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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

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NORTH CAROLINA REGISTER
 Publication Schedule for July 2003 – December 2003

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Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
17:13	01/02/03	12/06/02	01/17/03	03/03/03	03/20/03	05/01/03	05/10/04	09/29/03
17:14	01/15/03	12/19/02	01/30/03	03/17/03	03/20/03	05/01/03	05/10/04	10/12/03
17:15	02/03/03	01/10/03	02/18/03	04/04/03	04/21/03	06/01/03	05/10/04	10/31/03
17:16	02/17/03	01/27/03	03/04/03	04/21/03	04/21/03	06/01/03	05/10/04	11/14/03
17:17	03/03/03	02/10/03	03/18/03	05/02/03	05/20/03	07/01/03	05/10/04	11/28/03
17:18	03/17/03	02/24/03	04/01/03	05/16/03	05/20/03	07/01/03	05/10/04	12/12/03
17:19	04/01/03	03/11/03	04/16/03	06/02/03	06/20/03	08/01/03	05/10/04	12/27/03
17:20	04/15/03	03/25/03	04/30/03	06/16/03	06/20/03	08/01/03	05/10/04	01/10/04
17:21	05/01/03	04/09/03	05/16/03	06/30/03	07/21/03	09/01/03	05/10/04	01/26/04
17:22	05/15/03	04/24/03	05/30/03	07/14/03	07/21/03	09/01/03	05/10/04	02/09/04
17:23	06/02/03	05/09/03	06/17/03	08/01/03	08/20/03	10/01/03	05/10/04	02/27/04
17:24	06/16/03	05/23/03	07/01/03	08/15/03	08/20/03	10/01/03	05/10/04	03/12/04
18:01	07/01/03	06/10/03	07/16/03	09/02/03	09/22/03	11/01/03	05/10/04	03/27/04
18:02	07/15/03	06/23/03	07/30/03	09/15/03	09/22/03	11/01/03	05/10/04	04/10/04
18:03	08/01/03	07/11/03	08/16/03	09/30/03	10/20/03	12/01/03	05/10/04	04/27/04
18:04	08/15/03	07/25/03	08/30/03	10/14/03	10/20/03	12/01/03	05/10/04	05/11/04
18:05	09/02/03	08/11/03	09/17/03	11/03/03	11/20/03	01/01/04	05/10/04	05/29/04
18:06	09/15/03	08/22/03	09/30/03	11/14/03	11/20/03	01/01/04	05/10/04	06/11/04
18:07	10/01/03	09/10/03	10/16/03	12/01/03	12/22/03	02/01/04	05/10/04	06/27/04
18:08	10/15/03	09/24/03	10/30/03	12/15/03	12/22/03	02/01/04	05/10/04	07/11/04
18:09	11/03/03	10/13/03	11/18/03	01/02/04	01/20/04	03/01/04	05/10/04	07/30/04
18:10	11/17/03	10/24/03	12/02/03	01/16/04	01/20/04	03/01/04	05/10/04	08/13/04
18:11	12/01/03	11/05/03	12/16/03	01/30/04	02/20/04	04/01/04	05/10/04	08/27/04
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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 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 60 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 the text of proposed rules. The agency must accept comments on the proposed rule for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. Statutory reference: G.S. 150B-21.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

- Substantive (>=\$3,000,000)
None

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Building Commission intends to adopt the rules cited as 01 NCAC 30A .0406; 30J .0101-.0103, .0201-.0202, .0301-.0306.

Proposed Effective Date: January 1, 2004

Public Hearing:

Date: September 30, 2003

Time: 2:00 p.m. – 4:00 p.m.

Location: State Construction Office, Conference Room, Suite 450, New Education Building, 301 N. Wilmington St., Raleigh, NC

Reason for Proposed Action:

01 NCAC 30A .0406 – S.L. 2001-496, Sec. 11(1) (SB914) requires the State Building Commission to adopt rules governing review and final approval of plans submitted to the State Construction Office pursuant to G.S. 58-31-40. Temporary rules were adopted in February of 2003.

01 NCAC 30J .0101-.0103, .0201-.0202, .0301-.0306 – S.L. 2001-496, Sec. 11(1) (SB914) requires the State Building Commission to adopt rules to ensure that designers, consultants and construction managers at risk selected for State Capital improvement projects have the necessary qualifications and experience to complete those projects. Temporary rules were adopted in February of 2003.

Comment Procedures: Comments from the public shall be directed to Speros Fleggas, Director, State Construction Office, 1307 Mail Service Center, Raleigh, NC 27699-1309, phone (919) 733-7962 and email speros.fleggas@ncmail.net. Comment period ends November 3, 2003.

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30A - DIVISION OF STATE CONSTRUCTION

SECTION .0400 - CONSTRUCTION ADMINISTRATION OFFICE

01 NCAC 30A .0406 REVIEW BY STATE CONSTRUCTION OFFICE FOR FIRE SAFETY REQUIREMENTS

In all cases where plans are submitted to the State Construction Office pursuant to G.S. 58-31-40:

- (1) The owner shall submit complete construction documents to the State Construction Office in accordance with the planning procedures in the State Construction Manual.
(2) Pursuant to G.S. 58-31-40 (c), should an owner request review and final approval of the plans by the State Construction Office and the Department of Insurance and if the plans have not been approved by the Commissioner of Insurance within 60 days of submittal, such review and final approval shall be conducted by the State Construction Office within 30 days.
(3) No type of structural work may be initiated by the owner without prior approval of the State Construction Office.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

SUBCHAPTER 30J - CONSTRUCTION MANAGER-AT-RISK SELECTION PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

01 NCAC 30J .0101 AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by public law (G.S. 143-135.26) to perform a multiplicity of duties with regard to the State's capital facilities development and management program. In the specific area of State capital improvement project construction manager-at-risk selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the construction manager-at-risk selected for each State capital improvement project has the qualifications and experience necessary for that capital improvement project. The SBC is responsible and accountable for the final selection of the construction manager-at-risk. The exceptions are the University of North Carolina and the General Assembly, which shall be responsible and accountable for the final selection of

construction manager-at-risk for capital projects in which they are the funded agencies.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0102 POLICY

It is the policy of the SBC to select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-128.1, based on criteria contained herein and to make available to every firm, duly licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. It is also the policy of the SBC to select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The SBC considers that the selection of competent construction manager-at-risk is vital to providing the State of North Carolina with the best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of construction managers-at-risk. The construction manager-at-risk shall use standard form of contract for the owner, construction manager-at-risk, and first-tier subcontractor authorized by the SBC.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0103 DEFINITIONS

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these Rules may have other titles within his agency but shall carry out the duties assigned herein to the capital projects coordinator. Whenever the capital projects coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
- (2) "Construction Manager-at-Risk" means a person, corporation, or entity that provides construction management at risk services.
- (3) "Construction Management-at-Risk Services" means services provided by a person, corporation, or entity that
 - (a) provides construction management services for a project throughout the preconstruction and construction phases;
 - (b) who is licensed as a general contractor; and
 - (c) who guarantees the cost of the project.
- (4) "First-Tier Subcontractor" means a subcontractor who contracts directly with the Construction Manager-at-Risk.

- (5) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
- (6) "Funded agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction project.
- (7) "Using agency" means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
- (8) "Minority Business" means:
 - (a) in which at least 51 percent is owned by one or more minority persons, or in the case of corporation, in which at least 51 percent of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (9) "Socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

SECTION .0200 - PROJECT INFORMATION

01 NCAC 30J .0201 PROJECT DESCRIPTION

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring construction management-at-risk services. This information should be provided to the State Construction Office for publication on State Construction Office website. The Capital Projects Coordinator is responsible for prompt initiation of the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0202 PUBLIC ANNOUNCEMENT

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the State Construction Office website. Public

announcement is required prior to Construction Manager-at-Risk selection. The closing date for being considered for construction management-at-risk services shall be minimum of 21 days from date of publication on the State Construction Office website. Responses to RFP for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

SECTION .0300 - SELECTION OF CONSTRUCTION MANAGERS AT RISK

01 NCAC 30J .0301 CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS

All firms desiring to provide construction management-at-risk services shall submit all information required in the Request for Proposal (RFP) for the owner's review and evaluation. Firms shall be required to submit evidence of compliance with the minimum requirements of the RFP. Each firm shall meet the minimum requirements of the RFP prior to being considered by the selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all necessary information in the RFP shall disqualify response.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0302 PRE-SELECTION COMMITTEE

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design or construction professional. The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his submission that the established rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0303 SELECTING CRITERIA

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is fully able to accommodate the addition of this project;
- (2) Record of successfully completed projects of similar scope without major legal or technical problems;
- (3) Previous experience with the Owner, a good working relationship with Owner representatives, have completed projects in a

timely manner and have performed an acceptable quality of work;

- (4) Key personnel that have appropriate experience and qualifications;
- (5) Relevant and easily understood graphic or tabular presentations;
- (6) Completion of CM-at-Risk projects in which there was little differences between the GMP and final cost;
- (7) Projects that were completed on or ahead of schedule;
- (8) Recent experience with project costs and schedules;
- (9) Construction administration capabilities;
- (10) Proximity to and familiarity with the area where the project is located;
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2; and
- (12) Other factors that may be appropriate for the project.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0304 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the policies and selection procedures outlined herein, except that:

- (1) the pre-selection committees need not include a representative of the State Construction Office; and
- (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0305 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS

Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, as requested by the SBC, the secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting. The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

- (1) Affirm the selection of the firms in the priority order recommended by the state or agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

01 NCAC 30J .0306 CONTRACT NEGOTIATION

After the three have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency shall discuss with the selected construction manager-at-risk appropriate services and information about the project. The State Construction Office shall request in writing a detailed fee proposal from the selected Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process will be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or call shall be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process shall continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk. Following execution of the contract, the State Construction Office shall publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

Authority G.S. 143-135.26; S.L. 2001-496, s. 11.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10A NCAC 13J .1302.

Proposed Effective Date: January 1, 2004

Public Hearing:

Date: November 6, 2003

Time: 2:00 p.m.

Location: Room 201, Council Building, Dorothea Dix campus, 701 Barbour Dr. Raleigh, NC

Reason for Proposed Action: *The NC Medical Care Commission proposes to amend this Rule. This Rule pertains to the policy/procedure for obtaining a physician's countersignature on verbal orders. The suggested amendment will clarify under which circumstances a physician's signature is necessary. This action will replace and supersede an earlier amendment to the same rule approved by the NC Medical Care Commission and the Rules Review Commission which would be effective July 1, 2004.*

Comment Procedures: *Comments from the public shall be directed to Mark T. Benton, 2701 Mail Service Center, Division of Facility Services, Raleigh, NC 27699-2701, phone (919) 855-3750, fax (919) 733-2757, and email mark.benton@ncmail.net. Comment period ends November 6, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13J - THE LICENSING OF HOME CARE AGENCIES

SECTION .1300 - PHARMACEUTICALS AND MEDICAL TREATMENT ORDERS

10A NCAC 13J .1302 ORDERS

(a) Orders for pharmaceuticals and medical ~~treatments~~ treatments, or orders for in-home aide services when orders for in-home aide services are required, shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records. Care may commence in the interim with ~~evidence of~~ a verbal order.

(b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, or other person authorized by state law to receive such orders. ~~orders recorded and signed by the person receiving it and countersigned by the physician or other person authorized by State law to prescribe within 30 days. The order shall include the date and signature of the person receiving the order, shall be recorded in the client record, and shall be countersigned by the physician or other person authorized by State law to prescribe.~~

(c) Verbal orders for allied health services personnel, other than nursing or other than in-home aide services when orders are required, services, shall be given to either a licensed nurse or the appropriate health professional, ~~recorded in the client record and signed by the person~~

receiving it and countersigned by the physician or other person authorized by State law to prescribe within 30 days from the time given professional. The order shall include the date and signature of the person receiving the order, shall be recorded in the client record and shall be countersigned by the physician or other person authorized by State law to prescribe.

(d) The home care agency shall develop and implement written policies and procedures for obtaining countersignatures on verbal orders within 60 days of the date of the verbal order.

Authority G.S. 131E-140.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to adopt the rules cited as 10A NCAC 13P .0121-.0122, .0201-.0202, .0301, .0501-.0502, .0504, .0507-.0508, .0510, .0601-.0603, .0701, amend the rules cited as 10A NCAC 13P .0101, .0106, .0114, .0119, .0203-.0205, .0207-.0211, .0214, .0303, .0401-.0403, .0405-.0409, .0506, .0509, .0901-.0903, .0905, .1103, and repeal the rules cited as 10A NCAC 13P .0108, .0604, .1201-.1203, .1301.

Proposed Effective Date: January 1, 2004

Public Hearing:

Date: November 6, 2003

Time: 3:30 p.m.

Location: Division of Facility Services, Room 201, Council Building, Dorothea Dix campus, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: The NC Medical Care Commission is proposing to adopt, amend and repeal rules found in 10A NCAC 13P. This Subchapter pertains to Emergency Medical Services (EMS). The specifics of this rule-making action are: (a) The changes to rules .0108, .0121-.0122, .0201-.0202, .0301, .0501-.0502, .0504, .0507-.0508, .0601-.0603, .0701 were prompted by SL 2003-392 (SB 661). This legislation authorized the NC Medical Care Commission to establish occupational standards for EMS systems, EMS educational institutions and specialty care transport programs. The action on these specific rules will replace and supersede earlier action of the same rules that are pending legislative review and would have been effective August 2004. (b) The adoption of a new rule at 10A NCAC 13P .0510 and amendments to existing rules 10A NCAC 13P .0101, .0106, .0119, .0203, .0401-.0403, .0408-.0409, .0510, .1103 were also prompted by SB 661. This legislation authorized the NC Medical Care Commission to set the criteria for the education/credentialing of EMS instructors, establish an "EMS Peer Review Committee," delete the EMT-D level of care, and remove credentialing (by the state) for MICN, EMS-PA and EMS-NP. (c) The repeal of, and amendments to, 10A NCAC 13P .0114, .0204-.0205, .0207-.0211, .0214, .0303, .0405-.0407, .0506, .0509, .0604, .0901-.0903, .0905, .1201-.1203 and .1301 were not prompted by SB 661. Rather, these changes are technical in nature and are limited to removing transitional/dated material, inserting abbreviations, etc.

Comment Procedures: Written comments should be submitted to Mark Benton, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701. Phone: (919) 855-3750, fax: (919) 733-2757, email: mark.benton@ncmail.net. Comments should be submitted through November 6, 2003.

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 13 – FACILITY SERVICES

SUBCHAPTER 13P – EMERGENCY MEDICAL SERVICES

SECTION .0100 - DEFINITIONS

10A NCAC 13P .0101 ABBREVIATIONS

As used in this Subchapter, the following abbreviations mean:

- (1) AHA: American Heart Association;
(2) CPR: Cardiopulmonary Resuscitation.
(3) EMD: Emergency Medical Dispatcher;
(4) EMDPRS: Emergency Medical Dispatch Priority Reference System;
(5) EMS: Emergency Medical Services;
(6) EMS-NP: EMS Nurse Practitioner;
(7) EMS-PA: EMS Physician Assistant;
(8) EMT: Emergency Medical Technician;
(9) EMT-D: EMT-Defibrillation;
(10) EMT-I: EMT-Intermediate;
(11) EMT-P: EMT-Paramedic;
(12) MICN: Mobile Intensive Care Nurse;
(13) MR: Medical Responder; and
(14) NHTSA: National Highway Traffic Safety Administration
(15) OEMS: Office of Emergency Medical Services; and
(16) US DOT: United States Department of Transportation.

Authority G.S. 143-508(b).

10A NCAC 13P .0106 EDUCATIONAL MEDICAL ADVISOR

As used in this Subchapter, "Educational Medical Advisor" means the physician responsible for overseeing the medical components of approved EMS educational programs in continuing education, basic, and advanced EMS educational institutions.

Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(13).

10A NCAC 13P .0108 EMS INSTRUCTOR

~~"EMS Instructor" means a person who is credentialed by the OEMS as a Level I or II EMS Instructor or EMD Instructor and who is approved to instruct or coordinate EMS educational programs.~~

Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(4); 131E-155(a)(7a).

10A NCAC 13P .0114 MEDICAL OVERSIGHT

As used in this Subchapter, "Medical Oversight" means the responsibility for the management and accountability of the medical care aspects of an EMS ~~System~~ System or Specialty Care Transport Program. Medical Oversight includes physician direction of the initial education and continuing education of EMS ~~personnel; personnel or medical crew members;~~ development and monitoring of both operational and treatment protocols; evaluation of the medical care rendered by EMS ~~personnel; personnel or medical crew members;~~ participation in system or program evaluation; and directing, by two-way voice communications, the medical care rendered by the EMS ~~personnel; personnel or medical crew members.~~

Authority G.S. 143-508(b).

10A NCAC 13P .0119 EMS PEER REVIEW COMMITTEE

~~As used in this Subchapter, "Quality Management" "EMS Peer Review Committee" means a committee as defined in G.S. 131E-155(a)(16a) within an EMS System or Specialty Care Transport Program that is affiliated with a medical review committee as referenced in G.S. 143-518(a)(5) and is responsible for the continued monitoring and evaluation of medical and operational issues within the system and for improvement of the system.~~

Authority G.S. 143-508(b); 143-518(a)(5); 131E-155(a)(16a).

10A NCAC 13P .0121 SPECIALTY CARE TRANSPORT PROGRAM CONTINUING EDUCATION COORDINATOR

As used in this Subchapter, "Specialty Care Transport Program Continuing Education Coordinator" means a Level I EMS Instructor within a specialty care transport program who is responsible for the coordination of EMS continuing education programs for EMS personnel within the program.

Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(13).

10A NCAC 13P .0122 SYSTEM CONTINUING

EDUCATION COORDINATOR

As used in this Subchapter, "System Continuing Education Coordinator" means a Level I EMS Instructor within a Model EMS System who is responsible for the coordination of EMS continuing education programs.

Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(13).

SECTION .0200 – EMS SYSTEMS

10A NCAC 13P .0201 EMS SYSTEM REQUIREMENTS

(a) County government shall establish EMS Systems. Each EMS System shall have:

- (1) a defined geographical service area for the EMS System. The minimum service area for an EMS System shall be one county. There may be multiple EMS provider service areas within the service area of an EMS System. The highest level of care offered within any EMS provider service area must be available to the citizens within that service area 24 hours per day;
- (2) a scope of practice within the parameters defined by the North Carolina Medical Board pursuant to G.S. 143-514;
- (3) a written plan describing the dispatch and coordination of all responders that provide EMS care within the system;
- (4) a minimum of one licensed EMS provider. For those systems with providers operating within the EMD, EMT-I, or EMT-P scope of practice, there shall be a plan for medical oversight required by Section .0400 of this Subchapter;
- (5) an identified number of permitted ambulances to provide coverage to the service area 24 hours per day;
- (6) personnel credentialed to perform within the scope of practice of the system and to staff the ambulance vehicles as required by G.S. 131E-158. There shall be a written plan for the use of credentialed EMS personnel for all practice settings used within the system;
- (7) a mechanism to collect and electronically submit to the OEMS data that uses the basic data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS Systems shall comply with this requirement by July 1, 2004;
- (8) a written infection control policy that addresses the cleansing and disinfecting of vehicles and equipment that are used to treat or transport patients;
- (9) a written plan to provide orientation to personnel on EMS operations and related

- issues for hospitals routinely receiving patients from the EMS System;
- (10) a listing of facilities that will provide online medical direction for systems with providers operating within the EMT, EMT-I, or EMT-P scope of practice. To provide online medical direction, the facility shall have:
- (A) availability of a physician, MICN, EMS-NP, or EMS-PA to provide online medical direction to EMS personnel during all hours of operation of the facility;
- (B) a written plan to provide physician backup to the MICN, EMS-NP, or EMS-PA providing online medical direction to EMS personnel;
- (C) a mechanism for persons providing online medical direction to provide feedback to the EMS Peer Review Committee; and
- (D) a written plan to provide orientation and education regarding treatment protocols for those individuals providing online medical direction;
- (11) a written plan to ensure that each facility which routinely receives patients and also offers clinical education for EMS personnel provides orientation and education to all preceptors regarding requirements of the EMS System;
- (12) a written plan for providing emergency vehicle operation education for system personnel who operate emergency vehicles;
- (13) an EMS communication system that provides for:
- (A) public access using the emergency telephone number 9-1-1 within the public dial telephone network as the primary method for the public to request emergency assistance. This number shall be connected to the emergency communications center or Public Safety Answering Point (PSAP) with immediate assistance available such that no caller will be instructed to hang up the telephone and dial another telephone number. A person calling for emergency assistance shall never be required to speak with more than two persons to request emergency medical assistance;
- (B) an emergency communications system operated by public safety telecommunicators with training in the management of calls for medical assistance available 24 hours per day;
- (C) dispatch of the most appropriate emergency medical response unit or units to any caller's request for assistance. The dispatch of all

response vehicles shall be in accordance with an official written EMS System plan for the management and deployment of response vehicles including requests for mutual aid; and

- (D) two-way radio voice communications from within the defined service area to the emergency communications center or PSAP and to facilities where patients are routinely transported. The emergency communications system shall maintain all Federal Communications Commission (FCC) radio licenses or authorizations required;

- (14) a written plan addressing the use of Specialty Care Transport Programs within the system;

- (15) a written continuing education plan for credentialed EMS personnel that follows the guidelines of the:

(A) "US DOT NHTSA First Responder Refresher: National Standard Curriculum" for MR personnel;

(B) "US DOT NHTSA EMT-Basic Refresher: National Standard Curriculum" for EMT personnel;

(C) "EMT-P and EMT-I Continuing Education National Guidelines" for EMT-I and EMT-P personnel; and

(D) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel.

These documents are incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. These documents are available from NHTSA, 400 7th Street, SW, Washington, D.C. 20590, at no cost; and

- (16) a written plan addressing the orientation of MICN, EMS-NP, or EMS-PA used in the system. The orientation program shall include the following:

(A) a discussion of all EMS System treatment protocols and procedures;

(B) an explanation of the specific scope of practice for credentialed EMS personnel, as authorized by the approved treatment protocols;

(C) a discussion of all practice settings within the EMS System and how scope of practice may vary in each setting;

(D) a mechanism to assess the student's ability to effectively use EMS System communications equipment including hospital and prehospital devices, EMS communication protocols, and communications contingency plans as

related to on-line medical direction; and

- (E) the successful completion of a scope of practice evaluation administered under the direction of the medical director.

(b) An application to establish an EMS System shall be submitted by the county to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The proposal shall demonstrate that the system meets the requirements in Paragraph (a) of this Rule. System approval shall be granted for a period of six years. Systems shall apply to OEMS for reapproval.

Authority G.S. 131E-155(a)(8), (a)(9), (a)(15); 143-508(b); (d)(1), (d)(5), (d)(9); 143-509(1); 143-517.

10A NCAC 13P .0202 MODEL EMS SYSTEMS

(a) Some EMS Systems may choose to move beyond the minimum requirements in Rule .0201 of this Section and receive designation from the OEMS as a Model EMS System. To receive this designation, an EMS System shall document that, in addition to the system requirements in Rule .0201 of this Section, the following criteria have been met:

- (1) a uniform level of care throughout the system available 24 hours per day;
- (2) a plan for medical oversight that meets the requirements found in Section .0400 of this Subchapter. Specifically, Model EMS Systems shall meet the additional requirements for medical director and written treatment protocols as defined in Rules .0401(1)(b) and .0405(a)(2) of this Subchapter;
- (3) a mechanism to collect and electronically submit to the OEMS data corresponding to the advanced data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (4) a written plan to address management of the EMS System to include:
 - (A) triage of patients to appropriate facilities;
 - (B) transport of patients to facilities outside of the system;
 - (C) arrangements for transporting patients to appropriate facilities when diversion or bypass plans are activated;
 - (D) a mechanism for reporting, monitoring, and establishing standards for system response times;
 - (E) a disaster plan; and
 - (F) a mass-gathering plan;
- (5) a written continuing education plan for EMS personnel, under the direction of the System

Continuing Education Coordinator, developed and modified based on feedback from system data, review, and evaluation of patient outcomes and quality management reviews;

- (6) a written plan to assure participation in clinical and field internship educational components for all EMS personnel;
- (7) operational protocols for the management of equipment, supplies and medications. These protocols shall include a methodology:
 - (A) to assure that each vehicle contains the required equipment and supplies on each response;
 - (B) for cleaning and maintaining the equipment and vehicles; and
 - (C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (8) a written plan for the systematic and periodic inspection, repair and maintenance of all vehicles used in the system;
- (9) a written plan addressing the role of the EMS System in the areas of public education, injury prevention, and community health;
- (10) affiliation with a minimum of one trauma Regional Advisory Committee; and
- (11) a system-wide communication system which meets the requirements of Paragraph (a)(13) of Rule .0201 of this Section, and in addition:
 - (A) operates an EMD program; and
 - (B) has an operational E-911 system.

(b) EMS Systems holding current accreditation by a national accreditation agency may use this as documentation of completion of the equivalent requirements outlined in this Rule.

(c) The county shall submit an application for designation as a Model EMS System to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The application shall demonstrate that the system meets the standards found in Paragraph (a) of this Rule. Designation as a Model EMS System shall be awarded for a period of six years. Systems shall apply to OEMS for model system redesignation.

Authority G.S. 143-508(b); (d)(1), (d)(5), (d)(9); (d)(13); 143-509(1).

10A NCAC 13P .0203 SPECIAL SITUATIONS

Upon application of citizens in North Carolina, the North Carolina Medical Care Commission shall approve the furnishing and providing of programs within the scope of practice of EMD, EMT, ~~EMT-D~~, EMT-I, or EMT-P in North Carolina by persons who have been approved to provide these services by an agency of a state adjoining North Carolina or federal jurisdiction. This approval shall be granted where the North Carolina Medical Care Commission concludes that the requirements enumerated in Rule .0201 of this Subchapter cannot be reasonably obtained by reason of lack of geographical access.

Authority G.S. 143-508(b).

10A NCAC 13P .0204 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides emergency medical services as its primary responsibility shall be licensed as an EMS provider Provider by meeting the following criteria:

- (1) Be affiliated with an EMS System System; Providers that apply for an initial EMS Provider License shall have until July 1, 2003, to comply with this requirement in the absence of an approved county system plan. Providers that apply for an initial EMS Provider License after July 1, 2003, shall comply with all requirements of this Rule;
(2) Present an application for a permit for any ambulance that will be in service as required by G.S. 131E-156;
(3) Submit a written plan detailing how the provider Provider will furnish credentialed personnel;
(4) Where there is a franchise ordinance in effect which covers the proposed service area, be granted a current franchise to operate or present written documentation of impending receipt of a franchise from the county; and
(5) Present a written plan and method for recording systematic, periodic inspection repair, cleaning, and routine maintenance of all EMS responding vehicles.

(b) An EMS provider Provider may renew its license by presenting documentation to the OEMS that the provider Provider meets the criteria found in Paragraph (a) of this Rule.

Authority G.S. 131E-155.1(c).

10A NCAC 13P .0205 EMS PROVIDER LICENSE CONDITIONS

(a) Applications for an EMS Provider License must be received by the OEMS at least 30 days prior to the date that the provider Provider proposes to initiate service. Applications for renewal of an EMS Provider License must be received by the OEMS at least 30 days prior to the expiration date of the current license.

(b) Only one license shall be issued to each EMS provider Provider. The Department shall issue a license to the EMS provider Provider following verification of compliance with applicable laws and rules.

(c) EMS Provider Licenses shall not be transferred.

(d) The license shall be posted in a prominent location accessible to public view at the primary business location of the EMS provider Provider.

(e) In order to provide a transition time for implementation of this Rule, EMS Provider Licenses obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.

Authority G.S. 131E-155.1(c).

10A NCAC 13P .0207 GROUND AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

(a) To be permitted as a Ground Ambulance, a vehicle shall have:

- (1) a patient compartment that meets the following minimum interior dimensions:
(A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
(B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
(2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;
(3) other equipment to include:
(A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
(B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
(4) the name of the ambulance provider permanently displayed on each side of the vehicle;
(5) reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle;
(6) emergency warning lights and audible warning devices mounted on the vehicle as required by G.S. 20-125 in addition to those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly;
(7) no structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle;
(8) an operational two-way radio that shall:
(A) be mounted to the ambulance and installed for safe operation and controlled by the ambulance driver;

- (B) have sufficient range, radio frequencies, and capabilities to establish and maintain two-way voice radio communication from within the defined service area of the EMS System to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
- (C) be capable of establishing two-way voice radio communication from within the defined service area to the emergency department of the hospital(s) where patients are routinely transported and to facilities that provide on-line medical direction to EMS personnel;
- (D) be equipped with a radio control device mounted in the patient compartment capable of operation by the patient attendant to receive on-line medical direction; and
- (E) be licensed or authorized by the Federal Communications Commission (FCC).

(b) Ground ambulances shall not use a radiotelephone device such as a cellular telephone as the only source of two-way radio voice communication.

(c) Other communication instruments or devices such as data radio, facsimile, computer, or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission dedicated radio.

Authority G.S. 131E-157(a); 143-508(d)(8).

10A NCAC 13P .0208 CONVALESCENT AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

(a) To be permitted as a Convalescent Ambulance, a vehicle shall have:

- (1) a patient compartment that meets the following minimum interior dimensions:
 - (A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
- (2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by

reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;

- (3) other equipment to include:
 - (A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
 - (B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance.

(b) Convalescent Ambulances shall:

- (1) not be equipped, permanently or temporarily, with any emergency warning devices, audible or visual, other than those required by Federal Motor Vehicle Safety Standards;
- (2) have the name of the ambulance provider permanently displayed on each side of the vehicle;
- (3) not have emergency medical symbols, such as the Star of Life, block design cross, or any other medical markings, symbols, or emblems, including the word "EMERGENCY," on the vehicle;
- (4) have the words "CONVALESCENT AMBULANCE" lettered on both sides and on the rear of the vehicle body; and
- (5) have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle.

(c) A two-way radio or radiotelephone device such as a cellular telephone shall be available to summon emergency assistance for a vehicle permitted as a convalescent ambulance.

(d) The convalescent ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle.

Authority G.S. 131E-157(a); 143-508(d)(8).

10A NCAC 13P .0209 AIR MEDICAL AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

To be permitted as an Air Medical Ambulance, an aircraft shall meet the following requirements:

- (1) Configuration of the aircraft interior shall not compromise the ability to provide appropriate care or prevent providers from performing emergency procedures if necessary.
- (2) The aircraft shall have on board patient care equipment and supplies as defined in the treatment protocols for the program. Air Medical Ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina

- College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS~~, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle.
- (3) There shall be installed in the aircraft an internal voice communication system to allow for communication between the medical crew and flight crew.
 - (4) Due to the different configurations and space limitations of air medical ambulances, the medical director shall designate the combination of medical equipment specified in Item (2) of this Rule that is carried on a mission based on anticipated patient care needs.
 - (5) Air Medical Ambulances shall have the name of the organization permanently displayed on each side of the aircraft.
 - (6) Air Medical Ambulances shall be equipped with a two-way voice radio licensed by the Federal Communications Commission capable of operation on any frequency required to allow communications with public safety agencies such as fire departments, police departments, ambulance and rescue units, hospitals, and local government agencies within the defined service area.
 - (7) All rotary wing aircraft permitted as an air medical ambulance shall have the following flight equipment operational in the aircraft:
 - (a) ~~Two~~two 360-channel VHF aircraft frequency transceivers;
 - (b) ~~One~~one VHF omnidirectional ranging (VOR) receiver;
 - (c) ~~Attitude~~attitude indicators;
 - (d) ~~One~~one transponder with 4097 code, Mode C with altitude encoding;
 - (e) ~~Turn~~turn and slip indicator in the absence of three attitude indicators;
 - (f) ~~Current~~current FAA approved navigational aids and charts for the area of operations;
 - (g) ~~Radar~~radar altimeter;
 - (h) Satellite Global Navigational System;
 - (i) Emergency Locator Transmitter (ELT);
 - (j) ~~A~~a remote control external search light;
 - (k) ~~A~~a light which illuminates the tail rotor;
 - (l) ~~A~~a fire extinguisher; and
 - (m) ~~Survival~~survival gear appropriate for the service area and the number of occupants.

- (8) Any fixed wing aircraft issued a permit to operate as an air medical ambulance shall have a current "Instrument Flight Rules" certification.
- (9) The availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the air medical ambulance.
- (10) The Air Medical Ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the aircraft.

Authority G.S. 131E-157(a); 143-508(d)(8).

10A NCAC 13P .0210 WATER AMBULANCE: WATERCRAFT AND EQUIPMENT REQUIREMENTS

To be permitted as a Water Ambulance, a watercraft shall meet the following requirements:

- (1) The watercraft shall have a patient care area that:
 - (a) provides access to the head, torso, and lower extremities of the patient while providing sufficient working space to render patient care;
 - (b) is covered to protect the patient and EMS personnel from the elements; and
 - (c) has an opening of sufficient size to permit the safe loading and unloading of a person occupying a litter.
- (2) The watercraft shall have on board patient care equipment and supplies as defined in the treatment protocols for the system. Water ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS~~, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle.
- (3) Water ambulances shall have the name of the ambulance provider permanently displayed on each side of the watercraft.
- (4) Water ambulances shall have a 360-degree beacon warning light in addition to warning devices required in Chapter 75A, Article 1, of the North Carolina General Statutes.
- (5) Water ambulances shall be equipped with:
 - (a) two floatable rigid long backboards with proper accessories for securing infant, pediatric, and adult patients and stabilization of the head and neck;

- (b) one floatable litter with patient restraining straps and capable of being secured to the watercraft;
 - (c) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge;
 - (d) lighted compass;
 - (e) radio navigational aids such as ADF (automatic directional finder), Satellite Global Navigational System, navigational radar, or other comparable radio equipment suited for water navigation;
 - (f) marine radio; and
 - (g) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
- (6) The water ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the watercraft.

Authority G.S. 131E-157(a); 143-508(d)(8).

10A NCAC 13P .0211 AMBULANCE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for the appropriate Ambulance Permit prior to placing an ambulance in service.
- (b) The Department shall issue a permit for an ambulance following verification of compliance with applicable laws and rules.
- (c) Only one Ambulance Permit shall be issued for each ambulance.
- (d) An ambulance shall be permitted in only one category.
- (e) Ambulance Permits shall not be transferred except in the case of Air Medical Ambulance replacement aircraft when the primary aircraft is out of service.
- (f) The Ambulance Permit shall be posted as designated by the OEMS inspector.
- ~~(g) In order to provide a transition time for implementation of this Rule, Ambulance Permits obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.~~

Authority G.S. 131E-157(a); 143-508(d)(8).

10A NCAC 13P .0214 EMS NONTRANSPORTING VEHICLE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for an EMS Nontransporting Vehicle Permit prior to placing such a vehicle in service.
- (b) The Department shall issue a permit for a vehicle following verification of compliance with applicable laws and rules.
- (c) Only one EMS Nontransporting Vehicle Permit shall be issued for each vehicle.

- (d) EMS Nontransporting Vehicle Permits shall not be transferred.
- (e) The EMS Nontransporting Vehicle Permit shall be posted as designated by the OEMS inspector.
- ~~(f) In order to provide a transition time for implementation of this Rule, EMS Nontransporting Vehicle Permits obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.~~

Authority G.S. 143-508(d)(8).

SECTION .0300 – SPECIALTY CARE TRANSPORT PROGRAMS

10A NCAC 13P .0301 PROGRAM CRITERIA

(a) Programs seeking designation to provide specialty care transports shall submit an application for program approval to the OEMS at least 60 days prior to field implementation. The application shall document that the program has:

- (1) a defined service area;
- (2) a medical oversight plan meeting the requirements of Section .0400;
- (3) service continuously available on a 24 hour per day basis;
- (4) the capability to provide the following patient care skills and procedures:
 - (A) advanced airway techniques including rapid sequence induction, cricothyrotomy, and ventilator management, including continuous monitoring of the patient's oxygenation;
 - (B) insertion of femoral lines;
 - (C) maintaining invasive monitoring devices to include central venous pressure lines, arterial and venous catheters, arterial lines, intra-ventricular catheters, and epidural catheters; and
 - (D) interpreting 12-lead electrocardiograms;
- (5) a written continuing education plan for EMS personnel, under the direction of the Specialty Care Transport Program Continuing Education Coordinator, developed and modified based on feedback from program data, review and evaluation of patient outcomes, and quality management reviews; and
- (6) a system to collect and submit by facsimile or other electronic means to the OEMS data that uses the basic data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS

Specialty Care Transport Programs shall comply with this requirement by July 1, 2004.

(b) Applications for specialty care transport program approval shall document that the applicant meets the requirements for the specific program type or types applied for as specified in Rules .0302, .0303 or .0304 of this Section.

(c) Specialty care transport program approval shall be valid for a period to coincide with the EMS Provider License, not to exceed six years. Programs shall apply to the OEMS for reapproval.

Authority G.S. 143-508(d)(1), (d)(8), (d)(9); (d)(13).

10A NCAC 13P .0303 GROUND SPECIALTY CARE TRANSPORT PROGRAMS

(a) When transporting patients that have a medical need for one or more of the skills or procedures as defined for specialty care transport programs in .0301(a)(4) of this Section, staffing for the vehicle used in the ground specialty care transport program shall be at a level to ensure the capability to provide in the patient compartment, when the patient condition requires, two of the following personnel approved by the medical director as medical crew members:

- (1) EMT-Paramedic;
- (2) ~~Nurse~~nurse practitioner;
- (3) ~~Physician~~physician
- (4) ~~Physician~~physician assistant;
- (5) ~~Registered~~registered nurse; and
- (6) ~~Respiratory~~respiratory therapist.

(b) When transporting patients that do not require specialty care transport skills or procedures, staffing for the vehicles used in the ground specialty care transport program shall be at a level to ensure compliance with G.S. 131E-158(a).

(c) In addition to the general requirements of specialty care transport programs in Rule .0301 of this Section, ground programs providing specialty care transports shall document that the program has:

- (1) a communication system that will provide, at a minimum, two-way voice communications to medical ~~crewmembers~~crew members anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction;
- (2) medical ~~crewmembers~~crew members that have all completed training regarding:
 - (A) operation of the EMS communications system used in the program; and
 - (B) the medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months;
- (3) ~~Operational~~operational protocols for the management of equipment, supplies and medications. These protocols shall include:
 - (A) ~~A~~a standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used

in the program as found in Rules .0207, .0208, .0209, and .0210 of this Subchapter;

- (B) ~~A~~a standard listing of medications for all ambulance and EMS nontransporting vehicles used in the system. This listing shall be based on the local treatment protocols and be approved by the medical director;
- (C) ~~A~~a methodology to assure that each vehicle contains the required equipment and supplies on each response;
- (D) ~~A~~a methodology for cleaning and maintaining the equipment and vehicles; and
- (E) ~~A~~a methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (4) ~~A~~a written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles; and
- (5) ~~A~~a written plan specifying how EMS Systems will request ambulances operated by the program.

(d) Ground Specialty Care Transport programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .0204 and .0301 of this Subchapter and Paragraphs (a) and (b) of this Rule.

Authority G.S. 143-508(d)(1), (d)(8), (d)(9).

SECTION .0400 -- MEDICAL OVERSIGHT

10A NCAC 13P .0401 COMPONENTS OF MEDICAL OVERSIGHT FOR EMS SYSTEMS

Each EMS System operating within the scope of practice for EMD, ~~EMT-D~~, EMT-I, or EMT-P or seeking designation as a Model EMS System shall have the following components in place to assure medical oversight of the system:

- (1) ~~A~~a medical director appointed, either directly or by documented delegation, by the county responsible for establishing the EMS System. Systems may elect to appoint one or more assistant medical directors.
 - (a) For EMS Systems, the medical director and assistant medical directors shall meet the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This

document is available from the Office of ~~Emergency~~ Medical Services, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and

(b) For Model EMS Systems, the medical director and assistant medical directors shall also meet the additional criteria for medical directors of Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of ~~Emergency~~ Medical Services, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;

- (2) ~~Written~~ written treatment protocols for use by EMS personnel;
- (3) ~~For~~ for systems providing EMD service, an EMDPRS approved by the medical director;
- (4) ~~A quality management committee; an EMS Peer Review Committee;~~ and
- (5) ~~Written~~ written procedures for use by EMS personnel to obtain on-line medical direction. On-line medical direction shall:

- (a) ~~Be~~ be restricted to medical orders that fall within the scope of practice of the EMS personnel and within the scope of approved system treatment protocols;
- (b) ~~Be~~ be provided only by physicians, a physician, MICN, EMS-NP, or EMS-PA. EMS physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
- (c) ~~Be~~ be provided by a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0402 COMPONENTS OF MEDICAL OVERSIGHT FOR SPECIALTY CARE TRANSPORT PROGRAMS

Each Specialty Care Transport Program shall have the following components in place to assure Medical Oversight of the system:

- (1) ~~A~~ a medical director. The administration of the Specialty Care Transport Program shall appoint a medical director following the criteria for medical directors of Specialty Care Transport Programs as defined by the "North Carolina College of Emergency Physicians:

Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of ~~Emergency~~ Medical Services, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The program administration may elect to appoint one or more assistant medical directors;

- (2) ~~Treatment~~ treatment protocols for use by medical crew members;
- (3) ~~A quality management committee; an EMS Peer Review Committee;~~ and
- (4) ~~A~~ a written protocol for use by medical crew members to obtain on-line medical direction. On-line medical direction shall:
 - (a) ~~Be~~ be restricted to medical orders that fall within the scope of practice of the medical crew members and within the scope of approved program treatment protocols;
 - (b) ~~Be~~ be provided only by physicians, a physician, MICN, EMS-NP, or EMS-PA. EMS physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
 - (c) ~~Be obtained via~~ be provided by a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0403 RESPONSIBILITIES OF THE MEDICAL DIRECTOR FOR EMS SYSTEMS

(a) The ~~medical director~~ Medical Director for an EMS ~~system~~ System shall be responsible for the following:

- (1) ~~Ensure~~ ensure that medical control is available 24 hours a day;
- (2) ~~The~~ the establishment, approval and annual updating of treatment protocols;
- (3) ~~For~~ —EMD programs, the establishment, approval, and annual updating of the EMDPRS;
- (4) ~~Medical~~ medical supervision of the selection, system orientation, continuing education and performance of EMS personnel;
- (5) ~~Medical~~ medical supervision of a scope of practice performance evaluation for all EMS personnel in the system based on the treatment protocols for the system;
- (6) ~~The~~ the medical review of the care provided to patients;
- (7) ~~Providing~~ providing guidance regarding decisions about the equipment, medical supplies, and medications that will be carried on ambulances or EMS nontransporting

- (8) ~~Keeping~~keeping the care provided up to date with current medical practice.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through clearly established written delegation, by assisting physicians, physician assistants, nurse practitioners, registered nurses, EMD's, or EMT-P's.

(c) The ~~medical director~~Medical Director shall have the authority to suspend temporarily, pending due process review, any EMS personnel from further participation in the EMS System when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient, constitute unprofessional behavior, or result in non-compliance with credentialing requirements.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0405 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR EMS SYSTEMS

(a) Written Treatment Protocols:

- (1) Used in EMS Systems shall meet the minimum standard treatment protocols as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS,~~ 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (2) Used in Model EMS Systems shall also meet the minimum standard treatment protocols for Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS,~~ 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (3) Shall not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the level of care offered in the EMS System or any other applicable health care licensing board.

(b) Treatment protocols developed locally shall, at a minimum, meet the requirements of Paragraph (a) of this Rule, shall be reviewed annually and any change in the treatment protocols shall be submitted to the OEMS Medical Director for review and approval at least 30 days prior to the implementation of the change.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0406 REQUIREMENTS FOR

TREATMENT PROTOCOLS FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) Treatment protocols used by medical crew members within a Specialty Care Transport Program shall:

- (1) be approved by the OEMS Medical Director and incorporate all skills, medications, equipment, and supplies for Specialty Care Transport Programs as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS,~~ 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (2) not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice of the medical crew members.

(b) Treatment protocols shall be reviewed annually, and any change in the treatment protocols shall be submitted to the OEMS Medical Director for review and approval at least 30 days prior to the implementation of the change.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0407 REQUIREMENTS FOR EMERGENCY MEDICAL DISPATCH PRIORITY REFERENCE SYSTEM

(a) EMDPRS used by ~~EMD's~~an EMD within an approved EMD program shall:

- (1) be approved by the OEMS Medical Director and meet or exceed the statewide standard for EMDPRS as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS,~~ 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (2) not exceed the EMD scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514.

(b) An EMDPRS developed locally shall be reviewed and updated annually and submitted to the OEMS ~~medical director~~Medical Director for approval. Any change in the EMDPRS shall be submitted to the OEMS ~~medical director~~Medical Director for review and approval at least 30 days prior to the implementation of the change.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0408 EMS PEER REVIEW COMMITTEE FOR EMS SYSTEMS

(a) The ~~quality management committee~~EMS Peer Review Committee for an EMS System shall:

PROPOSED RULES

- (1) ~~Be~~ composed of at least one voting representative from each of the following components of the system:
 - (A) ~~Physicians~~physicians
 - (B) ~~Nurses~~nurses;
 - (C) ~~Medical~~medical facility personnel such as pharmacists or respiratory therapists;
 - (D) EMS educators;
 - (E) ~~County~~county government officials; and
 - (F) EMS ~~providers~~providers; and
 - (G) ~~EMS~~ personnel.
- (2) ~~Appoint~~appoint a physician as chairperson;
- (3) ~~Meet~~meet, at a minimum, on a quarterly basis;
- (4) ~~Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or subcommittee thereof, analyzes~~analyze system data to evaluate the ongoing quality of patient care and medical direction within the system;
- (5) ~~Use~~use information gained from system data analysis to make recommendations regarding the content of ~~educational~~continuing education programs for EMS personnel;
- (6) ~~Review~~review treatment protocols of the EMS System and make recommendations to the medical director for changes;
- (7) ~~Establish~~establish a written procedure to guarantee reviews for EMS personnel temporarily suspended by the medical director; and
- (8) ~~Maintain~~maintain minutes of committee meetings throughout the approval period of the EMS System.

(b) The ~~quality management committee~~EMS Peer Review Committee shall adopt written guidelines that address at a minimum:

- (1) ~~Structure~~structure of committee membership;
- (2) ~~Appointment~~appointment of committee officers;
- (3) ~~Appointment~~appointment of committee members;
- (4) ~~Length~~length of terms of committee members;
- (5) ~~Frequency~~frequency of attendance of committee members;
- (6) ~~Establishment~~establishment of a quorum for conducting business; and
- (7) ~~Confidentiality~~confidentiality of medical records and personnel issues.

Authority G.S. 143-508(b); 143-509(12).

10A NCAC 13P .0409 EMS PEER REVIEW COMMITTEE FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) The ~~quality management committee~~EMS Peer Review Committee for a Specialty Care Transport Program shall:

- (1) ~~Be~~ composed of membership as defined in G.S. 131E-155(16a). The Committee shall include at least one voting representative from

each of the following components of the program:

- (A) ~~Physicians~~physicians;
- (B) ~~Nurses~~nurses;
- (C) ~~Medical~~medical facility personnel such as pharmacists or respiratory therapists;
- (D) ~~Educators~~educators; and
- (E) ~~Medical~~medical crew members;

- (2) ~~Appoint~~appoint a physician as chairperson;
- (3) ~~Meet~~meet, at a minimum, on a quarterly basis;
- (4) ~~Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or subcommittee thereof, analyzes~~analyze system ~~program~~ data to evaluate the ongoing quality of patient care and medical direction within the program;
- (5) ~~Use~~use information gained from program data analysis to make recommendations regarding the content of ~~educational~~continuing education programs for medical crew members;
- (6) ~~Review~~review treatment protocols of the Specialty Care Transport Programs and make recommendations to the medical director for changes;
- (7) ~~Establish~~establish a written procedure to guarantee reviews for medical crew members temporarily suspended by the medical director; and
- (8) ~~Maintain~~maintain minutes of committee meetings throughout the approval period of the Specialty Care Transport Program.

(b) Each ~~quality management committee~~EMS Peer Review Committee shall adopt written guidelines that address at a minimum:

- (1) ~~Structure~~structure of committee membership;
- (2) ~~Appointment~~appointment of committee officers;
- (3) ~~Appointment~~appointment of committee members;
- (4) ~~Length~~length of terms of committee members;
- (5) ~~Frequency~~frequency of attendance of committee members;
- (6) ~~Establishment~~establishment of a quorum for conducting business; and
- (7) ~~Confidentiality~~confidentiality of medical records and personnel issues.

Authority G.S. 143-508(b); 143-509(12).

SECTION .0500 – EMS PERSONNEL

10A NCAC 13P .0501 EDUCATIONAL PROGRAMS

(a) An educational program approved to qualify credentialed EMS personnel to perform within their scope of practice shall be offered by an EMS educational institution.

(b) Educational programs approved to qualify EMS personnel for credentialing shall meet the educational objectives of the:

- (1) "US DOT NHTSA First Responder: National Standard Curriculum" for MR personnel;
- (2) "US DOT NHTSA EMT-Basic: National Standard Curriculum" for EMT personnel;

PROPOSED RULES

(3) "US DOT NHTSA EMT-Paramedic: National Standard Curriculum" for EMT-I and EMT-P personnel. For EMT-I personnel, the

educational objectives will be limited to the following:

(A) Module 1: Preparatory

<u>SECTION</u>	<u>TITLE</u>	<u>LESSON OBJECTIVES</u>
<u>1-1</u>	<u>EMS Systems / Roles & Responsibilities</u>	<u>1-1.1 – 1-1.46</u>
<u>1-2</u>	<u>The Well Being of the Paramedic</u>	<u>1-2.1 – 1-2.46</u>
<u>1-4</u>	<u>Medical / Legal Issues</u>	<u>1-4.1 – 1-4.35</u>
<u>1-5</u>	<u>Ethics</u>	<u>1-5.1 – 1-5.11</u>
<u>1-6</u>	<u>General Principles of Pathophysiology</u>	<u>1-6.3; 1-6.5 – 1-6.9;</u> <u>1-6.13 – 1-6.16;</u> <u>1-6.19 – 1-6.25;</u> <u>1-6.27 – 1-6.31</u>
<u>1-7</u>	<u>Pharmacology</u>	<u>1-7.1 – 1-7.31</u>
<u>1-8</u>	<u>Venous Access / Medication Administration</u>	<u>1-8.1 – 1-8.8;</u> <u>1-8.10 – 1-8.17;</u> <u>1-8.19 – 1-8.34;</u> <u>1-8.36 – 1-8.38;</u> <u>1-8.40 – 1-8.43</u>
<u>1-9</u>	<u>Therapeutic Communications</u>	<u>1-9.1 – 1-9.21</u>

(B) Module 2: Airway

<u>SECTION</u>	<u>TITLE</u>	<u>LESSON OBJECTIVES</u>
<u>2-1</u>	<u>Airway Management & Ventilation</u>	<u>2-1.1 – 2-1.10;</u> <u>2-1.12 – 2-1.40;</u> <u>2-1.42 – 2-1.64;</u> <u>2-1.69;</u> <u>2-1.73 – 2-1.89;</u> <u>2-1.93 – 2-1.103;</u> <u>2-1.104a-d;</u> <u>2-1.105 – 2-1.106;</u> <u>2-1.108</u>

(4) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel; or

(4) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel.

(5) "National Guidelines for Educating EMS Instructors" for EMS Instructors.

These documents are incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. These documents are available from NHTSA, 400 7th Street, SW, Washington, D.C. 20590, at no cost.

Authority G.S. 143-508(d)(3), (d)(4); 143-514.

10A NCAC 13P .0502 INITIAL CREDENTIALING REQUIREMENTS FOR MR, EMT, EMT-I, EMT-P, AND EMD

(a) MR, EMT, EMT-I, EMT-P, and EMD applicants shall meet the following criteria within one year of the completion date of the approved educational program for their level of application:

(1) "US DOT NHTSA First Responder Refresher: National Standard Curriculum" for MR personnel;

(1) Be at least 18 years of age;

(2) "US DOT NHTSA EMT-Basic Refresher: National Standard Curriculum" for EMT personnel;

(2) Successfully complete a scope of practice performance evaluation, approved by the OEMS, for the level of application.

(3) "EMT-P and EMT-I Continuing Education National Guidelines" for EMT-I and EMT-P personnel; or

(A) For MR and EMT credentialing, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and

(B) For EMT-I, EMT-P, and EMD credentialing, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor; and

(3) Successfully complete a written examination administered by the OEMS or equivalent. Applicants who fail the written EMT examination but achieve a minimum score of 70% on the medical responder subset contained within the examination may be credentialed as medical responders. If the educational program was completed over one year prior to application, applicants shall submit evidence of completion of continuing education during the past year. This continuing education shall be consistent with their level of application and approved by the OEMS.

(b) EMD applicants shall successfully complete, within one year prior to application, an AHA CPR course or equivalent, including infant, child, and adult CPR, in addition to Subparagraph (a)(1), (a)(2), and (a)(3) of this Rule.

Authority G.S. 131E-159 (a)(b); 143-508(d)(3).

10A NCAC 13P .0504 RENEWAL OF CREDENTIALS FOR MR, EMT, EMT-I, EMT-P, AND EMD

MR, EMT, EMT-I, EMT-P and EMD applicants shall renew credentials by presenting documentation to the OEMS that they have successfully completed:

(1) an approved educational program as described in Rule .0501(c) of this Subchapter; and

(2) within one year prior to renewal, a scope of practice performance evaluation, approved by the OEMS, for the level of application:

(a) for MR and EMT renewal, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and

(b) for EMT-I, EMT-P, and EMD renewal, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor.

Authority G.S. 131-159(a); 143-508(d)(3).

10A NCAC 13P .0506 PRACTICE SETTINGS FOR EMS

PERSONNEL

Credentialed EMS Personnel may function in the following practice settings in accordance with the protocols approved by the medical director of the EMS System or Specialty Care Transport Program with which they are affiliated, and by the OEMS:

- (1) at the location of a physiological or psychological illness or injury including transportation to an appropriate treatment facility if required;
- (2) at public or community health facilities in conjunction with public and community health initiatives;
- (3) in hospitals and clinics;
- (4) in residences, facilities, or other locations as part of wellness or injury prevention initiatives within the community and the public health system; and
- (5) at mass gatherings or special events.

Authority G.S. 143-508(d)(7).

10A NCAC 13P .0507 CREDENTIALING REQUIREMENTS FOR LEVEL I EMS INSTRUCTORS

(a) Applicants for credentialing as a Level I EMS Instructor shall:

- (1) be currently credentialed by the OEMS as an EMT, EMT-P, or EMD;
- (2) have three years experience at the scope of practice for the level of application;
- (3) within one year prior to application, successfully complete both a clinical and educational scope of practice performance evaluation, approved by the OEMS, for the level of application:

(A) for a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and

(B) for a credential to teach at the EMT-I or EMT-P levels, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;

(C) for a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor;

(4) have 100 hours of formal teaching experience in an approved EMS educational program or equivalent;

PROPOSED RULES

- (5) successfully complete an educational program as described in Rule .0501(b)(5) of this Subchapter;
- (6) within one year prior to application, attend a Level I EMS Instructor workshop sponsored by the OEMS; and
- (7) have a high school diploma or General Education Development certificate.

(b) The credential of a Level I EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) the OEMS imposes an administrative action against the instructor credential; or
- (2) the instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

Authority G.S. 143-508(d)(3).

10A NCAC 13P .0508 CREDENTIALING REQUIREMENTS FOR LEVEL II EMS INSTRUCTORS

(a) Applicants for credentialing as a Level II EMS Instructor shall:

- (1) be currently credentialed by the OEMS as an EMT, EMT-I, or EMT-P;
- (2) complete post-secondary level education equal to or exceeding an Associate Degree;
- (3) within one year prior to application, successfully complete both a clinical and educational scope of practice performance evaluation, approved by the OEMS, for the level of application:
 - (A) For a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
 - (B) For a credential to teach at the EMT-I or EMT-P level, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
 - (C) For a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor;
- (4) have two years teaching experience as a Level I EMS Instructor or equivalent;
- (5) successfully complete the "EMS Education Administration Course" adopted by the North Carolina Community College System, incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is

available from the North Carolina Community College System, 200 West Jones Street, Raleigh, North Carolina 27603, at no cost; and attend a Level II EMS Instructor workshop sponsored by the OEMS;

- (6) attend a Level II EMS Instructor workshop sponsored by the OEMS;

(b) The credential of a Level II EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) The OEMS imposes an administrative action against the instructor credential; or
- (2) The instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

Authority G.S. 143-508(d)(3).

10A NCAC 13P .0509 CREDENTIALING OF INDIVIDUALS TO ADMINISTER LIFESAVING TREATMENT TO PERSONS SUFFERING AN ADVERSE REACTION TO AGENTS THAT MIGHT CAUSE ANAPHYLAXIS

(a) To become credentialed by the North Carolina Medical Care Commission to administer epinephrine to persons who suffer adverse reactions to agents that might cause anaphylaxis, a person shall meet the following:

- (1) Be 18 years of age or older; and
- (2) Successfully successfully complete an educational program taught by a physician licensed to practice medicine in North Carolina or designee of the physician. The educational program shall instruct individuals in the appropriate use of procedures for the administration of epinephrine to pediatric and adult victims who suffer adverse reactions to agents that might cause anaphylaxis and shall include at a minimum the following:
 - (A) Definitiondefinition of anaphylaxis;
 - (B) Agentsagents that might cause anaphylaxis and the distinction between them, including drugs, insects, foods, and inhalants;
 - (C) Recognitionrecognition of symptoms of anaphylaxis for both pediatric and adult victims;
 - (D) Appropriateappropriate emergency treatment of anaphylaxis as a result of agents that might cause anaphylaxis;
 - (E) Availabilityavailability and design of packages containing equipment for administering epinephrine to victims suffering from anaphylaxis as a result of agents that might cause anaphylaxis;
 - (F) Pharmacologypharmacology of epinephrine including indications, contraindications, and side effects;
 - (G) Discussiondiscussion of legal implications of rendering aid; and
 - (H) Instructioninstruction that treatment is to be utilized only in the absence of the availability of physicians or other

practitioners who are authorized to administer the treatment.

(b) A credential to administer epinephrine to persons who suffer adverse reactions to agents that might cause anaphylaxis may be issued by the North Carolina Medical Care Commission upon receipt of a completed application signed by the applicant and the physician who taught or was responsible for the educational program. Applications may be obtained from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707. All credentials shall be valid for the period stated on the credential issued to the applicant.

Authority G.S. 143-508(d)(11); 143-509(9).

10A NCAC 13P .0510 RENEWAL OF CREDENTIALS FOR LEVEL I AND LEVEL II EMS INSTRUCTORS

(a) Level I and Level II EMS Instructor applicants shall renew credentials by presenting documentation to the OEMS that they:

- (1) are currently credentialed by the OEMS as an EMT, EMT-I, or EMT-P, or EMD;
- (2) successfully completed, within one year prior to application, both a clinical and educational scope of practice performance evaluation, approved by the OEMS, for the level of application:
 - (A) To renew a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application;
 - (B) To renew a credential to teach at the EMT-I or EMT-P level, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor; and
 - (C) To renew a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor;
- (3) completed 96 hours of EMS instruction at the level of application; and
- (4) completed 40 hours of educational professional development.

(b) The credential of a Level I or Level II EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) the OEMS imposes an administrative action against the instructor credential; or
- (2) the instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

Authority G.S. 131E-159(a)(b); 143-508(d)(3).

SECTION .0600 – EMS EDUCATIONAL INSTITUTIONS

10A NCAC 13P .0601 CONTINUING EDUCATION EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Continuing Education EMS Educational Institutions shall be credentialed by the OEMS to provide EMS continuing education programs.

(b) Continuing Education EMS Educational Institutions shall have, at a minimum:

- (1) a Level I EMS Instructor as program coordinator. The program coordinator shall hold a Level I EMS Instructor credential at a level equal to or greater than the highest level of continuing education program offered in the EMS System or Specialty Care Transport Program;
- (2) a continuing education program consistent with the EMS System or Specialty Care Transport Program continuing education plan for EMS personnel:
 - (A) In an EMS System, the continuing education programs for EMD, EMT-I, and EMT-P shall be reviewed and approved by the medical director of the EMS System.
 - (B) In a Model EMS System, the continuing education program shall be reviewed and approved by the system continuing education coordinator and medical director.
 - (C) In a Specialty Care Transport Program, the continuing education program shall be reviewed and approved by Specialty Care Transport Program Continuing Education Coordinator and the medical director.
- (3) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(c) of this Subchapter;
- (4) educational programs offered in accordance with Rule .0501(c) of this Subchapter;
- (5) an Educational Medical Advisor if offering educational programs that have not been reviewed and approved by a medical director of an EMS System or Specialty Care Transport Program. The Educational Medical Advisor shall meet the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (6) a written educational plan describing the delivery of educational programs, the record-keeping system detailing student attendance and performance, and the selection and monitoring of EMS instructors.

(c) An application for credentialing as a Continuing Education EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraph (b) of this Rule.

(d) Continuing Education EMS Educational Institution credentials shall be valid for a period of four years.

(e) It is not necessary for Continuing Education EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

Authority G.S. 143-508(d)(4), (13).

10A NCAC 13P .0602 BASIC EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Basic EMS Educational Institutions may offer MR, EMT, and EMD courses for which they have been credentialed by the OEMS.

(b) For initial courses, Basic EMS Educational Institutions shall have, at a minimum:

- (1) a Level I EMS Instructor as lead course instructor for MR and EMT courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (2) a Level I EMS Instructor credentialed at the EMD level as lead course instructor for EMD courses;
- (3) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this Paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Paragraph (b)(5) of this Rule. Basic EMS Educational Institutions offering only EMD courses may meet this requirement with a Level I EMS Instructor credentialed at the EMD level;
- (4) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection" incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (5) a written educational plan describing the delivery of educational programs, the record-keeping system detailing student attendance and performance; and the selection and monitoring of EMS instructors; and
- (6) access to instructional supplies and equipment necessary for students to complete educational

programs as defined in Rule .0501(c) of this Subchapter.

(c) For EMS continuing education programs, Basic EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .0601 of this Section.

(d) An application for credentialing as a Basic EMS Educational Institution shall be submitted to the OEMS for review. The proposal shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule.

(e) Basic EMS Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Basic EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

Authority G.S. 143-508(d)(4), (13).

10A NCAC 13P .0603 ADVANCED EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Advanced EMS Educational Institutions may offer all EMS educational programs for which they have been credentialed by the OEMS.

(b) For initial courses, Advanced EMS Educational Institutions shall have, at a minimum:

- (1) a Level I EMS Instructor as lead course instructor for MR and EMT courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (2) a Level I EMS Instructor credentialed at the EMD level as lead course instructor for EMD courses;
- (3) a Level II EMS Instructor as lead instructor for EMT-I and EMT-P courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (4) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Paragraph (b)(6) of this Rule;
- (5) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (6) a written educational plan describing the delivery of educational programs, the record-

keeping system detailing student attendance and performance; and the selection and monitoring of EMS instructors; and

- (7) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(c) of this Subchapter.

(c) For EMS continuing education programs, Advanced EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .0601 of this Section.

(d) An application for credentialing as an Advanced EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule. Advanced EMS Educational Institutions holding current accreditation by a national EMS educational accreditation agency that has been recognized by OEMS may use this accreditation as documentation toward meeting the requirements of Paragraphs (b) and (c) of this Rule.

(e) Advanced Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Advanced EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

Authority G.S. 143-508(d)(4), (13).

10A NCAC 13P .0604 TRANSITION FOR APPROVED TEACHING INSTITUTIONS

~~Approved Teaching Institutions under contract with the OEMS as of April 30, 2002, shall be credentialed as an EMS Educational Institution consistent with the existing level of approval through December 31, 2003. These institutions may continue to offer courses currently allowed under the contract while preparing for credentialing under Rules .0601, .0602, and .0603.~~

Authority G.S. 143-508(b).

SECTION .0700 – ENFORCEMENT

10A NCAC 13P .0701 DENIAL, SUSPENSION, AMENDMENT OR REVOCATION

(a) The Department may deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS provider:

- (1) fails to substantially comply with the requirements of Section .0200 of this Subchapter;
- (2) obtains or attempts to obtain a permit through fraud or misrepresentation; or
- (3) fails to provide emergency medical care within the defined EMS service area in a timely manner.

(b) In lieu of suspension or revocation, the Department may issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:

- (1) the EMS provider to which that vehicle is assigned has substantially failed to comply

with the provisions of G.S. 131E, Article 7, and the rules adopted under that article; or

- (2) there is a reasonable probability that the EMS provider can remedy the permit deficiencies within a length of time determined by the department; or
- (3) there is a reasonable probability that the EMS provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.

(c) The Department shall give the EMS provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:

- (1) the duration of the temporary permit not to exceed 60 days;
- (2) a copy of the vehicle inspection form;
- (3) the statutes or rules alleged to be violated; and
- (4) notice to the EMS provider's right to a contested case hearing on the temporary permit.

(d) The temporary permit shall be effective immediately upon its receipt by the EMS provider and shall remain in effect until the earlier of the expiration date of the permit or until the Department:

- (1) restores the vehicle to full permitted status; or
- (2) suspends or revokes the vehicle permit.

(e) The Department may deny, suspend, or revoke the credentials of EMS personnel for any of the following reasons:

- (1) failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
- (2) making false statements or representations to the OEMS or willfully concealing information in connection with an application for credentials;
- (3) being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of illness, use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;
- (4) unprofessional conduct, including but not limited to a failure to comply with the rules relating to the proper function of credentialed EMS personnel contained in this Subchapter or the performance of or attempt to perform a procedure that is detrimental to the health and safety of any person or that is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (5) conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the scope of practice of credentialed EMS personnel;
- (6) by false representations obtaining or attempting to obtain money or anything of value from a patient;
- (7) adjudication of mental incompetence;
- (8) lack of competence to practice with a reasonable degree of skill and safety for patients including but not limited to a failure to

perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure that is not within the scope of practice of credentialed EMS personnel or EMS instructors;

- (9) making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the OEMS;
- (10) testing positive for any substance, legal or illegal, that is likely to impair the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;
- (11) representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have; or
- (12) failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients.

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

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

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

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

(h) The provisional EMS provider license shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the EMS provider, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until the Department:

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

(i) The Department may revoke or suspend an EMS provider license whenever the Department finds that the licensee:

- (1) has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and it is not reasonably probable that the licensee can

remedy the licensure deficiencies within a reasonable length of time;

- (2) has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and, although the licensee may be able to remedy the deficiencies within a reasonable period of time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;
- (3) has failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for or transported by the licensee; or
- (4) obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS provider license through fraud or misrepresentation.

(j) The issuance of a provisional EMS provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (i) of this Rule.

(k) The Department may amend, deny, suspend, or revoke the credential of an EMS educational institution for any of the following reasons:

- (1) failure to substantially comply with the requirements of Section .0600 of this Subchapter; or
- (2) obtaining or attempting to obtain a credential through fraud or misrepresentation.

(l) The Department may amend, deny, suspend, or revoke the approval of an EMS System or designation of a Model EMS System for any of the following reasons:

- (1) failure to substantially comply with the requirements of Section .0200 of this Subchapter; or
- (2) obtaining or attempting to obtain designation through fraud or misrepresentation.

(m) The Department may amend, deny, suspend, or revoke the designation of a Specialty Care Transport Program for any of the following reasons:

- (1) failure to substantially comply with the requirements of Section .0300 of this Subchapter; or
- (2) obtaining or attempting to obtain designation through fraud or misrepresentation.

Authority G.S. 131E-155.1(d); 131E-157(c); 131E-159(a); 143-508(d)(10).

SECTION .0900 – TRAUMA CENTER STANDARDS AND APPROVAL

10A NCAC 13P .0901 LEVEL I TRAUMA CENTER CRITERIA

To receive designation as a Level I Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;

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- (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) Trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) Serve on the center's trauma service;
 - (c) Participate in providing care to patients with life-threatening or urgent injuries;
 - (d) Participate in the North Carolina Chapter of the ACS Committee on Trauma as well as other regional and national trauma organizations;
 - (e) Remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma-related instruction to other health care personnel; and
 - (f) Be involved with trauma research and the publication of results and presentations.
- (4) A full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
- (5) A full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
- (6) A hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
- (7) Clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel.
- (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes:
 - (a) An in-house Post Graduate Year 4 (PGY4) or senior general surgical resident, at a minimum, who is a member of that hospital's surgical residency program and responds within 20 minutes of notification;
 - (b) A trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (c) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine). Emergency physicians caring only for pediatric patients may, as an alternative, be boarded or prepared in pediatric emergency medicine. Emergency physicians must be board-certified within five years after successful completion of a residency in emergency medicine and serve as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (d) Neurosurgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, unless there is either an in-house attending neurosurgeon, a Post Graduate Year 2 (PGY2) or higher in-house neurosurgery resident or an in-house trauma surgeon or emergency physician as long as the institution can document management guidelines and annual continuing medical education for neurosurgical emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon is simultaneously on-call at a hospital other than the trauma center;
 - (e) Orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, unless there is either an in-house

- attending orthopaedic surgeon, a Post Graduate Year 2 (PGY2) or higher in-house orthopaedic surgery resident or an in-house trauma surgeon or emergency physician as long as the institution can document management guidelines and annual continuing medical education for orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the orthopaedist is simultaneously on-call at a hospital other than the trauma center;
- (f) An in-house anesthesiologist or a Clinical Anesthesiology Year 3 (CA3) resident as long as an anesthesiologist on-call is advised and promptly available if requested by the trauma team leader, and
- (g) Registered nursing personnel trained in the care of trauma patients.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
- (b) Respiratory distress;
- (c) Airway compromise;
- (d) Unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
- (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
- (b) Burns meeting institutional transfer criteria;
- (c) Vascular compromise;
- (d) Crush to chest or pelvis;
- (e) Two or more proximal long bone fractures; and
- (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
- (b) Pedestrian struck by motor vehicle;
- (c) Motor vehicle crash with:
- (i) Ejection (includes motorcycle);
- (ii) Rollover;
- (iii) Speed greater than 40 mph; or
- (iv) Death of another individual at the scene;
- (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) Cardiac surgery;
- (b) Critical care;
- (c) Hand surgery;
- (d) Microvascular/replant surgery;
- (e) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.)
- (f) Obstetrics/gynecologic surgery;
- (g) Ophthalmic surgery;
- (h) Oral/maxillofacial surgery;
- (i) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
- (j) Pediatric surgery;
- (k) Plastic surgery;
- (l) Radiology;
- (m) Thoracic surgery; and
- (n) Urologic surgery.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department such that:
- (i) At least one physician on every shift in the Emergency Department is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) to serve as the designated

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- member of the trauma team at least until the arrival of the trauma surgeon. Emergency physicians caring only for pediatric patients may, as an alternative, be boarded in pediatric emergency medicine. All emergency physicians must be board-certified within five years after successful completion of the residency;
 - (ii) All remaining emergency physicians, if not board-certified or prepared in emergency medicine as outlined in Item (16)(b)(i) of this Rule, are board-certified, or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine, with each being board-certified within five years after successful completion of a residency; and
 - (iii) All emergency physicians practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices, including capability for cervical traction;
 - (xiii) Arterial catheters;
 - (xiv) Thermal control equipment for patients;
 - (xv) Thermal control equipment for blood and fluids;
 - (xvi) Rapid infuser system;
 - (xvii) Broselow tape;
 - (xviii) Sonography; and
 - (xix) Doppler.
- (17) An operating suite that is immediately available 24 hours per day and has:
- (a) 24-hour-per-day immediate availability of in-house staffing;
 - (b) Equipment for patients of all ages to include:
 - (i) Cardiopulmonary bypass capability;
 - (ii) Operating microscope;
 - (iii) Thermal control equipment for patients
 - (iv) Thermal control equipment for blood and fluids;
 - (v) 24-hour-per-day x-ray capability including c-arm image intensifier;
 - (vi) Endoscopes and bronchoscopes;
 - (vii) Craniotomy instruments;
 - (viii) Capability of fixation of long-bone and pelvic fractures; and
 - (ix) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
- (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;

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- (ii) Capability for continuous monitoring of intracranial pressure;
 - (iii) Pulse oximetry;
 - (iv) End-tidal carbon dioxide determination capability;
 - (v) Thermal control equipment for patients; and
 - (vi) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
- (a) A designated surgical director for trauma patients;
 - (b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;
 - (c) Ratio of one nurse per two patients on each shift;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary, transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices;
 - (xi) Temperature control devices; and
 - (xii) Intracranial pressure monitoring devices.
 - (e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital
- (23) capable of caring for a spinal cord injured patient;
- (23) Radiological capabilities that have at a minimum:
- (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
 - (c) Sonography;
 - (d) Computed tomography;
 - (e) Angiography;
 - (f) Magnetic resonance imaging; and
 - (g) Resuscitation equipment to include: airway management and IV therapy.
- (24) Respiratory therapy services available in-house 24 hours per day;
- (25) 24-hour-per-day clinical laboratory service that must include:
- (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (26) A rehabilitation service that provides:
- (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendations regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) Physical, occupational, speech therapies, and social services; and
 - (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services, OEMS~~, 2707 Mail Service Center, Raleigh, North Carolina

27699-2707, at no cost. This performance improvement program must include:

- (a) The trauma registry agreed to by the North Carolina State Trauma Advisory Committee and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
 - (b) Morbidity and mortality reviews to include all trauma deaths;
 - (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
 - (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
 - (e) Identification of discretionary and non-discretionary audit filters;
 - (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
 - (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance.
 - (h) Monitoring of trauma team notification times;
 - (i) Review of pre-hospital trauma care to include dead-on-arrivals; and
 - (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
 - (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .1102 of this Subchapter;
 - (d) Development of regional criteria for coordination of trauma care;
 - (e) Assessment of trauma system operations at the regional level; and
 - (f) ATLS.
- (29) A program of injury prevention and public education to include:
- (a) Epidemiology research to include studies in injury control, collaboration with other institutions on research, monitoring progress of prevention programs, and consultation with qualified researchers on evaluation measures;
 - (b) Surveillance methods to include trauma registry data, special Emergency Department and field collection projects;
 - (c) Designation of a injury prevention coordinator; and
 - (d) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A trauma research program designed to produce new knowledge applicable to the care of injured patients to include:
- (a) Identifiable institutional review board process;
 - (b) Extramural educational presentations that must include 12 education/outreach presentations over a three-year period; and
 - (c) 10 peer-reviewed publications over a three-year period that could come from any aspect of the trauma program.
- (31) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) A general surgery residency program;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedists, and neurosurgeons, with at least 50% of this being extramural;

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| <ul style="list-style-type: none"> (c) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all emergency physicians, with at least 50% of this being extramural; (d) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS; (e) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager; (f) 16 hours of trauma -registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager for the trauma registrar; (g) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and (h) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients. | <ul style="list-style-type: none"> (c) Participate in providing care to patients with life-threatening urgent injuries; (d) Participate in the North Carolina Chapter of the ACS' Committee on Trauma as well as other regional and national trauma organizations; and (e) Remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma-related instruction to other health care personnel. <ul style="list-style-type: none"> (4) A full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing; (5) A full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record; (6) A hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each; (7) Clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel. (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes: <ul style="list-style-type: none"> (a) A trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures; (b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency |
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Authority G.S. 131E-162.

10A NCAC 13P .0902 LEVEL II TRAUMA CENTER CRITERIA

To receive designation as a Level II Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;
- (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) Serve on the center's trauma service;

- medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after successful completion of the residency and serves as a designated member of the trauma team until the arrival of the trauma surgeon;
- (c) Neurosurgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending neurosurgeon; a Post Graduate Year 2 (PGY2) or higher in-house neurosurgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for neurosurgical emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon is simultaneously on-call at a hospital other than the trauma center; and
- (d) Orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending orthopaedic surgeon; a Post Graduate Year 2 (PGY2) or higher in-house orthopaedic surgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the orthopaedic surgeon is simultaneously on-call at a hospital other than the trauma center; and
- (e) An in-house anesthesiologist or a Clinical Anesthesiology Year 3 (CA3) resident unless an anesthesiologist on-call is advised and promptly available after notification or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma care management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than eight with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
 - (b) Pedestrian struck by motor vehicle;
 - (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
 - (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) Critical care;

- (b) Hand surgery;
 - (c) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.);
 - (d) Obstetrics/gynecologic surgery;
 - (e) Ophthalmic surgery;
 - (f) Oral maxillofacial surgery;
 - (g) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
 - (h) Plastic surgery;
 - (i) Radiology;
 - (j) Thoracic surgery; and
 - (k) Urologic surgery.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine). These emergency physicians must be board-certified within five years after successful completion of a residency;
 - (ii) Are designated members of the trauma team; and
 - (iii) Practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices, including capability for cervical traction;
 - (xiii) Arterial catheters;
 - (xiv) Thermal control equipment for patients;
 - (xv) Thermal control equipment for blood and fluids;
 - (xvi) Rapid infuser system;
 - (xvii) Broselow tape;
 - (xviii) Sonography; and
 - (xix) Doppler.
- (17) An operating suite that is immediately available 24 hours per day and has:
- (a) 24-hour-per-day immediate availability of in-house staffing;
 - (b) Equipment for patients of all ages to include:
 - (i) Thermal control equipment for patients;
 - (ii) Thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;

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- (iv) Endoscopes and bronchoscopes;
 - (v) Craniotomy instruments;
 - (vi) Capability of fixation of long-bone and pelvic fractures; and
 - (vii) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
- (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Capability for continuous monitoring of intracranial pressure;
 - (iii) Pulse oximetry;
 - (iv) End-tidal carbon dioxide determination capability;
 - (v) Thermal control equipment for patients; and
 - (vi) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
- (a) A designated surgical director of trauma patients;
 - (b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;
 - (c) Ratio of one nurse per two patients on each shift;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
- (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices;
 - (xi) Temperature control devices; and
 - (xii) Intracranial pressure monitoring devices.
- (e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies.
- (20) Acute hemodialysis capability or utilization of a written transfer agreement;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Radiological capabilities that has at a minimum:
- (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
 - (c) Sonography;
 - (d) Computed tomography;
 - (e) Angiography; and
 - (f) Resuscitation equipment to include airway management and IV therapy.
- (24) Respiratory therapy services available in-house 24 hours per day;
- (25) 24-hour-per-day clinical laboratory service that must include:
- (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to a community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (26) A rehabilitation service that provides:
- (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendation regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by

- (d) Physical, occupational, speech therapies, and social services; and
- (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services~~ OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
- (a) The trauma registry agreed to by the North Carolina ~~Chapter of the American College of Surgeons Committee on Trauma~~ State Trauma Advisory Committee and OEMS whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
- (b) Morbidity and mortality reviews to include all trauma deaths;
- (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
- (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
- (e) Identification of discretionary and non-discretionary audit filters;
- (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
- (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance;
- (h) Monitoring of trauma team notification times;
- (i) Review of pre-hospital trauma care to include dead-on-arrivals; and
- (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
- (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
- (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .1102 of this Subchapter;
- (d) Development of regional criteria for coordination of trauma care; and
- (e) Assessment of trauma system operations at the regional level.
- (29) A program of injury prevention and public education to include:
- (a) Designation of an injury prevention coordinator; and
- (b) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedics, and neurosurgeons, with at least 50% of this being extramural;
- (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all

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| <p>(c) emergency physicians, with at least 50% of this being extramural; Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS.</p> <p>(d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;</p> <p>(e) 16 hours of trauma -registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;</p> <p>(f) at least 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and</p> <p>(g) 16 contact hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.</p> | <p>(4) Course in the provision of trauma-related instruction to other health care personnel.</p> <p>(5) A designated trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;</p> <p>(6) A trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;</p> <p>(7) A hospital department/division/section for general surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;</p> <p>(8) Clinical capabilities in general surgery with a written posted call schedule that indicates who is on call for both trauma and general surgery. If a trauma surgeon is simultaneously on call at more than one hospital, there must be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency).</p> |
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Authority G.S. 131E-162.

10A NCAC 13P .0903 LEVEL III TRAUMA CENTER CRITERIA

To receive designation as a Level III Trauma Center, a hospital shall have the following:

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| <p>(1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;</p> <p>(2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal application;</p> <p>(3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must:</p> <p>(a) Serve on the center's trauma service;</p> <p>(b) Participate in providing care to patients with life-threatening or urgent injuries;</p> <p>(c) Participate in the North Carolina Chapter of the ACS' Committee on Trauma;</p> <p>(d) Remain a current provider in the ACS' Advanced Trauma Life Support</p> | <p>(a) A trauma attending whose presence at the patient's bedside within 30 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;</p> <p>(b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after successful completion of the residency and serve as a designated</p> |
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PROPOSED RULES

- member of the trauma team until the arrival of the trauma surgeon;
 - (c) An anesthesiologist who is on-call and promptly available after notification by the trauma team leader or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist within 20 minutes of notification.
 - (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
 - (10) Current board certification or eligibility of orthopaedists, with board certification within five years after successful completion of residency;
 - (11) Standard written protocols relating to trauma care management formulated and routinely updated;
 - (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
 - (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
 - (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
 - (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
 - (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
 - (a) Falls greater than 20 feet;
 - (b) Pedestrian struck by motor vehicle;
 - (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
- (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule) to include individuals credentialed in the following:
 - (a) Orthopaedics; and
 - (b) Radiology.
- (16) An Emergency Department that has:
 - (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine. These emergency physicians must be board-certified within five years after successful completion of a residency;
 - (ii) Are designated members of the trauma team; and
 - (iii) Practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Resuscitation equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;

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- (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices;
 - (xiii) Thermal control equipment for patients; and
 - (xiv) Thermal control equipment for blood and fluids;
 - (xv) Rapid infuser system;
 - (xvi) Broselow tape; and
 - (xvii) Doppler.
- (17) An operating suite that has:
- (a) Personnel available 24 hours a day, on-call, and available within 30 minutes of notification unless in-house;
 - (b) Age-specific equipment to include:
 - (i) Thermal control equipment for patients;
 - (ii) Thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) Endoscopes and bronchoscopes;
 - (v) Equipment for long bone and pelvic fracture fixation; and
 - (vi) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
- (a) 24-hour-per-day availability of registered nurses within 30 minutes from inside or outside the hospital;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination;
 - (iv) Thermal control equipment for patients; and
 - (v) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
- (a) A designated surgical director of trauma patients;
 - (b) A physician on duty in the intensive care unit 24-hours-per-day or immediately available from within the hospital (which may be a physician who is the sole physician on-call for the Emergency Department);
 - (c) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices; and
 - (xi) Temperature control devices.
 - (d) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability or utilization of a written transfer agreement;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;

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- (23) Acute head injury management capability or written transfer agreement with a hospital capable of caring for a head injury;
- (24) Radiological capabilities that have at a minimum:
 - (a) Radiology technologist and computer tomography technologist available within 30 minutes of notification or documentation that procedures are available within 30 minutes;
 - (b) Computed Tomography;
 - (c) Sonography; and
 - (d) Resuscitation equipment to include airway management and IV therapy.
- (25) Respiratory therapy services on-call 24 hours per day;
- (26) 24-hour-per-day clinical laboratory service that must include:
 - (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to a community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (27) Full in-house rehabilitation service or written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
- (28) Physical therapy and social services.
- (29) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the ~~Office of Emergency Medical Services~~, OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
 - (a) The trauma registry agreed to by the North Carolina State Trauma Advisory Committee and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
 - (b) Morbidity and mortality reviews to include all trauma deaths;
 - (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
 - (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, emergency medicine, and other specialty physicians as needed specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
 - (e) Identification of discretionary and non-discretionary audit filters;
 - (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
 - (g) Documentation and review of response times for trauma surgeons, airway managers, and orthopaedists. All must demonstrate 80% compliance;
 - (h) Monitoring of trauma team notification times;
 - (i) Documentation (unless in-house) and review of Emergency Department response times for anesthesiologists or airway managers and computerized tomography technologist;
 - (j) Documentation of availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule;
 - (k) Trauma performance and multidisciplinary peer review committees may be incorporated together or included in other staff meetings as appropriate for the facility performance improvement rules;
 - (l) Review of pre-hospital trauma care to include dead-on-arrivals; and
 - (m) Review of times and reasons for transfer of injured patients.
- (30) An outreach program to include:
 - (a) Written transfer agreements to address the transfer and receipt of trauma patients;

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- (b) Participation in a Regional Advisory Committee (RAC).
- (31) Coordination or participation in community prevention activities;
- (32) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
 - (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education every two years for all attending general surgeons on the trauma service, with at least 50% of this being extramural;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education every two years for all emergency physicians, with at least 50% of this being extramural;
 - (c) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
 - (e) 16 hours of trauma-registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;
 - (f) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
 - (g) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.
- (a) One of two options may be utilized to achieve trauma center renewal:
 - (1) Undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
 - (2) Undergo a verification visit arranged by the ACS, in conjunction with OEMS, to obtain a three-year renewal designation;
- (b) For hospitals choosing Subparagraph (a)(1) of this Rule:
 - (1) Prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for completion. The hospital shall, within 10 days of receipt of the RFP, define for OEMS the trauma center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow for comment.
 - (2) Hospitals seeking a renewal of trauma center designation shall complete and submit an original and five copies of a bound, page-numbered RFP as directed by the OEMS to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rule .0901, .0902, or .0903 of this Section as it relates to the trauma center's level of designation.
 - (3) All criteria defined in Rule .0901, .0902, or .0903 of this Section, as relates to the trauma center's level of designation, shall be met for renewal designation.
 - (4) A site visit shall be conducted within 120 days prior to the end of the designation period. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
 - (5) The composition of a Level I or II site survey team shall be the same as that specified in Rule .0904(k) of this Section.
 - (6) The composition of a Level III site survey team shall be the same as that specified in Rule .0904(l) of this Section.
 - (7) On the day of the site visit the hospital shall make available all requested patient medical charts.
 - (8) A post-conference report based on consensus of the site review team shall be given verbally during the summary conference. A written consensus report shall be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
 - (9) The report of the site survey team and a staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 4530 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that

Authority G.S. 131E-162.

10A NCAC 13P .0905 RENEWAL DESIGNATION PROCESS

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- (10) Hospitals with a deficiency(ies) have ~~two weeks~~ up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be ~~corrected in two weeks, waived in this period prior to the State EMS Advisory Council meeting,~~ the hospital, instead of a four-year renewal, may be given a time period (up to 12 months) to demonstrate compliance and undergo a focused review, which may require an additional site visit. The hospital shall retain its trauma center designation during the focused review period, and the time will constitute part of the four-year renewal period that shall be granted if compliance can be demonstrated in the prescribed time period. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit an updated RFP and follow the initial applicant process outlined in Rule .0904 of this Section.
 - (11) The final decision regarding trauma center renewal shall be rendered by the OEMS.
 - (12) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
 - (13) The four-year renewal date that may be eventually granted will not be extended due to the focused review period.
 - (14) Hospitals in the process of satisfying contingencies placed on them prior to December 31, 2001, shall be evaluated based on the rules that were in effect at the time of their renewal visit.
- (c) For hospitals choosing Subparagraph (a)(2) of this Rule:
- (1) At least six months prior to the end of the trauma center's designation period, the trauma center must notify the OEMS of its intent to undergo an ACS verification visit. It must simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma centers choosing this option must then comply with all the ACS' verification procedures, as well as any additional state criteria as outlined in Rule .0901, .0902, or .0903, as apply to their level of designation.
 - (2) If a trauma center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise the option in Subparagraph (a)(1) of this Rule.
- (3) When completing the ACS' documentation for verification, the trauma center must simultaneously submit two identical copies to OEMS. The trauma center must simultaneously complete documents supplied by OEMS to verify compliance with additional North Carolina criteria (i.e., criteria that exceed the ACS criteria) and forward these to OEMS and the ACS.
 - (4) The OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the trauma center's request for renewal to allow for comments.
 - (5) The trauma center must make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled State Emergency Medical Services Advisory Council meeting to ensure that the trauma center's state designation period does not terminate without consideration by the State Emergency Medical Services Advisory Council.
 - (6) The composition of the Level I or Level II site team must be as specified in Rule .0904(k) of this Section, except that both the required trauma surgeons and the emergency physician may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeons or emergency physician, respectively, if from out-of-state.
 - (7) The composition of the Level III site team must be as specified in Rule .0904(l) of this Section, except that the trauma surgeon, emergency physician, and trauma nurse coordinator/program manager may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeon or emergency physician, respectively, if from out-of-state.
 - (8) All state trauma center criteria must be met as defined in Rules .0901, .0902, and .0903, for renewal of state designation. An ACS' verification is not required for state designation. An ACS' verification does not ensure a state designation.
 - (9) The final written report issued by the ACS' verification review committee, the accompanying medical record reviews (from which all identifiers may be removed), and cover letter must be forwarded to OEMS within 10 working days of its receipt by the trauma center seeking renewal.
 - (10) The written reports from the ACS and the OEMS staff recommendation shall be reviewed by the State Emergency Medical

- Services Advisory Council at its next regularly scheduled meeting. The State EMS Advisory Council shall recommend to OEMS that the request for trauma center renewal be approved or denied. An approval may include contingencies that are not deficiencies.
- (11) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (12) Hospitals with contingencies, as the result of a deficiency(ies), as determined by OEMS, have up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be waived in this time period prior to the State EMS Advisory Council meeting, the hospital, instead of a four-year renewal, may undergo a focused review (to be conducted by the OEMS) whereby the trauma center may be given up to 12 months to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. The hospital shall retain its trauma center designation during the focused review period, and the time will constitute part of the four-year renewal period that shall be granted if compliance can be demonstrated in the prescribed time period. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit a new RFP and follow the initial applicant process outlined in Rule .0904 of this Section.

- (D) Transport to determine the appropriate mode of transport and level of care required to transport, considering patient condition, requirement for trauma center resources, family requests, and capability of transferring entity.
- (E) Bypass procedures which define:
- (i) Circumstances and criteria for bypass decisions;
 - (ii) Time and distance criteria; and
 - (iii) Mode of transport which bypasses closer facilities.
- (F) Scene and inter-hospital diversion procedures which shall include delineation of specific factors such as hospital census or acuity, physician availability, staffing issues, disaster status, or transportation which would require routing of a patient to another trauma center.
- (3) Transfer agreements (to include those with other hospitals, as well as specialty care facilities such as burn, pediatrics, spinal cord, and rehabilitation) which shall outline mutual understandings between facilities to transfer/accept certain patients. These shall specify responsible parties, documentation requirements, and minimum care requirements.
- (4) A performance improvement plan that includes:
- (A) ~~A performance improvement regional trauma peer review~~ committee of the RAC;
 - (i) Whose membership and responsibilities are defined in G.S. 131E-162; only includes health care professionals, as defined and protected by G.S. 131E-95 or in G.S. 90-21.222A; and
 - (ii) Continuously evaluates the regional trauma system through structured review of process of care and outcomes.
 - (B) ~~The existing trauma registry database and the RAC~~ registry database, once operational, that reports quarterly or as requested by the OEMS.

Authority G.S. 131E-162; 143-509(3).

10A NCAC 13P .1103 REGIONAL TRAUMA SYSTEM POLICY DEVELOPMENT

The RAC shall oversee the development, implementation, and evaluation of the regional trauma system to include:

- (1) Public information and education programs to include system access and injury prevention;
- (2) Written trauma system guidelines to address the following:
 - (A) Regional communications;
 - (B) Triage;
 - (C) Treatment at the scene and in the pre-hospital, inter-hospital, and Emergency Department to include guidelines to facilitate the rapid assessment and initial resuscitation of the severely injured patient, including primary and secondary survey. Criteria addressing management during transport shall include continued assessment and

Authority G.S. 131E-162.

SECTION .1200 - TRAUMA SYSTEM DESIGN

10A NCAC 13P .1201 STATE TRAUMA SYSTEM PLAN

~~(a) The state trauma system plan consists of regional trauma system plans and policies, coordinated and monitored by the Office of Emergency Medical Services.~~

~~(b) The Office of Emergency Medical Services shall require that each hospital choose a Regional Advisory Committee (RAC) within six months of the effective date of this rule. Each RAC shall include at least one Level I or II trauma center. Any hospital changing its affiliation shall report the change in writing to the Office of Emergency Medical Services within 30 days of the date of the change.~~

~~(c) The Office of Emergency Medical Services shall notify each RAC of its hospital membership.~~

~~(d) The RAC shall submit a report semi-annually to the Office of Emergency Medical Services that assesses compliance with the regional trauma system plan and specifies any updates to the plan.~~

Authority G.S. 131E-162.

10A NCAC 13P .1202 REGIONAL TRAUMA SYSTEM PLAN

~~(a) A Level I or II trauma center shall facilitate development of and provide staff support for the RAC which shall include, at a minimum, the following:~~

- ~~(1) the trauma medical director from the Trauma Center;~~
- ~~(2) a trauma nurse coordinator;~~
- ~~(3) an emergency physician;~~
- ~~(4) an Emergency Medical Services provider representative;~~
- ~~(5) a representative from each hospital participating in the RAC;~~
- ~~(6) community representatives; and~~
- ~~(7) an advanced life support medical director.~~

~~(b) The RAC shall submit a plan, within one year of notification of the RAC membership, to the Office of Emergency Medical Services containing at a minimum:~~

- ~~(1) organizational structure to include the roles of the members of the system;~~
- ~~(2) goals and objectives to include the orientation of providers to the regional system;~~
- ~~(3) RAC membership list, rules of order, terms of office, meeting schedule (held at a minimum of two times per year);~~
- ~~(4) copies of documents and information required by the Office of Emergency Medical Services as defined in Rule .1203 of this Section;~~
- ~~(5) system evaluation tools to be utilized; and~~
- ~~(6) written documentation of regional support for the plan.~~

~~(c) The Office of Emergency Medical Services shall provide written approval or denial of submissions from the RAC based on compliance with the state trauma system.~~

~~(d) If submissions are incomplete or denied, recommendations and necessary consultations shall be provided by the Office of Emergency Medical Services.~~

~~(e) Resubmissions shall be due within three months of notification by the Office of Emergency Medical Services.~~

~~(f) Upon notification of the approval of a hospital to submit an RFP for initial trauma center designation by the Office of Emergency Medical Services pursuant to Rule .2105(a) of this Subchapter, the RAC shall adjust protocols as needed to facilitate the additional trauma center. The RAC shall then, after a review of at least six months of the hospital's trauma data, provide a written recommendation to the Office of Emergency Medical Services as to the appropriateness of the hospital's application for trauma center designation.~~

Authority G.S. 131E-162.

10A NCAC 13P .1203 REGIONAL TRAUMA SYSTEM POLICY DEVELOPMENT

~~The RAC shall oversee the development of the regional trauma system to include:~~

- ~~(1) public information and education programs to include system access and injury prevention;~~
- ~~(2) written trauma system protocols to address the following:

 - ~~(a) dispatch~~
 - ~~(b) triage and treatment at the scene and in the emergency department and shall include:

 - ~~(i) Priority selection (for treatment and transport decisions) based upon anatomic, physiologic, and mechanism of injury factors; and~~
 - ~~(ii) Guidelines to facilitate the rapid assessment and initial resuscitation of the severely injured patient including primary and secondary survey. Criteria addressing management during transport should include continued assessment and management of airway, cervical spine, breathing, circulation, neurologic and secondary parameters, communication and documentation.~~~~~~
- ~~(c) transport and treatment which shall address:

 - ~~(i) guidelines to determine the appropriate mode of transport and level of care required to transport, considering patient condition, requirement for trauma center resources, family requests and capability of transferring entity.~~
 - ~~(ii) criteria addressing management during transport, to include continued assessment and~~~~

~~stabilization of airway, cervical spine, breathing, circulation, neurologic and secondary parameters, medication protocols, communication and documentation.~~

- ~~(d) bypass procedures which define:

 - ~~(i) patient identification and selection based on anatomic, physiologic and mechanism of injury factors;~~
 - ~~(ii) circumstances and criteria for bypass decisions;~~
 - ~~(iii) time and distance criteria; and~~
 - ~~(iv) helicopter or ground unit use for transports which bypass closer facilities.~~~~

~~(e) diversion procedures which shall include delineation of specific factors such as hospital census and/or acuity, physician availability, staffing issues, disaster status, or transportation which would require routing of a patient to another trauma center. A plan to assist referring hospitals in locating care for the diverted patient shall be outlined and a system to track diversions shall be maintained.~~

- ~~(3) transfer agreements (to include those with other hospitals, as well as specialty care facilities such as burn, pediatrics, spinal cord and rehabilitation) which shall outline mutual understandings between facilities to transfer/accept certain patients. These shall specify responsible parties, documentation requirements and minimum care requirements.~~

Authority G.S. 131E-162.

SECTION .1300 - FORMS

10A NCAC 13P .1301 SOURCE OF FORMS AND DOCUMENTS

~~One copy of any form or document referenced in this Subchapter may be obtained free of charge from the North Carolina Office of Emergency Medical Services, Division of Facility Services, Department of Health and Human Services, Post Office Box 29530, Raleigh, North Carolina 27626-9530, telephone (919) 733-2285.~~

Authority G.S. 131E-162.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rules cited as 15A NCAC 18A .3401-.3408.

Proposed Effective Date: *January 1, 2004*

Public Hearing:

Date: *September 30, 2003*

Time: *7:00 p.m.*

Location: *New Hanover County Health Department Auditorium, 2029 South 17th Street, Wilmington, NC*

Date: *October 7, 2003*

Time: *7:00 p.m.*

Location: *Carteret County Health Department Large Conference Room, 3820 Bridges Street, Morehead City, NC*

Date: *October 16, 2003*

Time: *7:00 p.m.*

Location: *Municipal Building, 102 Town Hall Drive, Kill Devil Hills, NC*

Reason for Proposed Action: *Congress passed the "Beaches" Act in October 2000, requiring all coastal states to develop and implement a beach monitoring program. These Rules are to carry out the mandate of the federal legislation and to codify the operations of the program.*

Comment Procedures: *Comments from the public shall be directed to J.D. Potts, RS, Recreational Water Quality Program, P.O. Box 769, Morehead City, NC 28557, phone (252) 726-6827 and email j.d.potts@ncmail.net. Comment period ends November 3, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State**
- Local**
- Substantive (≥\$3,000,000)**
- None**

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .3400 - CLASSIFICATION AND WATER QUALITY STANDARDS FOR COASTAL RECREATIONAL WATERS

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply throughout this Section.

- (1) "Enterococcus" means a bacterial group that is a subgroup of the fecal streptococci including *S. faecalis*, *S. gallinarum* and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6 and at 10°C and 45°C.
- (2) "Geometric mean" means the antilog (base 10) of the arithmetic mean of a sample result logarithm (base 10).
- (3) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch or other conveyance into a swimming area.
- (4) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (5) "Recreational waters" means marine waters that are classified by the Division of Water Quality as primary or secondary recreation.
- (6) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into recreational waters.
- (7) "Swimming advisory" means an advisory to the public that recommends no primary contact with the water in a specific area for public health reasons but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a press release to notify the public of the risks of swimming in the area.
- (8) "Swimming alert" means a notification to the public by media contact including a press release to warn the public of risks of swimming in an area that exceeds bacteriological swimming water standards.
- (9) "Swimming area" means an area of a river, stream, sound or ocean that is used for primary contact.
- (10) "Swimming season" means from April 1 through October 31 of each year.
- (11) "Tier I swimming area" means an area used daily, including any recreational waters used at a public access swimming area and any other swimming area where people use the water for primary contact on an ongoing basis.
- (12) "Tier II swimming area" means an area used infrequently usually accessible by watercraft.
- (13) "Tier III swimming area" means an area rarely used for primary contact.
- (14) "Winter season" means from November 1 through March 31 of each year.

Authority G.S. 130A-233.

15A NCAC 18A .3402 BACTERIOLOGICAL STANDARDS

(a) A Tier I swimming area shall not exceed:

- (1) A geometric mean of 35 enterococci per 100 ml of water, which includes a minimum of five samples collected within 30 days; and
 - (2) A single sample of 104 enterococci per 100 ml of water.
- (b) A Tier II swimming area shall not exceed a single sample of 276 enterococci per 100 ml of water.
- (c) A Tier III swimming area shall not exceed two consecutive samples of 500 enterococci per 100 ml of water.

Authority G.S. 130A-233.

15A NCAC 18A .3403 FREQUENCY OF SAMPLING

The Division shall sample swimming areas at the following frequency:

- (1) All Tier I swimming areas shall be sampled at least weekly from April 1 to September 30, twice monthly in October, and once a month in the winter season; and
- (2) All Tier II and III swimming areas shall be sampled two times a month during the swimming season and once a month in the winter season.

Authority G.S. 130A-233.

15A NCAC 18A .3404 SWIMMING ADVISORY FOR BACTERIOLOGICAL CONTAMINATION

Swimming advisories and swimming alerts shall be issued under the following conditions:

- (1) Tier I Swimming areas:
 - (a) A swimming advisory shall be issued by the Division when recreational waters do not meet the bacteriological standards in Rule 18A .3402(a)(1) of this Section during the swimming season;
 - (b) A swimming alert shall be issued by the Division when recreational waters do not meet the bacteriological standards in Rule 18A .3402(a)(2) of this Section and the bacterial count is higher than 104 per 100 ml, but less than 500 per 100 ml;
 - (c) A swimming advisory shall be issued by the Division when recreational waters do not meet the bacteriological standards in Rule 18A .3402(a)(2) of this Section, and the bacterial count is 500 per 100 ml. or higher;
 - (d) A Tier I swimming area shall not receive an advisory for noncompliance with Rule 18A .3402(a)(1) of this Section during the months of April and October;
- (2) Tier II swimming areas:
 - (a) A swimming alert shall be issued by the Division when recreational waters do not meet the bacteriological standards in Rule 18A .3402(b) of this Section and the bacterial count is

higher than 276 per 100 ml. but less than 500 per 100 ml; and

- (b) A swimming advisory shall be issued by the Division when recreational waters do not meet the bacteriological standards in Rule 18A .3402(b) of this Section, and the bacterial count is 500 per 100 ml. or higher;
- (3) A Tier III swimming area with a sample result of 500 per 100 ml. or higher on the first sample shall be resampled the following day. If the laboratory results of the second sample are 500 or higher, a swimming advisory shall be issued by the Division;
- (4) Any sign(s) posted pursuant to this Section shall be placed or erected in open view where the public may see the sign(s) prior to entering the water; and
- (5) The sign(s) shall convey the following:
ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

Authority G.S. 130A-233.

15A NCAC 18A .3405 SWIMMING ADVISORY FOR POINT SOURCE DISCHARGES INTO SWIMMING AREAS

All swimming areas that are affected by point source discharges shall be posted with one or more signs.

- (1) Wastewater treatment plants discharging into swimming waters shall be permanently posted until the discharge is removed. The signs for wastewater treatment discharges shall convey the following:
ATTENTION: THESE WATERS MAY BE CONTAMINATED BY HUMAN OR ANIMAL WASTE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.
- (2) At least two signs shall be used to post a storm drain or storm water discharge that is actively discharging into a swimming area. Signs shall be placed where necessary to advise the public as they enter the area impacted by the drain. The signs for a storm drain or storm water discharge shall convey the following:
SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.
- (3) At least two signs shall be used to post a storm drain where flood waters are being pumped

into a swimming area. The signs shall remain posted for at least 24 hours after the pumping of flood waters has ceased. The signs shall convey the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

- (4) At least two signs shall be used to post an area receiving dredge material on a swimming beach when the dredge material is being pumped from an area closed to shellfish harvesting. The signs shall convey the following:
SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.
- (5) A town or municipality may choose to erect permanent signs at a point source discharge in lieu of signs placed by the Division. Any signs erected by the town or municipality shall contain language approved by the Division.

Authority G.S. 130A-233.

15A NCAC 18A .3406 RESCINDING A SWIMMING ADVISORY OR SWIMMING ALERT

A swimming advisory or swimming alert shall be rescinded under the following conditions:

- (1) A Tier I swimming area advisory shall be rescinded when two consecutive weekly samples and the geometric mean meet the bacteriological limits in Rule 18A .3402(a) of this Section. A swimming alert shall be rescinded within 24 hours of compliance with Rule 18A .3402(a)(2) of this Section;
- (2) A Tier II or Tier III swimming area advisory shall be rescinded after samples meet the bacteriological standard in Rule 18A .3402(b) or (c) of this Section;
- (3) A swimming advisory resulting from a point source discharge or the discharge of dredge material may be rescinded 24 hours after the discharge has ceased; and
- (4) When a swimming advisory or alert has been rescinded, the Division shall issue a press release to announce the lifting of the advisory or the alert and the sign(s) shall be removed immediately by the Division.

Authority G.S. 130A-233.

15A NCAC 18A .3407 DESTRUCTION OF SIGNS

A person shall not mutilate, deface, pull down, destroy, hide, or steal any sign posted pursuant to this Section.

Authority G.S. 130A-233.

15A NCAC 18A .3408 APPLICABILITY OF RULES

The rules of this Section shall apply to all recreational waters in coastal North Carolina.

Authority G.S. 130A-233.

- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation – Division of Highways intends to amend the rules cited as 19A NCAC 02E .0216, .0219-.0221 and repeal the rules cited as 19A NCAC 02E .0217-.0218, .0222.

Proposed Effective Date: *January 1, 2004*

Public Hearing:

Date: *September 22, 2003*

Time: *10:00 a.m.*

Location: *Room 150, Highway Building, 1 South Wilmington St., Raleigh, NC*

Reason for Proposed Action: *Pursuant to the requirements in Senate Bill 38, S.L. 2003-184, ratified June 12, 2003, the Department of Transportation transmitted proposed temporary rules concerning logo signs to the Office of Administrative Hearings on July 11, 2003. Section 3 of Senate Bill 38 directed the Department to submit temporary rules to OAH for the Codifier of Rules on August 5, 2003. This Notice of Text will serve as notice of permanent rule-making for the Logo Sign Program. These rules are proposed for amendment to clarify language, add Attractions to eligible criteria for participation, change the fee structure, and simplify the conditions under which the Logo Sign Program operates.*

Comment Procedures: *Comments from the public shall be directed to Emily B. Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501, phone (919) 733-2520, fax (919) 733-9150, and email elee@dot.state.nc.us. Comment period ends November 3, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

State

19A NCAC 02E .0216 SPECIFIC SERVICE SIGNING (LOGO) PROGRAM

The Specific ~~Service Information~~ Signing Program, hereinafter "Program", provides eligible businesses with the opportunity to be listed on official signs within the right-of-way of fully controlled access highways. The Traffic Engineering and Safety Systems Branch is responsible for administering the program and receiving requests for information concerning the Program. Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, ~~P.O. Box 25201, Raleigh, N. C. 27611.~~ 1561 Mail Service Center, Raleigh, NC 27699-1561. Division Engineers for the division in which the interchange is located are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

19A NCAC 02E .0217 SPECIFIC INFORMATION PROGRAM DEFINITIONS

~~The following definitions apply to 19A NCAC 2E .0216 through .0223:~~

- (1) ~~"Specific Information Panel", or "panel" means a panel, rectangular in shape, located within the highway right of way and consisting of:~~
 - (a) ~~the words "GAS", "FOOD", "LODGING", or "CAMPING" and directional information;~~
 - (b) ~~space for one or more individual business (logo) signs to be mounted on the panel.~~
- (2) ~~"Business Sign" or "Logo Sign" means a separately attached sign, furnished and owned by a participating business, mounted on the rectangular panel or mounted separately for trailblazing to show the brand, symbol, trademark, or name, or combination of these, for the motorist service available on the crossroad at or near the interchange.~~
- (3) ~~"Public Telephone" means a coin operated telephone or a business telephone which is available for public use during all business hours. If there is an outside coin operated telephone in the immediate vicinity of the business (within the intersection area, at an adjacent business or across the road), the business is in compliance. A business phone~~

- at an adjacent business is not a public telephone for a particular applicant business.
- (4) ~~"Supplemental Service Sign" means a panel, rectangular in shape, white legend and border on a blue background, with the words "GAS", "FOOD", "LODGING", "CAMPING" or any combination thereof.~~
- (5) ~~"Tire Repair (by an employee)" means on premise tire repair by an employee or a contract between the subject business and another business to do tire repair for them.~~
- (6) ~~"Fully Controlled Access Highway" means a highway on which the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.~~
- (7) ~~"Mainline" means fully controlled access highway.~~

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .0218 LOCATION OF PANELS

The department shall control the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with following criteria:

- (1) ~~The department may erect panels at interchanges.~~
- (2) ~~Panels shall be fabricated and located as detailed on the signing plans for the interchanges and shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.~~
- (3) ~~A separate mainline panel shall be provided on the interchange approach for each qualified type of motorist service except as provided in Item (4) of this Rule. No more than one panel shall be erected for a type of service in each direction approaching an interchange. Panels shall be required in each direction on the mainline when lateral spacing is available, except a panel may not be required in the direction from a non-controlled access facility to a fully controlled access freeway. Where a qualified type of motorist service is not available at an interchange, the panel may not be erected. A maximum number of six specific business (logo) signs may be installed on any logo panel for each service type at an interchange.~~
- (4) ~~The mainline panels shall be erected between the previous interchange and 800 feet in advance of the exit direction sign for the interchange from which the services are available. There shall be at least 800 feet spacing between the panels and other signs. In the direction of traffic, the successive panels shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order. A~~

combination type panel may be used in remote rural areas of a fully controlled access highway and when space does not permit all signs and only two of each type of service is available at the location. A maximum of three business signs may appear below each respective service on a combination type panel. If all four services are available, "GAS" and "FOOD" shall be combined on one sign, and "LODGING" and "CAMPING" shall be combined on one sign. When the number of business facilities at an interchange are increased to more than three for one or more services, existing combination service business signing must be removed and replaced with sign panels, dedicated to each service. If the spacing limitations prohibit the erection of Specific Information Panels for all of the types of services available, preference shall be given to "GAS", "FOOD", "LODGING" or "CAMPING" services in that order. No panels shall be erected where minimum spacing limitations cannot be met.

If a panel(s) cannot be erected due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected below existing sign(s). Not more than three services may be erected below an existing sign.

- (5) ~~On each exit ramp, a ramp panel for the qualified type of motorist service may be erected. Panels shall be required in each direction on the ramps when lateral spacing is available, except where a panel may not be required in the direction from a non-controlled access facility to a fully controlled access freeway or if all of the qualified services are visible from the exit ramp terminal, ramp panels are not required.~~
- (6) ~~The ramp panel shall be erected as detailed on the signing plans for the interchange. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order.~~
- (7) ~~If there is insufficient space on the ramp or the mainline for all the panels, priority shall be given to "GAS", "FOOD", "LODGING", then "CAMPING" services in that order. If panel(s) cannot be erected on a ramp due to spacing limitations, a supplemental service sign, which lists the additional services available, shall be installed.~~
- (8) ~~Where supplemental service signing is on the mainline due to space limitations, a business may purchase logo panels on ramps.~~
- (9) ~~Panels shall not be erected at an interchange where the motorist cannot conveniently re-enter the freeway and continue in the same direction of travel.~~

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C.

131(f).

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

~~Businesses signs may be permitted, may participate in the program provided said businesses comply with the following criteria: criteria and have a public telephone:~~

- (1) ~~The individual business installation whose name, symbol or trademark appears on a business panel sign—shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, age, disability, or national origin. An individual business may apply for additional sign positions on a sign panel provided no qualified applicant is denied space on the sign panel. An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.~~
- (2) ~~An individual business, under construction, may apply to participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application. No business panel shall be displayed for a business which is not open for business and in full compliance with the standards required by the program. A business under construction shall not be allowed to apply for participation in the program if its participation would prevent an existing open business application from participating, unless the existing business qualifies for or has a provisional contract.~~
- (3) ~~Businesses may apply for participation in the program on a first-come, first-served basis until the maximum number of panels on the logo sign for that service are reached. If a business's panels are removed and space is available on the sign, the first business to contact the Department shall be allowed priority for the vacant space.~~
- (2)(4) ~~The maximum distance that a "GAS" "GAS", "FOOD", or "LODGING" service may be located from the fully controlled access highway shall not exceed three miles at rural interchange approaches and one mile at urban interchange approaches in either direction via an all-weather road. Where no qualifying services exist within three miles, miles (rural) or one mile (urban), provisional contracts are permitted where the maximum distance may be increased to six miles, miles at rural interchange approaches and three miles at urban interchange approaches, provided the total travel distance to the~~

~~business and return to the interchange does not exceed 12 miles. Provisional contracts shall be written with the understanding that if a closer business applies, qualifies, and is within the three miles (rural) or one mile (urban) radius as applicable, and there is not otherwise room on the sign for the new business, then the provisional contract of the furthest business from the intersection shall be cancelled and the business panels shall be removed at the annual contract renewal date. The maximum distance for a "CAMPING" service shall not exceed ten 15 miles in either direction via an all-weather road, road, and the maximum distance for an "ATTRACTION" service shall not exceed 15 miles in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of a fully controlled access highway route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building shall not be used for the purposes of measuring. If the office (main building) of a business is located more than .2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.~~

- (3)(5) ~~"GAS" and associated services. Criteria for erection of a business sign panel on a panel sign shall include:~~
 - (a) ~~appropriate licensing as required by law;~~
 - (b) ~~vehicle services for fuel, fuel (gas, diesel, or alternative fuels), motor oil, tire repair (by an employee) and water;~~
 - (c) ~~on premise restroom facilities; facilities and drinking water suitable for public use;~~
 - (d) ~~an on premise on premise attendant to collect monies, make change, and make or arrange for tire repairs;~~
 - (e) ~~year-round operation at least 16 continuous hours per day, seven days a week, week; and~~
 - (f) ~~on premise telephone available for emergency use by the public.~~
- (4)(6) ~~"FOOD". Criteria for erection of a business sign panel on a panel sign shall include:~~

- (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) businesses shall ~~meet at least one of the following criteria: operate year round at least eight continuous hours per day six days per week.~~
 - (i) ~~year round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;~~
 - (ii) ~~year round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper) six days a week;~~
 - (iii) ~~year round operation at least eight continuous hours per day, open by at least 6:00 a.m. or open later than 11:00 p.m. and with a drive up window to serve at least two meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week. If a business qualifies under (ii) or (iii) then it must be stated on each mainline, each ramp, and each trailblazer business sign the day closed or the hours of operation.~~
 - (c) indoor seating for at least 20 persons;
 - (d) on premise public restroom facilities; and facilities.
 - (e) on premise telephone available for emergency use by the public.
- (5)(7) "LODGING". Criteria for erection of a business panel sign on a panel sign shall include:
- (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) overnight sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo sign panels;
- (c) ~~off street vehicle parking for each lodging room for rent; adequate parking accommodations;~~
 - (d) ~~year-round operation.~~ operation; and
 - (e) on premise telephone available for emergency use by the public.
- (6)(8) "CAMPING". Criteria for erection of a business sign panel on a panel sign shall include:
- (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations (including public restroom facilities) for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business sign panel by the department during off seasons, if operated on a seasonal basis; basis; and
 - (f) on premise telephone available for emergency use by the public.
- (9) "ATTRACTION". Criteria for erection of a business panel on a sign for any business or establishment shall include:
- (a) appropriate licensing as required by law;
 - (b) on premise public restroom facilities in a permanent structure;
 - (c) continuously open to the motoring public without appointment at least eight hours per day, five days per week during its normal operating season or the normal operating season for the type of business;
 - (d) adequate parking accommodations for a minimum of 10 motor vehicles (cars);
 - (e) only facilities which have the primary purpose of providing amusement, historical, cultural, or leisure activities to the public and meet the eligibility requirements as specified in the NCDOT Logo Signing Manual; and

(f) on premise telephone available for emergency use by the public.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

19A NCAC 02E .0220 COMPOSITION OF SIGNS

No business ~~sign panel~~ shall be displayed which would mislead or misinform the traveling public. Any message, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device is prohibited. Each specific service business ~~sign panel~~ shall include only information that is related to that specific service. No business sign shall be displayed for a business which is not open for business and in full compliance with the standards required by the program. Signs with more than one specific service such as gas and food may be allowed if approved by the Department. Provisional contracts for the businesses other than gas on these signs shall be required as specified in the NCDOT Logo Signing Manual. Individual business panels containing more than one type of service shall not be allowed.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

19A NCAC 02E .0221 FEES

All logo signs shall be constructed and maintained by the Department. These logo signs shall be owned by the Department. The participating logo business shall pay an annual fee established by the Board of Transportation. All logo contracts existing under prior administrative code provisions are terminated in accordance with the terms of those contracts. However, existing participants shall not be required to reapply, but shall be required to sign an appropriate contract in accordance with the new regulations in order to continue their participation.

(a)(1) The fees for participation in the Logo program are as follows:

(1)(a) ~~Mainline and Ramp~~ Mainline, ramp, and trailblazer panels are billed Construction Payback Fee consists of three options as listed in Parts (A), (B) and (C) in this Subparagraph:

(A) Option A is a one-year contract fee of two hundred twenty five dollars (\$225) ~~three hundred dollars (\$300)~~ per each mainline and mainline, ramp, and trailblazer panel. ~~ramp sign~~. Contracts shall be renewed annually and every participating business that meets program requirements, has a valid contract and pays all required fees shall be automatically renewed. The annual fee shall be paid prior to initial installation, every November 1.

(B) Option B is a 10-year contract fee of two thousand two hundred fifty dollars (\$2,250.00) per each mainline

and ramp sign. Contracts shall be renewed by decade every November 1.

(C) Option C is a lifetime contract fee of the design and complete installation cost for all required mainline, ramp, trailblazer and supplemental service panels. The participating business shall be subject to a credit to be determined by the Department at the time the Department receives any fee from a business which later qualifies and elects to participate in the program on the subject panel. Businesses participating in the program under Paragraph (c) of this Rule shall not have lifetime rights.

(2) Trailblazer Fee is a one time charge of two hundred fifty dollars (\$250.00) per each trailblazer business sign.

(3) Maintenance Fee is an annual fee of seventy five dollars (\$75.00) per each mainline, per each ramp, and per each trailblazer business sign.

(4) Prorated Fee is a prorated portion of the construction payback fee. This fee shall be charged for that period of time between placement and acceptance of the business sign by the Department and the following November 1. This construction payback prorated fee shall be charged on the first November 1 of the contract. This applies for both one-year and 10-year contracts, but not for lifetime contracts as stated in Subparagraph (a)(1) Option C of this Rule.

(5)(2) Service Charge Fee of sixty dollars (\$60.00) per each business sign shall be charged when a business requests replacement of their business sign, or when the Department requires replacement due to damages to the business sign caused by acts of vandalism, accidents, or natural causes including natural deterioration. The business shall provide a new or renovated business panel when necessary due to damages to the business panel caused by acts of vandalism, accidents, or natural causes including natural deterioration sign with the service charge fee per each business sign to the Department. If the Department replaces a business panel on a logo sign or removes or masks a business panel sign because of seasonal operation, there shall be no additional charge to the business.

(6) Supplemental Service Signs shall not be subject to fees except as stated in Subparagraph (a)(1) Option C of this Rule.

(b)(3) Fees may be paid by check, cash check or money order and are due in advance of the period of service covered by said fee. Failure to pay a charge fee when due is ground grounds for removal of the business signs

~~panels and termination of the contract. All participating businesses shall be allowed to change contract options only at the renewal date.~~

~~(c) Any business located more than three miles from a fully controlled access highway participating under Subparagraph (a)(1) Option C of this Rule shall be allowed a reimbursement if dislocated by another qualifying participating business. This reimbursement amount shall be determined by the Department, based on life cycle costs of the logo signs and in service time the business logo was displayed.~~

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

19A NCAC 02E .0222 CONTRACTS WITH THE DEPARTMENT

~~(a) The Department shall perform all required installation, maintenance, removal and replacement of all business signs upon panels.~~

~~(b) Individual businesses requesting placement of business signs on panels shall apply by submitting to the Department of Transportation a completed Agreement form. As a condition of said Agreement, the applicant must agree to submit the required initial fee within 30 days after the business is approved by the Department. The Department shall provide a statement(s) to the applicant at the time agreements are provided that itemize the number of business signs required, their fee(s) and remittance requirements.~~

~~(c) Businesses must submit a layout of their proposed business sign for approval by the Department before the business sign is fabricated.~~

~~(d) No business sign shall be displayed which, in the opinion of the Department, is unsightly, badly faded, or in a state of dilapidation. The Department shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance services shall be performed by the Department at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of the rules in this Section and the business sign shall be removed. The business shall furnish all business signs.~~

~~(e) When a business sign is removed, it shall be taken to the division traffic services shop of the division in which the business is located. The business shall be notified of such removal and given 30 days in which to retrieve their business sign(s). After 30 days, the business sign shall become the property of the Department and shall be disposed of as the Department shall see fit.~~

~~(f) Should the Department determine that trailblazing to a business that is signed for at the interchange is desirable, it shall be done with an assembly (or series of assemblies) consisting of a ramp size business sign and a white on blue arrow. The business shall furnish all business sign(s) required and deemed necessary by the Department. If several different services are located on the same business site, duplicate type logo signs shall not be erected in a single logo trailblazer installation. In such trailblazer installations, only one logo sign and one directional arrow sign shall be used. The business may submit, subject to approval by the Department, different logo signs to identify~~

~~different services which may be located on the same business site.~~

~~(g) Should a business qualify for business signs at two interchanges, the business sign(s) shall be erected at the nearest interchange. If the business desires signing at the other interchange also, it may be so signed provided it does not prevent another business from being signed.~~

~~(h) A business under construction shall not be allowed to apply for participation in the program if its participation would prevent an existing open business applicant from participating, unless the open business has turned down a previous opportunity offered by the Department to participate in the program as provided in Paragraph (i) of this Rule. After approval of an application to participate, a business under construction shall be allowed priority participation over another business, which qualifies and becomes open for business prior to the time specified for opening in the application by the business under construction.~~

~~(i) Should the number of businesses of a particular service at an interchange increase to more than the maximum number of business signs allowed on a panel, and a closer business, as measured as described in 19A NCAC 02E .0219(2) of this Section, qualifies and requests installation of its business signs, the business sign(s) of the farthest business shall be removed at the renewal date, provided that any business which has previously paid the lifetime contract fee as described in 19A NCAC 02E .0221(a)(1) Option C of this Section shall not be removed under this Rule. A business with more than one sign displayed on any panel shall have the additional sign(s) removed at the end of a contract period when other qualifying business(es) applies for space on the panels. A business which has turned down a previous opportunity offered by the Department to participate in the program may not qualify as a closer business under this Rule. If the existing panel is designed to hold less than the maximum allowed number of business signs, then the new business must pay the full cost of upgrading the panel to the maximum size such that displacements of participating businesses shall not take place until the panel is at maximum size.~~

~~A business closed for reconstruction or renovation, or for restoration of damages caused by fire or storm shall notify the division engineer's office immediately upon closing. The business shall be granted one year to complete the construction, renovation, or restoration, provided all logo fees are maintained and the same type of qualifying service is provided after reopening, even if under a different business name. The business signs shall be removed from the panels and stored by the Department until notice of reopening is received. The signs shall then be reinstalled upon payment of a Service Charge fee as described in 19A NCAC 02E .0221(a)(5) of this Section per each business sign.~~

~~(j) When it comes to the attention of the Department that a participating business is not in compliance with the minimum state criteria, the division engineer's office shall promptly verify the information and if a breach of agreement is ascertained, inform the business that it shall be given 30 days to correct any deficiencies or its business signs shall be removed. If the business is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant. When a participating business is determined not to be in compliance with the minimum state criteria for a second~~

~~time within two years of the first determination of non-compliance, its business signs shall be permanently removed. At the time specified for opening, if a business under construction is found to not be in compliance, or not open for business, the Division Engineer shall promptly verify the information. If a breach of agreement is ascertained, the Division Engineer shall inform the business that it shall be given 30 days to correct any deficiencies or its business signs shall not be erected. If the business later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant.~~

~~(k) The Department may cover or remove any or all business signs in the conduct of maintenance or construction operations, or for research studies, or whenever deemed by the Department to be in the best interest of the Department or the traveling public, without advance notice thereof.~~

~~(l) The transfer of ownership of a business for which an agreement has been lawfully executed with the original owner shall not in any way affect the validity of the agreement for the business sign(s) of the business, provided that the appropriate division engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer.~~

~~(m) No new contracts shall be accepted by the Department during the month of October. The renewal date for all contracts shall be on November 1.~~

~~(n) The Department shall not maintain waiting lists for the program.~~

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0109, .0112-.0113, .0202, .0303, .0323.

Proposed Effective Date: *January 1, 2004*

Public Hearing:

Date: *September 25, 2003*

Time: *1:00 p.m.*

Location: *NC Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC*

Reason for Proposed Action: *Recent changes in the Nursing Practice Act, Session Law 2003-146, Senate Bill 522 and Session Law 2003-29, Senate Bill 244.*

Comment Procedures: *Comments from the public shall be directed to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602, phone (919) 782-3211, ext. 252, fax (919) 781-9461, and email jeans@ncbon.com. Comment period ends November 3, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent

rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State**
- Local**
- Substantive** (≥\$3,000,000)
- None**

SECTION .0100 - GENERAL PROVISIONS

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 holds a current North Carolina license to practice nursing. If the nominee is not currently licensed, the petition shall be declared invalid. If any petitioners are not currently licensed and this decreases the number of petitioners to less than 10, the petition shall be declared invalid.

- (c) On forms provided by the Board, each nominee shall:
- (1) indicate the category for which the nominee is seeking election;
 - (2) attest to meeting the qualifications specified in G.S. 90-171.21(d); and
 - (3) provide written permission to be listed on the ballot.

The forms must be received by the Board by April 1 at midnight.

~~(d) Minimum requirements for a registered nurse or licensed practical nurse seeking election for membership and maintaining membership on the Board shall include:~~

- ~~(1) current unencumbered license to practice in North Carolina;~~
- ~~(2) evidence of five years of employment in nursing practice at the appropriate level of licensure for the Board member category; and~~
- ~~(3) maintaining North Carolina as declared primary state of residence consistent with Rule .0702(a) of this Chapter.~~

~~(d)(e) Minimum on-going employment requirements for the registered nurse or licensed practical nurse member shall include: include continuous employment equal to or greater than~~

50% of a full-time position that meets the criteria for the specified Board member position.

- ~~(1) continuous employment equal to or greater than 50% of a full-time position that meets the criteria for the specified Board member position; and~~
- ~~(2) maintaining North Carolina as declared primary state of residence consistent with Rule .0702(a) of this Chapter.~~

~~(e)(f)~~ The following apply in determining qualifications for certain registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a Board approved nursing program in the specific category as outlined in G.S. 90-171.21(d), 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 services to inpatients, inpatients, but excludes nursing homes and adult care homes.
- (3) A hospital system is defined as a multihospital system, or a single diversified hospital system that includes a hospital as defined in Subparagraph (e)(2) of this Rule plus non-hospital preacute and postacute client services.
- ~~(4)(3)~~ Hospital Nursing Service Director is any nurse who is—A nurse accountable for the administration of nursing services shall be the chief nurse executive officer for—of a hospital, hospital system, or the director of nursing service—services for a major service division that includes inpatient care within a hospital or hospital system.
- ~~(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.
- ~~(5)(7)~~ A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- ~~(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.

~~(f)(g)~~ 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 at the appropriate licensure level for each category.

~~(g)(h)~~ A nominee shall be listed in only one category on the ballot.

~~(h)(i)~~ 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 undesignated 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 undesignated position.

~~(i)(j)~~ 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.

~~(j)(k)~~ The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting.

~~(k)(l)~~ The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

~~(l)(m)~~ The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting; and
- (2) The certificate number shall be matched with the database from the Board.

~~(m)(n)~~ 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)(o)~~ 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)(p)~~ The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

~~(p)(q)~~ 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.

Authority G.S. 90-171.21; 90-171.23(b).

21 NCAC 36 .0112 DETERMINATION OF VACANCY

~~(a) Should—Except for the RN At-Large Member, should a registered nurse member of the Board cease to meet the employment criteria as defined in G.S. 90-171.21(d) and Rule .0109 Paragraph (f) Paragraphs (d) and (e) of this Section, Section which is the basis for the member's eligibility, the member shall have 60 days to resume employment in the designated area. If employment criteria as defined in Rule .0109 Subparagraph (f)(1) of this Section in—for the specified area are not met within 60 days, the seat shall be declared vacant.vacant~~

~~and the vacancy filled according to G.S. 90-171.21(c).~~
 Provided, however, that if such a change in employment for the specified category of Board member occurs within ~~42~~ 18 months of the end of the member's term, such member may continue to serve until the end of the term.

(b) Should a licensed practical nurse member of the Board cease to meet the employment criteria as defined in ~~Rule .0109 Paragraph (f) of this Section, G.S. 90-171.21(d)~~, which is the basis for the member's eligibility, the member shall have 60 days to resume employment. If employment criteria ~~as defined in Rule .0109 Paragraph (f) of this Section~~ are not met within 60 days, the seat shall be declared vacant and the vacancy filled according to G.S. 90-171.21(c). Provided however, that if such change in employment occurs within ~~42~~ 18 months of the end of the member's term, such member may continue to serve until the end of the term.

(c) If at any time a registered nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(1)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(d) If at any time a licensed practical nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(2)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(e) Any vacancy of an unexpired term shall be filled according to G.S. 90-171.21(c).

Authority G.S. 90-171.21(c); 90-171.23(b).

21 NCAC 36 .0113 DETERMINATION OF QUALIFICATIONS

For purposes of G.S. 90-171.21 and Rule ~~.0109(d) and (e) .0109(e) and (f)~~ of this Section, the Board shall determine whether a person meets the employment requirements by examining the following factors:

- (1) whether the licensee is presently employed equal to or greater than 50% of a full-time position;
- (2) the number of days during the preceding three years devoted to practice in the specified activity that would qualify the licensee for election in that ~~category; category as outlined in Rule .0109 of this Section;~~
- (3) the duration of any periods of interruption of engaging in the specified activity during the preceding three years and the reasons for any such interruptions;
- (4) job descriptions, contracts, and any other relevant evidence concerning the time, effort, and education devoted to the specified activity; and
- (5) whether engagement in the specified activity is or has been for compensation, and whether income from the specified activity meets the ~~employment eligibility requirements outlined in this Rule and in Rule .0109(e) and (f) of this Section.~~ for the specified nurse member category.

Authority G.S. 90-171.21(d); 90-171.23(b)(2).

SECTION .0200 – LICENSURE

21 NCAC 36 .0202 INACTIVE AND RETIRED STATUS

(a) A registrant who holds a current license and who desires to discontinue the practice of nursing in North Carolina may request inactive status. While remaining on inactive status, the registrant shall not practice nursing in North Carolina and shall not be subject to payment of the license renewal fee.

(b) A registrant whose licensure status is inactive and who desires to resume the practice of nursing in North Carolina shall be removed from inactive status and shall obtain a current license. To this end the registrant shall:

- (1) furnish information required on forms provided by the Board;
- (2) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (4) submit such other evidence that the Board may require to determine whether the license should be reactivated; and
- (5) submit the current fee for renewal.

(c) The registrant whose license has been inactive for a period of five years or more shall also submit:

- (1) evidence of mental and physical health necessary to competently practice nursing;
- (2) evidence of competency to resume the practice of nursing through:
 - (A) satisfactory completion of a Board-approved course; or
 - (B) an active license in another jurisdiction within the last five years; and
- (3) a recent photograph for identification purposes, if deemed necessary.

(d) If a refresher course is required, the registrant shall apply for reactivation of license within one year of completing the refresher course in order to receive a current license. The application for reactivation shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(e) The Board may decline to reactivate a license if it is not satisfied as to the applicant's ability to practice nursing.

(f) A registrant who desires to retire from the practice of nursing may request retired nurse status and pay the application fee pursuant to G.S. 90-171.27(b), provided the registrant:

- (1) holds a current unencumbered license issued by the North Carolina Board of Nursing; and
- (2) is not currently the subject of an investigation by this Board for possible violation of the Nursing Practice Act.

(g) While remaining on retired status, the registrant shall not practice nursing in North Carolina and shall not be subject to payment of the license renewal fee.

(h) The registrant may use the title Retired Registered Nurse or Retired Licensed Practical Nurse once issued retired status.

- (i) The registrant whose licensure status is retired shall not be eligible to vote in Board elections.
- (j) A registrant whose licensure status is retired and who desires to resume the practice of nursing shall apply for reinstatement of a license to practice nursing and meet the same reinstatement requirements for a nurse on inactive status as set forth in Paragraphs (b) – (e) of this Rule.

Authority G.S. 90-171.21; 90-171.23(b); 90-171.27(b); 90-171.36; 90-171.36A; 90-171.37.

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

- (a) Full Approval/Approval with Stipulations:
- (1) Designated representatives of the Board will ~~survey~~ review approved programs at least every ~~five~~ eight years as specified in G.S. 90-171.40. Interpretation of and assistance toward meeting these Standards are provided by representatives of the Board through evaluation and consultation services. ~~Surveys~~ Reviews of individual programs may be conducted at shorter intervals upon the Board's direction or upon request from the individual institution.
 - (2) 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.
 - (3) The program shall receive a written report of the ~~survey~~ review no more than 30 business days following the completion of the review process. ~~survey~~ visit. Responses from a nursing education program regarding a ~~survey~~ visit review report or Board stipulation shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of stipulation.
 - (A) If no materials or documents are received by the specified deadline date, the Board will act upon the findings in the ~~survey~~ review report or testimony of the consultant(s).
 - (B) When a nursing education program has responded by the deadline date, additional materials and documents will be received and reviewed up to 10 business days before the Education Committee meeting. No materials or documents will be reviewed during the interval between the Education Committee meeting and the Board meeting.
 - (4) If the Board through its designated representative determines that a program has

complied with the Law and all Standards, the program shall be continued on Full Approval status.

- (5) If the Education Committee determines from consideration of all evidence, that a program has substantially complied with the Law and all Standards, the Education Committee shall make a recommendation to the Board that the program be Approved with Stipulations. The Board shall specify stipulations which shall be met by the program within a designated period of time, which shall not exceed 12 months, and shall direct that the program be assigned Approved with Stipulations status.

- (b) Provisional Approval:
- (1) If the Board determines that a program is not complying with the Law, Standards or stipulations the Board shall assign the program Provisional Approval status, and shall give written notice by certified or registered mail to the program specifying:
 - (A) the areas in which there is noncompliance with Law, Standards or stipulations; and
 - (B) a time no later than 12 months from the date of notice by which the program must comply with the Law and all Standards.
 - (2) At the end of the specified time, designated representatives of the Board shall conduct a ~~survey~~ review to determine the program's compliance with the Law and all Standards.
 - (3) The program shall receive a written report of the ~~reviews~~ survey no more than 30 business days following the completion of the ~~reviews~~ survey to allow time for the program to respond to the ~~survey~~ report in writing. Program responses shall follow the receipt deadlines as specified in Subparagraph (a)(3)(A) and (B) of this Rule. The Education Committee shall consider all evidence, including the ~~survey~~ report and program's response, and make recommendations for the Board's consideration at the next regularly scheduled meeting of the Board.
 - (4) If the Board determines that the program is complying with the Law and all Standards, the Board shall assign the program Full Approval status.
 - (5) If the Board determines that the program is not complying with the Law and all Standards, the Board shall direct that the program be assigned Probational Approval status.
- (c) Probational Approval:
- (1) When the Board has assigned the program Probational Approval status the Board shall:
 - (A) determine if the program may continue to admit students based on evidence that the program can comply with the Law and all Standards before

- the end of the designated period for probational approval;
 - (B) provide the program with written notice of the Board's decision regarding probational approval and admission of students;
 - (C) schedule a hearing if the program submits a written request for such within 10 business days of the receipt of the Board's notice. Such hearing shall be held not less than 20 days from the date on which the request was received.
- (2) If the program does not request a hearing, the program will remain on Probational Approval and shall be resurveyed by designated representatives of the Board, ~~including a Board member(s),~~ within one year of the Board's initial determination of probational approval.
- (3) If the program so requests, a hearing will be scheduled.
- (A) If the Board determines from evidence presented at the hearing that the program is complying with the Law and all Standards, the Board shall assign the program Full Approval status.
 - (B) If the Board determines from evidence presented at the hearing that the program is not complying with the Law or all Standards, the program shall remain on Probational Approval for no more than one year from the date that the program was placed on Probational Approval. A survey by designated representatives of the Board shall be conducted during that specified time.
- (4) The program shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow for the program to respond to the survey report in writing. The Education Committee shall consider all evidence, including the survey report and program's response, and make recommendations for the Board's consideration at the next regularly scheduled meeting of the Board.
- (5) If the Board determines that the program is complying with the Law and all Standards, the Board shall assign the program Full Approval status.
- (6) If the Board determines that the program is not complying with the Law or all Standards, the Board shall cause notice to be served on the program and shall specify a date for a hearing to be held not less than 20 days from the date on which notice is given.
- (7) If the Board determines from evidence presented at the hearing that the program is

- complying with the Law and all Standards, the Board shall assign the program Full Approval status.
- (8) If the Board, following a hearing, finds that a nursing program on Probational Approval is not complying with the Law and all Standards, the Board shall withdraw approval.
 - (A) This action constitutes discontinuance of the program.
 - (B) The parent institution shall present a plan to the Board for transfer of students to approved programs. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board.
 - (C) The parent institution shall notify the Board of the arrangement for storage of permanent records.

Authority G.S. 90-171.23(b); 90-171.39; 90-171.40.

21 NCAC 36 .0323 RECORDS AND REPORTS

- (a) The controlling institution's publications shall be current and accurately describe the nursing program.
- (b) There shall be evidence of an accurate and complete system for maintaining official records. Current and permanent student records shall be stored in a manner that prevents damage and unauthorized use.
- (c) Both permanent and current records shall be available for review by representatives of the Board.
- (d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.
- (e) The record for each enrolled student shall contain up-to-date and complete information, including:
 - (1) documentation of admission criteria met by the student;
 - (2) evidence of graduation from an accredited high school, high school equivalent, or earned credits from an approved post-secondary institution; and
 - (3) transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.
- (f) The nursing program shall file with the Board such records, data, and reports as may be required in order to furnish information concerning operation of the program as prescribed in the Standards and concerning any student or graduate of the program. These records, data and reports include but are not necessarily limited to:
 - (1) an Annual Report giving all data requested on the form provided by the Board for the period beginning fall term through summer term and submitted to the Board office by November 1 of each year;
 - (2) a Program Description Report giving all data requested and submitted to the Board office at least 30 days prior to a scheduled ~~review; survey visit;~~

PROPOSED RULES

- (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification must include a vitae for the new individual and must be submitted within 10 business days of the effective date of the change;
- (4) a curriculum vitae for new faculty shall be submitted by the program director within 10 business days from the time of employment.
- (g) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with Standards and law by a program and its associated agencies.
- (h) The Application for Licensure by Examination shall be submitted on forms provided by the Board.
- (1) The part of the application to be submitted by the nursing program shall include, but is not necessarily limited to, a statement verifying satisfactory completion of all requirements for graduation and the date of completion.
- (2) The verification form is to be submitted as soon as possible following completion of the program.
- (i) When a nursing program closes, the Board shall be notified of the arrangements for storage of permanent records. Storage method shall prevent damage or unauthorized use.

Authority G.S. 90-171.23(b)(8); 90-171.38.

TEMPORARY RULES

This Section includes temporary rules reviewed and approved by the Rules Review Commission and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. Statutory Authority: G.S. 150B-21.1.

EXPIRED TEMPORARY RULES

Department of Environment and Natural Resources	Effective Date	Expired
Environmental Management Commission		
15A NCAC 02L .0202	06/30/02	02/09/03
Radiation Protection Commission		
15A NCAC 11 .1102	06/30/02	03/28/03
Occupational Licensing Boards		
Chiropractic Examiners, NC Board of		
21 NCAC 10 .0202	01/01/03	10/31/03
21 NCAC 10 .0206	01/01/03	10/31/03

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, September 18, 2003, 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 by Friday, September 12, 2003 to the RRC staff, the agency, and the individual Commissioners. 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

September 18, 2003 October 16, 2003
November 20, 2003 December 18, 2003

RULES REVIEW COMMISSION Commission Review/Administrative Rules

Log of Filings (Log #200)
July 22, 2003 through August 20, 2003

COMMISSION FOR HEALTH SERVICES

Reportable Diseases and Conditions	10A NCAC 41A .0101	Amend
Control Measures Smallpox Vaccinia Disease	10A NCAC 41A .0208	Adopt
Control Measures SARS	10A NCAC 41A .0213	Adopt
Screening Requirements	10A NCAC 43F .1203	Amend

DEPARTMENT OF INSURANCE/CODE OFFICIALS QUALIFICATION BOARD

Nature of Standard Certificate	11 NCAC 08 .0702	Amend
Required Qualifications Types and Levels	11 NCAC 08 .0706	Amend

CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

Scope and Applicability of Subchapter	12 NCAC 09G .0101	Amend
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DENR/COASTAL RESOURCES COMMISSION

Purpose	15A NCAC 07H .1401	Amend
Approval Procedures	15A NCAC 07H .1402	Amend
General Conditions	15A NCAC 07H .1404	Amend
Specific Conditions	15A NCAC 07H .1405	Amend
Variance Petitions	15A NCAC 07J .0701	Amend
Staff Review of Variance Petitions	15A NCAC 07J .0702	Amend
Procedures for Deciding Variance Petitions	15A NCAC 07J .0703	Amend

NC DEPARTMENT OF THE SECRETARY OF STATE

Limited Offerings Pursuant to G.S. 78A-17(9)	18 NCAC 06 .1205	Amend
Transactions Exempt Under Rule .1206	18 NCAC 06 .1208	Amend
Notice Filing Procedures for Rule 506 Offerings	18 NCAC 06 .1211	Amend
Application for Registration of Dealers	18 NCAC 06 .1401	Amend
Application for Registration of Salesmen	18 NCAC 06 .1402	Amend
Application for Limited Registration of Canadian Securities	18 NCAC 06 .1417	Amend

NC MEDICAL BOARD

Criminal Background Check	21 NCAC 32B .0104	Adopt
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OFFICE OF ADMINISTRATIVE HEARINGS

Return Copy	26 NCAC 02C .0104	Amend
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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.

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Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 INS 1257

SHAWNA J. TALLEY
Petitioner,

v.

NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES'
COMPREHENSIVE MAJOR MEDICAL PLAN,
Respondent.

DECISION

This contested case came on to be heard before James L. Conner II, Administrative Law Judge, on December 21, 2002 in Raleigh, North Carolina. Proposed findings of fact and conclusions of law were submitted by Respondent on June 3, 2003.

APPEARANCES

For Petitioner: Shawna J. Talley
210 Garren Road
Easley, South Carolina 29640

For Respondent: LaShawn L. Strange
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

ISSUE

Whether Respondent was justified in refusing to pay Petitioner's full hospital bill, less co-insurance and deductible, pursuant to the contract for health insurance for which Petitioner's husband paid.

FINDINGS OF FACT

1. At all relevant times, Christopher Talley was an employee of the State of North Carolina. Mr. Talley paid the premiums for family health insurance coverage from the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

2. On August 7, 2001, Petitioner Shawna Talley, wife of Christopher Talley, received medical treatment from Greenville Memorial Hospital (hereinafter "Greenville") in Greenville, South Carolina, for delivery of her baby. Petitioner was hospitalized at Greenville from August 7-9, 2001.

3. Ms. Talley was an exceptionally diligent patient with regard to her insurance coverage. She made numerous inquiries prior to being hospitalized regarding insurance coverage. Her initial inquiries were an attempt to determine whether to maintain her existing health insurance coverage at her place of employment or to rely on her husband's family coverage with the Plan. Since the Talleys lived in South Carolina, and the closest hospital was a South Carolina hospital, she was concerned about the coverage from the Plan. She made phone calls to the Plan on May 16 and 29 and June 6, 2001. The Plan representatives told her that the hospital she planned to use was non-contracting. The Plan representatives told her that she and her husband would have some liability to the hospital for the portion of charges that were not covered by the Plan, but that there would be little difference between

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what they would owe at a contracting hospital and the non-contracting hospital. In reliance upon these representations, she cancelled her other coverage and relied upon the Plan.

4. Once she had received treatment and learned that the Plan would not be paying the portion of her bill she had expected, she also made many more calls and wrote several emails and letters trying to get the situation resolved. Though there is no transcript of her telephone calls from which to judge, her written communications were exceptionally polite and patient.

5. On August 7, 2001, at 5:30 a.m. Ms. Talley’s water broke. She needed to go to the hospital immediately. Since the non-contracting hospital (Greenville) was 45 minutes closer than the closest contracting hospital, her husband drove her there.

6. Mrs. Talley successfully delivered a son at Greenville.

7. Greenville submitted charges to the North Carolina Teachers’ and State Employees’ Comprehensive Major Medical Plan (hereinafter “Respondent” or “Plan”) for Petitioner’s hospital stay that totaled \$7005.85.

8. Respondent sent an Explanation of Benefits to Petitioners on November 9, 2001, that was so incomprehensible that, even with the benefit of a year’s hindsight, neither the Respondent’s attorney nor its witness could explain it at the hearing of this matter. Most significantly, the Explanation sets out the following:

Amount of bill	Amount paid by Plan	Your Balance
	To provider	
\$7005.85	2,106.02	5,553.43

Elementary arithmetic establishes that if the bill was \$7005.85, and the Plan paid \$2106.02 on that bill, the balance would be \$4899.83, not \$5,553.43.

9. The same Explanation of Benefits also contained a column titled “Explanation of Your Balance.” That column contained items which do in fact add up to \$5553.43, as follows:

653.60	Services not covered by Plan terms.
526.51	Your 20% co-insurance.
4,273.32	Please see attached letter.
100.00	Inpatient deductible.

Though these items do total \$5553.43, the largest item by far (\$4273.32) is simply a number without any calculation or explanation, other than the general explanation in the attached letter about DRGs. The letter contains no specific numbers, nor any reference to a specific DRG.

10. The Explanation of Benefits indicates, then, that the Plan paid \$2106.02, but states a remaining balance that reflects a credit of only \$1452.42. The Plan offers no explanation or justification for this payment—just over twenty per cent of the bill.

11. Respondent claims that it calculated the amount of payment for charges submitted according to its diagnosis related groups reimbursement system of payment (hereinafter “DRG”). Respondent claims that it determined the DRG amount to be \$2732.54. (This amount was not put into evidence by Respondent at hearing, but was submitted by its attorney verbally after the close of the evidence.)

12. Respondent allegedly calculated the amount to pay Greenville by subtracting Petitioner’s deductible (\$100) and Petitioner’s twenty (20) percent of DRG coinsurance (\$526.51), from the DRG amount of \$2732.54, leaving \$2106.02.

CONTESTED CASE DECISIONS

13. As Greenville was not a contracting hospital with Respondent, Greenville has not agreed to accept Respondent's payment of approximately 20 per cent (\$1452.42) of its charges as payment in full. Therefore, Petitioner has been billed by the hospital for the unpaid balance.

14. Respondent's sole witness at hearing was Ginny Klarman, its Manager of Compliance and Member Services. She explained that "DRGs" are essentially a list of 700 procedures, each with a dollar amount assigned to it. She testified that these are basically an average price for each procedure.

15. When questioned at hearing, Ms. Klarman was unable to say what DRG applied to Ms. Talley's treatment, nor what dollar figure was assigned to that DRG.

16. Ms. Klarman was also unable to explain the figures and the arithmetic on the Explanation of Benefits.

17. Neither Ms. Klarman nor any of the exhibits submitted by Respondent provided any evidence regarding any of the following:

- a. which portions of the hospital bill, if any, were subject to DRGs (see Petitioner's brief, in which she tries, with little or no information from the Plan, to determine what portions of her bill are subject to the DRGs and which are not);
- b. which of the 700 or so DRGs should have been applied to Petitioner's stay and treatment;
- c. that the correct DRG or DRGs were in fact applied;
- d. what amount of payment is associated with the correct DRG(s);
- e. how that amount was arrived at, and that such method was legitimate; nor
- f. that these DRGs were applied to the bill without mathematical error.

18. The Explanation of Benefits (Resp. Exh. 2) states, without further explanation, that "Services not covered by Plan terms" amount to \$653.60.

19. Petitioner made and documented approximately 38 communications with the Plan and the hospital. She has been through the internal grievance process with the Plan. Despite all this, the Plan has never provided her with a clear explanation of any of the above. It has provided her with the same sort of conclusory, unhelpful statements its witness provided at the hearing of this matter.

CONCLUSIONS OF LAW

1. Our courts have allocated the burden of proof to the insurer where the insurer seeks to avoid payment of a claim, otherwise covered, by application of an exception or limitation in the policy. "The defendant [insurer] had the burden of proving that the expenses incurred for [the insured's] hospitalization came within the stated exception of the policy." *Gunther v. Blue Cross/Blue Shield of North Carolina*, 58 N.C. App. 341, 347 (1982). Similarly, "an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the loss, of a part thereof, comes within the purview of the exception or limitation set up." *Flintall v. Charlotte Liberty Mutual Insurance Company*, 259 N.C. 666, 670 (1963), quoting 29A Am. Jur., Insurance, section 1854, p 918.

2. Our courts have also set up rules of construction governing the interpretation of insurance policies. The following sets out the rules applicable here: "[T]he rules of construction which govern the interpretation of insurance policy provisions extending coverage to the insured differ from the rules of construction governing policy provisions which exclude coverage. Those provisions in an insurance policy which extend coverage to the insured must be construed liberally so as to afford coverage whenever possible by reasonable construction. However the converse is true when interpreting the exclusionary provisions of a policy; exclusionary provisions are not favored and, if ambiguous, will be construed against the insurer and in favor of the insured." *N.C. Farm Bureau Mutual Ins. Co. v. Stox*, 330 N.C. 697, 702 (1992)(citations omitted).

3. Respondent Plan has failed completely to meet its burden of proof. Its sole witness was unable to explain the Explanation of Benefits, to explain the math that resulted in the remaining balance, or to state the amount of the DRG that the Plan applied in this case. (The finding of fact as to the DRG amount is based only upon submissions after the fact by Respondent's

CONTESTED CASE DECISIONS

attorney, which are not evidence in the case. However, for clarity's sake, and because it is not contested that the Plan used that DRG amount for its calculations, I have found that amount as a fact).

4. The mere conclusory statements by the Respondent's witness that the DRGs were applied, which resulted in less than all the hospital bill being paid, and that the Explanation of Benefits is correct, fall far short of the evidence necessary to establish: (A) which portions of the hospital bill, if any, were subject to DRGs; (B) which of the 700 or so DRGs should have been applied to Petitioner's stay and treatment; (C) that the correct DRG or DRGs were in fact applied; (D) what amount of payment is associated with the correct DRG(s); (E) how that amount was arrived at, and that such method was legitimate; and (F) that these DRGs were applied to the bill without mathematical error.

5. In the alternative, even if the burden of proof were assigned to Petitioner, she has met the burden of showing that the Plan acted in an arbitrary and capricious manner in calculating her benefits and dealing with its insured.

6. Given the Plan's failure to establish that it is entitled to use the exclusions and limitations of coverage upon which it wishes to rely, it must pay the default coverage for which the Talleys paid and relied upon, namely 80 per cent of the covered charges, less the deductible.

DECISION

Respondent shall pay directly to the Talleys, within 30 days of this Decision, 80 per cent of the Greenville Hospital charges at issue here, less the deductible and less the amount already paid. The amount to be paid is \$3,529.38, which is arrived at by the arithmetic shown in the following chart:

	Total charges	Amount previously paid	Balance (per Explanation of Benefits)
	\$7005.85	(\$1452.42)	\$5,553.43
Non-covered services	-\$653.60		
Total of charges for covered services	\$6352.25		
20 per cent coinsurance	-\$1270.45		
Deductible	-\$100		
Total Plan should have paid	\$4981.80		
Amount already paid	-\$1452.42		
Amount due from Plan to Talleys	\$3529.38		

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B036(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

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

This the 5th day of August, 2003.

James L. Conner, II
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 OSP 1001

CAROLYN DAVIS
Petitioner,

v.

DURHAM MENTAL HEALTH/DEVELOPMENTAL
DISABILITIES/SUBSTANCE ABUSE AREA AUTHORITY
d/b/a THE DURHAM CENTER
Respondent.

FINAL DECISION

On February 27, 2003, and March 17, 24, and 27, 2003, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Durham, North Carolina. Pursuant to Respondent's Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim, the undersigned **GRANTED** Respondent's Motion as follows:

APPEARANCES

Petitioner: Janet Lennon
Attorney at Law
Frasier & Alston
100 East Parrish Street, Suite 350
Durham, NC 27701-3336

Respondent: Lucy Chavis
Assistant County Attorney
Office of the County Attorney
P.O. Box 3508
Durham, NC 27702

EXHIBITS

For Petitioner: 1-6, 9, 11-19, 22, 26, 28, 29, 31, 42-43

For Respondent: 37, pp 55-60; 38, 40, 41

ISSUES

1. Whether Petitioner applied for the position of Interim Area Director, and therefore, had standing to bring a cause of action against Respondent for denying her a promotion to the Interim Area Director position for failing to give her priority consideration, failing to follow Area guidelines in filling the Interim Area Director position, and discriminating against her based upon her race and color?
2. Whether Petitioner failed to state a cause of action upon which relief can be granted, and whether the Office of Administrative Hearings has subject matter jurisdiction to hear this contested case?
3. Whether Respondent's policy vests Petitioner with a property right in the Acting Area Director position?

FINDINGS OF FACT

Background Facts

1. Petitioner is an African-American female.
2. From November 1977 until 1985, Petitioner worked as a substance abuse counselor, and then a program director for Respondent (T pp 28-29). In 1985, Respondent promoted Petitioner to Assistant or Deputy Area Director. (T pp 29-30) At all times

relevant to this proceeding, Petitioner held the position of Deputy Area Director.

3. Respondent provides mental health, developmental disability, and substance abuse services to individuals and families in Durham County, North Carolina. Respondent's Area Board of Directors ("the Area Board") is Respondent's governing body.

4. Pursuant to its policies, Respondent's Area Board has the authority to, and is responsible for, appointing an Area Director, Acting Area Director, or Interim Area Director. Specifically, Respondent's Area Board policy, "Delegation of Authority In Absence of The Area Director," provides in pertinent part:

I. PURPOSE/INTENT

To insure availability and continuity of the Chief Executive/Area Director authorities and responsibilities in his/her absence.

II. POLICY STATEMENT

...

B. Separation of the Area Director (ex. Retirement, resignation, termination) - delegation of authority and responsibility

1. The Area Board Executive Committee, **per majority vote of those present at the meeting for this purpose**, will designate a Deputy Area Director as Acting Area Director, with full Area Director authorities and responsibilities, to serve in that capacity until such time as a new Area Director is hired and begins work.

(Emphasis added, Resp Exh 40)

Area Director Vacancy

5. On January 12, 2002, Dr. Steven B. Ashby, (hereinafter, "Dr. Ashby"), Area Director for Respondent, announced to Respondent's Area Board that he was resigning from his position effective March 24, 2002.

6. In January and February 2002, Petitioner was the only Deputy Director employed by Respondent as the other Deputy Area Director had left employment with Respondent in 2001. (T pp 52, 107) When Petitioner learned of Dr. Ashby's resignation, she approached Harold Batiste, Chairman of the Area Board, expressed her interest in the Interim Area Director position, and asked to meet with Batiste about that position. (T pp 104-105, 124)

7. On February 7, 2002, Chairman Batiste met with Petitioner. (Resp Exh 36, p 44) During this meeting, Petitioner reiterated her interest in becoming the Interim Area Director of The Durham Center. She specifically informed Chairman Batiste of her plans and vision for The Durham Center for the interim period between Dr. Ashby's resignation and the hiring of a new Area Director, should she be named the Interim Area Director. (T p 108) Petitioner advised Batiste that she wanted to talk with the Board's Personnel Committee (a.k.a. Human Resources Committee) to:

give them an opportunity to get to know me and to talk to me individually so that they could see who I was. And I was trying to really sell myself for the position of Interim Area Director. I wanted them to be comfortable with me in that role. I thought I was going to get the job. I thought they might as well be comfortable with me and get to know me.

(Resp Exh 36, p 48) Petitioner also told Batiste that she desired Dr. Ashby's salary if she became Interim Area Director.

Batiste informed Petitioner that he would arrange a meeting for her with the Board's Personnel Committee. Batiste also told Petitioner that as Interim Area Director, she would not make the same salary as Dr. Ashby, because Ashby's salary was based upon his years of work experience. (T p 107)

8. At all relevant times of this proceeding, the Personnel Committee consisted of the Area Board's Executive Committee, plus the Personnel Committee chairman. That is, the Personnel committee included Executive Committee members Doug Wright (Board Vice-Chair), Nancye Bryan, Chairman Batiste, Phillip Golden; and Personnel Committee chairman Hugh Wright. (T pp 322, 804)

9. Before meeting with the Personnel Committee, Petitioner contacted individual members of the Personnel Committee, and expressed her interest in the Interim Area Director position, told each committee member about herself, and explained to each committee member, her plans for The Durham Center. (T p 244)

10. Petitioner believed that “Acting” Area Director and “Interim” Area Director was the same position, in that the words “acting” and “interim” were synonymous in meaning. (T p 107) Petitioner strongly believed, and expected, that pursuant to the Board’s “Delegation of Authority In Absence of The Area Director” policy, she would automatically be designated as the Acting or Interim Area Director. (T pp 106-124)

11. On February 12, 2002, Petitioner met with the Personnel Committee and Chairman Batiste in an informal meeting to discuss her “candidacy and interest in the Interim Area Director position.” (T p 202) There were no other persons being considered for the position of Interim Area Director at that time.

Specifically, Petitioner explained her goals and vision for The Durham Center, including improving employee morale, and requested that she be paid \$20,188 more than her current annual salary of \$69,000, or \$92,000.00 annually, to perform the position of Interim Area Director. (T p 111) Petitioner believed she deserved to receive a \$20,188 pay raise to perform this position, because a previous Area Board had given Petitioner’s coworker a \$20,188 pay raise when they appointed that coworker to Interim Area Director in 1985. (T pp 204-211) However, the Area Board at that time consisted of different members than the current Area Board.

12. The Personnel Committee and Chairman Batiste expected that “we would just talk with her, and then we’ll make a recommendation to the board to just go ahead and move her up into the position.” (T p 507) Yet, after talking with Petitioner, and considering Petitioner’s interest in the Interim Area Director position, the Personnel Committee did not make a decision whether to recommend to the full area Board that Petitioner be designated as the “Acting” Area Director of The Durham Center.

13. On February 18, 2002, the full Area Board conducted a meeting. Before the meeting began, Chairman Batiste informed Petitioner that she would not make a presentation to the full Board as she had been previously advised, and the Area Board would not be appointing an Interim Area Director at that meeting. (T pp 115, 117-118) Petitioner had expected the Area Board to name her as Interim Area Director at that meeting. (T pp 115, 117-118)

a. During that Board meeting, Petitioner addressed the Area Board during the public comment period about the fairness and integrity of the Interim Area Director selection process. The Board invited Petitioner to speak with them in closed session, and Petitioner did so. During the closed session, Petitioner expressed her interest in the Interim Area Director position, discussed her plans for The Durham Center if she became Interim Area Director, pointed out the Board’s policy on “Delegation of Authority In Absence Of The Area Director,” and advised the Board of her \$92,000 annual salary “requirement” (T p 193) to perform such job.

b. After Petitioner left the Board’s closed session, each member of the Personnel Committee and Chairman Batiste (ie. the Executive Committee) expressed his or her impression of the February 12, 2002 Committee meeting with Petitioner, and how he/she felt about that meeting and about Petitioner, to the full Area Board. (T pp 815, 838) Neither the Personnel Committee nor Chairman Batiste (ie. the Executive Committee) recommended to the full Board that Petitioner be named or designated “Acting” Area Director. (T p 369) After reconvening to open session, Chairman Batiste directed the Personnel Committee seek legal counsel from the County on how the selection “process to procure an Interim Area Director can be opened up.” (Pet Exh 12, pp 2-3)

14. On February 19, 2002, Petitioner sent an e-mail to Respondent’s staff saying:

Contrary to the information floating around, I was not, and shall not, be named interim area director . . . It seems my salary request was too high and I was inflexible about it. Those of you interested in the job shall let your desire be known. I stand ready and willing to work for you. I feel the Area Board’s conduct was not very honorable toward me in the process, but that’s okay. I feel relieved and joyous at the thought of not being designated, and interesting times lies [sic] ahead, and I’m comfortable being an observer rather than a key player. It’s all good.

(T pp 203, 224-225; January 10, 2003 Motions’ Hearing, T pp 52-54)

15. On February 21, 2002, the Area Board held a closed session meeting to discuss procedures for selecting an Interim Area Director. The Board chose to follow a closed selection process whereby board members would submit qualified candidates’ names to Chairman Batiste by February 24, 2002, copies of candidates’ resumes would be distributed to board members, and interviews would be scheduled for the week of March 4, 2002.

16. Between February 18 - 21, 2002, pursuant to Chairman Batiste’s request, Marie Jones sent an e-mail to all the Board members regarding the “Interim Area Director Position” stating:

Mr. Batiste requested that I e-mail all Area Board members and ask them if they know anyone interested in the Interim Area Director position. If so, the Board member should contact Mr. Batiste (620-8066) by February 24, 2002 with information on how to contact the interested person.

(Pet Exh 17) This e-mail was also circulated to the Respondent's management team. Because Petitioner was a member of the management team, she received a copy of this e-mail. (T p 127)

17. Petitioner did not respond to Jones' February 2002 e-mail, "either by e-mail or by talking with Jones," (T p 144), or by communicating with anyone else.

18. Between February 18, 2002 and February 21, 2002, Petitioner encouraged colleague Jack Ramsey to apply for the Interim Area Director position. (T pp 130-131)

19. On March 4, 2002 and March 11, 2002, the Area Board interviewed applicants for Jack Ramsey, Scott Bryant Comstock, and Ellen S. Holliman for the Interim Area Director position.

20. On March 4, 2002, Petitioner spoke with Jack Ramsey about his interview for the Interim Area Director position, and discussed Ramsey's interview. (T pp 131-134)

21. At its March 18, 2002 meeting, Respondent's Area Board announced that it had selected Ellen S. Holliman as Interim Area Director, and would negotiate with Holliman regarding her salary.

22. On April 1, 2002, Ms. Holliman reported to work as Respondent's Interim Area Director.

23. On April 22, 2002, Respondent appointed Ellen Holliman as Interim Area Director "as of April 1, 2002" for an "interim appointment of one year" with Holliman receiving the contracted salary of \$50.00 per hour.

Contested Case Petition Filed

24. On June 12, 2002, Petitioner filed a petition for a contested case hearing appealing Respondent's decision to hire Ellen Holliman as its Interim Area Director. Petitioner alleged that Respondent wrongfully denied her a promotion to the Interim Area Director position by:

- 1) failing to give her priority consideration,
- 2) failing to follow Area guidelines in filling the Interim Area Director position, and
- 3) discriminating against her based upon her race, age, and color.

25. On February 27, 2003, the undersigned began conducting the contested case hearing in this matter. Before the presentation of her evidence, Petitioner withdrew the age discrimination claim from her appeal.

26. On February 27, 2003, March 17 and 24, 2003, Petitioner presented her case-in-chief.

Motion to Dismiss

27. On March 25, 2003, the undersigned conducted a telephone conference with the parties, and advised the parties that she was concerned whether the facts presented at hearing sufficiently proved that Petitioner had standing, and was a "person aggrieved" who could file a contested case petition.

The undersigned asked the parties to present written briefs with supporting case law, on the following issues:

- (1) Whether Petitioner, under the factual scenario of this case, has standing to be a "person aggrieved" under N.C. Gen. Stat. § 150B,
- (2) When did Respondent's formal interview process for the Interim Area Director
- (3) Is there a difference between an "interim" and "acting" [Director] position? If there is a difference, then how would Respondent's personnel policies, particularly hiring policies, apply to that difference?

The undersigned further instructed the parties that she would hear oral argument and review any written arguments from the parties on March 27, 2003.

28. On March 27, 2003, the undersigned heard oral argument from both parties on these issues. Petitioner submitted a "Memorandum Supporting Petition," along with accompanying case law, as its argument. Respondent submitted its written argument

as a formal Motion to Dismiss. After reviewing Respondent's formal Motion to Dismiss, Petitioner requested additional time to file a written response thereto. Because Respondent's Motion to Dismiss solely responded to the issues the undersigned had requested of the parties, and the undersigned had advised the parties during their March 25, 2003 phone conference of her concerns, the undersigned denied Petitioner's request for additional time to file an additional response to such Motion.

29. On March 28, 2003, the undersigned conducted a telephone conference with the parties, and advised the parties that she was granting Respondent's Motion to Dismiss. The undersigned ruled that Petitioner lacked standing to file a contested case petition, appealing Respondent's decision to hire Ellen Holliman as Interim Area Director, because Petitioner never "applied" for the Interim Area Director position. The undersigned instructed Respondent's counsel to file a proposed Decision.

30. On May 1, 2003, Respondent's counsel filed a proposed Final Decision with the Office of Administrative Hearings. On May 2, 2003, Petitioner's counsel requested an opportunity to file a response to Respondent's proposed Final Decision. On May 5, 2003, the undersigned granted Petitioner's request.

31. On May 20, 2003, Petitioner filed her response to Respondent's proposed Final Decision. On or about July 3, 2003, Chief Administrative Law Judge Julian Mann extended the deadline to file the decision in this case until August 6, 2003.

Analysis

32. In the subject case, Petitioner's claim that she actually applied for the Interim Area Director position was not supported by the evidence. First, Petitioner asserted that the Area Board did not develop any formal application procedures for selecting an Interim Area Director. Yet, evidence presented at the administrative hearing proved that the Area Board met on February 21, 2002 for a budget retreat, and devised a process for selecting an Interim Area Director. (T pp 128-129)

a. During her deposition, Petitioner admitted that she attended the Board's February 21st budget retreat. Petitioner specifically conceded that at the beginning of the retreat, she heard Chairman Batiste state to the board members, "We'll need a few minutes to talk about hiring an interim area director." (Petitioner's deposition, pp 61-63). Later, just before the Board took a break and went into closed session, Petitioner heard Batiste tell the Board members that he needed to talk to them for a few minutes. (Petitioner's deposition, pp 61-63) Thereafter, the Board met in closed session.

Later, Petitioner and the management team received Marie Jones' e-mail instructing Board members to have any persons interested in the Interim Area Director position, contact Chairman Batiste by February 24, 2002. This e-mail not only reminded Board members of the application deadline for the Interim Area Director position, but, by being sent to the management team, also advised Petitioner and the rest of the management team that persons could contact Board members if they were interested in the Interim Area Director position. Based upon this evidence, it is more likely than not, that Petitioner knew the Board had devised application procedures for selecting the Interim Area Director in late February 2002, and knew of the application deadline.

b. Second, there was no evidence presented at the administrative hearing that Petitioner, after learning of the selection process for the Interim Area Director position, formally applied for that position. In fact, a preponderance of the evidence proved that Petitioner believed that she "didn't have to go through a formal procedure" to become the Interim Area Director position (T p 203), because the Board's "Delegation of Authority In Absence of The Area Director" policy required the Board's Executive Committee designate Petitioner as the Acting or Interim Area Director until the Board hired a permanent Area Director. In essence, Petitioner thought her designation to the Interim Area Director position was a "done deal," and the only remaining item to be addressed was a negotiation of her salary to perform such job.

During the administrative hearing, Petitioner admitted that after leaving the February 12, 2002 meeting with the Personnel Committee, she thought the Area Board was going to appoint her as Acting Area Director, given the Board's policy on "Delegation of Authority In Absence of The Area Director." Yet, when Petitioner did not believe the Board would meet her salary "requirements" of \$20,188 more than her current salary, she voluntarily withdrew from pursuing the Interim Area Director position, and did not apply for the Interim Area Director position. Petitioner advised the staff of her decision by her February 19, 2002 e-mail specifically stating, "Those of you interested in the job shall let your desire be known. I stand ready and willing to work for you." She also encouraged coworker Jack Ramsey to apply for the Interim Area Director position.

c. Third, Petitioner admitted that she approached Chairman Batiste, expressed interest in the Interim Area Director position, and advised him of her desire to talk with the Personnel Committee to:

give them an opportunity to get to know me and to talk to me individually so that they could see who I was. **And I was trying to really sell myself for the position of Interim Area Director. I wanted them to be comfortable with me in that role. I thought I was going to get the job.** I thought they might as well be comfortable with me and get to know me.

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(Emphasis added) (Resp Exh 36, p 48) Here, the most important fact was that Petitioner initiated contact with Chairman Batiste, and called the individual Personnel Committee members to express her interest in the Interim Area Position. At this time, neither the Executive Committee, Personnel Committee, nor the full Area Board had yet devised their selection and application process for the Interim Area Director position. When Petitioner learned of the Board's application process by Marie Jones' e-mail, she failed to apply for the subject position.

33. Further, Petitioner's claim that she applied for the Interim Director position is contradicted by the fact that she also claimed that the Board's Executive Committee was required to designate her as the Acting Area Director. Petitioner admitted that she prepared a presentation to address the Area Board at its February 18, 2002 meeting to "sell herself" to the Board and prove why she should be named the Acting or Interim Area Director. Yet, at the same time, she contended that the Board's subject policy required that she, as the only Deputy Director, be designated the Acting Area Director.

Giving the word "designate" its common and ordinary meaning, it is reasonable to say that if a governing body was "designating" an Acting Area Director, then it would not require persons to "apply" to be designated as the Acting Area Director. In addition, the Board's subject policy did not state that in designating a Deputy Director to be the Acting Area Director, the Deputy Director must "apply" for that position.

34. Moreover, Petitioner also failed to prove that the Board intended that the "Acting" Area Director position mentioned in its "Delegation of Authority in the Absence of Area Director" policy, to be the same position as the "Interim" Area Director position. Thus, Petitioner failed to prove the Board's subject policy applied to an Interim Area Director position.

a. Instead, the evidence at the administrative hearing tended to prove otherwise. At hearing, Board Vice-Chair Doug Wright opined that the difference between "Acting" and "Interim" Director was:

Acting [Area Director] is someone who works when the area director is gone for a period of time – it may be [that] he's out sick, maybe he's resigned, it may be that he's terminated – until a decision is made to either hire an interim director or a regular director. An interim director is usually hired for an interim . . . period of time.

(T pp 826-827) Mr. Wright further explained that Petitioner was:

acting director while there was no interim director. . . I don't know [if] she was designated, other than she knew that, that was her responsibility, was to act as director in the absence of the director because she was the deputy director. (T p 827 - 828)

b. Similarly, Chairman Batiste indicated that Petitioner was in charge of The Durham Center for approximately one or two weeks (T pp 492-494) after Dr. Ashby left, and before Holliman began working as Interim Area Director on April 1, 2002. In addition, Batiste held a management team meeting, and informed the team that Petitioner "would be in charge and I expected them to function as managers and keep things rolling until we get squared away with whatever we were going to do." (T p 494)

35. Lastly, in asserting that the Board's Executive Committee "will" designate her as Acting Area Director, Petitioner assumed that a "majority" of the Board's Executive Committee would actually vote to designate her as "Acting" Area Director. Pursuant to the subject policy, the Executive Committee had to "per majority vote" designate a Deputy Director to become the Acting Area Director, in order to designate Petitioner as the Respondent's Acting Area Director. Petitioner failed to produce evidence that the Executive Committee "per majority vote," voted to designate her as the Acting Area Director.

36. A preponderance of the evidence proved that Petitioner did not apply for the Interim Area Director position at The Durham Center in February and March 2002, and therefore, Petitioner could not claim that she suffered injury for not being hired for that position.

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. § 150B-33(b)(10) and -36(c), and 26 NCAC 03 .0105 and .115.

2. The federal courts developed standing as a "justiciability doctrine" to give meaning to the United States Constitution's "case or controversy" requirement. U.S. Const. Art. 3, 2. The term "standing" refers to whether a party has a "sufficient stake in an otherwise justiciable controversy so as to properly seek adjudication of the matter." Neuse Foundation, Inc., 574 S.E. 2d at 51. (Citing Sierra Club v. Morton, 405 U.S. 727, 731-32, 92 S.Ct. 1361, 1364-65, 31 L.E.2d 636, 641 (1972))

3. North Carolina courts are not limited by the "case or controversy" requirement of Article III of the U.S. Constitution. In the 1960's and 1970's, our courts began using the term "standing" to refer generally to a party's right to have a court decide the merits of

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a dispute. Neuse Foundation, Inc., 574 S.E. 2d at 51. “Standing” most often turns on whether a party has alleged “injury in fact” in light of the applicable statutes or case law. See Empire Power Co. v. North Carolina Dep’t of E.H.N.R., 337 N.C. 569, 447 S.E.2d 768 (1994)

4. The North Carolina Court of Appeals has held that “Standing is a necessary prerequisite to a court’s proper exercise of subject matter jurisdiction.” Aubin v. Susi, 149 N.C. App. 320, 324, 560 S.E.2d 875, 878 (2002)

5. A lack of standing is properly challenged by a motion to dismiss for failure to state a claim. Peacock v. Shinn, 533 S.E.2d 842 (N.C. App. 2000).

6. As the party invoking jurisdiction, plaintiffs [here Petitioner] have the burden of proving the elements of standing. Neuse Foundation, Inc. et al. v. Smithfield Foods, Inc. et. al., – N.C. App. – , 574 S.E. 2d 48, 51 (2002)

7. Petitioner contended that Respondent denied her a promotion to the Interim Area Director position by failing to give her priority consideration, by discriminating against her based upon her race and color, and by failing to follow Area guidelines in filling the Interim Area Director position. Specifically, she claimed that she had standing to contest the hiring of Ellen Holliman as Interim Area Director, because she applied for the Interim Area Director position, and because the Board’s policy on “Delegation of Authority in the Absence of Area Director” required the Board’s Executive Committee to designate her as Interim Area Director.

8. Because Petitioner did not actually apply for the position of Interim Area Director, she suffered no “injury in fact,” and thus, lacked standing to bring a cause of action pursuant to N.C. Gen. Stat. § 150B-23 against Respondent for wrongfully denying her a promotion based on failure to receive priority consideration, for race and color discrimination, and for failure to follow policy and procedure.

9. Because Petitioner lacked standing to file a petition for such claims, Petitioner failed to state a claim upon which relief can be granted, and this Court lacks subject matter jurisdiction to hear Petitioner’s claims.

10. Based on the foregoing, the undersigned will not address any further issues concerning the interpretation of the Board’s definition and/or distinction between “Acting” versus “Interim” Area Director, the Board’s intent or application of its “Delegation of Authority in the Absence of Area Director” policy to an Interim Area Director position, if that policy vested Petitioner with a property right in the Acting or Interim Area Director position, and if Respondent violated such policy.

DECISION

Based on the above Findings Of Fact and Conclusions Of Law, the undersigned hereby **DISMISSES** this contested case **with prejudice**.

NOTICE

This is a Final Decision under the authority of G.S. 150B-36(c). Pursuant to G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Decision and Order. Pursuant to G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 6th day of August, 2003.

Melissa Owens Lassiter
Administrative Law Judge