard at the next regularly scheduled meeting.

(c) If a licensee who is an approved course sponsor or an instructor employed by or under contract with an approved course sponsor engages in any dishonest, fraudulent, or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-143.13.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1413 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all CE courses and course sponsors expires one year following the date of approval. In order to assure continuous approval, renewal applications shall be accompanied by the prescribed renewal fee and filed on a form prescribed by the Board not later than 30 days prior to the date of expiration. Any incomplete renewal application received 30 days or more prior to the date of expiration that is not completed within 10 days after notice of the deficiency, as well as any renewal application received less than 30 days prior to the date of expiration, shall not be accepted. For renewal applications received less than 30 days prior to the date of expiration, the sponsor shall file an application for original approval in accordance with 11 NCAC 08 .1405 on or after July 1 in order to be reapproved. Fees as prescribed in 11 NCAC 08 .1405 shall apply for all such reapprovals.

(b) The fee for renewal of Board approval shall be seventy-five dollars (\$75.00) for each CE course for sponsors meeting the deadlines specified in paragraph (a) of this rule. Fees shall be paid by check, money order, or Visa / MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

11 NCAC 08 .1414 SPONSOR CHANGES DURING APPROVAL PERIOD

(a) Course sponsors shall give prior written notice to the Board in writing of any change in business name, Continuing Education Coordinator, address, or business telephone number.

(b) Course sponsors shall obtain prior approval from the Board for any proposed changes in the content or number of hours for CE courses. The Board shall approve the changes if they satisfy the accreditation requirements of 11 NCAC 08 .1405. Changes in course content that are solely for the purpose of assuring that information provided in a course is current, such as code amendments, changes in regulations, etc., need not be reported until the time the sponsor requests renewal of course approval as specified in 11 NCAC 08 .1413. Requests for approval of changes shall be in writing and in a form prescribed by the Board.

Authority G.S. 143-143.10; 143-143.11B; 150B-21.1(a6).

Rule-making Agency: *NC Department of Insurance*

Rule Citation: *11 NCAC 12 .0815, .0820, .0835, .0842*

Effective Date: *February 1, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 58-2-40, 58-54-10, 58-54-15, 58-54-25, 58-54-50*

Reason for Proposed Action: *The 106th Congress enacted two laws, P.L. 106-170, the Balanced Budget Refinement Act (BBRA) and P.L. 106-113, the Ticket To Work And Work Incentives Improvement Act (TWWIIA). These acts amended Section 1882 of the Social Security Act (42 U.S.C. 1395ss), which governs Medicare supplement insurance. Since these laws were enacted, Medicare supplement insurance companies have been, and continue to be, responsible for adhering to the heightened standards created by the two laws. The BBRA amends the guaranteed issue provisions and the TWWIIA amends the suspension of benefits and premiums under the Medicare supplement insurance policy provisions of the Social Security Act. The proposed amendments incorporate the Medicare supplement insurance provisions from the BBRA and TWWIIA into the NC Administrative Code.*

Comment Procedures: *Written comments may be sent to Theresa Shackelford, Life & Health Division, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.*

CHAPTER 12 – LIFE AND HEALTH DIVISION

SECTION .0800 – MEDICARE SUPPLEMENT INSURANCE

11 NCAC 12 .0815 PURPOSE AND DEFINITIONS

(a) The purpose of this Section is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

(b) For the purposes of this Section:

- (1) "Buyer's Guide means the Guide to Health Insurance for People with Medicare developed jointly by the NAIC and the federal government.
- ~~(2)~~ "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.
- ~~(3)~~ "Issuer" includes an insurance company, fraternal benefit society, hospital or medical service ~~plan, corporation,~~ health maintenance organization, or any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.
- ~~(4)~~ "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

History Note: Filed as a Temporary Amendment Eff. October 16, 1991 for a period of 180 days to expire on April 13, 1992; Filed as a Temporary Adoption Eff. June 13, 1990, for a period of 180 days to expire on December 10, 1990; Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50; Eff. December 1, 1990; Temporary Amendment Eff. February 1, 2002.

11 NCAC 12 .0820 MINIMUM BENEFIT STANDARDS BEFORE JANUARY 1, 1992

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State before January 1, 1992. No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.
 - (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because the loss involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
 - (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
 - (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
 - (d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:
 - (i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
 - (ii) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.
 - (e) Except as authorized by law or rule, an issuer shall neither cancel nor fail

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- to renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
- (f) If a group Medicare supplement policy is terminated by the group policyholder and not replaced as provided in Subparagraph (1)(h) of this Rule, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:
- (i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy;
 - (ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 11 NCAC 12 .0835(2).
- (g) If membership in a group is terminated, the issuer shall:
- (i) offer the certificateholder such conversion opportunities as are described in Subparagraph (1)(f) of this Rule; or
 - (ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (h) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
- (i) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.
- (2) Minimum Benefit Standards.
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
 - (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
 - (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
 - (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
 - (e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;
 - (f) Coverage for the coinsurance ~~amount~~amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [one hundred dollars (\$100.00)]. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within this provision;
 - (g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

History Note: Filed as a Temporary Amendment Eff. October 16, 1991 for a period of 180 days to expire on April 13, 1992; Filed as a Temporary Adoption Eff. June 13, 1990, for a period of 180 days to expire on December 10, 1990; Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50; Eff. December 1, 1990; Amended Eff. August 3, 1992; March 1, 1992; Temporary Amendment Eff. February 1, 2002.

11 NCAC 12 .0835 MINIMUM BENEFIT STANDARDS ON OR AFTER JANUARY 1, 1992

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Section.
 - (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
 - (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
 - (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes, but new premiums must be filed and approved by the Commissioner before use.
 - (d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium.

- (e) Each Medicare supplement policy shall be guaranteed renewable and:
 - (i) The issuer shall not cancel or fail to renew the policy solely on the ground of health status of the individual.
 - (ii) The issuer shall not cancel or fail to renew the policy for any reason other than nonpayment of premium or material misrepresentation.
 - (iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (1)(e)(v) of this Rule, the issuer shall offer each certificateholder an individual Medicare supplement policy that, at the option of the certificate holder:
 - (A) Provides for continuation of the benefits contained in the group policy, or
 - (B) Provides for such benefits as otherwise meet the requirements of this Rule.
 - (iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall either:
 - (A) Offer the certificateholder the conversion opportunity described in Subparagraph (1)(e)(iii) of this Rule; or
 - (B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
 - (v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding

- issuer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
- (g) Suspension During Medicaid Eligibility.
- (i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.
- (ii) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
- (iii) Reinstitution of such coverages as described in Subparagraphs (i) and (ii) of this Rule:
- (A) Shall not provide for any waiting period with respect to treatment of pre-existing conditions;
- (B) Shall provide for coverage that is substantially equivalent to coverage in effect before the date of such suspension; and
- (C) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.
- (2) Standards for Basic ("Core") Benefits Common to All Benefit Plans: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Benefit Plans in addition to the basic "core" package, but not in lieu thereof.
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
- (b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

- (c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
 - (d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
 - (e) Coverage for the coinsurance ~~amount~~amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.
- (3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 11 NCAC 12 .0836.
- (a) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
 - (b) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.
 - (c) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
 - (d) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
 - (e) One Hundred Percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge.
- (f) Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
 - (g) Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
 - (h) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250.00) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.
 - (i) Preventive Medical Care Benefit: Coverage for the following preventive health services:
 - (i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (3)(i)(ii) of this Rule and patient education to address preventive health care measures.
 - (ii) Any one or a combination of the following preventive screening tests or preventive services, the frequency of

which is considered medically appropriate:

~~(A) Fecal occult blood test or digital rectal examination;~~

~~(B) Mammogram;~~

~~(C)~~(A) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

~~(D)~~(B) Pure tone (air only) hearing screening test, administered or ordered by a physician;

~~(E)~~(C) Serum cholesterol screening (every five years);

~~(F)~~(D) Thyroid function test;

~~(G)~~(E) Diabetes screening.

(iii) ~~Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every 10 years).~~

(iv) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120.00) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-Home Recovery Benefit: Coverage for services to provide short term at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(i) For purposes of this benefit, the following definitions shall apply:

(A) "Activities of daily living" include but are not limited to bathing, dressing, personal hygiene,

transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(ii) Coverage Requirements and Limitations.

(A) At-home recovery services provided must be primarily services that assist

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- in activities of daily living.
- (B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
- (C) Coverage is limited to:
- (I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.
- (II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit.
- (III) One thousand six hundred dollars (\$1,600) per calendar year.
- (IV) Seven visits in any one week.
- (V) Care furnished on a visiting basis in the insured's home.
- (VI) Services provided by a care provider, as defined in this Rule.
- (VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.
- (VIII) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home

- health care visit.
- (iii) Coverage is excluded for:
- (A) Home care visits paid for by Medicare or other government programs; and
- (B) Care provided by family members, unpaid volunteers or providers who are not care providers.
- (k) New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

(l) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

11 NCAC 12 .0842 GUARANTEED ISSUE FOR ELIGIBLE PERSONS

- (a) As used in this Rule:
- (1) "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.
- (2) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002 (Employee Retirement Income Security Act).
- (3) "Insolvency" means when an issuer, licensed to transact the business of insurance in this State, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.
- (4) "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859, Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:
- (A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
- (B) Medicare medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
- (C) Medicare+Choice private fee-for-service plans.
- (b) Eligible persons are those individuals described in Paragraph (c) of this Rule whose seek to enroll under the policy during the period specified in Paragraph (d), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Paragraph (d) of this Rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.
- (c) An eligible person is an individual described in any of the following Subparagraphs:
- (1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit

History Note: Filed as a Temporary Adoption Eff. October 16, 1991 for a period of 180 days to expire on April 13, 1992; Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50; Eff. March 1, 1992; Amended Eff. February 1, 1996; Temporary Amendment Eff. February 1, 2002.

- plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;
- (2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances ~~apply; apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described in this Paragraph that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan;~~
- ~~(A) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; The certification of the organization or plan under this part has been terminated; or~~
- ~~(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; or~~
- ~~(B)(C)~~ (C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of the United States Department of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; or
- ~~(C)(D)~~ (D) The individual demonstrates, in accordance with guidelines established by the Secretary of the United States Department of Health and Human Services, that:
- (i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or
- (ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
- ~~(D)(E)~~ (E) The individual meets such other exceptional conditions as the Secretary of the United States Department of Health and Human Services may provide.
- (3) The individual is enrolled with:
- (A) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); or
- (B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or
- ~~(C) Any PACE program under Section 1894 of the Social Security Act; or~~
- ~~(C)(D)~~ (D) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or
- ~~(D)(E)~~ (E) An organization under a Medicare Select policy; and
- ~~(E)(F)~~ (F) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Subparagraph (2) of this Paragraph.
- (4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:
- (A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization or of other involuntary termination of coverage or enrollment under the policy;
- (B) The issuer of the policy substantially violated a material provision of the policy; or
- (C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;
- (5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of

Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment is terminated by the enrollee during any period within the first 12 months after the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act);

- (6) The individual, upon first becoming enrolled in Medicare part A or part B for benefits at age 65 or older, enrolls in a Medicare+Choice plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan by not later than 12 months after the effective date of enrollment; or
- (7) The individual is enrolled in a Medicare risk plan under part C of Medicare and the plan is later converted to a Medicare+Choice plan, and first disenrolls from the converted plan by not later than 12 months after the effective date of the conversion.

(d) Guaranteed Issue Time Periods:

- (1) In the case of an individual described in Subparagraph (c)(1) of this Rule, the guaranteed issued period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;
- (2) In the case of an individual described in Subparagraphs (c)(2), (3), (5) or (6) of this Rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and 63 days after the date the applicable coverage is terminated;
- (3) In the case of an individual described in Subparagraph (c)(4)(A) of this Rule, the guaranteed issue period begins on the earlier of:
 - (A) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and
 - (B) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;
- (4) In case of an individual described in Subparagraphs (c)(2), (c)(4)(B), (c)(4)(C), (c)(5) or (c)(6) of this Rule who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective

date of the disenrollment and ends on the date that is 63 days after the effective date; and

- (5) In the case of an individual described in Subparagraph (c) of this Rule but not described in the preceding provisions of this Section, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(e) Extended Medigap access for interrupted trial periods:

- (1) In the case of an individual described in Subparagraph (c)(5) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with an organization or provider described in Subparagraph (c)(5) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be an initial enrollment described in Subparagraph (c)(5) of this Rule.
- (2) In the case of an individual described in Subparagraph (c)(6) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with a plan or in a program described in Subparagraph (c)(6) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subparagraph (c)(6) of this Rule.
- (3) For the purposes of Subparagraphs (c)(5) and (c)(6) of this Rule, no enrollment of an individual with an organization or provider described in Subparagraph (c)(5) of this Rule, or with a plan or program described in Subparagraph (c)(6) of this Rule, may be deemed to be an initial enrollment under this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

~~(d)~~(f) The Medicare supplement policy to which eligible persons are entitled under:

- (1) Subparagraphs (c)(1), (2), (3) and (4) of this Rule is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.
- (2) Subparagraph (c)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subparagraph (1) of this Paragraph.
- (3) Subparagraph (c)(6) shall include any Medicare supplement policy offered by any issuer.

~~(e)~~(g) Notification provisions:

- (1) At the time of an event described in Paragraph (c) of this Rule because of which an individual

loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated contemporaneously with the notification of termination.

- (2) At the time of an event described in Paragraph (c) of this Rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.

History Note: Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50;
Temporary Adoption Eff. August 1, 1998;
Eff. April 1, 1999;
Temporary Amendment Eff. February 1, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 21H .0111*

Effective Date: *December 5, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 130A-134; 130A-135; 130A-139; 130A-141*

Reason for Proposed Action: *Available program funds were not increased in Senate Bill 1005. Anticipated carryforward and inflationary increases are unavailable for FY02 due to budgetary constraints. Program expenditures increased by 30% in FY00 and 19% in FY01. The average cost per patient per year has risen to \$4729. Without the anticipated increased funds, all program funds will be expended by January 31, 2002. To avoid a total interruption in program services for the 203 low-income persons enrolled in the program, payment for inpatient services will be discontinued beginning December 2001. The preventive services (i.e. outpatient and drug services)*

will be continued. These options have been developed and reviewed with the NC Sickle Cell Advisory Council.

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 60 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris Hoke, Rule-making Coordinator, Division Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH SECTION

SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

15A NCAC 21H .0111 MEDICAL SERVICES COVERED

~~(a) The North Carolina Sickle Cell Syndrome Program shall provide services only when they are not available through other sources or agencies. Prior to requesting services, it shall be determined that the patient is not eligible for services through the division of services for the blind; Medicaid and Medicare programs; school health program; vocational rehabilitation; workmen's compensation or civilian health and medical programs of the uniformed services (CHAMPUS).~~

~~(b) If an individual meets the eligibility requirements, he shall be provided the following medical services: Covered medical services, which must be determined to be related to sickle cell disease and approved by the Program, include:~~

- ~~(1) inpatient care;~~
- ~~(1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits not to exceed triple the Program average for each for the previous two years;~~
- ~~(2) routine visits to the physician; physicians' office visits;~~
- ~~(3) prescription drugs; drugs on the Program's formulary. A copy of this formulary may be obtained by writing to the Sickle Cell Program;~~
- ~~(4) general analgesics;~~
- ~~(5)(4) appliances; medical supplies and equipment;~~
- ~~(6)(5) preventive and limited maintenance dentistry; and~~
- ~~(7) obstetrical care (excluding delivery of baby);~~
- ~~(8)(6) eye care (when the division of services for the blind will not provide coverage); coverage).~~
- ~~(9) psychiatric; and~~
- ~~(10) psychological counseling.~~

History Note: Filed as a Temporary Amendment Eff. October 14, 1988, for a period of 180 days to expire on April 12, 1989; Filed as a Temporary Amendment Eff. November 7, 1983, for a period of 120 days to expire on March 4, 1984; Authority G.S. 130A-129; Eff. February 1, 1976;

TEMPORARY RULES

Amended Eff. April 22, 1977;

Readopted Eff. December 5, 1977;

*Amended Eff. October 1, 1984; March 1, 1984; July 1, 1982;
January 1, 1982;*

Expired Temporary Amendment Eff. April 12, 1989;

Amended Eff. September 1, 1990;

Temporary Amendment Eff. June 19, 1996;

Temporary Amendment Expired on March 11, 1997;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. December 5, 2001.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of November 15, 2001 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10	NCAC	03R	.1613*	16:03 NCR
10	NCAC	03R	.2502	16:03 NCR
10	NCAC	03R	.2713	16:03 NCR
10	NCAC	03R	.2715	16:03 NCR
10	NCAC	03R	.3701	16:03 NCR
10	NCAC	03R	.3703*	16:03 NCR
10	NCAC	03R	.6301-.6302	16:03 NCR
10	NCAC	03R	.6303-.6304*	16:03 NCR
10	NCAC	03R	.6305-.6307	16:03 NCR
10	NCAC	03R	.6309-.6319	16:03 NCR
10	NCAC	03R	.6320-.6321*	16:03 NCR
10	NCAC	03R	.6322-.6323	16:03 NCR
10	NCAC	03R	.6324*	16:03 NCR
10	NCAC	03R	.6325-.6335	16:03 NCR
10	NCAC	03R	.6337-.6338	16:03 NCR
10	NCAC	03R	.6339*	16:03 NCR
10	NCAC	03R	.6340-.6342	16:03 NCR
10	NCAC	03R	.6343-.6346	16:03 NCR
10	NCAC	45H	.0203-.0204*	15:15 NCR
10	NCAC	50B	.0101*	16:02 NCR
15A	NCAC	02B	.0311*	14:24 NCR
15A	NCAC	02D	.1008*	16:02 NCR
15A	NCAC	02Q	.0102*	16:02 NCR
15A	NCAC	07H	.0309*	16:01 NCR
15A	NCAC	07K	.0209*	16:01 NCR
15A	NCAC	07K	.0213	16:01 NCR
15A	NCAC	18A	.1311*	16:02 NCR
15A	NCAC	18A	.1321*	16:02 NCR
16	NCAC	06D	.0503*	16:04 NCR, Eff. December 1, 2001
21	NCAC	20	.0115	16:05 NCR
21	NCAC	36	.0109*	16:05 NCR
21	NCAC	36	.0231	15:23 NCR
21	NCAC	46	.2108*	not required (G.S. 150B-21.5(a)(3), Eff. December 1, 2001
21	NCAC	46	.2502*	not required (G.S. 150B-21.5(a)(5), Eff. December 1, 2001
21	NCAC	64	.0210*	16:05 NCR

**TITLE 10 – DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

10 NCAC 03R .1613 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved" means the equipment was not in operation prior to the beginning of the

- (2) review period and had been issued a certificate of need.
"Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means 1500 diagnostic-equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at 1.75

- diagnostic-equivalent procedures. One cardiac catheterization procedure performed on a patient age 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
- (3) "Cardiac angioplasty equipment" shall have the same meaning as defined in G.S. 131E-176(2e).
- (4) "Cardiac catheterization equipment" shall have the same meaning as defined in GS. 131E-176(2f).
- (5) "Cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a single episode of diagnostic or therapeutic catheterization which occurs during one visit to a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker insertion, or procedures performed in dedicated angiography or electrophysiology rooms.
- (6) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the performance of cardiac catheterization procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.
- (7) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 90 road miles.
- (8) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
- (9) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic and therapeutic cardiac catheterization procedures, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.
- (10) "Diagnostic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects or diseases in the coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.
- (11) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.
- (12) "Existing" means the equipment was in operation prior to the beginning of the review period.
- (13) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1991) report.
- (14) "Mobile equipment" means cardiac angioplasty equipment or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.
- (15) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.
- (16) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the

- facility, if the facility has a comprehensive cardiac services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 03R shall not be limited to 45 road miles.
- (17) "Therapeutic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of treating or resolving anatomical or physiological conditions which have been determined to exist in the heart or coronary arteries or veins of the heart, but not the pulmonary artery.

- (2) the proposed PET scanner is reasonably projected to be utilized at an annual rate of at least 1,220 clinical procedures by the end of the third year following completion of the project. The applicant shall describe all assumptions and methodologies used in making these projections;
- (3) its existing clinical PET scanners operating in the proposed PET scanner service area in which the proposed PET scanner will be located performed an average of 1,220 clinical procedures per scanner during the 12 month period reflected in the 2000 Licensure Application on file with the Division of Facility Services;
- (4) its existing and approved PET scanners in the PET scanner service area is reasonably protected to perform an average of at least 1,220 clinical procedures per PET scanner during the third year following completion of the project. All assumptions and methodologies used in making these projections shall be described in the application; and
- (5) each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturers specifications, and licensing requirements. The following shall be addressed:
- (a) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
 - (b) quality control measures and assurance of PET tomograph and associated instrumentation;
 - (c) radiation protection and shielding;
 - (d) radioactive emission to the environment; and
 - (e) radioactive waste disposal.

History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177(1); 131E-183; Eff. January 1, 1987; Amended Eff. November 1, 1996; February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Amended Eff. August 1, 2002.

History Note: Filed as a Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177(1); 131E-183(b); Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

10 NCAC 03R .3703 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire a PET scanner shall demonstrate that:

- (1) all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations;

10 NCAC 03R .6303 MULTI-COUNTY GROUPINGS

(a) Health Service Areas. The Department of Health and Human Services (DHHS) has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

HEALTH SERVICE AREAS (HSA)

I	II	III	IV	V	VI
County	County	County	County	County	County
Alexander	Alamance	Cabarrus	Chatham	Anson	Beaufort
Alleghany	Caswell	Gaston	Durham	Bladen	Bertie

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Ashe	Davidson	Iredell	Franklin	Brunswick	Camden
Avery	Davie	Lincoln	Granville	Columbus	Carteret
Buncombe	Forsyth	Mecklenburg	Johnston	Cumberland	Chowan
Burke	Guilford	Rowan	Lee	Harnett	Craven
Caldwell	Randolph	Stanly	Orange	Hoke	Currituck
Catawba	Rockingham	Union	Person	Montgomery	Dare
Cherokee	Stokes		Vance	Moore	Duplin
Clay	Surry		Wake	New Hanover	Edgecombe
Cleveland	Yadkin		Warren	Pender	Gates
Graham				Richmond	Greene
Haywood				Robeson	Halifax
Henderson				Sampson	Hertford
Jackson				Scotland	Hyde
McDowell					Jones
Macon					Lenoir
Madison					Martin
Mitchell					Nash
Polk					Northampton
Rutherford					Onslow
Swain					Pamlico
Transylvania					Pasquotank
Watauga					Perquimans
Wilkes					Pitt
Yancey					Tyrrell
					Washington
					Wayne
					Wilson

(b) Mental Health Planning Areas. The DHHS has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2	Buncombe, Madison, Mitchell, Yancey
3	Alleghany, Ashe, Avery, Watauga, Wilkes
4	Henderson, Transylvania
5	Alexander, Burke, Caldwell, McDowell
6	Rutherford, Polk
7	Cleveland, Gaston, Lincoln
8	Catawba
9	Mecklenburg
10	Cabarrus, Rowan, Stanly, Union
11	Surry, Yadkin, Iredell
12	Forsyth, Stokes, Davie
13	Rockingham
14	Guilford
15	Alamance, Caswell
16	Orange, Person, Chatham
17	Durham
18	Vance, Granville, Franklin, Warren
19	Davidson
20	Anson, Hoke, Montgomery, Moore, Richmond
21	Bladen, Columbus, Robeson, Scotland
22	Cumberland
23	Lee, Harnett
24	Johnston
25	Wake
26	Randolph
27	Brunswick, New Hanover, Pender

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28	Onslow
29	Wayne
30	Wilson, Greene
31	Edgecombe, Nash
32	Halifax
33	Carteret, Craven, Jones, Pamlico
34	Lenoir
35	Pitt
36	Bertie, Gates, Hertford, Northampton
37	Beaufort, Hyde, Martin, Tyrrell, Washington
38	Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
39	Duplin, Sampson

(c) Mental Health Planning Regions. The DHHS has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)

Western (W)	
1	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2	Buncombe, Madison, Mitchell, Yancey
3	Alleghany, Ashe, Avery, Watauga, Wilkes
4	Henderson, Transylvania
5	Alexander, Burke, Caldwell, McDowell
6	Rutherford, Polk
7	Cleveland, Gaston, Lincoln
8	Catawba
9	Mecklenburg
10	Cabarrus, Rowan, Stanly, Union
North Central (NC)	
11	Surry, Yadkin, Iredell
12	Forsyth, Stokes, Davie
13	Rockingham
14	Guilford
15	Alamance, Caswell
16	Orange, Person, Chatham
17	Durham
18	Vance, Granville, Franklin, Warren
South Central (SC)	
19	Davidson
20	Anson, Hoke, Montgomery, Moore, Richmond
21	Bladen, Columbus, Robeson, Scotland
22	Cumberland
23	Lee, Harnett
24	Johnston
25	Wake
26	Randolph
Eastern (E)	
27	Brunswick, New Hanover, Pender
28	Onslow
29	Wayne
30	Wilson, Greene
31	Edgecombe, Nash
32	Halifax
33	Carteret, Craven, Jones, Pamlico
34	Lenoir
35	Pitt
36	Bertie, Gates, Hertford, Northampton
37	Beaufort, Hyde, Martin, Tyrrell, Washington
38	Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
39	Duplin, Sampson

APPROVED RULES

(d) Radiation Oncology Treatment Center Planning Areas. The DHHS has assigned the counties of the state to the following Radiation Oncology Treatment Center Planning Areas for purposes of the State Medical Facilities Plan:

RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Buncombe, Haywood, Madison, McDowell, Mitchell, Yancey
3	Ashe, Avery, Watauga
4	Henderson, Polk, Transylvania
5	Alexander, Burke, Caldwell, Catawba
6	Rutherford, Cleveland, Gaston, Lincoln
7	Mecklenburg, Anson, Union
8	Iredell, Rowan
9	Cabarrus, Stanly
10	Alleghany, Forsyth, Davidson, Davie, Stokes, Surry, Wilkes, Yadkin
11	Guilford, Randolph, Rockingham
12	Alamance, Chatham, Orange
13	Durham, Caswell, Granville, Person, Vance, Warren
14	Moore, Hoke, Lee, Montgomery, Richmond, Scotland
15	Cumberland, Bladen, Sampson, Robeson
16	New Hanover, Brunswick, Columbus, Pender
17	Wake, Franklin, Harnett, Johnston
18	Lenoir, Duplin, Wayne
19	Craven, Carteret, Onslow, Jones, Pamlico
20	Nash, Halifax, Wilson, Northampton, Edgecombe
21	Pitt, Beaufort, Bertie, Greene, Hertford, Hyde, Martin, Washington
22	Pasquotank, Camden, Chowan, Currituck, Dare, Gates, Perquimans, Tyrrell

(e) Ambulatory Surgical Facility Planning Areas. The DHHS has assigned the counties of the state to the following Ambulatory Surgical Facility Planning Areas for purposes of the State Medical Facilities Plan:

AMBULATORY SURGICAL FACILITY PLANNING AREAS

Area	Constituent Counties
1	Alamance
2	Alexander, Iredell
3	Alleghany, Surry, Wilkes
4	Anson, Gaston, Mecklenburg, Union
5	Ashe, Avery, Watauga
6	Beaufort, Hyde
7	Bertie, Gates, Hertford
8	Bladen, Cumberland, Robeson, Sampson
9	Brunswick, Columbus, Duplin, New Hanover, Pender
10	Buncombe, Haywood, Madison, Mitchell, Yancey
11	Burke, McDowell, Rutherford
12	Cabarrus, Rowan, Stanly
13	Caldwell, Catawba, Lincoln
14	Camden, Currituck, Dare, Pasquotank, Perquimans
15	Carteret, Craven, Jones, Onslow, Pamlico
16	Caswell, Chatham, Orange
17	Cherokee, Clay, Graham, Jackson, Macon, Swain
18	Chowan, Tyrrell, Washington
19	Cleveland
20	Davidson, Davie, Forsyth, Stokes, Yadkin
21	Durham, Granville, Person
22	Edgecombe, Halifax, Nash, Northampton
23	Franklin, Harnett, Johnston, Wake
24	Greene, Lenoir, Martin, Pitt
25	Guilford, Randolph, Rockingham

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26	Henderson, Polk, Transylvania
27	Hoke, Lee, Montgomery, Moore, Richmond, Scotland
28	Vance, Warren
29	Wayne
30	Wilson

(f) Magnetic Resonance Imaging (MRI) Scanners Service Areas for both fixed and mobile MRI scanners. The DHHS has assigned the counties of the state to the following Magnetic Resonance Imaging Scanners Service Areas for purposes of the State Medical Facilities Plan for both fixed and mobile MRI scanners.

MAGNETIC RESONANCE IMAGING PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Haywood
3	Buncombe, Madison, McDowell, Mitchell, Yancey
4	Ashe, Avery, Watauga
5	Alexander, Burke, Caldwell, Catawba, Lincoln
6	Cleveland, Rutherford
7	Henderson, Polk, Transylvania
8	Gaston
9	Cabarrus, Montgomery, Rowan, Stanly
10	Iredell
11	Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin
12	Alamance
13	Durham, Caswell, Granville, Person, Vance, Warren
14	Chatham, Orange
15	Davidson, Guilford, Randolph, Rockingham
16	Richmond, Scotland
17	Anson, Mecklenburg, Union
18	Cumberland, Hoke, Moore, Robeson, Sampson
19	Franklin, Harnett, Johnston, Lee, Wake
20	Lenoir, Wayne, Wilson
21	Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender
22	Carteret, Craven, Jones, Onslow, Pamlico
23	Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington
24	Edgecombe, Halifax, Nash, Northampton
25	Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans, Tyrrell

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1);
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

10 NCAC 03R .6304 SERVICE AREAS AND PLANNING AREAS

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed planning areas are the hospital service systems which are defined as follows:

- (1) hospitals that are in the same city or within 10 miles of one another are in the same hospital service system;
- (2) hospitals that are under common ownership and within the same county are in the same hospital service system; or
- (3) a 10-mile radius around a hospital that is not included in one of the groups of hospitals described in Subparagraphs (1) or (2) of this Rule is a hospital service system.

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10 NCAC 03R .6303(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning

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areas are the multi-county groupings as defined in 10 NCAC 03R .6303(f).

(f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.

(g) A Medicare-certified home health agency office's service area is the Medicare-certified home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate Medicare-certified home health agency office planning area.

(h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.

(i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.

(j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed

planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).

(o) A heart-lung bypass machine's service area is the heart-lung bypass machine planning area in which the heart-lung bypass machine is located. The heart-lung bypass machine planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).

(p) A unit of fixed cardiac catheterization and cardiac angioplasty equipment's service area is the fixed cardiac catheterization and cardiac angioplasty equipment planning area in which the equipment is located. Each of the 100 counties in the State is a separate fixed cardiac catheterization and cardiac angioplasty equipment planning area.

(q) A unit of shared fixed cardiac catheterization and cardiac angioplasty equipment's service area is the shared fixed cardiac catheterization and cardiac angioplasty planning area in which the equipment is located. The shared fixed cardiac catheterization and cardiac angioplasty planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).

(r) A positron emission tomography scanner's service area is the health service area (HSA) in which the scanner is located. The health service areas are the multi-county groupings as defined in 10 NCAC 03R .6303(a).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1); Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

10 NCAC 03R .6320 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

It is determined that there is a need for eight additional fixed Magnetic Resonance Imaging (MRI) Scanners based on fixed MRI Scanner utilization in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R .6321.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	MRI Scanners Need Determination
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	3
13 (Caswell, Durham, Granville, Person, Vance, Warren)	1
17 (Anson, Mecklenburg, Union)	2
19 (Franklin, Harnett, Johnston, Lee, Wake)	1
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

10 NCAC 03R .6321 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

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It is determined that there is a need for two additional fixed Magnetic Resonance Imaging (MRI) Scanners based on utilization of mobile MRI Scanners in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R .6320.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	MRI Scanners Need Determination
15 (Davidson, Guilford, Randolph & Rockingham)	1
17 (Anson, Mecklenburg, Union)	1

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

**10 NCAC 03R .6324 DIALYSIS NEED
DETERMINATION METHODOLOGY FOR REVIEWS
BEGINNING JANUARY 1, 2001**

(a) The Medical Facilities Planning Section (MFPS) issued an "Amended September 2000 Semiannual Dialysis Report" on October 12, 2000. Data used for need determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) as of June 30, 2000 supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS.;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1995 to the end of 1999 is multiplied by the county's June 30, 2000 total number of patients in the Amended SDR, and the product is added to each county's most recent total number of patients reported in the Amended SDR. The sum is the county's projected total June 30, 2001 patients.
 - (B) The percent of each county's total patients who were home dialysis patients on June 30, 2000 is multiplied by the county's projected total June 30, 2001 patients, and the product is subtracted from the county's projected total June 30,

2001 patients. The remainder is the county's projected June 30, 2001 in-center dialysis patients.

(C) The projected number of each county's June 30, 2001 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2001 in-center dialysis stations.

(D) From each county's projected number of June 30, 2001 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2001 projected station surplus or deficit.

(E) If a county's June 30, 2001 projected station deficit is 10 or greater and the Amended SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2001 county station need determination is the same as the June 30, 2001 projected station deficit. If a county's June 30, 2001 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's June 30, 2001 station need determination is zero.

(2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the Amended September Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

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- (A) Its utilization, reported in the Amended SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center dialysis patients reported in the March 2000 SDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the Amended SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate;
 - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
 - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the Amended SDR until the end of calendar 2000;
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the Amended SDR and that product is added to such reported number of in-center patients; and
 - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the Amended SDR. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the Amended September 2000 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the January 1, 2001 Review Period shall be as follows:

Data for Period Ending	Corrected SEKC Report	Publication of Amended SDR	Receipt of CON Applications for Need Determinations affected by Amended Patient Data	Beginning Review Date for Need Determinations affected by Amended Patient Data
June 30, 2000	Oct. 4, 2000	Oct. 12, 2000	December 15, 2000	January 1, 2001

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.

(f) Home patients shall not be included in determination of need for new stations.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

10 NCAC 03R .6339 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS

A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part A, provided that the conditions set forth in this Rule and in 10 NCAC 03R .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
 - (a) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
 - (b) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an

- environment which emphasizes religious customs, ceremonies, and practices;
- (c) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide long-term nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (d) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
 - (e) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10 NCAC 03R .6322 shall be granted to a nursing facility for purposes of relocating existing licensed nursing beds to another county provided that it complies with all of the criteria listed in this Rule.
- (3) Any certificate of need issued under this Rule shall be subject to the following conditions:
- (a) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make discharge arrangements acceptable to residents not desiring to transfer to the new facility; and
 - (b) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
 - (c) subsequent to providing the letter to the Licensure and Certification Section described in Subparagraph (3)(b) of this Rule, the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

Eff. August 1, 2002.

10 NCAC 45H .0203 SCHEDULE II

- (a) Schedule II shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and as specified in G.S. 90-90. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.12.
- (b) The Commission for MH/DD/SAS may add, delete or reschedule substances within Schedules FVI as specified in G.S. 90-88.

History Note: Authority G.S. 90-88; 90-90; 143B-147; Eff. June 30, 1978; Amended Eff. January 1, 1994; April 1, 1993; August 1, 1991; August 1, 1989; Temporary Amendment Eff. May 13, 1997; Amended Eff. August 1, 2002; July 1, 1998.

10 NCAC 45H .0204 SCHEDULE III

- (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated and as specified in G.S. 90-91. Each drug or substitute has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.13.
- (b) The Commission for MH/DD/SAS may add, delete or reschedule substances within Schedules FVI as specified in G.S. 90-88.

History Note: Authority G.S. 90-88; 90-91; 143B-147; Eff. June 30, 1978; Amended Eff. August 1, 2002; August 1, 1991; December 1, 1987; August 1, 1987; July 1, 1982.

SECTION .0100 – COVERAGE GROUPS

10 NCAC 50B .0101 MANDATORY

The following groups required by 42 U.S.C. 1396a (a)(10) or 1396u-1 shall be eligible for Medicaid:

- (1) Individuals who meet the requirements under 42 U.S.C. 1396u-1.
- (2) Individuals receiving four months continued Medicaid when eligibility under 42 U.S.C. 1396u-1 is lost due to collection or increased collection of child support.
- (3) Individuals receiving transitional Medicaid as described in 42 U.S.C. 1396s when eligibility under 42 U.S.C. 1396u-1 is lost due to increased earnings.
- (4) Individuals for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under Title IV E of the Social Security Act as described at 42 U.S.C. 673 (b).
- (5) Qualified pregnant women as defined at 42 U.S.C. 1396d(n)(1).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001;

- (6) Qualified children as defined at 42 U.S.C. 1396d(n)(2).
- (7) Pregnant women, during a 60 day period following termination of the pregnancy, for pregnancy related and post partum services if they applied for Medicaid prior to termination of the pregnancy and were eligible on the date pregnancy is terminated.
- (8) Children, born to a woman who was eligible for and receiving Medicaid on the date of the child's birth, for up to one year from the date of birth; as described at 42 U.S.C. 1396a(e)(4).
- (9) Individuals receiving SSI under Title XVI of the Social Security Act.
- (10) Individuals who meet the requirements under 42 U.S.C. 1382h(a) or (b)(1).
- (11) Blind or disabled individuals who were eligible in December 1973 as blind or disabled and who for each consecutive month since December 1973 continue to meet December 1973 eligibility criteria.
- (12) Individuals who were eligible in December 1973 as aged, or blind, or disabled with an essential spouse and who, for each consecutive month since December 1973, continue to live with the essential spouse and meet December 1973 eligibility criteria.
- (13) Individuals who in December 1973 were eligible as the essential spouse of an aged, or blind, or disabled individual and who for each consecutive month since December 1973, have continued to live with that individual who has met December 1973 eligibility criteria.
- (14) Qualified Medicare Beneficiaries described at 42 U.S.C. 1396d(p).
- (15) Pregnant women whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2), for pregnancy related services including labor and delivery.
- (16) Children born after September 30, 1983 and who are under age 19 who are described at 42 U.S.C. 1396a(1).
- (17) Qualified Disabled and Working Individuals described at 42 U.S.C. 1396d(s).
- (18) Individuals as described at 42 U.S.C. 1396a(a)(10)(E)(iii).
- (19) Individuals who would continue to be eligible for SSI except for specific Title II benefits or cost-of-living adjustments as described at 42 U.S.C. 1383c.

Amended Eff. January 1, 1995; March 1, 1993; January 4, 1993; April 1, 1992;
Temporary Amendment September 11, 2000; September 13, 1999;
Amended Eff. August 1, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Alamance County
 - Bladen County
 - Brunswick County
 - Caswell County
 - Chatham County
 - Columbus County
 - Cumberland County
 - Duplin County
 - Durham County
 - Forsyth County
 - Guilford County
 - Harnett County
 - Hoke County
 - Lee County
 - Montgomery County
 - Moore County
 - New Hanover County
 - Onslow County
 - Orange County
 - Pender County
 - Randolph County
 - Rockingham County
 - Sampson County
 - Wake County
 - Wayne County
- (2) North Carolina Department of Environment and Natural Resources:
 - (A) Winston-Salem Regional Office
585 Woughtown Street
Winston-Salem, North Carolina
 - (B) Fayetteville Regional Office
Systel Building
225 Green Street
Suite 714
Fayetteville, North Carolina
 - (C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina
 - (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133; Eff. September 1, 1984;

- (3) December 14, 1980;
 - (4) August 9, 1981;
 - (5) April 1, 1982;
 - (6) December 1, 1983;
 - (7) January 1, 1985;
 - (8) August 1, 1985;
 - (9) December 1, 1985;
 - (10) February 1, 1986;
 - (11) July 1, 1987;
 - (12) October 1, 1987;
 - (13) March 1, 1988;
 - (14) June 1, 1988;
 - (15) July 1, 1988;
 - (16) January 1, 1990;
 - (17) August 1, 1990;
 - (18) August 3, 1992;
 - (19) September 1, 1994;
 - (20) August 1, 1998;
 - (21) April 1, 1999;
 - (22) August 1, 2002.
- (c) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective June 1, 1988 as follows:
- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
 - (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.
- (d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.
- (e) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows:
- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
 - (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.
- (f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.
- (g) The Schedule of Classifications and Water Quality Standards for the Cape Fear 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 Cape Fear River Basin was amended effective June 1, 1994 as follows:
- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
 - (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
 - (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.
- (i) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.
- (j) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 1998 with the revision to the primary

classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 2002 as follows:

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (3) The "@" symbol as used in Paragraph (m) of this Rule means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
 Eff. February 1, 1976;
 Amended Eff. August 1, 2002; April 1, 1999; August 1, 1998;
 September 1, 1994; June 1, 1994; August 3, 1992;
 August 1, 1990.

15A NCAC 02D .1008 HEAVY DUTY DIESEL ENGINE REQUIREMENTS

(a) Definitions. For the purposes of this Rule, the following definitions apply:

- (1) "Heavy duty diesel engine," means any diesel engine used in a vehicle with a gross vehicle weight rating of 14,001 pounds and greater.
- (2) "Model year" means model year as defined in 40 CFR Section 85.2302.

(b) Requirement. No model year 2005 or 2006 heavy duty diesel engine may be sold, leased, or registered within North Carolina unless it has been certified by the California Air Resources Board as meeting the requirements of Title 13 of the California Code of Regulations, Section 1956.8 (as amended).

(c) Referenced Regulation. A copy of Title 13 of the California Code of Regulations, Section 1956.8, may be obtained free of charge via the internet from the Office of Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard copy may be obtained at a cost of five dollars (\$5.00) from the Public Information Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7);
 Eff. July 1, 2002.

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
 - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
 - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
 - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or
 - (D) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
- (3) prevention of significant deterioration under 15A NCAC 02D .0530;

- (4) new source review under 15A NCAC 02D .0531 or .0532;
 - (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg County according to 15A NCAC 02D .0902;
 - (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
 - (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).
- (c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:
- (1) activities exempted because of category:
 - (A) maintenance, upkeep, and replacement:
 - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
 - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
 - (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (iv) use of fire fighting equipment;
 - (v) paving parking lots; or
 - (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
- (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (C) laboratory activities:
 - (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (iv) research and development laboratory activities provided the activity produces no commercial product or feedstock material;
 - (D) storage tanks:
 - (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;
 - (ii) storage tanks used to store gasoline for which there

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- are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;
- (iii) storage tanks used solely to store inorganic liquids; or
- (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
 - (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
 - (ii) residential wood stoves, heaters, or fireplaces;
 - (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G) gasoline distribution: gasoline service stations or gasoline dispensing facilities;
- (H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:
 - (i) The portable solvent distillation system is not:
 - (I) owned by the facility, and
 - (II) operated at the facility for more than seven consecutive days; and
 - (ii) The material recycled is recycled at the site of origin;
- (J) processes:
 - (i) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (ii) electric motor bake-on ovens;
 - (iii) burn-off ovens for paint-line hangers with afterburners;
 - (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (v) blade wood planers planing only green wood;
- (K) solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (L) miscellaneous:
 - (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
 - (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
 - (iii) equipment used for the preparation of food for direct on-site human consumption;
 - (iv) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;
 - (v) exit gases from in-line process analyzers;
 - (vi) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
 - (vii) refrigeration equipment that is consistent with Section 601 through 618

- of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- (viii) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
 - (ix) equipment that does not emit any regulated air pollutants;
 - (x) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
 - (xi) sources for which there are no applicable requirements;
 - (xii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
 - (A) storage tanks:
 - (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or
 - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70°F;
 - (B) combustion and heat transfer equipment:
 - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
 - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
 - (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
 (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);

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- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (iii) space heaters burning waste oil if:
 - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
 - (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
 - (III) The combustion gases from the heater are vented to the ambient air;
- (iv) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
 - (I) 310 kilowatts (electric) or 460 horsepower for natural gas-fired engines,
 - (II) 830 kilowatts (electric) or 1150 horsepower for liquefied petroleum gas-fired engines,
- (III) 270 kilowatts (electric) or 410 horsepower for diesel-fired or kerosene-fired engines, or
- (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;
(Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph)
- (v) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph);
- (vi) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:
 - (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters

- that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
- (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
 - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
 - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
- (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:
 - (I) storage tanks,
 - (II) fuel combustion equipment,
 - (III) space heaters burning waste oil,
 - (ii) any facility whose actual emissions of particulate,
- (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
 - (V) bulk gasoline plants,
 - (VI) printing, paint spray booths, or other painting or coating operations,
 - (VII) sawmills,
 - (VIII) perchloroethylene dry cleaners, or
 - (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);

sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate;

(iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or

(iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;

(F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:

(i) to be negligible in their air quality impacts,

(ii) not to have any air pollution control device, and

(iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he may revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter.

History Note: Filed as a Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108; Eff. July 1, 1994; Amended Eff. April 1, 1999; July 1, 1998; July 1, 1997; November 1, 1996; Filed as a Temporary Amendment Eff. December 1, 1999; Amended Eff. July 15, 2002; July 1, 2000.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development may be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands; and
- (8) sand fences

In all cases, this development shall be permitted only if it is landward of the vegetation line; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where strict application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, single family residential structures may be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in

addition to those required by Rule .0308(d) of this Subchapter.

- (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
- (B) The footprint of the structure shall be no more than 1,000 square feet or 10 percent of the lot size, whichever is greater; and
- (C) Driveways and parking area shall be constructed of clay, packed sand or gravel;

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system must be submitted as part of the CAMA permit application.

(c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
- (2) Reconfiguration will not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
- (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule must meet the requirements of Paragraphs (1) through (5) of that Paragraph.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule 07H .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers providing public access (excluding any pier house, office, or other enclosed areas); and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude replacement of a pier house associated with an existing ocean pier, replacement of the pier house shall be permitted if each of the following conditions are met:

- (1) The associated ocean pier provides public access for fishing or other recreational purposes whether on a commercial, public, or nonprofit basis;

- (2) The pier house is set back from the ocean the maximum feasible distance while maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment into the setback area;
- (3) The pier house shall not be enlarged beyond its original dimensions as of January 1, 1996;
- (4) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (5) If the associated pier has been destroyed or rendered unusable, replacement of the pier house shall be permitted only if the pier is also being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural ocean front processes, may be permitted on those non-oceanfront portions of shoreline within a designated Ocean Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;

Eff. February 2, 1981;

Amended Eff. August 1, 2002; August 1, 2000;

August 1, 1998; April 1, 1996; April 1, 1995;

February 1, 1993; January 1, 1991; April 1, 1987.

15A NCAC 07K .0209 EXEMPTION/ACCESSORY USES/MAINTENANCE REPAIR/REPLACEMENT

(a) Accessory buildings customarily incident to an existing structure are specifically excluded from the definition of development if the work does not involve filling, excavation, or the alteration of any sand dune or beach as set out in G.S. 113A-103(5)(b)(6). Accessory buildings shall be subordinate in area and purpose to the principal structure and shall not require, or consist of the expansion of the existing structure as defined by an increase in footprint or total floor area of the existing structure. A building with a footprint of 100 square feet or less shall be considered an accessory building as long as it is customarily incident to and subordinate in area and purpose to the principal structure.

(b) Accessory uses as defined in Paragraph (a) of this Rule and that are directly related to the existing dominant use, but not within the exclusion set out in G.S. 113A-103(5)(b)(6), and that require no plumbing, electrical or other service connections and do not exceed 200 square feet shall be exempt from the CAMA minor development permit requirement if they also meet the criteria set out in Paragraph (d) of this Rule.

Any structure or part thereof may be maintained, repaired or replaced in a similar manner, size and location as the existing structure without requiring a permit, unless such repair or replacement would be in violation of the criteria set out in Paragraph (d) of this Rule. This exemption applies to those projects that are not within the exclusion for maintenance and repairs as set out in G.S. 113A-103(5)(b)(5) and Rule .0103 of this Subchapter.

(d) In order to be eligible for the exemptions described in Paragraphs (a), (b) and (c) of this Rule, the proposed development activity must meet the following criteria:

- (1) the development must not disturb a land area of greater than 200 square feet on a slope of greater than 10 percent;
- (2) the development must not involve removal, damage, or destruction of threatened or endangered animal or plant species;
- (3) the development must not alter naturally or artificially created surface drainage channels;
- (4) the development must not alter the land form or vegetation of a frontal dune;
- (5) the development must not be within 30 feet of normal water level or normal high water level; and
- (6) the development must be consistent with all applicable use standards and local land use plans in effect at the time the exemption is granted.

History Note: Authority G.S. 113A-103(5)(b); 113A-103(5)(c); 113A-111; 113A-118(a); 113A-120(8); Eff. November 1, 1984; Amended Eff. August 1, 2002; August 1, 2001.

15A NCAC 18A .1311 LIGHTING, VENTILATION AND MOISTURE CONTROL

(a) All areas shall be provided with sufficient illumination to effectively perform all operations, including cleaning, and shall have at least 10 foot candles of light at 30 inches above the floor in all areas other than food service areas. Food service areas shall be lighted as required for restaurants in "Rules Governing The Sanitation of Restaurants and other Foodhandling Establishments" 15A NCAC 18A .2600.

(b) Ventilation equipment shall be kept clean and in good repair.

(c) Ambient air temperatures shall be maintained in the range of 65° F to 85° F.

(d) Moisture shall be controlled such that there is no evidence of microbial growth on interior surfaces and objects.

(e) Indoor smoking, including the carrying of any lit cigarette, pipe, cigar, or other similar product containing tobacco or other substances shall be restricted to dedicated smoking rooms. Smoking rooms shall be ventilated to prevent environmental tobacco smoke from moving into other occupied portions of the building. There shall be no obligation to establish such smoking rooms.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977;

Amended Eff. August 1, 2002; September 1, 1990; July 1, 1986; October 1, 1985.

15A NCAC 18A .1321 FOOD SUPPLIES

(a) All food and food supplies provided by the institution shall be from sources which comply with North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 and shall be clean, free from spoilage, free from adulteration and misbranding, and safe for human consumption.

(b) Food brought from home by employees or visitors of patients or residents shall be stored separately from the institution's food supply and shall be labeled with the name of the person to receive the food and the date the food was brought in and shall be kept only as long as it is clean, and free from spoilage.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; September 1, 1990.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06D .0503 STATE GRADUATION REQUIREMENTS

(a) In order to graduate and receive a high school diploma, public school students shall meet the requirements of paragraph (b) and shall attain passing scores on competency tests adopted by the SBE and administered by the LEA. Students who satisfy all state and local graduation requirements but who fail the competency tests shall receive a certificate of achievement and transcript and shall be allowed by the LEA to participate in graduation exercises. The passing score for the competency test, which is the same as grade-level proficiency as set forth in Rule .0502 of this Subchapter, shall be level III or higher. Special education students may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma. Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the competency tests during regularly scheduled testing until the student reaches maximum school age.

(b) In addition to the requirements of Paragraph (a), students must successfully complete 20 course units in grades 9-12 as specified below.

- (1) Effective with the class entering ninth grade for the first time in the 2000-2001 school year, students shall select one of the following four courses of study:

NOTE: All students are encouraged, but not required, to include at least one elective course in arts education. Unless included as career/technical education credits in the career preparation course of study, courses

in R.O.T.C. qualify for credit as electives in any of the courses of study.

(A) Career preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, one of which shall be algebra I (except as limited by G.S. 115C-81(b));
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS); U.S. history; and world studies;
- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course; or four credits in one of the four disciplines in arts education: theatre, music, visual arts, or dance; or four credits in R.O.T.C.;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

(B) College technical preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be either algebra I, geometry, and algebra II; or algebra I, technical mathematics I, and technical mathematics II; or integrated mathematics I, II, and III;
- (iii) three credits in science, which shall include biology, a physical

science, and earth/environmental science;

- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS); U.S. history; and world studies;
- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

NOTE: A student who is pursuing this course of study may also meet the requirements of a college/university course of study by by completing one additional mathematics course for which Algebra II is a prerequisite and, effective with the class entering the ninth grade for the first time in the 2002-03 school year, two credits in the same second language.

(C) College/university preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be algebra I, algebra II, and geometry or a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, and III; however, effective with the class entering the ninth grade for the first time in the 2002-03 school year, this requirement shall become four credits in mathematics, which shall be algebra I, algebra II, geometry, and a higher level course for which

- (iii) algebra II is a prerequisite; or integrated mathematics I, II, III, and one course beyond integrated mathematics III;
 - (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
 - (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS); U.S. history; and world studies;
 - (v) one credit in health and physical education;
 - (vi) two credits in the same second language;
 - (vi) four elective credits, except that effective with the class entering the ninth grade for the first time in the 2002-03 school year, this shall be reduced to three elective credits; and
 - (viii) other credits designated by the LEA.
- (D) Occupational, which shall include:
- (i) four credits in English language arts, which shall be Occupational English I, II, III, and IV;
 - (ii) three credits in mathematics, which shall be Occupational Mathematics I, II, and III;
 - (iii) two credits in science, which shall be Life Skills Science I and II;
 - (iv) two credits in social studies, which shall be Government/U.S. History and Self-Advocacy/Problem Solving;
 - (v) one credit in health and physical education;
 - (vi) six credits in occupational preparation education, which shall be Occupational Preparation I, II, III, IV, 240 hours of community-based training, and 360 hours of paid employment;
 - (vii) four vocational education elective credits;
- (viii) computer proficiency as specified in the student's IEP;
 - (ix) a career portfolio; and
 - (x) completion of the student's IEP objectives.
- (2) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.
 - (3) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.
 - (4) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the locally-designated electives requirements of this Rule. 23 NCAC 02C .0305 shall govern enrollment in community college institutions.
- (c) Effective with the class of 2001, all students must demonstrate computer proficiency as a prerequisite for high school graduation. The passing scores for this proficiency shall be 47 on the multiple choice test and 49 on the performance test. This assessment shall begin at the eighth grade. A student with disabilities shall demonstrate proficiency by the use of a portfolio if this method is required by the student's IEP.
- (d) Special needs students as defined by G.S. 115C-109, excluding gifted and pregnant, who do not meet the requirements for a high school diploma shall receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:
- (1) successful completion of 20 course units by general subject area (4 English, 3 math, 3 science, 3 social studies, 1 health and physical education, and 6 local electives) under Paragraph (b). These students are not required to pass the specifically designated courses such as Algebra I, Biology or United States history,
 - (2) completion of all IEP requirements.

History Note: Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5; Eff. December 1, 1999; Amended Eff. December 1, 2001; December 1, 2000.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 -BOARD OF NURSING

21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the last issue of the North Carolina Board of Nursing "Bulletin" for the calendar year, which shall be mailed to the address on record for each North Carolina licensed nurse. The

"Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner hold a current North Carolina license to practice nursing. If the nominee is found to be not currently licensed, the petition shall be declared invalid. If any petitioners are found to be not currently licensed and this finding decreases the number of petitioners to less than ten, the petition shall be declared invalid.

(c) On a form provided by the Board, each nominee shall indicate the category for which nominee is seeking election, shall attest to meeting the qualifications specified in G.S. 90-171.21(d) and shall provide written permission to be listed on the ballot. The form must be received by the Board by April 1, at midnight.

(d) The majority of employment income of registered nurse members of the Board, must be earned by holding positions with primary responsibilities in nursing education or in nursing practice which includes administration, supervision, planning, delivery or evaluation of nursing care as specified in G.S. 90-171.21(d). The following apply in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.
- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.
- (5) Employed by a physician includes any nurse employed by a physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.
- (6) Employed by skilled or intermediate care facility includes any nurse employed by a long term nursing facility.
- (7) Registered nurse approved to perform medical acts includes any nurse approved for practice in North Carolina as a Nurse Practitioner or Certified Nurse Midwife.
- (8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.

(e) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the

position is required to hold a current license to practice nursing.

(f) A nominee shall be listed in only one category on the ballot.

(g) If there is no nomination in one of the registered nurse categories, all registered nurses who have been duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.

(h) Separate slates shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the slate for licensed practical nurse nominees and within the categories for registered nurse nominees. Slates shall be published in the "Bulletin" following the Spring Board meeting and shall be accompanied by biographical data on nominees and a passport-type photograph.

(i) Any nominee may withdraw her/his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for voting. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.

(j) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting, together with a notice designating the latest day and hour for voting.

(k) The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

(l) The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting.
- (2) The certificate number shall be matched with the database from the Board.

(m) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(n) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote;
- (2) the number of votes cast; and
- (3) the number of votes cast for each person on the slate.

(o) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(p) All petitions to nominate a nurse, signed consents to appear on the slate, verifications of qualifications, and copies of the computerized validation and tabulation shall be retained for a period of three months following the close of an election.

History Note: Authority G.S. 90-171.21; 90-171.23(b);

Eff. May 1, 1982;

Amended Eff. August 1, 1998; January 1, 1996; June 1, 1992;

March 1, 1990; April 1, 1989;

Temporary Amendment Eff. July 2, 2001;

Amended Eff. August 1, 2002.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2108 DETERMINATION OF ELECTION RESULTS

The determination of election results shall be in accordance with G.S. 163-111, which is adopted herein by reference and includes subsequent amendments and editions. A copy of G.S. 163-111 is available for inspection at the Board office and may be obtained from the Board office for a cost of 25 cents (\$.25) per page.

*History Note: Authority G.S. 90-85.7;
Eff. March 1, 1991;
Amended Eff. December 1, 2001.*

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

- (a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.
- (b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less.
- (c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.
- (d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.
- (e) The pharmacist-manager shall maintain complete authority and control over any and all keys to the pharmacy and shall be responsible for the ultimate security of the pharmacy. A pharmacy shall be secured to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of 90 minutes or more.
- (f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the Rules in this chapter.
- (g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.
- (h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. Notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the

patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.

- (i) Notice of the temporary closing of any pharmacy for more than 14 consecutive days shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.
- (j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.
- (k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.
- (l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.
- (m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (l) of this Rule, except as required by law. All reports made under Paragraph (l) of this Rule shall not be released except as required by law.
- (n) Dispensing errors which are not detected and corrected prior to the patient receiving the medication shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate forms including the identity of individual(s) responsible. These documents, including action taken as part of a quality assurance plan, shall be archived in a readily retrievable manner and available for inspection by the Board for a period of three years. These documents shall not be released except as required by law.
- (o) In any Board proceeding, the Board shall consider compliance with Paragraphs (l) and (n) of this Rule as a

mitigating factor and noncompliance with Paragraphs (l) and (n) of this Rule as an aggravating factor.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32;
Eff. May 1, 1989;
Amended Eff. December 1, 2001; April 1, 2001; April 1, 1999;
July 1, 1996; March 1, 1992; October 1, 1990.

**CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH
AND LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

21 NCAC 64 .0210 CERTIFIED TECHNICIANS

(a) The Board interprets the term "certified technician" as used in G.S. 90-294(f) to be synonymous with "certified audiometric technician", "certified Industrial audiometric technician", or similar designations used for non-licensed audiometric technicians in industry.

(b) Certified audiometric technicians may perform air conduction, threshold audiograms required by the Occupational Safety and Health Act (OSHA) for industrial hearing conservation programs, provided that the following three conditions are met:

- (1) The audiometric technician has received appropriate instruction, including supervised

practicum, in the principles and specific techniques for testing hearing in the industrial environment. The standards established by the Council for Accreditation of Occupational Hearing Conservation (CAOHC) for certified occupational hearing conservationists meet this training requirement. Where other training programs are used, the curriculum shall be in writing and available for inspection by the Board of Examiners.

- (2) Supervision of the audiometric technician must be vested in a licensed physician or licensed audiologist.
- (3) A licensed audiologist who supervises the activities of audiometric technicians, whether as employer or program consultant, must provide sufficient on-site supervision of the technicians to ensure continuous adherence to the standards of G.S. 90-301 and G.S. 90-301A as well as relevant OSHA regulations.

History Note: Authority G.S. 90-304(a)(3);
Eff. August 1, 2002.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, January 17, 2002, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, January 11, 2002 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

January 17, 2002
February 21, 2002

March 21, 2002
April 18, 2002

RULES REVIEW COMMISSION

Due to timing of the Rules Review Commission filing deadline and the OAH printing schedule for the holiday season, the RRC is unable to have its agenda and log of rules for the January meeting printed in this issue of the NCR. This information will be in the January 15, 2002 edition. If you have any questions concerning the rules for the January 17, 2002 meeting, please contact the Rules Review Commission at 733-2721.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A.B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEO LOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 ²	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
<u>Child Support Enforcement Section</u>				
Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01	
Asuncion I. Crawford v. Department of Health & Human Services	99 CSE 1398	Mann	11/16/01	
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01	
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01	
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01	
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01	

CONTESTED CASE DECISIONS

Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01
Gregory Kent Cranford v. Department of Health & Human Services	00 CSE 0392	Chess	11/30/01
Thellie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01
Robert D Goodman v. Department of Health & Human Services	00 CSE 1083	Conner	11/26/01
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01
Ronnie Chapman v. Department of Health & Human Services	00 CSE 1367	Conner	11/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Sharon Tucker v. Department of Health & Human Services	00 CSE 1530	Morrison	11/27/01
William E Kurn v. Department of Health & Human Services	00 CSE 1544	Morrison	11/16/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Terry Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Raymond Stevens v. Department of Health & Human Services	00 CSE 1730	Mann	10/31/01
Mohammad E Ghafarian v. Department of Health & Human Services	00 CSE 1734	Wade	11/16/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Joe Louis Hall Jr. v. Department of Health & Human Services	00 CSE 1737	Morrison	11/16/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Jason Cline v. Department of Health & Human Services	00 CSE 1804	Gray	11/14/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Wayne DeRoss v. Department of Health & Human Services	00 CSE 1940	Conner	11/26/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
Howard Jacobs v. Department of Health & Human Services	00 CSE 1996	Morrison	11/05/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
Terry Jacobs v. Department of Health & Human Services	00 CSE 2004	Lassiter	10/11/01
Robert Scot Pope v. Department of Health & Human Services	00 CSE 2014	Gray	11/14/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Mario C Crank v. Department of Health & Human Services	00 CSE 2172	Conner	11/26/01
Dennis Cunningham v. Department of Health & Human Services	00 CSE 2183	Conner	11/26/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
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David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
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Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
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Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01
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Benjamin Sabbath Krizon v. Alarm Systems Licensing Board	01 DOJ 1303	Conner	09/14/01	
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James Kevin Hightower v. Alarm System Licensing Board	01 DOJ 1351	Gray	10/12/01	16:10 NCR 947
<u>Private Protective Services Board</u>				
Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01	
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01	
Emar I. Ifediora v. Private Protective Services Board	01 DOJ 0823	Conner	10/16/01	
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01	
Calvin McNair v. Private Protective Services Board	01 DOJ 1000	Lassiter	07/03/01	
Michael David Faris v. Private Protective Services Board	01 DOJ 1271	Gray	10/12/01	
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01	
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01	
<u>Sheriffs' Education & Training Standards Commission</u>				
Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01	
Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01	
Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1577	Gray	08/27/01	
Darrick Harris v. NC Sherriffs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01	
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01	
Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0470	Gray	10/11/01	
Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm.	01 DOJ 0478	Morrison	11/08/01	
Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0500	Gray	10/12/01	
Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0557	Conner	11/07/01	
James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0616	Wade	08/29/01	
Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 0650	Gray	09/28/01	
Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1267	Chess	10/04/01	
<u>DEPARTMENT OF STATE TREASURER</u>				
Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems	00 DST 0727	Mann	08/06/01	
Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System	00 DST 0776	Gray	07/06/01	16:04 NCR 384
<u>STATE BOARD OF EDUCATION</u>				
Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education	00 EDC 2119	Elkins	11/07/01	16:12 NCR 1252

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Carolyn H. Lancaster v. NC Department of Public Instruction	01 EDC 0054	Morrison	11/08/01		
<u>ENVIRONMENT AND NATURAL RESOURCES</u>					
Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01		
Hawley Farms, Inc. v. NC DENR, Div. of Water Quality	99 EHR 1740	Conner	10/25/01		
Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0438	Conner	08/17/01		
Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0439	Conner	08/17/01		
Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01		
Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0441	Conner	08/17/01		
Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0448	Conner	08/17/01		
Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0449	Conner	08/17/01		
Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0450	Conner	08/17/01		
Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0501	Conner	08/17/01		
Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0508	Conner	08/17/01		
Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0509	Conner	08/17/01		
Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0510	Conner	08/17/01		
Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01		
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01		
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01		
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ¹	Gray	08/07/01	16:05 NCR	463
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR	40
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR	1043
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gulley Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR	463
Albert Galluzzo, James T. Gulley, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, Lot 66					
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01		
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ¹	Gray	08/07/01	16:05 NCR	463
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01		
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01		
Paul J Williams v. NC Dept. of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01		
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01		
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01		
Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01		
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01		
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01		

¹ Combined Cases

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Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01		
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01		
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01		
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01		
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01		
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01		
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01		
NC Real Estate Services Corp, v. NC DENR, Div. of Air Quality	01 EHR 1503	Elkins	11/20/01		
 <u>ENGINEERS AND LAND SURVEYORS</u>					
NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01		
 <u>HUMAN RELATIONS COMMISSION</u>					
NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01		
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01		
 <u>DEPARTMENT OF INSURANCE</u>					
Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01		
 <u>LICENSING BOARD FOR GENERAL CONTRACTORS</u>					
NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01		
 <u>MISCELLANEOUS</u>					
Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01		
Donald Jason Biles v. W-S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01		
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01		
 <u>OFFICE OF ADMINISTRATIVE HEARINGS</u>					
James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01		
 <u>OFFICE OF STATE PERSONNEL</u>					
Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01		
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01		
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01		
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01		
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01		
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01		
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01		
Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01		
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01	16:06 NCR	550
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01		
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR	271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01		
Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01		
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01		
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01		
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01		
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR	864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01		
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01		
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01		
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01		
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01		
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01		
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01		
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01		
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01		
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01		
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01		
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01		
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01		
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01		
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01		
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01		
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01		
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01		
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01		
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01		
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01		

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Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01	
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01	
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01	
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01	
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01	16:12 NCR 1263
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01	
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01	
Annie Karampatsos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01	
Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01	
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01	

UNIVERSITY OF NORTH CAROLINA

Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01	
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01	
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01	
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01	

WELL CONTRACTORS

Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01	
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