

NORTH CAROLINA

IN THIS ISSUE

REGISTER



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
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18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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		53 Professional Counselors	
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		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2005 – December 2005

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
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
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

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: 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.

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.

EXECUTIVE ORDER NO. 73
NORTH CAROLINA MOTORSPORTS ADVISORY COUNCIL

WHEREAS, motorsports has had not only a historic impact on North Carolina but also an economic impact, including the first NASCAR race in 1949 held in Charlotte, NASCAR headquarters were formerly located in North Carolina, and ninety percent of NASCAR race teams are currently located in this State; and

WHEREAS, the motorsports industry in North Carolina has suffered the loss of two major racing events at the North Carolina Speedway located in Rockingham, with other states recruiting events, race teams and other motorsports elements, which has caused an adverse economic impact on North Carolina; and

WHEREAS, the State of North Carolina must consider measures that will preserve, strengthen and expand this historical economic engine; an industry which contributes approximately \$5 billion a year to the state's economy, providing more than 24,000 direct and indirect jobs to our citizens;

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

Section 1. Establishment.

The North Carolina Motorsports Advisory Council ("Advisory Council") is hereby established. The Advisory Council shall be composed of not less than twelve or more than twenty members appointed by and to serve at the pleasure of the Governor. The Governor shall designate a Chair and Vice Chair. Members shall include, but not be limited to, representatives of the motorsports industry, the Office of the Governor, and the Department of Commerce.

Section 2. Terms of Membership.

All members shall be appointed for a term of two years.

Section 3. Vacancies.

A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

Section 4. Meetings.

The Advisory Council shall meet at least twice yearly and at other times at the call of the Chair or the Governor.

- (a) The Council shall meet as a quorum. A quorum, for the purposes of this Order, is defined as a simple majority.
- (b) The Advisory Council is authorized to conduct public hearings.

Section 5. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Advisory Council.

Section 6. Duties.

The Advisory Council shall have the following duties:

- (a) Review the recommendations and findings from the Sanford Holshouser Development Group motorsports economic impact/development study conducted by Dr. John Connaughton of UNC-Charlotte and make recommendations thereof;
- (b) Receive and review the feasibility study for the testing and research complex conducted by a UNC-Charlotte steering committee;
 - 1. Provide assistance and oversight regarding the RFP process for the location of a testing and research complex, if the UNC-Charlotte steering committee feasibility study and business plan supports an investment in such a facility, and addressing concerns regarding where such a facility should be located;
- (c) Recommend policy, procedures and program initiatives to protect, strengthen, and expand the motorsports industry through, but not limited to, research and development other than a testing and research complex;
- (d) Provide ongoing advice and consultation to State policy leaders as to how to recruit, retain and expand the motorsports industry in North Carolina; and
- (e) Other such duties as assigned by the Chair or the Governor.

This Order shall be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 28th day of February, 2005.

MICHAEL F. EASLEY

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

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

Public Notice

This is to provide notice that the Department of Health and Human Services has received the Interim Report required by its First Amended Certificate of Public Advantage with Mission Hospitals of Asheville, North Carolina. The Amended Certificate was issued October 8, 1998, under the North Carolina Hospital Cooperation Act.

Anyone wishing to review that report may contact Mr. Robert J. Fitzgerald, Director, Division of Facility Services, 2701 Mail Service Center, Raleigh NC, 27699-2701, or by telephone at (919) 855-3750.

Comments on the Report are invited any time on or prior to May 31, 2005.

SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY

Dillon Properties, LLC

Pursuant to N.C.G.S. § 130A-310.34, Dillon Properties, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property"). The Property consists of approximately 14 acres and is located at 6700 Ward Boulevard in Wilson, Wilson County, North Carolina. Environmental contamination exists on the Property in groundwater. Dillon Properties, LLC has committed itself to redevelop the Property for industrial, commercial, retail, office, residential, recreational, institutional, entertainment venue or open space uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Dillon Properties, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at _____ by contacting _____ at _____. **[We cannot approve proceeding to public notice until Prospective Developer provides name and location of local facility (e.g., library, City Manager's office) where full NOI will be made available for public review during the public notice period, and name and contact information for the person the public can contact at that facility to arrange for review of documents.];** or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

The effective date of this Notice is April 1, 2005.

[Please insert above whichever date you expect to occur later: the date of publication of this Summary of Notice of Intent in the N.C. Register or in a newspaper of general circulation serving the area in which the brownfields property is located.]

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

Joshua's, Inc. d.b.a. Joshua's Farm

Pursuant to N.C.G.S. § 130A-310.34, Joshua's, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of approximately one acre and is located 3607 Kidd Lane. Environmental contamination exists on the Property in soil. Joshua's, Inc. has committed itself to redevelopment of the Property for no use other than as a parking lot for its visitors and staff. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Joshua's, Inc., which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the City of Charlotte's Economic Development offices, which are located at 600 East Trade Street, Charlotte, NC 28202, by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

Mr. Paul Ferrigan and Ms. Lynda Wolfe

Pursuant to N.C.G.S. § 130A-310.34, Mr. Paul Ferrigan and Ms. Lynda Wolfe have filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in the City of Charlotte, Mecklenburg County, North Carolina. The Property consists of 19.88 acres and is located at 8900 Research Drive. Environmental contamination exists on the Property in groundwater. Mr. Ferrigan and Ms. Wolfe have committed themselves to make no use of the Property other than for commercial and office space. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Mr. Ferrigan/Ms. Wolfe, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Economic Development offices of the City of Charlotte, located at 600 East Trade Street, Charlotte, NC 28202, by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704) 661-0330; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) 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. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 71S .0101, .0201-.0202, .0207-.0208, and repeal the rules cited as 10A NCAC 71S .0203, .0205-.0206.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: June 8, 2005

Time: 10:00 a.m.

Location: Albemarle Building, Room 832, 325 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: *Since 1992, the Division of Aging and the Division of Social Services have coordinated separate rules and policies on cost sharing related to services and funding administered by the Division of Social Services and the Division of Aging's Home and community Care Block Grant (HCCBG). Both sets of cost sharing rules were similar; however, each had some fundamental differences. In September 2003, NC DHHS Secretary, Carmen Hooker Odom authorized the merger of the Adult Services Section of the Division of Social Services with the Division of Aging, renamed as the Division of Aging and Adult Services. In addition, the Federal Older Americans Act was reauthorized in 2000 modifying some requirements related to implementation of cost sharing by states. The Social Services Block Grant (SSBG), the HCCBG, and other funding sources administered by both divisions target families with children, older and disabled adults and their families. For the 58 county departments of social services which administer HCCBG, having one manual with parallel rules would enhance service delivery.*

Procedure by which a person can object to the agency on a proposed rule: Contact Carlotta Dixon, Acting APA Coordinator, Division of Social Services, 325 N. Salisbury St., 8th Floor, or 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055, email Carlotta.dixon@ncmail.net.

Written comments may be submitted to: Carlotta Dixon, Acting APA Coordinator, 2401 Mail Service Center, Raleigh, NC 27699-2401; phone 919-733-3055, fax 919-733-9386, email Carlotta.dixon@ncmail.net

Comment period ends: June 8, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of

the rule, 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 day following the day the Commission approves the rule. 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

SUBCHAPTER 71S – SERVICE COST-SHARING

SECTION .0100 - PURPOSE

10A NCAC 71S .0101 PURPOSE OF CONSUMER CONTRIBUTION

(a) As used in this Subchapter, the following definitions shall apply:

- (1) Consumer Contributions – A monetary amount voluntarily given to the service provider by the service recipient or the designated representative toward the cost of the service received.
- (2) Recommended Contribution Schedule – a listing of income ranges and corresponding recommended contribution percentages for use with clients whose incomes are above the Federal poverty level. The Recommended Contribution Schedule is available on the website of the Division of Aging and Adult Services (<http://www.dhhs.state.nc.us/aging/>).

(b) The purpose of the Service Cost Sharing consumer contributions Policy is to extend the availability of services which are subject to cost sharing consumer contributions that are administered by the Division of Social Services by soliciting from all clients a portion of the cost for services rendered based upon their ability to pay, providing the opportunity for each client to voluntarily contribute toward the cost of the service(s) received. Revenue collected from clients will be retained by the service provider.

Authority G.S. 143B-153.

SECTION .0200 - SERVICE COST SHARING REQUIREMENTS

10A NCAC 71S .0201 SERVICES SUBJECT CONSUMER CONTRIBUTIONS

(a) The following services, when provided by funds administered by the Division of Social Services, shall be subject to the Service Cost Sharing Policies and Procedures: consumer contributions:

- (1) Adult Day Care, including Transportation; Care;
- (2) Adult Day Health, including Transportation; Health;
- (3) Housing and Home Improvement (Renovations or Repair and Furnishings or Appliance Purchases only);
- (4) In-Home Aide Services;
- (5) Personal and Family Counseling;
- (6) Preparation and Delivery of Meals.

(b) When any of the services specified in Paragraph (a) of this Rule are provided to adults or children as part of a Protective Services Plan, these individuals will be excluded from ~~any cost sharing requirement,~~ consumer contributions, up to a maximum of 12 months. Consumer contributions shall not apply to Children-children in foster care and care, children who have been approved to receive adoption assistance are also excluded from the cost sharing requirement. assistance. In addition, when any of the services specified in Paragraph (a) of this Rule are provided to an Aid to Families with Dependent Children (AFDC) persons receiving Work First assistance, or federally administered Supplemental Security Income (SSI) applicant or recipient, cost sharing requirements do not apply applicants or recipients.

Authority G.S. 143B-153.

10A NCAC 71S .0202 INITIAL AND ANNUAL REVIEWS

(a) Upon initiation of the provision of the service(s) subject to consumer contributions and at least annually thereafter, ~~The the~~ following information ~~must shall~~ be reviewed with each client who has been determined eligible to receive a ~~service services~~ subject to ~~service cost sharing: consumer contributions:~~

- (1) ~~the policy which requires that all clients receiving services subject to cost sharing be requested to share in the cost of services rendered, based upon their ability to pay;~~
- (2) ~~the purpose of Service Cost Sharing;~~
- (3) ~~the cost of the service received (actual cost or fixed rate per unit); actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to service cost sharing; fixed rate per unit will be the specified contract rate when purchasing services;~~

- (4) ~~the process by which cost sharing revenue will be collected;~~
- (5) ~~the individual whom the client should contact with questions pertaining to service cost sharing; and~~
- (6) ~~the fact that services will not be terminated for failure to share in the cost of services rendered.~~
- (1) that the contribution is entirely voluntary and that there is no obligation to contribute;
- (2) that all contributions collected shall be used to expand the service(s);
- (3) that information about the client's participation in consumer contributions shall be confidential;
- (4) who should be contacted, including the telephone number, if the client has questions regarding consumer contributions;
- (5) the total cost of the service (actual or per unit); and
- (6) that services shall not be reduced or terminated for failure to contribute.

(b) A copy of the Recommended Contribution Schedule from the North Carolina Division of Aging and Adult Services shall be provided to clients whose incomes are above the Federal poverty level. The Recommended Contribution Schedule shall not be provided to clients whose incomes are at or below the Federal poverty level.

(c) Documentation shall be maintained in the client's file that the above information has been shared with the client or the designated representative.

Authority G.S. 143B-153.

10A NCAC 71S .0203 ANNUAL REVIEW

~~On at least an annual basis, preferably during a service reassessment, agencies must review the following information with each individual receiving services subject to the Service Cost Sharing Policy:~~

- (1) ~~the purpose of service cost sharing;~~
- (2) ~~the agency's cost (actual cost or fixed rate per unit) to provide the service or services received; actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to service cost sharing; fixed rate per unit will be the specified contract rate when purchasing services;~~
- (3) ~~the agency's procedures for collecting cost sharing revenue and the individual whom the client should contact with questions pertaining to service cost sharing; and~~
- (4) ~~the fact that services will not be terminated for failure to share in the cost of service rendered.~~

Authority G.S. 143B-153.

10A NCAC 71S .0205 SERVICE COST SHARING

PROPOSED RULES

FORM

(a) A service cost sharing form must be completed for all clients receiving services subject to cost sharing. The form must contain the following:

- (1) the purpose of service cost sharing;
- (2) space to list the service or services received;
- (3) space to indicate the cost (actual cost or fixed rate per unit) of the service or services to be received; actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to cost sharing; fixed rate per unit will be the specified contract rate when purchasing services;
- (4) information regarding what procedures the agency will use to request cost sharing

revenue and whom the client should contact if he has questions regarding service cost sharing collection procedures;

- (5) a statement indicating that services will not be terminated for failure to share in the cost of services rendered; and
- (6) space for signatures by the client or designated representative and the agency representative indicating that the form has been reviewed with the client and the date.

(b) Each client or designated representative shall be given a copy of the signed cost sharing form and a copy shall be kept in the client's file.

Authority G.S. 143B-153.

10A NCAC 71S .0206 SERVICE COST SHARING SCHEDULE

(a) The amount of cost sharing to be requested from clients shall be in accordance with the following cost sharing schedule:

COST SHARING SCHEDULE

	Size of Income Unit			— Minimum — Percentage (Percentage of Service Cost)
	1	2	3	
Monthly	\$ 852-970	\$1,149-1,301	\$1,446-1,648	30%
Estab. Income	971-1,090	1,302-1,516	1,649-1,850	40%
	1,091-1,209	1,517-1,600	1,851-2,053	50%
	1,210-1,328	1,601-1,761	2,054-2,255	60%
	1,329-1,447	1,762-1,952	2,256-2,458	75%
	1,448-above	1,953-above	2,459-above	100%
	4	5	6	
Monthly	\$1,744-1,987	\$2,041-2,326	\$2,339-2,665	30%
Estab. Income	1,988-2,231	2,327-2,612	2,666-2,992	40%
	2,232-2,475	2,613-2,897	2,993-3,320	50%
	2,476-2,719	2,898-3,183	3,321-3,647	60%
	2,720-2,963	3,184-3,469	3,648-3,975	75%
	2,964-above	3,470-above	3,976-above	100%
	7	8	9	
Monthly	\$2,636-3,004	\$2,934-3,343	\$3,231-3,683	30%
Estab. Income	3,005-3,373	3,344-3,754	3,684-4,135	40%
	3,374-3,743	3,755-4,165	4,136-4,587	50%
	3,744-4,112	4,166-4,576	4,588-5,040	60%
	4,113-4,481	4,577-4,986	5,041-5,492	75%
	4,482-above	4,987-above	5,493-above	100%
	10	11	12	
Monthly	\$3,529-4,022	\$3,826-4,361	\$4,124-4,700	30%
Estab. Income	4,023-4,516	4,362-4,897	4,701-5,277	40%
	4,517-5,010	4,898-5,432	5,278-5,856	50%
	5,011-5,504	5,433-5,968	5,857-6,432	60%
	5,505-5,998	5,969-6,504	6,433-7,009	75%
	5,999-above	6,505-above	7,010-above	100%

Established Income (Estab. Income) as used in this Rule is defined in 10A NCAC 71R .0504, which is incorporated by reference, including subsequent amendments and editions; Income Unit as used in this Rule is defined in 10A NCAC 71R .0503, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699 6714, (919) 733 2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

(b) Agencies must establish a cost sharing schedule for clients whose gross monthly income is less than the established income as defined in 10A NCAC 71R .0504, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699 6714, (919) 733 2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule. In developing this schedule, agencies may establish percentages of the cost of the service or an amount that will be requested from clients.

(c) Agencies must distribute a copy of the cost sharing schedule to all clients receiving services subject to cost sharing as defined in Rule .0201 of this Section. The cost sharing schedule must reflect the income ranges and minimum percentages outlined in Paragraph (a) of this Rule.

(d) Agencies may negotiate higher service cost sharing percentages or lower service cost sharing percentages than those outlined in Paragraph (a) of this Rule, based on individual client circumstances. The client will determine the amount of service cost sharing he will pay based upon his individual financial circumstances.

Authority G.S. 143B-153.

10A NCAC 71S .0207 COLLECTION OF CONSUMER CONTRIBUTIONS REVENUE

(a) Agencies must establish policies and procedures governing the collection of cost sharing revenue at least quarterly. Service providers shall have written procedures to collect, account for, and safeguard all contributions.

(b) Agencies must document that efforts have been made to collect cost sharing revenue at least quarterly from those clients who have agreed to share in the cost of services. This includes asking the client at least quarterly to share in the cost of services subject to cost sharing.

(c) When the county department of social services directly provides a service subject to cost sharing, consumer contributions, the county department of social services must shall be responsible for collecting and accounting for cost sharing these revenues.

(d) When a service subject to cost sharing, consumer contributions is provided by another an agency other than a county department of social services or an individual through a purchase of service contract, that provider or the county department of social services must shall be responsible for collecting and accounting for cost sharing the revenue. When

the provider is responsible for collecting and accounting for cost sharing revenue, consumer contributions revenue, this must be specified in the contract for purchase of services.

(e) When a service subject to cost sharing, consumer contributions is purchased through a local or state-level contract, the provider must be furnished the county department of social services shall furnish the provider current information in writing, via the Services Information System Client Entry Form (DSS 5027), as to writing as to the amount of the cost sharing, consumer contributions the client has agreed to pay, contribute. This amount is Contributions are to be collected from the client. Any change in the amount of cost sharing must be transmitted to the provider via a revised DSS 5027. The county department of social services shall furnish the provider in writing any change in the amount of consumer contributions. No cost sharing, consumer contributions amounts other than those identified on the most current DSS 5027 may be collected.

Authority G.S. 143B-153.

10A NCAC 71S .0208 TERMINATION

Services Service(s) to the client will shall not be terminated for failure to share in contribute to the cost of services service(s) rendered.

Authority G.S. 143B-153.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 12 .0843.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: April 18, 2005

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Bldg, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The adoption of this rule is needed in order to be NAIC compliant.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to the adoption of this rule until the expiration of the comment period on May 31, 2005.*

Written comments may be submitted to: *Louis Belo, Life & Health Division, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-5060, email lbelo@ncdoi.net.*

Comment period ends: May 31, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 12 - LIFE AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

11 NCAC 12 .0843 NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Medicare Supplement Insurance Minimum Standards Model Act, Model No. 651. Copies of this Act may be obtained from: The National Association of Insurance Commissioners, 2301 McGee Street, Kansas City, MO 64108-1662; the North Carolina Department of Insurance, Life & Health Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page: <http://www.ncdoi.com/>.

(b) Section 7 of Model No. 651 shall apply to policies or certificates issued for delivery in North Carolina before January 1, 1992.

(c) Section 8 of Model No. 651 shall apply to policies or certificates issued for delivery in North Carolina on or after January 1, 1992.

(d) For purposes of this Rule, Section 8A(7)(c) of Model No. 651 shall read as follows: Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period effective as of the date of termination of enrollment in the group health plan.

(e) The applicable effective dates for Section 14B(3) of Model No. 651 are October 16, 1991, December 1, 1995, and May 31, 1997.

(f) Insurers shall use the Appendices of Model No. 651 for reporting and disclosure formats.

(g) This Rule applies to policies issued, renewed, or reinstated on or after January 1, 2006.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to repeal the rules cited as 11 NCAC 12 .0815-.0816, .0818-.0822, .0824-.0830 and .0834-.0842.

Proposed Effective Date: *December 31, 2005*

Public Hearing:

Date: *April 18, 2005*

Time: *10:00 a.m.*

Location: *3rd Floor Hearing Room, Dobbs Bldg, 430 N. Salisbury St., Raleigh, NC*

Reason for Proposed Action: *These rules are being repealed because the adoption of the NAIC Model Law makes them obsolete.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these repeals until the expiration of the comment period on May 31, 2005.*

Written comments may be submitted to: *Louis Belo, Life & Health Division, 1201 Mail Service Center, Raleigh, NC 27699-120, phone (919)733-0055, email lbelo@ncdoi.net.*

Comment period ends: *May 31, 2005*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 12 - LIFE AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

11 NCAC 12 .0815 PURPOSE AND DEFINITIONS

(a) ~~The purpose of this Section is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.~~

(b) ~~For the purposes of this Section:~~

- (1) ~~"Buyer's Guide" means the *Guide to Health Insurance for People with Medicare* developed jointly by the NAIC and the federal government.~~
- (2) ~~"Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.~~
- (3) ~~"Issuer" includes an insurance company, fraternal benefit society, hospital or medical service corporation, health maintenance organization, or any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.~~
- (4) ~~"Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

11 NCAC 12 .0816 APPLICABILITY AND SCOPE

(a) ~~Except as otherwise specifically provided in 11 NCAC 12 .0820, 12 .0821, 12 .0822 and 12 .0829, this Section applies to:~~

- (1) ~~All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this Section, and~~
- (2) ~~All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.~~

(b) ~~This Section does not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members, or a combination thereof, of the labor organizations.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

11 NCAC 12 .0818 POLICY DEFINITIONS AND TERMS

~~No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms that conform to the requirements of this Section.~~

- (1) ~~"Accident", "Accidental Injury", or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.~~
 - (a) ~~The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."~~
 - (b) ~~Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, unless prohibited by law.~~
- (2) ~~"Benefit Period" or "Medicare Benefit Period" shall not be defined more restrictively than as defined in the Medicare program.~~
- (3) ~~"Convalescent Nursing Home", "Extended Care Facility", or "Skilled Nursing Facility" shall not be defined more restrictively than as defined in the Medicare program.~~
- (4) ~~"Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. Such expenses shall not include:~~
 - (a) ~~home office and overhead costs;~~
 - (b) ~~advertising costs;~~
 - (c) ~~commissions and other acquisition costs;~~
 - (d) ~~taxes;~~
 - (e) ~~capital costs;~~
 - (f) ~~administrative costs; and~~
 - (g) ~~claims processing costs.~~
- (5) ~~"Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.~~
- (6) ~~"Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security~~

Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

- (7) ~~"Medicare Eligible Expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.~~
- (8) ~~"Physician" shall not be defined more restrictively than as defined in the Medicare program.~~
- (9) ~~"Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.~~

Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

11 NCAC 12 .0819 POLICY PROVISIONS

- (a) ~~Except for permitted pre-existing condition clauses as described in 11 NCAC 12 .0820(1)(a) and 11 NCAC 12 .0835(1)(a), no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.~~
- (b) ~~No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.~~
- (c) ~~No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.~~

Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

11 NCAC 12 .0820 MINIMUM BENEFIT STANDARDS BEFORE JANUARY 1, 1992

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State before January 1, 1992. No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

- (1) ~~General Standards. The following standards apply to Medicare supplement policies and~~

~~certificates and are in addition to all other requirements of this regulation.~~

- (a) ~~A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because the loss involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.~~
- (b) ~~A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.~~
- (c) ~~A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.~~
- (d) ~~A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:~~
 - (i) ~~provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or~~
 - (ii) ~~be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.~~
- (e) ~~Except as authorized by law or rule, an issuer shall neither cancel nor fail to renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.~~
- (f) ~~If a group Medicare supplement policy is terminated by the group policyholder and not replaced as provided in Subparagraph (1)(h) of this Rule, the issuer shall offer certificateholders an individual Medicare supplement policy. The~~

issuer shall offer the certificateholder at least the following choices:

- (i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy;
 - (ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 11 NCAC 12 .0835(2).
- (g) If membership in a group is terminated, the issuer shall:
- (i) offer the certificateholder such conversion opportunities as are described in Subparagraph (1)(f) of this Rule; or
 - (ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (h) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
- (i) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.
- (2) Minimum Benefit Standards:
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

- (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
- (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
- (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
- (e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;
- (f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [one hundred dollars (\$100.00)]. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within this provision;
- (g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

11 NCAC 12 .0821 STANDARDS FOR CLAIMS PAYMENT

(a) An issuer shall comply with Section 1882(e)(3) of the Social Security Act [as enacted by Section 4081(b)(2)(C) of the

Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), P.L. 100-203] by:

- (1) ~~Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;~~
- (2) ~~Notifying the participating physician or supplier and the beneficiary of the payment determination;~~
- (3) ~~Paying the participating physician or supplier directly;~~
- (4) ~~Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;~~
- (5) ~~Paying user fees for claim notices that are transmitted electronically or otherwise; and~~
- (6) ~~Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.~~

(b) ~~Compliance with the requirements set forth in Paragraph (a) of this Rule shall be certified on the Medicare supplement insurance experience reporting form on page 47 of the Annual Statement.~~

Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

11 NCAC 12 .0822 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM

(a) ~~Loss Ratio Standards:~~

- (1) ~~A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:~~
 - (A) ~~At least 75 percent of the aggregate amount of premiums earned in the case of group policies, or~~
 - (B) ~~At least 65 percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.~~

- (2) ~~All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.~~
- (3) ~~For the purposes of Subparagraph (a)(1) of this Rule, group policies sold or solicited on individual bases by mail or mass media advertising shall be deemed to be group policies.~~
- (4) ~~For policies issued before October 16, 1991, expected claims in relation to premium shall meet:~~
 - (A) ~~The originally filed anticipated loss ratio when combined with the actual experience since inception;~~
 - (B) ~~The appropriate loss ratio requirements from Parts (a)(1)(A) and (B) of this Rule when combined with actual experience beginning with December 1, 1995 to date; and~~
 - (C) ~~The appropriate loss ratio requirement from Parts (a)(1)(A) and (B) of this Rule over the entire future period for which the rates are computed to provide coverage.~~

(b) ~~Refund or Credit Calculation:~~

- (1) ~~An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the reporting form for each type in a standard Medicare supplement benefit plan. This information shall be filed with the Life and Health Division. The reporting form shall be in the format prescribed by the NAIC in Appendix A of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file at the North Carolina Department of Insurance. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.~~
- (2) ~~If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies~~

issued within the reporting year shall be excluded.

- (3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13 week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

- (4) For policies or certificates issued before October 16, 1991, the issuer shall make the refund or credit calculation separately for all individual policies combined and all other group policies combined for experience after December 1, 1995. The first report is due by May 31, 1997.

(e) Annual Filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by statute or rule. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:

- (1) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(A) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate that will conform with minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or

certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

- (B) If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this Rule.

- (2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(d) Public Hearings. The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in the manner prescribed by statute.

Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

11 NCAC 12 .0824 REQUIRED DISCLOSURE PROVISIONS

(a) General Rules.

- (1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provisions must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

- (2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the

insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

- (3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.
- (4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- (5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.
- (6) Issuers of accident and health policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to such applicants a copy of the Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration in a type size no smaller than 12-point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this Rule. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) Notice Requirements:

- (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement policies or certificates. Such notice shall:

- (A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

- (B) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

- (2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

- (3) Such notices shall not contain or be accompanied by any solicitation.

(c) Outline of coverage requirements for Medicare supplement policies.

- (1) Issuers shall provide an outline of coverage to each applicant at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and

- (2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

- (3) The outline of coverage provided to applicants pursuant to this Rule shall consist of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Subparagraph (c)(4) of this Rule in no less than 12-point type. All plans A J shall be shown on the cover page, and the plan or plans offered by the issuer shall be prominently identified. Premium information for the plan or plans offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The

premium and mode shall be stated for each plan that is offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The outline of coverage shall be in the language and format as prescribed by the NAIC in Section 16C(4) of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file with the North Carolina Department of Insurance. Copies may be obtained at a cost of fourteen dollars (\$14.00) each from the Life and Health Division, 430 N. Salisbury Street, Raleigh, North Carolina 27611.

(d) Notice regarding policies or certificates that are not Medicare supplement policies:

(1) For any accident and health insurance policy or certificate, other than a Medicare supplement policy; policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et. seq.); disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy; or other policy identified in 11 NCAC 12 .0816(b), that is issued for delivery in this State to persons eligible for Medicare, the insurer shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy; or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare, which is available from the company."

(2) Applications provided to persons eligible for Medicare to purchasing the policies or certificates described in Subparagraph (d)(1) of this Rule shall disclose, using the applicable disclosure statement in the format prescribed by the NAIC in Appendix C of the Model Regulation, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate. A copy of this format is on file at the Department. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0825 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE

(a) Application forms shall include the following statements and questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and health policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used:

{Statements}

- (1) You do not need more than one Medicare supplement policy.
- (2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (3) The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility.
- (4) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a specified Low Income Medicare Beneficiary (SLMB).

{Questions}

To the best of your knowledge,

- (1) Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?
 - (a) If so, with which company?
 - (b) If so, do you intend to replace your current Medicare supplement policy [certificate]?
- (2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

- (3) ~~Are you covered for medical assistance through the state Medicaid program:

 - (a) ~~As a Specified Low Income Medicare Beneficiary (SLMB)?~~
 - (b) ~~As a Qualified Medicare Beneficiary (QMB)?~~
 - (c) ~~For other Medicaid medical benefits?~~~~
- (4) ~~Agents shall list any other health insurance policies they have sold to the applicant.

 - (a) ~~List policies sold which are still in force.~~
 - (b) ~~List policies sold in the past five years which are no longer in force.~~~~

~~(b) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.~~

~~(c) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of such notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.~~

~~(d) The notice required by Paragraph (c) of this Rule for an issuer shall be provided in substantially the following form in no less than 12 point type:~~

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [company name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- Other. (Please specify)

- (1) ~~Health conditions which you may now have (preexisting conditions) may not be immediately or fully covered under the new policy if you have had your present policy for less than six months.~~
- (2) ~~If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this Paragraph need not appear.]~~

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

Signature of Agent, Broker or Other Representative

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

~~(e) Paragraph 1 of the replacement notice (applicable to pre-existing conditions) may be deleted by an issuer if the replacement does not involve application of a new pre-existing condition limitation.~~

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0826 FILING REQUIREMENTS FOR

ADVERTISING

Every issuer shall comply with G.S. 58-54-35 before it uses any advertising in this State.

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0827 STANDARDS FOR MARKETING

- (a) ~~An issuer, directly or through its producers, shall:~~
- (1) ~~Establish marketing or other procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.~~
 - (2) ~~Establish marketing or other procedures to assure excessive insurance is not sold or issued.~~
 - (3) ~~Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:
"Notice to buyer: This policy may not cover all your medical expenses."~~
 - (4) ~~Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.~~
 - (5) ~~Establish auditable procedures for verifying compliance with Paragraph (a) of this Rule.~~

(b) ~~In addition to the practices prohibited in Article 63 of Chapter 58 of the North Carolina General Statutes, the following acts and practices are prohibited:~~

- (1) ~~Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another issuer.~~
- (2) ~~High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.~~
- (3) ~~Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.~~

(c) ~~The terms "Medicare Supplement," "Medigap," "Medicare Wrap Around," and words of similar import shall not be used unless the policy is issued in compliance with this Section.~~

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0828 APPROPRIATENESS OF RECOMMENDED PURCHASE/EXCESSIVE INSURANCE

- (a) ~~In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.~~
- (b) ~~Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.~~

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0829 REPORTING OF MULTIPLE POLICIES

(a) ~~On or before March 1 of each year an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement insurance policy or certificate:~~

- (1) ~~Policy and certificate numbers, and~~
- (2) ~~Date of issuance.~~

(b) ~~The items set forth in this Rule must be grouped by individual policyholder.~~

(c) ~~The reporting form for compliance with this Rule shall be in the format prescribed by the NAIC in Appendix B of the Model Regulation to Implement the NAIC Medicare Supplement Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this form is on file at the North Carolina Department of Insurance; and copies may be obtained from the Department at a cost of fifty cents (\$0.50) each.~~

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0830 PROHIBITIONS IN REPLACEMENT POLICIES OR CERTIFICATES

(a) ~~If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.~~

(b) ~~If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in effect for at least six months, the replacing policy shall not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods.~~

(c) ~~A separate charge may not be made to the applicant for the waiver of the pre-existing condition or other waiting period in a replacement policy.~~

Authority G.S. 58-2-40; 58-54-35.

11 NCAC 12 .0834 PERMITTED COMPENSATION ARRANGEMENTS

- (a) ~~As used in this Rule:~~
- (1) ~~"Compensation" means consideration or remuneration of any kind relating to the sale or~~

renewal of a Medicare supplement policy, including but not limited to commissions, bonuses, gifts, prizes, or awards.

- (2) "Policy" includes a certificate.
- (3) "Representative" includes an agent, general agent, manager, broker, or other producer.

(b) An issuer may provide compensation to a representative for the sale of a Medicare supplement policy only if the compensation for the first year or period is no more than 200 percent of the compensation provided in the second year or period.

(c) The compensation provided in subsequent renewal years or periods must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years or periods.

(d) If a Medicare supplement policy is replaced, no person shall provide and no representative shall receive compensation greater than that payable by the replacing issuer on renewal policies.

Authority G.S. 58-2-40; 58-54-15.

11 NCAC 12 .0835 MINIMUM BENEFIT STANDARDS ON OR AFTER JANUARY 1, 1992

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Section.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and

copayment percentage factors. Premiums may be modified to correspond with such changes, but new premiums must be filed and approved by the Commissioner before use.

(d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable and:

(i) The issuer shall not cancel or fail to renew the policy solely on the ground of health status of the individual.

(ii) The issuer shall not cancel or fail to renew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (1)(e)(v) of this Rule, the issuer shall offer each certificateholder an individual Medicare supplement policy that, at the option of the certificate holder:

(A) Provides for continuation of the benefits contained in the group policy, or

(B) Provides for such benefits as otherwise meet the requirements of this Rule.

(iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall either:

(A) Offer the certificateholder the conversion opportunity described in Subparagraph

- ~~(1)(e)(iii) of this Rule; or~~
- ~~(B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.~~
- ~~(v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre existing conditions that would have been covered under the group policy being replaced.~~
- ~~(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.~~
- ~~(g) Suspension During Medicaid Eligibility.~~
- ~~(i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or~~
- ~~certificate within 90 days after the date the individual becomes entitled to such assistance.~~
- ~~(ii) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.~~
- ~~(iii) Reinstitution of such coverages as described in Subitems (i) and (ii) of Item (1)(g) of this Rule:~~
- ~~(A) Shall not provide for any waiting period with respect to treatment of pre existing conditions;~~
- ~~(B) Shall provide for coverage that is substantially equivalent to coverage in effect before the date of such suspension; and~~
- ~~(C) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.~~

- (2) ~~Standards for Basic ("Core") Benefits Common to All Benefit Plans: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Benefit Plans in addition to the basic "core" package, but not in lieu thereof.~~
- ~~(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~
 - ~~(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;~~
 - ~~(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;~~
 - ~~(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;~~
 - ~~(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.~~
- (3) ~~Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 11 NCAC 12 .0836.~~
- ~~(a) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.~~
 - ~~(b) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.~~
 - ~~(c) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.~~
 - ~~(d) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare approved Part B charge.~~
 - ~~(e) One Hundred Percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare approved Part B charge.~~
 - ~~(f) Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.~~
 - ~~(g) Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.~~
 - ~~(h) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250.00) and a lifetime maximum benefit of fifty~~

thousand dollars (\$50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (3)(i)(ii) of this Rule and patient education to address preventive health care measures.

(ii) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(A) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(B) Pure tone (air only) hearing screening test, administered or ordered by a physician;

(C) Serum cholesterol screening (every five years);

(D) Thyroid function test;

(E) Diabetes screening.

(iii) Tetanus and Diphtheria booster (every 10 years).

(iv) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120.00) annually under this benefit. This benefit shall not include

payment for any procedure covered by Medicare.

(j) At Home Recovery Benefit: Coverage for services to provide short term at home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(i) For purposes of this benefit, the following definitions shall apply:

(A) "Activities of daily living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit

~~required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24 hour period of services provided by a care provider is one visit.~~

~~(ii) Coverage Requirements and Limitations.~~

~~(A) At home recovery services provided must be primarily services that assist in activities of daily living.~~

~~(B) The insured's attending physician must certify that the specific type and frequency of at home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.~~

~~(C) Coverage is limited to:~~

~~(I) No more than the number and type of at home recovery visits certified as necessary by the insured's attending physician. The total number of at home recovery visits shall not exceed the number of Medicare approved home health care~~

~~visits under a Medicare approved home care plan of treatment.~~

~~(II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit.~~

~~(III) One thousand six hundred dollars (\$1,600) per calendar year.~~

~~(IV) Seven visits in any one week.~~

~~(V) Care furnished on a visiting basis in the insured's home.~~

~~(VI) Services provided by a care provider, as defined in this Rule.~~

~~(VII) At home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.~~

~~(VIII) At home recovery~~

visits received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home health care visit.

- (iii) Coverage is excluded for:
 - (A) Home care visits paid for by Medicare or other government programs; and
 - (B) Care provided by family members, unpaid volunteers or providers who are not care providers.
- (k) New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.
- (l) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a

group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.

11 NCAC 12 .0836 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS

- (a) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in 11 NCAC 12 .0835(2).
- (b) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this Rule shall be offered for sale in this State, except as may be permitted in 11 NCAC 12 .0835(3)(k).
- (c) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "J" listed in this Rule and conform to the definitions in G.S. 58 54 1 and 11 NCAC 12 .0815. Each benefit shall be structured in accordance with the format provided in 11 NCAC 12 .0835(2) and (3), and the policy shall list the benefits in the order shown in this Section. For purposes of this Rule, "structure, language, and format" means style, arrangement, and overall content of a benefit.
- (d) An issuer may use, in addition to the benefit plan designations required in Paragraph (c) of this Rule, other designations to the extent permitted by law.
- (e) Make up of benefit plans:
 - (1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in 11 NCAC 12 .0835(2).
 - (2) Standardized Medicare supplement benefit plan "B" shall include only the following: The Core Benefit plus the Medicare Part A Deductible as defined in 11 NCAC 12 .0835(3)(a).
 - (3) Standardized Medicare supplement benefit plan "C" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (c), and (h) respectively.

- (4) ~~Standardized Medicare supplement benefit plan "D" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (h), and (j) respectively.~~
- (5) ~~Standardized Medicare supplement benefit plan "E" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in 11 NCAC 12 .0835(3)(a), (b), (h), and (i) respectively.~~
- (6) ~~Standardized Medicare supplement benefit plan "F" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, the Part B Deductible, 100 percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (e), (e), and (h) respectively.~~
- (7) ~~Standardized Medicare supplement benefit plan "G" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 80 Percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (d), (h), and (j) respectively.~~
- (8) ~~Standardized Medicare supplement benefit plan "H" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (f), and (h) respectively.~~
- (9) ~~Standardized Medicare supplement benefit plan "I" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 100 Percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (e), (f), (h), and (j) respectively.~~
- (10) ~~Standardized Medicare supplement benefit plan "J" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100 percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically~~

~~Necessary Emergency Care in a Foreign Country, Preventive Medical Care and the At Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (e), (e), (g), (h), (i), and (j) respectively.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.

11 NCAC 12 .0837 OPEN ENROLLMENT

- (a) ~~No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six month period beginning with the first month in which an individual (who is aged 65 years or older) is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this Rule without regard to age. No issuer shall use any method of marketing that discourages the sale of any approved plan to persons eligible for open enrollment.~~
- (b) ~~Paragraph (a) of this Rule does not prevent the exclusion of benefits under a policy during the first six months, based on a pre existing condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six month period before the policy became effective.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.

11 NCAC 12 .0838 FILING AND APPROVAL OF POLICIES/CERTIFICATES AND PREMIUM RATES

- (a) ~~An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this State unless the policy form or certificate form has been filed in triplicate with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by statute or rule.~~
- (b) ~~An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by statute or rule.~~
- (c) ~~Except as provided in Subparagraph (c)(1) of this Rule, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.~~
 - (1) ~~An issuer may offer, with the approval of the Commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:~~
 - (A) ~~The inclusion of new or innovative benefits;~~
 - (B) ~~The addition of either direct response or agent marketing methods;~~
 - (C) ~~The addition of either guaranteed issue or underwritten coverage;~~

(D) ~~The offering of coverage to individuals eligible for Medicare by reason of disability.~~

(2) ~~For the purposes of this Rule, a "type" means an individual policy or a group policy.~~

(d) ~~Except as provided in Subparagraph (d)(1) of this Rule, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.~~

(1) ~~An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner written notice of the issuer's decision at least 30 days before discontinuing availability. After the Commissioner receives this notice, the issuer shall no longer offer for sale the policy form or certificate form in this State.~~

(2) ~~An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (d)(1) of this Rule shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate and in the public interest.~~

(e) ~~The sale or other transfer of a Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this Rule.~~

(f) ~~A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (d) of this Rule unless the issuer complies with the following requirements:~~

(1) ~~The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.~~

(2) ~~The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential that is in the public interest.~~

(g) ~~Refund or Credit Calculation.~~

(1) ~~Except as provided in Subparagraph (g)(2) of this Rule, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit~~

~~calculation prescribed in 11 NCAC 12 .0822(b).~~

(2) ~~Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.

11 NCAC 12 .0839 MEDICARE SELECT POLICIES AND CERTIFICATES

(a) ~~No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this Rule.~~

(b) ~~For the purposes of this Rule:~~

(1) ~~"Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.~~

(2) ~~"Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.~~

(3) ~~"Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.~~

(4) ~~"Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.~~

(5) ~~"Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.~~

(6) ~~"Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.~~

(7) ~~"Service area" means the geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.~~

(c) ~~The Commissioner shall authorize an issuer to offer a Medicare Select policy or certificate, under this Rule and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this Rule.~~

(d) ~~A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the Commissioner.~~

(e) ~~A Medicare Select issuer shall file a proposed plan of operation with the Commissioner. The plan of operation shall contain at least the following information:~~

(1) ~~Evidence that all covered services that are subject to restricted network provisions are~~

available and accessible through network providers, including a demonstration that:

- (A) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after hour care. The hours of operation and availability of after hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.
- (B) The number of network providers in the services area is sufficient, with respect to current and expected policyholders.
 - (i) To adequately deliver all services that are subject to a restricted network provision; and
 - (ii) To make appropriate referrals.
- (C) There are written agreements with network providers describing specific responsibilities.
- (D) Emergency care is available 24 hours per day and seven days per week.
- (E) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.
- (2) A statement or map providing a clear description of the services area.
- (3) A description of the grievance procedure to be utilized.
- (4) A description of the quality assurance program, including:
 - (A) The formal organizational structure;
 - (B) The written criteria for selection, retention, and removal of network providers;
 - (C) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.
- (5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Paragraph (i) of this Rule.

(f) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner before implementing the changes. Changes shall be considered approved by the Commissioner after 30 days unless specifically disapproved. An updated list of network providers shall be filed with the Commissioner at least quarterly.

(g) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

- (1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and
- (2) It is not feasible to obtain services through a network provider.

(h) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(i) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. The disclosure shall include the following:

- (1) An outline of coverage that permits the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
 - (A) Other Medicare supplement policies or certificates offered by the issuer; and
 - (B) Other Medicare Select policies or certificates.
- (2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.
- (3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.
- (4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.
- (5) A description of limitations on referrals to restricted network providers and to other providers.
- (6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.
- (7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(j) Before the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed

and dated form stating that the applicant has received the information provided under Paragraph (i) of this Rule and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(k) A Medicare Select issuer shall have and use the following procedures for hearing complaints and resolving written grievances from the subscribers, which procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures:

- (1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.
- (2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.
- (3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.
- (4) If a grievance is found to be valid, corrective action shall be taken promptly.
- (5) All concerned parties shall be notified about the results of a grievance.
- (6) The issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(l) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(m) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months. For the purposes of this Paragraph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at home recovery services, or coverage for Part B excess charges.

(n) Medicare Select policies and certificates shall provide for continuation of coverage in the event the U.S. Secretary of Health and Human Services determines that Medicare Select policies and certificates issued under this Rule should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement

policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificate available without requiring evidence of insurability. For the purposes of this Paragraph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at home recovery services, or coverage for Part B excess charges.

(o) A Medicare Select issuer shall comply with requests for data made by State or federal agencies, including the U.S. Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25.

11 NCAC 12 .0840 HIGH DEDUCTIBLE PLANS

(a) In addition to the benefit plans specified in 11 NCAC 12 .0836, the following high deductible benefit plans are authorized for use in this State. The provisions of 11 NCAC 12.0836(a) through (d) apply to the plans in this Rule.

(1) Standardized Medicare supplement benefit high deductible Plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan F deductible. The covered expenses include the core benefit as defined in 11 NCAC 12 .0835(2), plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan F deductible shall consist of out of pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be one thousand five hundred dollars (\$1500) for 1998 and 1999, and shall be based on the calendar year.

(2) Standardized Medicare supplement benefit high deductible Plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible Plan J deductible. The covered expenses include the core benefit as defined in 11 NCAC 12 .0835(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at home

recovery benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The annual high deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be one thousand five hundred dollars (\$1500) for 1998 and 1999, and shall be based on a calendar year.

(b) After 1999, the annual deductibles for the plans described in Subparagraphs (a)(1) and (a)(2) of this Rule shall be those established annually by the Secretary of the United States Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10).

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

11 NCAC 12 .0841 CREDITABLE COVERAGE

(a) As used in this Rule:

- (1) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.
- (2) "Creditable coverage" has the same meaning as in G.S. 58-68-30(e)(1).

(b) If an applicant qualifies under 11 NCAC 12 .0837(a) and submits an application during the time period referenced in 11 NCAC 12 .0837(a) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(c) If the applicant qualifies under 11 NCAC 12 .0837(a) and submits an application during the time period referenced in 11 NCAC 12 .0837(a) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The manner of the reduction under this Paragraph shall be as prescribed by the Secretary of the United States Department of Health and Human Services.

(d) 11 NCAC 12 .0837(b) does not apply to this Rule.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

11 NCAC 12 .0842 GUARANTEED ISSUE FOR ELIGIBLE PERSONS

(a) As used in this Rule:

- (1) "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for

declaration of bankruptcy and has ceased doing business in the state.

- (2) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002 (Employee Retirement Income Security Act).
- (3) "Insolvency" means when an issuer, licensed to transact the business of insurance in this State, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.
- (4) "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859, Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:
 - (A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point of service option), plans offered by provider sponsored organizations, and preferred provider organization plans;
 - (B) Medicare medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
 - (C) Medicare+Choice private fee-for-service plans.

(b) Eligible persons are those individuals described in Paragraph (c) of this Rule whoseek to enroll under the policy during the period specified in Paragraph (d), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Paragraph (d) of this Rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) An eligible person is an individual described in any of the following Subparagraphs:

- (1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;

- (2) ~~The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described in this Subparagraph that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:~~
- (A) ~~The certification of the organization or plan under this part has been terminated; or~~
 - (B) ~~The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;~~
 - (C) ~~The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of the United States Department of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; or~~
 - (D) ~~The individual demonstrates, in accordance with guidelines established by the Secretary of the United States Department of Health and Human Services, that:~~
 - (i) ~~The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or~~
 - (ii) ~~The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or~~
- (E) ~~The individual meets such other exceptional conditions as the Secretary of the United States Department of Health and Human Services may provide.~~
- (3) ~~The individual is enrolled with:~~
- (A) ~~An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); or~~
 - (B) ~~A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or~~
 - (C) ~~Any PACE program under Section 1894 of the Social Security Act; or~~
 - (D) ~~An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or~~
 - (E) ~~An organization under a Medicare Select policy; and~~
 - (F) ~~The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Subparagraph (2) of this Paragraph.~~
- (4) ~~The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:~~
- (A) ~~Of the insolvency of the issuer or bankruptcy of the nonissuer organization or of other involuntary termination of coverage or enrollment under the policy;~~
 - (B) ~~The issuer of the policy substantially violated a material provision of the policy; or~~
 - (C) ~~The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;~~
- (5) ~~The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a~~

Medicare Select policy; and the subsequent enrollment is terminated by the enrollee during any period within the first 12 months after the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act);

(6) The individual, upon first becoming enrolled in Medicare part A or part B for benefits at age 65 or older, enrolls in a Medicare+Choice plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan by not later than 12 months after the effective date of enrollment; or

(7) The individual is enrolled in a Medicare risk plan under part C of Medicare and the plan is later converted to a Medicare+Choice plan, and first disenrolls from the converted plan by not later than 12 months after the effective date of the conversion.

(d) Guaranteed Issue Time Periods:

(1) In the case of an individual described in Subparagraph (e)(1) of this Rule, the guaranteed issued period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;

(2) In the case of an individual described in Subparagraphs (e)(2), (e)(3), (e)(5) or (e)(6) of this Rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and 63 days after the date the applicable coverage is terminated;

(3) In the case of an individual described in Part (e)(4)(A) of this Rule, the guaranteed issue period begins on the earlier of:

(A) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, or

(B) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;

(4) In case of an individual, described in Subparagraph (e)(2), Parts (e)(4)(B), (e)(4)(C); and Subparagraphs (e)(5) or (e)(6) of this Rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(5) In the case of an individual described in Subparagraph (e) of this Rule but not

described in the preceding provisions of this Section, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(e) Extended Medigap access for interrupted trial periods:

(1) In the case of an individual described in Subparagraph (e)(5) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with an organization or provider described in Subparagraph (e)(5) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be an initial enrollment described in Subparagraph (e)(5) of this Rule;

(2) In the case of an individual described in Subparagraph (e)(6) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with a plan or in a program described in Subparagraph (e)(6) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subparagraph (e)(6) of this Rule;

(3) For the purposes of Subparagraphs (e)(5) and (e)(6) of this Rule, no enrollment of an individual with an organization or provider described in Subparagraph (e)(5) of this Rule, or with a plan or program described in Subparagraph (e)(6) of this Rule, may be deemed to be an initial enrollment under this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(f) The Medicare supplement policy to which eligible persons are entitled under:

(1) Subparagraphs (e)(1), (2), (3) and (4) of this Rule is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Subparagraph (e)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subparagraph (1) of this Paragraph.

(3) Subparagraph (e)(6) shall include any Medicare supplement policy offered by any issuer.

(g) Notification provisions:

(1) At the time of an event described in Paragraph (e) of this Rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy,

~~or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated contemporaneously with the notification of termination.~~

(2) ~~At the time of an event described in Paragraph (e) of this Rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.~~

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 54 – PSYCHOLOGY BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to adopt the rules cited as 21 NCAC 54 .1611 and .1708 and amend the rules cited as 21 NCAC 54 .1701, .1707, .1802, .1901 and .2009.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: April 20, 2005

Time: 4:00 p.m.

Location: LaQuinta Inn & Suites, 2211 Summit Park Lane, Raleigh, NC 27612

Reason for Proposed Action: To define the conditions under which an individual who is pursuing postdoctoral training or experience must practice in order to be exempt from licensure. To amend the number of years which an applicant must have been licensed and practiced in another state or province in order to qualify for licensure under senior psychologist provisions. To amend the requirements for licensure at the Psychological Associate level. To clarify the conditions which a candidate must meet in order to be granted special examination accommodations. To define the requirements to qualify for licensure under reciprocity provisions.

Procedure by which a person can object to the agency on a proposed rule: Any person may submit written objections to the agency either prior to or at the public hearing. Written objections should be sent to Martha Storie, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, or fax (828) 265-8611.

Written comments may be submitted to: Martha N. Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, fax 828-265-8611.

Comment period ends: May 31, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 .1600 - GENERAL PROVISIONS

21 NCAC 54 .1611 PRACTICE BY POSTDOCTORAL TRAINEES

An individual pursuing postdoctoral training or experience in psychology shall be exempt from licensure pursuant to G.S. 90-270.4(d) if the following criteria are met:

- (1) the postdoctoral training or experience in psychology meets all the criteria for a training program in psychology as defined in 21 NCAC 54 .2009(i); and
- (2) the individual has completed all doctoral degree requirements for a program in psychology from an institution of higher education as defined in G.S. 90-270.2(5). Evidence of completion of all degree requirements shall be in the form of either an official transcript showing the date on which the degree was conferred; or a letter from the director of graduate studies verifying that all substantive and administrative requirements for the doctoral degree have been met without exception, and stating the date on which the doctoral degree will be awarded.

Authority G.S. 90-270.4(d); 90-270.9.

SECTION .1700 - APPLICATION FOR LICENSURE

21 NCAC 54 .1701 INFORMATION REQUIRED

(a) Except as provided in ~~Rule-Rules~~ .1707 and .1708 of this Section, the information required for each applicant for licensure shall consist of:

- (1) typed, or legibly printed, notarized application form, supervision contract form, and application fee;
- (2) ~~official, graduate~~ official college transcripts transcript(s) sent directly to the Board by ~~the any training institutions(s); institution(s) from which the applicant received a graduate degree;~~
- (3) completed information forms from present and past supervisors;
- (4) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;
- ~~(5) evidence of being 18 years of age and of good moral character;~~
- ~~(6)~~(5) verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license-license, is currently licensed, or previously has been licensed, if applicable;
- ~~(7)~~(6) official report of any previous score obtained on the Examination for Professional Practice in Psychology sent directly to the Board from the ~~Professional Examination Service, Association of State and Provincial Psychology Boards,~~ if applicable; and
- ~~(8)~~(7) additional documentation regarding educational credentials described in 21 NCAC 54 .1802 and 21 NCAC 54 .1803, if applicable.

(b) An application shall contain all ~~requested~~ required materials to be complete. An incomplete application shall be active for three months from the date ~~of application on which the application is received in the Board office.~~ At the end of such time, if still incomplete, the application shall be void, the applicant shall be deemed to have discontinued the application process, and the applicant shall totally reapply.

(c) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Paragraph (a)(1) of this Rule shall be filed in the ~~Board's~~ Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.11(a),(b); 90-270.13(a)(b); 90-270.15.

21 NCAC 54 .1707 SENIOR PSYCHOLOGIST

(a) A senior psychologist shall be someone who has achieved longevity in the practice of psychology and has demonstrated exemplary professional behavior over the course of his/her career, as defined in this Rule.

(b) To be approved for licensure at the Licensed Psychologist level on the basis of senior psychologist status, an applicant shall hold a doctoral degree from an institution of higher education and meet all of the following requirements:

- (1) is licensed and has been licensed for 45 10 continuous years at the doctoral level by one or more state or provincial psychology boards ~~in one or more jurisdictions~~ which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application in North Carolina; and
- (4) passes the North Carolina State Written Examination.

(c) To be approved for licensure at the Licensed Psychological Associate level on the basis of senior psychologist status, an applicant shall hold a master's, specialist, or doctoral degree from an institution of higher education and meet all of the following requirements:

- (1) is licensed and has been licensed for 45 10 continuous years at the masters level by one or more state or provincial psychology boards ~~in one or more jurisdictions~~ which are members of the Association of State and Provincial Psychology Board, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application in North Carolina; and
- (4) passes the North Carolina State Written Examination.

(d) The information required for each applicant shall consist of:

- (1) typed, or legibly printed, notarized application form, including an affidavit which attests to meeting the requirements specified in Paragraph (b) or (c) of this Rule;
- (2) typed, or legibly printed, notarized supervision contract form;
- (3) application fee;
- ~~(2)~~(4) official, graduate ~~official college transcripts transcript(s)~~ sent directly to the Board by the

any training institution(s); institution(s) from which the applicant received a graduate degree;

~~(3)~~(5) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist; and

~~(4)~~(6) verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdictionstate or province in which the applicant has applied for a license license, is currently licensed, or previously has been licensed.

(e) An application shall contain all requested materials to be complete. An incomplete application shall be active for three months from the date of application on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, the applicant shall be deemed to have discontinued the application process, and the applicant shall totally reapply.

Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.13(a),(e).

21 NCAC 54 .1708 RECIPROCITY

(a) To be approved for licensure at the Licensed Psychologist level on the basis of reciprocity, an applicant shall hold a doctoral degree in psychology from an institution of higher education and shall meet all of the following requirements:

- (1) The applicant shall hold a current valid license in good standing to practice psychology which has been granted by a state or provincial psychology board which is a member of the Association of State and Provincial Psychology Boards, hereinafter referred to as ASPPB member board, with which the Board has established a formal written agreement of reciprocity for licensure at the Psychologist level. An applicant who documents that he/she meets any of the following criteria shall be deemed to meet the requirement specified in this Subparagraph:

(A) is a current holder in good standing of a Certificate of Professional Qualification (CPO) from the Association of State and Provincial Psychology Boards (ASPPB);

(B) is a current registrant in good standing in the National Register of Health Service Providers in Psychology; or

(C) is a diplomate in good standing of the American Board of Professional Psychology.

(2) The applicant shall have no unresolved complaint in any jurisdiction at the time of application in North Carolina.

(3) The applicant shall have behaved in compliance with G.S. 90-270.15(a).

(4) The applicant shall have passed the North Carolina State Written Examination.

(b) To be approved for licensure at the Licensed Psychological Associate level on the basis of reciprocity, an applicant shall hold a master's, specialist, or doctoral degree from an institution of higher education and shall meet all of the following requirements:

(1) The applicant shall hold a current valid license in good standing to practice psychology which has been granted by a state or provincial psychology board which is a member of the Association of State and Provincial Psychology Boards, hereinafter referred to as ASPPB member board, with which the Board has established a formal written agreement of reciprocity for licensure at the Psychological Associate level.

(2) The applicant shall have no unresolved complaint in any jurisdiction at the time of application in North Carolina.

(3) The applicant shall have behaved in compliance with G.S. 90-270.15(a).

(4) The applicant shall have passed the North Carolina State Written Examination.

(c) The information required for each applicant for licensure on the basis of reciprocity shall consist of:

(1) typed, or legibly printed, notarized application form, including an affidavit which attests to having no unresolved complaint in any jurisdiction at the time of application in North Carolina;

(2) typed, or legibly printed, notarized supervision contract form;

(3) application fee;

(4) official college transcript(s) sent directly to the Board by any training institution from which the applicant received a graduate degree;

(5) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;

(6) verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously has been licensed;

(7) documentation of meeting criteria specified in Parts (a)(1)(A)-(C) of this Rule, if applicable, in the form of written verification sent directly to the Board from either the ASPPB, National Register of Health Service Providers in

- (8) Psychology, or American Board of Professional Psychology; and documentation of meeting requirements for health services provider certification as specified in Section .2700 of this Chapter, if applicable.

(d) An application shall contain all required materials to be complete. An incomplete application shall be active for three months from the date on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, the applicant shall be deemed to have discontinued the application process, and the applicant shall totally reapply.

(e) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (d)(1), (d)(2), and (d)(3) of this Rule shall be filed in the Board's office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

Authority G.S. 90-270.9; 90-270.13(b),(e).

SECTION .1800 - EDUCATION

21 NCAC 54 .1802 PSYCHOLOGICAL ASSOCIATE

(a) Licensure for the level of psychological associate requires a master's degree or specialist degree in psychology from an institution of higher education. ~~For an individual applying before January 1, 1999, his or her degree program shall be publicly identified and clearly labeled as a psychology program. For an individual applying on or after January 1, 1999, his or her degree program~~ The degree program shall meet all of the following requirements:

- (1) The program shall be publicly identified and clearly labeled as a psychology program; such a program shall specify in pertinent institutional catalogues its intent to educate and train ~~psychologists~~ students to engage in the activities which constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall maintain clear authority and primary responsibility for the core and specialty areas ~~whether or not even if~~ the program crosses administrative lines.
- (3) The program shall have an identifiable body of students in residence at the institution who are matriculated in that program for a degree.
- (4) There shall be an identifiable full-time psychology faculty in residence at the institution, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the home campus of the institution.
- (5) There shall be a psychologist responsible for the ~~applicant's~~ student's program either as the administrative head of the program, or as the advisor, major professor, or committee chair for the individual ~~applicant's~~ student's program.

(6) The program shall be an integrated, organized sequence of study in psychology as demonstrated by an identifiable curriculum track or tracks wherein course sequences are ~~outlined~~ described in institutional catalogues, departmental handbooks, or other institutional publications.

(7) The program shall encompass the equivalent of a minimum of one academic year of full-time graduate study in student residence at the institution from which the degree is granted. Residence requires interaction with psychology faculty and other matriculated psychology ~~students~~ students at the institution. One year's residency is defined as 30 semester (45 ~~quarter~~ quarter or 40 trimester) hours taken on a full-time or part-time basis at the institution.

(8) The program shall include internship, externship, practicum, or other supervised field experience appropriate to the area of specialty and the practice of ~~psychology~~ psychology, as defined in G.S. 90-270.2(8), which shall be referred to hereinafter as internship. This ~~experience~~ internship shall meet all of the following criteria:

(A) It shall ~~have been~~ be a planned and directed program of training in the practice of psychology, in contrast to on-the-job training, and shall ~~have provided~~ provide the trainee with a planned and directed sequence of training that is integrated with the educational program in which the ~~individual was~~ student is enrolled. This ~~training~~ internship shall ~~have been~~ be planned by the ~~program's~~ educational program faculty and training site staff, rather than by the student.

~~(B)~~(C) The ~~training~~ internship site shall have ~~had~~ a clearly designated and appropriately licensed or certified psychologist or psychological associate ~~who was~~ responsible for the integrity and quality of the ~~training program~~ internship. Such person shall be employed and working at the internship site.

~~(C)~~(E) The ~~training~~ internship shall ~~have been~~ be a minimum of 12 weeks consisting of at least 500 hours of supervised ~~training~~ training in the practice of psychology. ~~At least 50% of the training shall have been spent in the practice of psychology.~~

~~(D)~~(B) The ~~training program~~ internship shall have ~~had~~ a written program description detailing its ~~functioning~~

- ~~and the program of training, or a written agreement, developed prior to the time of the training, between the student's educational program and the training site detailing the responsibilities of the student and the training site. Such an agreement shall have been approved by the applicant's student's educational program prior to its occurrence.~~
- (E) ~~The training site shall have provided a minimum of one hour per week of individual face to face, regularly scheduled supervision with the specific intent of overseeing the practice of psychology.~~
- (F) ~~Supervision may have been provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall have been provided by an appropriately licensed or certified psychologist or psychological associate, or other psychologist who is exempt from licensure under the North Carolina Psychology Practice Act.~~
- (F) The internship in the practice of psychology shall be completed within a period of 12 consecutive months at not more than two internship sites.
- (G) Except as provided in Part (a)(8)(H) of this Rule, regularly scheduled individual face-to-face supervision with the specific intent of overseeing the practice of psychology shall be provided by a licensed or certified psychologist or psychological associate employed by the training site, at a rate of not less than one hour per week during at least 12 separate weeks of the internship. The minimum 12 hours of supervision in not less than 12 weeks shall be provided for not less than 500 hours of training in the practice of psychology during the internship. In North Carolina, supervision of the student's internship may be provided by a psychologist who is exempt from licensure pursuant to G.S. 90-270.4(b). For an internship exceeding the minimum requirements of 12 weeks and 500 hours, not less than 12 hours of supervision as described in this Subparagraph shall be provided by a psychologist.
- (H) If completing an internship outside of North Carolina, the student shall be provided regularly scheduled individual face-to-face supervision with the specific intent of overseeing the practice of psychology by a licensed or certified psychologist or psychological associate, or by an individual holding a master's, specialist, or doctoral degree in psychology, employed by the training site at a rate of not less than one hour per week during at least 12 separate weeks of the internship. The minimum of 12 hours of supervision in not less than 12 weeks shall be provided for not less than 500 hours of training in the practice of psychology during the internship. Proof of the supervisor's license or degree program, as applicable, may be required by the Board to establish the supervisor's training in psychology. For an internship exceeding the minimum requirements of 12 weeks and 500 hours, not less than 12 hours of supervision as described in this Subparagraph shall be provided by a licensed or certified psychologist or psychological associate, or by an individual holding a master's, specialist, or doctoral degree in psychology, employed by the training site.
- ~~(G)(D) Persons—A student enrolled in the training an internship shall have been be designated as an "intern," "extern," or "practicum student," "interns", "externs", or "practicum students", or shall hold a title other designation which clearly indicated—indicates training status—status in the practice of psychology.~~
- (9) Except as provided in Paragraph (b) of this Rule, the program of study shall include a minimum of 45 semester (68 quarter) quarter or 60 trimester) hours of graduate study in standard psychology courses, including courses drawn from academic psychology (e.g., social, experimental, physiological, developmental, history and systems), statistics and research design, scientific and professional ethics and standards, and a specialty area. Of the required 45 semester (68 quarter) quarter or 60 trimester) program hours, not more than 6 semester (9 quarter) quarter or 9 trimester) hours shall be credited for internship/practicum and not more than 6 semester (9 quarter) quarter or 9 trimester)

hours shall be credited for thesis/dissertation. No credit shall be allowed for audited courses or courses taken at an institution which does not meet the definition of an "institution of higher education" as defined by G.S. 90-270.2(5).

(b) If an individual's degree program did not include a minimum of 45 semester (68 quarter or 60 trimester) hours of course content as defined in Subparagraph (a)(9) of this Rule, but included a minimum of 39 semester (59 quarter or 51 trimester) hours of graduate study in standard psychology courses as specified in Subparagraph (a)(9) of this Rule, allowing not more than 6 semester (9 quarter or 9 trimester) hours for practicum/internship or 6 semester (9 quarter or 9 trimester) hours for thesis/dissertation, the individual shall be allowed to take and must pass with a grade of "B" or above additional graduate level course work to meet the hourly requirement specified in Subparagraph (a)(9) of this Rule. The individual shall complete specified course content, as defined by Subparagraph (a)(9) of this Rule, to meet the minimum educational requirements to apply for licensure. The aforementioned course work shall be completed at an institution of higher education as defined by G.S. 90-270.2(5) in a graduate psychology program in the same specialty area as the degree program completed by the individual and shall be reported on an official college transcript. No credit shall be accepted for audited courses. This additional graduate level course work shall not duplicate course work taken by the individual in his or her degree program or prior to admittance to his or her degree program and shall be completed in one or more of the following areas:

- (1) academic psychology (e.g., social, experimental, physiological, developmental, history and systems);
- (2) statistics and research design;
- (3) scientific and professional ethics and standards; or
- (4) electives offered in the course of study for the individual's specialty area (e.g., clinical psychology, counseling psychology, school psychology, or other specialty area in psychology).

(c) If an individual's degree program did not include a minimum of 39 semester (59 quarter or 51 trimester) hours in standard psychology courses as specified in Subparagraph (a)(9) of this Rule, allowing not more than six semester (nine quarter or nine trimester) hours for practicum/internship and not more than six semester (nine quarter or nine trimester) hours for thesis/dissertation, the individual shall not be allowed to obtain additional hours at a post-graduate level to meet the hourly requirements in Subparagraph (a)(9) of this Rule.

(d) An individual shall not, under any circumstance following the completion of the individual's master's or specialist degree in psychology, be allowed to complete a practicum, internship, or other training requiring the individual to practice psychology in order to meet the minimum educational requirement.

~~(b)~~(e) An applicant whose credentials have been approved by the Board for examination at the licensed psychologist level may be issued a license as a psychological associate if the applicant

fails an examination at the licensed psychologist level but passes such at the psychological associate level. To receive this license, the applicant shall make a written request to the Board for licensure at the psychological associate level within 30 days from the date on which the applicant is notified of his or her examination score.

Authority G.S. 90-270.9; 90-270.11(b).

SECTION .1900 – EXAMINATION

21 NCAC 54 .1901 TYPES

(a) Qualifying Examinations. National and state examinations shall be administered. The examinations shall be taken only for licensure purposes. The applicant shall comply with deadlines and procedures established by the examination contractor and testing vendor when approved to take a computer administered examination.

(1) National Examination. The national examination is the Examination for Professional Practice in Psychology (EPPP) which is developed by the Association of State and Provincial Psychology Boards (ASPPB). The EPPP assesses the applicant's knowledge of the subject matter of psychology and his or her understanding of professional and ethical problems in the practice of psychology. ~~For paper and pencil administrations of the EPPP in April, 2001, and in October, 2001, the passing point for licensed psychologist shall be set at 70% of the total scored items on the examination, and the passing point for licensed psychological associate shall be set at 64% of the total scored items on the examination. For computer delivered administrations of the EPPP beginning in April, 2001, and for all other computer delivered administrations of the EPPP thereafter, the~~ The passing point for licensed psychologist shall be a scaled score of 500, and the passing point for licensed psychological associate shall be a scaled score of 440. This examination shall not be required for an applicant who has previously taken the EPPP and whose score met the North Carolina passing point which was established for that particular administration date of the examination unless the Board determines pursuant to G.S. 90-270.15 that an individual shall be required to take and pass a current form of the EPPP. Further, this examination shall not be required for an applicant who documents meeting requirements for licensure specified in Rules .1707 or .1708 of this Chapter.

(2) State Examination. The Board-developed state examination assesses the applicant's knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and

supervision, and other legal requirements. The passing point for all licensees shall be set at 78% of the total scored items on the examination.

(b) Oral Examination. Upon proof that an applicant or licensee has engaged in any of the prohibited actions specified in G.S. 90-270.15(a), the Board may administer a state oral examination which assesses knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements.

(c) Special Administrations. Candidates with documented impairments or disabilities which meet compliance requirements of the Americans with Disabilities Act of 1990 (ADA) shall be ~~tested~~ administered the EPPP and State Examination under conditions that shall minimize the effect of the impairments or disabilities on their performance. In general, those lifestyle accommodations which an individual uses to compensate for impairments or disabilities, and which have become accepted practice for the individual in his or her graduate program or since the onset of the applicant's impairment of disability, shall be considered as the most appropriate accommodation for testing. Special test administrations shall be as comparable as possible to a standard administration.

Authority G.S. 90-270.9; 90-270.11; 90-270.15(b).

SECTION .2000 - SUPERVISION

21 NCAC 54 .2009 LICENSED PSYCHOLOGIST

(a) Except as provided in 21 NCAC 54 ~~.1707~~, .1707 and 21 NCAC 54 .1708, to be issued a permanent license at the Psychologist level, an applicant shall document a minimum of 2 years consisting of at least 3000 hours of supervised practice which shall meet the requirements specified in Paragraphs (i) and (j) of this Rule. A minimum of 1 calendar year consisting of at least 1500 hours of this supervised practice shall be accrued at the postdoctoral level.

(b) A psychologist who shall meet all other requirements for a permanent license except the two years of supervised experience shall be issued a provisional license at the Psychologist level and shall comply with supervision requirements specified in this Rule.

(c) If practicing psychology in North Carolina, a provisional licensee shall receive at least one hour per week of face-to-face individual supervision by an appropriate supervisor as defined in Rule .2001 of this Section until permanent status shall be approved by the Board.

(d) A provisional licensee who is not practicing psychology shall not be required to receive supervision.

(e) A provisional licensee who engages in the practice of psychology in a jurisdiction other than North Carolina shall not be required to receive supervision for those services rendered in another jurisdiction so long as said services shall be rendered in a manner consistent with the jurisdiction's legal requirements.

(f) A written, notarized supervision contract form shall be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board and within 30 days after receiving written notification from the Board that the filing of a new form is necessary to provide for the protection of

the public or the regulation of the practice of psychology. A supervision contract form shall document either that supervision is required and shall be received, or that supervision is not required. A separate supervision contract form shall be filed for each separate work setting. If receiving supervision from more than one supervisor, a separate supervision contract form shall be filed with each individual supervisor.

(g) A supervisor shall report to the Board that agreed upon supervision has occurred and shall file a final report upon termination of supervision. If not receiving supervision, it shall be the responsibility of the provisional licensee to report such to the Board. A report shall be submitted to the Board within 30 days after receiving written notification from the Board that such is due, within 2 weeks of termination of supervision, and within 2 weeks of a change in the conditions specified in the supervision contract form on file with the Board.

(h) Additional supervision and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggests possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview with the Board or its designated representative(s) may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(i) One year of supervised experience shall meet all of the following criteria for a training program in psychology:

- (1) The training shall be a planned and directed program in the practice of psychology, in contrast to "on the job" training, and shall provide the trainee with a planned, programmed sequence of training experience.
- (2) The training site shall have a written statement or brochure which describes its training program and is made available to prospective trainees.
- (3) Trainees shall be designated as "interns," "fellows," or "residents," or shall hold other designation which clearly indicates training status.
- (4) The training shall be completed within a consecutive period of 24 months.
- (5) The training shall consist of at least 1500 hours of practice in psychology as defined by G.S. 90-270.2(8).
- (6) The training site shall have a minimum of two doctorally trained licensed, certified, or license eligible psychologists at the training site as supervisors who shall have ongoing contact with the trainee.
- (7) The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who shall be on the staff of the training site, who shall approve and monitor the training, who shall be familiar with the training site's purposes and functions, who shall have ongoing contact with the trainee, and who shall agree to

- assume responsibility for the quality, suitability, and implementation of the training experience.
- (8) The training shall provide a minimum of two hours per week of individual face-to-face discussion of the trainee's practice, with the specific intent of overseeing the psychological services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall be provided by licensed, certified, or license-eligible doctorally trained psychologists.
- (9) In addition to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences. Internships accredited by the American Psychological Association and other internships which meet all of the specified criteria in this Paragraph shall be deemed to meet the requirements in this Paragraph.
- (j) One year of supervised experience shall meet all of the following criteria:
- (1) A minimum of one hour per week of face-to-face, individual supervision shall be provided.
 - (2) The experience shall consist of a minimum of 1 calendar year, shall include 1500 hours of practice, and shall be completed within a consecutive 4-year period.
 - (3) Supervision shall be provided for the practice of psychology as defined by G.S. 90-270.2(8).
 - (4) Supervision shall be provided by an individual who shall be recognized as an appropriate supervisor of licensees as defined in Rule .2001 of this Section.
- (k) Contract and report forms shall be provided by the Board.
- Authority G.S. 90-270.5(d); 90-270.9.*

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting February 17, 2005, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
04	NCAC	01E	.0303	n/a G.S. 150B-21.5(b)(1) Eff. March 1, 2005
12	NCAC	10B	.0204-.0206*	19:10 NCR
12	NCAC	10B	.1701-.1705*	19:10 NCR
12	NCAC	10B	.2002	19:10 NCR
16	NCAC	06B	.0108	19:01 NCR
16	NCAC	06D	.0501	19:01 NCR
16	NCAC	06D	.0503*	19:01 NCR
16	NCAC	06D	.0505-.0507	19:01 NCR
16	NCAC	06G	.0305*	19:01 NCR
16	NCAC	06G	.0312-.0313*	19:01 NCR
16	NCAC	06G	.0501*	19:01 NCR
21	NCAC	12	.0204*	19:05 NCR
21	NCAC	12	.0903*	19:05 NCR
21	NCAC	50	.0301	19:10 NCR
21	NCAC	50	.0306*	19:10 NCR
21	NCAC	50	.0505*	19:10 NCR
21	NCAC	50	.0508*	19:10 NCR
21	NCAC	50	.0513-.0515*	19:10 NCR
21	NCAC	50	.1101*	19:10 NCR
21	NCAC	50	.1102	19:10 NCR
25	NCAC	01C	.1004*	19:03 NCR
25	NCAC	01D	.1925*	19:06 NCR
25	NCAC	01D	.1928-.1929*	19:06 NCR
25	NCAC	01D	.1930	19:06 NCR
25	NCAC	01D	.1932-.1934	19:06 NCR
25	NCAC	01D	.1936	19:06 NCR
25	NCAC	01D	.1938-.1944	19:06 NCR
25	NCAC	01D	.1945*	19:06 NCR
25	NCAC	01D	.1946-.1951	19:06 NCR
25	NCAC	01D	.2502	19:03 NCR
25	NCAC	01D	.2511	19:03 NCR
25	NCAC	01J	.0501-.0511	19:03 NCR
25	NCAC	01J	.1201*	19:03 NCR
25	NCAC	01J	.1202	19:03 NCR
25	NCAC	01J	.1203-.1205*	19:03 NCR
25	NCAC	01J	.1206	19:03 NCR
25	NCAC	01J	.1207*	19:03 NCR
25	NCAC	01J	.1208	19:03 NCR
25	NCAC	01J	.1301*	19:03 NCR
25	NCAC	01J	.1401-.1407*	19:03 NCR
25	NCAC	01J	.1411-.1412*	19:03 NCR
25	NCAC	01K	.0105-.0106*	19:03 NCR
25	NCAC	01K	.0209-.0210*	19:03 NCR
25	NCAC	01K	.0211	19:03 NCR
25	NCAC	01K	.0214	19:03 NCR
25	NCAC	01K	.0402-.0404*	19:03 NCR

25	NCAC	01K	.0701-.0702*	19:03 NCR
25	NCAC	01K	.0703	19:03 NCR
25	NCAC	01K	.0705-.0706*	19:03 NCR
25	NCAC	01K	.0708	19:03 NCR
25	NCAC	01O	.0101*	19:03 NCR
25	NCAC	01O	.0201*	19:03 NCR
25	NCAC	01O	.0202	19:03 NCR
25	NCAC	01O	.0203-.0205*	19:03 NCR
25	NCAC	01O	.0301-.0304	19:03 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

13	NCAC	07F	.0606*	19:03 NCR
15A	NCAC	02Q	.0102*	19:03 NCR

TITLE 12 – DEPARTMENT OF JUSTICE

**12 NCAC 10B .0204 SUSPENSION: REVOCATION:
OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a one year time period as specified by the rules in this Subchapter; or
- (2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the in-service training requirements as presented in 12 NCAC 10B .1700, .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0306(a)(6) or .0410(a) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or
- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and

Training Standards. Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked shall not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification revoked shall not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

(g) If the Commission does revoke, suspend, or deny the certification of a justice officer pursuant to this Rule, the period of such sanction shall be as set out in 12 NCAC 10B .0205.

*History Note: Authority G.S. 17E-7;
Eff. January 1, 1990;
Amended Eff. July 1, 1990;
Recodified from 12 NCAC 10B .0204 Eff. January 1, 1991;
Amended Eff. April 1, 1991; January 1, 1991;
Recodified from 12 NCAC 10B .0207 Eff. January 1, 1992;
Amended Eff. March 1, 2005; January 1, 2005; August 1, 1998;
January 1, 1996; January 1, 1995; January 1, 1994;
January 1, 1993.*

**12 NCAC 10B .0205 PERIOD OF SUSPENSION:
REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
 - (a) commission or conviction of a felony; or
 - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
 - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
 - (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1) and (4); or
 - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain credit for in-service training as required by 12 NCAC 10B .1700, .2000, or .2100; or
 - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or
 - (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
 - (g) a positive result on a drug screen, or a refusal to submit to drug testing both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in

- connection with an application for certification as a criminal justice officer as defined in 12 NCAC 9A .0103(6).
- (h) the Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
- (a) failure to meet or satisfy relevant basic training requirements; or
 - (b) failure to meet or maintain the minimum standards of employment or certification; or
 - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .1700 or .2100; or
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (5), and (6); or
 - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

- (2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500, .0600, and 1300; or
- (3) the certified deputy sheriff or detention officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .1700 or .2100; or
- (4) the applicant for certification has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(c)(3) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6); or
- (5) the applicant for certification or the certified officer has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(b) Without limiting the application of G.S. 17E, a person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

History Note: Authority G.S. 17E-8; 17E-9; 150B-3(c); Eff. January 1, 1992; Amended Eff. January 1, 1993; Temporary Amendment Eff. March 1, 1998; Amended Eff. March 1, 2005; April 1, 1999; August 1, 1998.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1991; Recodified from 12 NCAC 10B .0208 Eff. January 1, 1992; Amended Eff. March 1, 2005; January 1, 1995; January 1, 1994; January 1, 1993; January 1, 1992.

12 NCAC 10B .0206 SUMMARY SUSPENSIONS: OR DENIALS

(a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Director, shall utilize summary suspension or denial following a full investigation of the matter when:

- (1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or

12 NCAC 10B .1701 SHERIFF RESPONSIBILITIES

The sheriff shall ensure that the Domestic Violence In-Service Training Program is conducted using the lesson plan developed by the North Carolina Justice Academy. In addition, the Sheriff shall:

- (1) report to the Division those deputy sheriffs who are considered "special deputy sheriffs" in accordance with G.S. 17E-2(3)(a);
- (2) maintain a roster of each deputy sheriff who successfully completes the In-Service Training Program; and
- (3) shall report to the Division by January 15th of each calendar year, those deputy sheriffs who fail to complete the Domestic Violence In-Service Training Program in accordance with 12 NCAC 10B .1704.

History Note: Authority G.S. 17E-4; 17E-7; Eff. March 1, 2005.

12 NCAC 10B .1702 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct the In-Service Domestic Violence Training Program:

- (1) The instructor shall hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission.
- (2) The instructor shall deliver the training consistent with the lesson plan developed by the North Carolina Justice Academy and shall be present at all times during which said training is being conducted.
- (3) The instructor shall document the successful or unsuccessful completion of training for each deputy sheriff attending a training program and forward a record of their completion to each deputy's Sheriff.

History Note: Authority G.S. 17E-4; 17E-7; Eff. March 1, 2005.

12 NCAC 10B .1703 MINIMUM TRAINING REQUIREMENTS

The North Carolina Justice Academy shall develop a four-hour In-Service Domestic Violence Training Program.

History Note: Authority G.S. 17E-4; 17E-7; Eff. March 1, 2005.

12 NCAC 10B .1704 DOMESTIC VIOLENCE IN-SERVICE TRAINING PROGRAM SPECIFICATIONS

Full-time and reserve deputy sheriffs must complete this In-Service Training Program by the end of each calendar year. Deputy Sheriffs who complete Basic Law Enforcement Training during a calendar year are not required to complete this in-service training for that year.

History Note: Authority G.S. 17E-4; 17E-7; Eff. March 1, 2005.

12 NCAC 10B .1705 FAILURE TO COMPLETE IN-SERVICE DOMESTIC VIOLENCE TRAINING PROGRAM

(a) Failure to complete the Domestic Violence In-Service Training Program in accordance with this Section shall result in the summary suspension of the deputy sheriff's certification by the Commission.

(b) Certification may be reinstated at the request of the deputy's Sheriff provided:

- (1) the deputy completes the In-Service Training Program within six months of the end of the calendar year in which the deputy failed to comply; and
- (2) the appointing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305.

An In-Service Training Program completed under this provision shall be credited to the prior year of non-compliance; and shall not be credited toward the current year of completion.

History Note: Authority G.S. 17E-4; 17E-7; Eff. March 1, 2005.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0606 NON-IONIZING RADIATION

(a) General. Employers shall ensure that employees performing work on communication towers are not exposed to Radio Frequency (RF) Electromagnetic Fields in excess of the Federal Communications Commission (FCC) maximum permissible exposure (MPE) limits for exposure as prescribed in 47 CFR 1.1310.

(b) Protection from Radiation Exposure.

- (1) Employees shall not enter areas where RF exposure levels are above the general population/uncontrolled MPE's described in 47 CFR 1.1310 unless they understand the potential for exposure and can exercise control over the exposure.
- (2) Control Procedures. Prior to employees performing work in areas on a communication tower where RF exposure levels exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, the employer shall enact and enforce written control procedures that provide for the reduction, elimination, avoidance or protection from such RF levels. These written control procedures shall include the following:
 - (A) Reducing the transmitter power to a level that ensures RF exposure levels in areas where employees are working do not exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, and that the transmitter power level is not increased until all employees have ceased working in those areas. If this method is chosen, the transmitter power shall be locked out and tagged out at the reduced level by a competent person in accordance with 29 CFR 1910.147. Prior to removing lock out/tag out devices and restoring the original transmitter power level, all employees shall be notified and the work area shall be checked to ensure that all employees have been safely positioned and removed;
 - (B) If the transmitter power level in areas where employees are working cannot be reduced and maintained at a level that ensures RF exposure levels do not exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, the transmitter power shall be locked out and tagged out by a competent person

in accordance with 29 CFR 1910.147. Prior to removing lock out/tag out devices and restoring the transmitter power level, all employees shall be notified and the work area shall be checked to ensure that all employees have been safely positioned and removed;

- (C) If the transmitter power level can not be reduced or eliminated, an employer may permit its employees to access areas where the occupational/controlled MPE values stated in 47 CFR 1.1310 are exceeded if it implements engineering or administrative controls that comply with the FCC's regulations concerning such exposure, including limiting the duration of the exposure and utilizing monitoring equipment, RF protective clothing and other related PPE; or
- (D) If an employer cannot ensure that the conditions in Parts (A), (B) or (C), of this Subparagraph, are met, employees shall not be permitted to access areas where RF exposure levels exceed the occupational/controlled MPE values stated in 47 CFR 1.1310.

(c) Use of Controls. Prior to commencing work on a communication tower, a competent person shall assess potential RF hazards of areas which may be accessed by employees in the course of their work, and post temporary signage to indicate areas where the RF hazard exceeds the general population/uncontrolled MPE limits for exposure set forth in 47 CFR 1.1310. Temporary signage shall remain in place while work is performed and the hazard exists.

(d) RF Safety Program. When employees are exposed to RF fields in excess of the general population/uncontrolled MPE limits established in 47 CFR 1.1310 as a consequence of their employment, the employer shall develop, implement, and maintain a written safety and health program with site specific procedures and elements based on the electromagnetic radiation hazards present, in accordance with 13 NCAC 07F .0609(g).

*History Note: Authority G.S. 95-131;
Eff. Pending Legislative Review.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
 - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
 - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
 - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or
 - (D) 40 CFR Part 60, Subpart JJJ, petroleum dry cleaners; or
 - (E) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
- (3) prevention of significant deterioration under 15A NCAC 02D .0530;
- (4) new source review under 15A NCAC 02D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg County according to 15A NCAC 2D .0902(c);
- (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
- (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).

(c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:

- (1) activities exempted because of category:
 - (A) maintenance, upkeep, and replacement:
 - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase

- in quantity of emission of regulated air pollutants;
 - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
 - (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (iv) use of fire fighting equipment;
 - (v) paving parking lots; or
 - (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
 - (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (C) laboratory activities:
 - (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
- (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
- (iv) research and development laboratory activities provided the activity produces no commercial product or feedstock material;
- (D) storage tanks:
 - (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;
 - (ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .0928;
 - (iii) storage tanks used solely to store inorganic liquids; or
 - (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
 - (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
 - (ii) residential wood stoves, heaters, or fireplaces;
 - (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G) gasoline distribution: gasoline service stations or gasoline dispensing facilities;
- (H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;

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| <p>(I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:</p> <p style="margin-left: 20px;">(i) The portable solvent distillation system is not:</p> <p style="margin-left: 40px;">(I) owned by the facility, and</p> <p style="margin-left: 40px;">(II) operated at the facility for more than seven consecutive days; and</p> <p style="margin-left: 20px;">(ii) The material recycled is recycled at the site of origin;</p> | | <p>(iii) equipment used for the preparation of food for direct on-site human consumption;</p> <p>(iv) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;</p> <p>(v) exit gases from in-line process analyzers;</p> <p>(vi) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;</p> <p>(vii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);</p> |
| <p>(J) processes:</p> <p style="margin-left: 20px;">(i) electric motor burn-out ovens with secondary combustion chambers or afterburners;</p> <p style="margin-left: 20px;">(ii) electric motor bake-on ovens;</p> <p style="margin-left: 20px;">(iii) burn-off ovens for paint-line hangers with afterburners;</p> <p style="margin-left: 20px;">(iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;</p> <p style="margin-left: 20px;">(v) blade wood planers planing only green wood;</p> | | <p>(viii) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);</p> |
| <p>(K) solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);</p> | | <p>(ix) equipment that does not emit any regulated air pollutants;</p> <p>(x) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for</p> |
| <p>(L) miscellaneous:</p> <p style="margin-left: 20px;">(i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;</p> <p style="margin-left: 20px;">(ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);</p> | | |

- another exemption under this Paragraph);
- (xi) sources for which there are no applicable requirements;
 - (xii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
- (A) storage tanks:
 - (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70° F; or
 - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70° F;
 - (B) combustion and heat transfer equipment:
 - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
 - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
 - (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
 - (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
 - (iii) space heaters burning waste oil if:
 - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
 - (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
 - (III) The combustion gases from the heater are vented to the ambient air;
 - (iv) fuel combustion equipment, with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:
 - (I) space heaters burning waste oil; or
 - (II) internal combustion engines;
 - (v) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that have

- a rated capacity of no more than:
 - (I) 680 kilowatts (electric) or 1000 horsepower for natural gas-fired engines;
 - (II) 1800 kilowatts (electric) or 2510 horsepower for liquefied petroleum gas-fired engines;
 - (III) 590 kilowatts (electric) or 900 horsepower for diesel-fired or kerosene-fired engines; or
 - (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;

(Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)

 - (vi) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.);
 - (vii) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production
 - (C) on a monthly basis and on a 12-month basis;
 - (D) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons; processes:
 - (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
 - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
 - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
 - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
 - (E) miscellaneous:
 - (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of

hazardous air pollutants are below their lesser quantity cutoff except:

- (I) storage tanks;
- (II) fuel combustion equipment;
- (III) space heaters burning waste oil;
- (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines;
- (V) bulk gasoline plants;
- (VI) printing, paint spray booths, or other painting or coating operations;
- (VII) sawmills;
- (VIII) perchloroethylene dry cleaners, or
- (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Sub-subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption

- under this Paragraph);
 - (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
 - (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
 - (iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:
- (i) to be negligible in their air quality impacts;
 - (ii) not to have any air pollution control device; and
 - (iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to maintain compliance.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. April 1, 1999; July 1, 1998; July 1, 1997; November 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 18, 2002; July 1, 2000; Amended Eff. Pending Legislative Review.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06D .0503 STATE GRADUATION REQUIREMENTS

- (a) In order to graduate and receive a high school diploma, public school students shall meet the requirements of Paragraph (e) of this Rule and shall attain passing scores on competency tests adopted by the SBE and administered by the LEA. The passing score for the competency test, which is the same as grade-level proficiency as set forth in Rule .0502 of this Subchapter, shall be level III or higher.
- (b) Students who satisfy all state and local graduation requirements but who fail the competency tests shall receive a certificate of achievement and transcript and shall be allowed by the LEA to participate in graduation exercises.
- (c) Special education students, other than students who are following the occupational course of study in Paragraph (e)(1)(D) of this Rule, may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma.
- (d) Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the competency tests during regularly scheduled testing until the student reaches maximum school age. Special education students who are following the occupational course of study in Paragraph (e)(1)(D) of this Rule shall not be required to pass the competency test or the exit exam referred to in 16 NCAC 06D .0502(d)(2) in order to graduate and receive a diploma.
- (e) In addition to the requirements of Paragraph (a) of this Rule, students must successfully complete 20 course units in grades 9-12 as specified below.
 - (1) Effective with the class entering ninth grade for the first time in the 2000-2001 school year, students shall select one of the following four courses of study:

NOTE: All students are encouraged, but not required, to include at least one elective course in arts education. Unless included as career/technical education credits in the career preparation course of study, courses in R.O.T.C. qualify for credit as electives in any of the courses of study.

- (A) career preparation, which shall include:
 - (i) four credits in English language arts, which shall be English I, II, III, and IV;
 - (ii) three credits in mathematics, one of which shall be algebra I (except as limited by G.S. 115C-81(b));
 - (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
 - (iv) three credits in social studies, which shall be Civics and Economics, U.S. history, and World history;
 - (v) one credit in health and physical education;
 - (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course; or four credits in one of the four disciplines in arts education: theatre, music, visual arts, or dance; or four credits in R.O.T.C.;
 - (vii) two elective credits; and
 - (viii) other credits designated by the LEA.
- (B) college technical preparation, which shall include:
 - (i) four credits in English language arts, which shall be English I, II, III, and IV;
 - (ii) three credits in mathematics, which shall be either algebra I, geometry, and algebra II; or algebra I, technical mathematics I, and technical mathematics II; or integrated mathematics I, II, and III;
 - (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
 - (iv) three credits in social studies, which shall be

- Civics and Economics, U.S. history, and World history:
- (v) one credit in health and physical education;
 - (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course;
 - (vii) two elective credits; and
 - (viii) other credits designated by the LEA.
- NOTE: A student who is pursuing this course of study may also meet the requirements of a college/university course of study by completing one additional mathematics course for which Algebra II is a prerequisite and, effective with the class entering the ninth grade for the first time in the 2002-03 school year, two credits in the same second language.
- (C) college/university preparation, which shall include:
- (i) four credits in English language arts, which shall be English I, II, III, and IV;
 - (ii) three credits in mathematics, which shall be algebra I, algebra II, and geometry or a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, and III; however, effective with the class entering the ninth grade for the first time in the 2002-03 school year, this requirement shall become four credits in mathematics, which shall be algebra I, algebra II, geometry, and a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, III, and one course beyond integrated mathematics III;
 - (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
 - (iv) three credits in social studies, which shall be
- Civics and Economics, U.S. history, and World history:
- (v) one credit in health and physical education;
 - (vi) two credits in the same second language or demonstration of proficiency in a language other than English as determined by the LEA;
 - (vii) four elective credits, except that effective with the class entering the ninth grade for the first time in the 2002-03 school year, this shall be reduced to three elective credits; and
 - (viii) other credits designated by the LEA.
- (D) occupational, which shall include:
- (i) four credits in English language arts, which shall be Occupational English I, II, III, and IV;
 - (ii) three credits in mathematics, which shall be Occupational Mathematics I, II, and III;
 - (iii) two credits in science, which shall be Life Skills Science I and II;
 - (iv) two credits in social studies, which shall be Government/U.S. History and Self-Advocacy/Problem Solving;
 - (v) one credit in health and physical education;
 - (vi) six credits in occupational preparation education, which shall be Occupational Preparation I, II, III, IV, 300 hours of school-based training, 240 hours of community-based training, and 360 hours of paid employment;
 - (vii) four vocational education elective credits;
 - (viii) computer proficiency as specified in the student's IEP;
 - (ix) a career portfolio; and
 - (x) completion of the student's IEP objectives.
- (2) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.

- (3) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.
 - (4) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the locally-designated electives requirements of this Rule. 23 NCAC 02C .0305 shall govern enrollment in community college institutions.
- (f) Effective with the class of 2001, all students must demonstrate computer proficiency as a prerequisite for high school graduation. The passing scores for this proficiency shall be 47 on the multiple choice test and 49 on the performance test. This assessment shall begin at the eighth grade. A student with disabilities shall demonstrate proficiency by the use of a portfolio if this method is required by the student's IEP.
- (g) Special needs students as defined by G.S. 115C-109, excluding gifted and pregnant, who do not meet the requirements for a high school diploma shall receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:
- (1) successful completion of 20 course units by general subject area (4 English, 3 math, 3 science, 3 social studies, 1 health and physical education, and 6 local electives) under Paragraph (e) of this Rule. These students are not required to pass the specifically designated courses such as Algebra I, Biology or United States history; and
 - (2) completion of all IEP requirements.

History Note: Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5; Eff. December 1, 1999; Amended Eff. April 1, 2005; September 1, 2002; December 1, 2001; December 1, 2000.

16 NCAC 06G .0305 DEFINITIONS

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

- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
- (2) "Adequate yearly progress" or "AYP" shall have the same definition as set out in P.L. 107-110, section 1111(b)(2)(C).
- (3) "b₀" means the state average growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8; or the state average performance used in the prediction formula for respective high school end-of-course tests. The constant values for b₀ shall be as follows:
 - (a) for reading:
 - (i) 8.0 for grade 3;
 - (ii) 5.2 for grade 4;
 - (iii) 4.6 for grade 5;
 - (iv) 3.0 for grade 6;

- (v) 3.3 for grade 7; and
 - (vi) 2.7 for grade 8.
- (b) for mathematics:
- (i) 14.3 for grade 3;
 - (ii) 7.3 for grade 4;
 - (iii) 7.4 for grade 5;
 - (iv) 7.1 for grade 6;
 - (v) 6.5 for grade 7; and
 - (vi) 4.9 for grade 8.
- (c) for EOC courses:
- (i) 60.4 for Algebra I;
 - (ii) 55.2 for Biology;
 - (iii) 53.3 for English I;
 - (iv) 59.3 for Algebra II;
 - (v) 56.9 for Chemistry;
 - (vi) 58.5 for Geometry;
 - (vii) 53.8 for Physical Science; and
 - (viii) 56.1 for Physics.
- (4) "b₁" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8. The values for b₁ shall be as follows:
- (a) for reading:
 - (i) 0.47 for grade 3; and
 - (ii) 0.22 for grades 4 through 8.
 - (b) for mathematics:
 - (i) 0.20 for grade 3; and
 - (ii) 0.26 for grades 4 through 8.
- (5) "b₂" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8. The values for b₂ shall as follows:
- (a) for reading:
 - (i) 0.98 for grade 3; and
 - (ii) -0.60 for grades 4 through 8.
 - (b) for mathematics:
 - (i) 0.58 for grade 3; and
 - (ii) -0.58 for grades 4 through 8.
- (6) "b_{IRP}" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:
- (a) 0.71 for Biology;
 - (b) 1.01 for English I;
 - (c) 0.43 for Algebra II;
 - (d) 0.42 for Geometry; and
 - (e) 0.58 for Physical Science.
- (7) "b_{IMP}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:
- (a) 0.88 for Algebra I;
 - (b) 0.32 for Biology;
 - (c) 0.39 for Geometry;
 - (d) 0.34 for Physical Science; and
 - (e) 0.58 for Physics.

- (8) "b_{imp2}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's squared average math proficiency on the predicted average EOC test score. The value for b_{imp2} shall be 0.01 for Biology.
- (9) "b_{imp3}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's cubed average math proficiency on the predicted average EOC test score. The value for b_{imp3} shall be 0.001 for Biology.
- (10) "b_{IAP}" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:
 (a) 0.89 for Algebra II;
 (b) 0.18 for Chemistry; and
 (c) 0.43 for Geometry.
- (11) "b_{IBP}" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b_{IBP} shall be 0.51 for Chemistry and 0.66 for Physics.
- (12) "b_{IEP}" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b_{IEP} shall be 0.27 for Chemistry and 0.32 for Physics.
- (13) "Compliance commission" means that group of persons selected by the SBE and authorized by SBE policy EEO-B-000 to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of teachers, principals, central office staff representatives, local school board representatives, a charter schools representative, and at-large members who represent parents, business, and the community.
- (14) "Composite score" means a summary of student performance in a school. A composite score shall include reading and mathematics in grades 3 through 8 and Algebra I & II, Biology, English I, Geometry, Chemistry, Physics, and Physical Science, in a school where one or more of these EOC tests are administered, as well as student performance on the NC Computer Skills Test, competency passing rate, change in dropout rates, and percent diploma recipients who satisfy the requirements for College University Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.
- (15) "Eligible students" means the total number of students in membership in the respective grades or enrolled in the respective EOC courses at the time the tests are administered in a statewide assessment.
- (16) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 in reading and mathematics.
- (17) "High growth" means the amount of growth in student performance in grades 3 through 8 in reading and mathematics that is projected through use of the regression formula that includes the state average growth adjusted by an additional ten percent (10%).
- (18) "Growth standards" means and includes collectively all the factors defined in this Rule that are used in the calculations described in Paragraph (h) of Rule .0312 of this Section to determine a school's growth/gain composite.
- (19) "IRM" is the index of regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average (the state average) reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the state average mathematics scale score from the local school average mathematics scale score. For grades 3-8 the SBE shall base the state average (the baseline) on data from the 1994-95 school year. For the third grade pretest in reading the SBE shall base the state average on data from the 1996-97 school year. For the third grade pretest in mathematics the SBE shall base the state average on data from the 2000-01 school year.
- (20) "ITP" is the index of true proficiency used in the regression formula. The SBE shall compute the ITP by adding the state average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state averages (the baselines) on data from the school years specified in Item (19) of this Rule.
- (21) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average on data from the 1998-99 school year.
- (22) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the state average mathematics scale score. The SBE shall base

- the state average (the baseline) on data from the 1998-99 school year.
- (23) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the state average Algebra I scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.
- (24) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the state average Biology scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.
- (25) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the state average English I scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.
- (26) "Performance Composite" is the percent of scores of students in a school that are at or above Achievement Level III, are at a passing level on the Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 06D .0503(f), and at proficiency level or above on the North Carolina Alternate Assessment Portfolio or the North Carolina Alternate Assessment Academic Inventory to the extent that any apply in a given school and consistent with United States Department of Education regulations concerning alternate assessments based on alternate achievement standards. The SBE shall:
- (a) determine the number of scores that are at Level III or IV in reading, or mathematics, or writing (starting in the 2004-05 school year) across grades 3 through 8, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test (students in eighth grade only); add the number of scores that are proficient or above on the North Carolina Alternative Assessment Portfolio; add the number of student scores on the North Carolina Alternate Assessment Academic Inventory and use the total of these numbers as the numerator;
 - (b) determine the number of student scores in reading, or mathematics, or writing (starting in the 2004-05 school year), across grades 3 through 8, or on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the North Carolina Alternate Assessment Academic Inventory and use the total of these numbers as the denominator; and
 - (c) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator and multiply the quotient by 100 to compute the performance composite.
- (27) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.
- (28) "Predicted EOC high mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional three percent.
- (29) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.
- (30) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.
- (31) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation baseline values used for the growth standards are as follow:
- (a) for reading in grades K-8:
 - (i) 1.6 for grade 3;
 - (ii) 1.3 for grade 4;
 - (iii) 1.2 for grade 5;
 - (iv) 1.3 for grade 6;
 - (v) 1.1 for grade 7; and
 - (vi) 1.2 for grade 8.
 - (b) for mathematics in grades K-8:
 - (i) 1.7 for grade 3;
 - (ii) 2.1 for grade 4;
 - (iii) 2.0 for grade 5;
 - (iv) 2.1 for grade 6;
 - (v) 2.0 for grade 7; and
 - (vi) 1.7 for grade 8.
 - (c) for courses with an EOC test:

- (i) 3.3 for Algebra I;
 - (ii) 2.6 for Biology;
 - (iii) 1.8 for English I;
 - (iv) 2.9 for Algebra II;
 - (v) 2.5 for Chemistry;
 - (vi) 2.5 for Geometry;
 - (vii) 2.5 for Physical Science;
 - (viii) 3.3 for Physics;
 - (ix) 10.0 for College University Prep/College Tech Prep (CUP/CTP);
 - (x) 12.8 for Competency Passing Rate; and
 - (xi) 2.1 for the ABCs Dropout Rate.
- (32) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.

History Note: Authority G.S. 115C-12(9)c4.; Eff. January 1, 1998; Amended Eff. December 1, 2000; Temporary Amendment Eff. March 5, 2001; Amended Eff. April 1, 2005; April 1, 2002; September 1, 2001.

16 NCAC 06G .0312 ANNUAL PERFORMANCE STANDARDS

(a) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards. (NOTE: see SBE policy HSP-C-020, which lists the components of the ABCs Accountability Program including Adequate Yearly Progress (AYP).)

- (1) The SBE shall calculate the expected growth for grades 3 through 8 in an individual school by using the regression formula "Expected Growth = $b_0 + (b_1 \times \text{ITP}) + (b_2 \times \text{IRM})$."
- (2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.
 - (A) "Predicted Algebra I Mean Score = $b_0 + (b_{\text{IMP}} \times \text{IMP})$," where $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.
 - (B) "Predicted Biology Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IMP}2} \times \text{IMP}^2) + (b_{\text{IMP}3} \times \text{IMP}^3)$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.
 - (C) "Predicted English I Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency.
 - (D) "Predicted Algebra II Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IAP}} \times \text{IAP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra Proficiency.

- (E) "Predicted Chemistry Mean Score = $b_0 + (b_{\text{IAP}} \times \text{IAP}) + (b_{\text{IBP}} \times \text{IBP}) + (b_{\text{IEP}} \times \text{IEP})$," where $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra Proficiency, $(b_{\text{IBP}} \times \text{IBP})$ is the impact of Biology Proficiency, and $(b_{\text{IEP}} \times \text{IEP})$ is the impact of English I Proficiency.
 - (F) "Predicted Geometry Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IAP}} \times \text{IAP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency, $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency, and $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra I Proficiency.
 - (G) "Predicted Physical Science Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.
 - (H) "Predicted Physics Mean Score = $b_0 + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IBP}} \times \text{IBP}) + (b_{\text{IEP}} \times \text{IEP})$," where $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency, $(b_{\text{IBP}} \times \text{IBP})$ is the impact of Biology Proficiency, and $(b_{\text{IEP}} \times \text{IEP})$ is the impact of English I Proficiency.
- (b) Schools shall be accountable for student performance and achievement. This paragraph describes the conditions under which an eligible student's scores shall be included in the accountability measures for the school that the student attended at the time of testing.
- (1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:
 - (A) have a pre-test score and a post-test score in reading and mathematics. For students in grade three the pre-test score refers to the score from the third-grade end-of-grade test administered in the Fall of the third grade and the post-test score refers to the score from the end-of-grade test administered in the Spring of the third grade. For students in grades four through eight, the pre-test score refers to the score from the previous year's end-of-grade test and the post-test score refers to the score from the current year's end-of-grade test; and
 - (B) have been in membership for the full academic year (defined as 140 of 180 days as of the time of EOG testing.).
 - (2) To be included in accountability measures for Algebra I, Algebra II, Biology, Chemistry, English I, Geometry, Physical Science, or Physics, a student must have scores for all tests used in the prediction formula.

- (3) Students shall be included in the performance composite without reference to pretest scores or length of membership.
- (c) Each K-8 school shall test at least 95 percent of its eligible students. If a school fails to test at least 95 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.
- (d) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.
- (e) All students shall take the SBE-adopted tests. Every student in membership in a grade or course in which testing is required shall complete or have completed by a school employee designated by the principal an answer document. The requirement for a completed answer document shall not apply to writing tests.
- (f) Students identified as limited English proficient and students with disabilities shall be included in the statewide testing program as follows: standard test administration, standard test administration with accommodations/modifications, or the state-designated alternate assessments (North Carolina Alternate Assessment Academic Inventory (NCAAAI) or North Carolina Alternate Assessment Portfolio (NCAAP)).
- (1) Limited English proficient students who have been assessed on the state identified language proficiency test as below intermediate/high in reading may participate in the NCAAAI as an alternate assessment for up to 2 years in US schools. The NCAAAI may be used as an alternate assessment in the areas of reading and mathematics at grades 3-8 and 10, writing at grades 4, 7, and 10, and in high school courses in which an end-of-course test is administered. Limited English proficient students who have been assessed on the state identified language proficiency test (SBE policy HSP-A-011) as below superior in writing may participate in the NCAAAI in writing for grades 4, 7, and 10 for up to two years in US schools.
- (2) All students identified as limited English proficient must be assessed using the state identified language proficiency test at initial enrollment and annually thereafter during the window of February 1 to April 30. A student who enrolls after January 1 does not have to be retested during the same school year. Limited English proficient students who are administered the NCAAAI shall not be assessed off grade level.
- (3) Schools shall:
- (A) continue to administer state reading and mathematics tests for LEP students who score at or above intermediate/high on the reading section of the language proficiency test during their first year in US schools. Results from these assessments shall be included in the ABCs and AYP.
- (B) not require LEP students who score below intermediate/high on the reading section of the language proficiency test in their first year in US schools to be assessed on the reading end-of-grade tests, High School Comprehensive Test in Reading, or the NC Alternate Assessment Academic Inventory (NCAAAI) for reading.
- (C) for purposes of determining the 95% tested rule in reading, use the language proficiency test from the spring administration for these students.
- (D) not count mathematics results in determining AYP or ABCs performance composite scores for LEP students who score below Intermediate High on the reading section of the language proficiency test in their first year in US schools.
- (E) include students previously identified as LEP, who have exited LEP identification during the last two years, in the calculations for determining the status of the LEP subgroup for AYP only if that subgroup already met the minimum number of 40 students required for a subgroup.
- (4) All students with disabilities including those identified under Section 504 in membership in grades 3-8 and 10 and in high school courses in which an end-of-course test is administered shall be included in the statewide testing program through the use of state tests with or without accommodations or an alternate assessment. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using the state-designed NCAAAI as the alternate assessment.
- (g) Students with disabilities in grades 3-8 and 10 with serious cognitive deficits documented in their Individualized Education Programs (IEPs) who are three or more years below grade level shall participate in the North Carolina Alternate Assessment Portfolio or the North Carolina Alternate Assessment Academic Inventory (NCAAAI) as an alternate assessment.
- (h) The SBE shall calculate a school's expected growth composite in student performance using the following process:
- (1) Review expected and high growth standards for all grades, subjects, and EOC courses.

- (2) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students identified by Paragraph (b)(1) of this Rule and determine the actual EOC mean for EOC tests using data on the groups of students identified by Paragraph (b)(2) of this Rule from one point in time to another point in time.
- (3) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.
- (4) Divide the differences for reading and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
- (5) The SBE shall calculate a school's growth component in college university prep/college tech prep using the following process:
 - (A) Compute the percent of graduates who receive diplomas (minus the diploma recipients who completed the Occupational Course of Study) who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
 - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study (except for the Occupational Course of Study).
 - (C) Subtract the baseline from the current year's percentage.
 - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) Divide by the associated standard deviation. The result is the standard growth for college university prep/college tech prep.
- (6) The SBE shall calculate a school's expected growth component in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the 8th-grade end-of-grade test.
 - (A) Subtract the grade 8 rate from the grade 10 rate.
 - (B) Subtract 0.1.
 - (C) Divide by the standard deviation. The result is the standard growth in competency passing rate.
- (7) Multiply the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC prediction, competency passing rate, college university prep/college tech prep, and change in ABCs dropout rate by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.
- (8) The SBE shall compute high growth using the high growth standard ($b_0 \times 1.10$) in the accountability formula for grades 3 through 8 in reading and mathematics, and ($b_0 \times 1.03$) for predicted EOC means. There is no high growth standard for competency passing rate or college university prep/college tech prep.
- (9) To determine the composite score for high growth standards:
 - (A) Subtract the high growth standard from the actual growth in reading and mathematics at grades 3 through 8; subtract the predicted high growth EOC mean from the actual EOC mean for each EOC test.
 - (B) Divide the differences in growth by the standard deviations of the respective differences in growth to determine the high standard scores.
 - (C) Multiply the high standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC high standard growth scores, expected standard growth in Competency Passing Rate, Dropout Rate, and for College University Prep/College Tech Prep by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the high growth standard.
 - (i) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint the compliance commission to review written appeals from schools. The school officials must document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.
 - (j) In compliance with the No Child Left Behind Act of 2001 (P.L. 107-110), its subsequent final regulations (34 CFR Part 200) released November 26, 2002, and pursuant to GS 115C-

105.35 the SBE shall incorporate adequate yearly progress (AYP) as the "closing the achievement gap" component of the ABCs. The calculations shall use 40 students' scores as the minimum number of scores for a group to be statistically reliable and valid for AYP purposes along with the use of a confidence interval around the percentage of students scoring proficient on the assessments.

History Note: Authority G.S. 115C-12(9)c4.; Eff. April 1, 2005.

16 NCAC 06G .0313 ALTERNATIVE SCHOOLS

(a) The SBE shall include in the accountability system each alternative school that has an identification number assigned by the Department. The SBE shall evaluate these alternative schools based upon student achievement and the school's success in meeting objectives that the school selects as set out in its school improvement plans.

- (1) The SBE shall include the following two state testing components:
 - (A) For schools that serve only high school grade students:
 - (i) EOC test results; and
 - (ii) the school's change in competency test passing rate measured from the end of Grade 8 to the end of Grade 10.
 - (B) For schools that serve both high school grade students and students in grades below high school:
 - (i) EOG and EOC test results; and
 - (ii) the school's change in competency test passing rate measured from the end of Grade 8 to the end of Grade 10.
 - (C) For schools that serve only students in Grade 8 and below, EOG and EOC test results, which shall be counted twice.
- (2) The SBE shall include the school's performance composite, if the school has a performance composite.
- (3) The school shall select three objectives from its school improvement plan, one of which shall be either Part (D) or (E) of this Subparagraph. The objectives shall be:
 - (A) Increase in student attendance rate.
 - (B) Decrease in student dropout rate.
 - (C) Decrease in the percentage of students who are referred for disciplinary action.
 - (D) Increase in the percentage of students whose grades improve as indicated by at least one letter grade improvement in grade point average from the previous school year, who enroll in

- (E) higher-level courses, or who are promoted to the next grade.
- (E) Increase in the percentage of students who make measurable progress. Progress shall be measured by a student's moving up to a higher proficiency level, by the number of students who score at proficiency level III or higher, or who pass other locally-required tests.
- (F) Increase in the percentage of parents of students who are involved in activities such as student referral or placement decisions, student exit from the school or transition to another school, or student and school activities.
- (G) Increase in the number of community members who are involved in school activities such as community-based activities, mentoring and tutoring, and volunteer activities.
- (H) Increase in the percentage of students, parents, and school staff who express satisfaction with the school as measured by the school's annual climate survey or by documented parent, student, or staff expressions of satisfaction.

(b) Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

History Note: Authority G.S. 115C-12(9)c4.; Eff. April 1, 2005.

16 NCAC 06G .0501 LIABILITY INSURANCE

- (a) Each charter school shall obtain and maintain liability insurance and fidelity bonding of the types and amounts specified in the charter agreement.
- (b) The provisions of this Rule shall not preclude any charter school from obtaining liability insurance coverage in addition to or in excess of the requirements of this Rule.

History Note: Authority G.S. 115C-238.29F(c)(1); Temporary Adoption Eff. November 14, 1997; Eff. March 15, 1999; Amended Eff. April 1, 2005.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0204 ELIGIBILITY

- (a) Limited License. The applicant for such a license must:
 - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements

- set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00);
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and
 - (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy.
- (b) Intermediate License. The applicant for such a license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (c) Unlimited License. The applicant for such a license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general

contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of two hundred fifty thousand dollars (\$250,000) for a limited license, seven hundred fifty thousand dollars (\$750,000) for an intermediate license, and one million five hundred thousand dollars (\$1,500,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S. 87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Working capital, balance sheet with current and fixed assets, current and long term liabilities, and other financial terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" as promulgated by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and, if applicable, through pronouncements of the Governmental Accounting Standards Board, or their predecessor organizations. An audited financial statement, an unqualified opinion, and other financial reporting terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" as promulgated by the American Institute of Certified Public Accountants through pronouncements of the Auditing Standards Board.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1983; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a Period of 155

Days to Expire on December 1, 1989;
Amended Eff. December 1, 1989;
Temporary Amendment Eff. May 31, 1996;
RRC Removed Objection Eff. October 17, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. August 24, 1998;
Amended Eff. March 1, 2005; August 1, 2002; April 1, 2001;
August 1, 2000.

21 NCAC 12 .0903 APPLICATION FOR PAYMENT

(a) Applicants desiring to obtain payment from the fund shall file a verified application with the Board on a prescribed form. The form shall require information concerning the applicant and the claim including, but not limited to, the applicant's name and address, the amount of the claim, a description of the acts of the general contractor which constitute the grounds for the claim and a statement that all court proceedings are concluded or the general contractor has filed for bankruptcy. Requests for the application form shall be directed to the Board at the address shown in Rule .0101 of this Chapter.

(b) If the applicant has exhausted all civil remedies pursuant to G.S. 87-15.8(3), the application shall include certified copies from the civil action of the complaint, judgment and return of execution marked as unsatisfied. If the general contractor was a corporation which was dissolved no later than one year after the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct, and the applicant did not commence a civil action against the general contractor, then the applicant shall include certified copies of documents evidencing the dissolution. If the applicant has been precluded from filing suit, obtaining a judgment or otherwise proceeding due to the bankruptcy of the general contractor, then the applicant shall submit a certified copy of the bankruptcy petition and any proof of claim, and documents from the bankruptcy court or trustee certifying that the applicant has not and will not receive any payment from the bankruptcy proceeding. If the applicant is claiming against the estate of a deceased general contractor, then the applicant shall submit a statement from the administrator of the estate certifying that the applicant has not and will not receive any payment from the estate.

History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8;
Eff. January 4, 1993;
Amended Eff. March 1, 2005; August 1, 1998.

**CHAPTER 50 - BOARD OF EXAMINERS OF
PLUMBING, HEATING AND FIRE
SPRINKLER CONTRACTORS**

**21 NCAC 50 .0306 APPLICATIONS: ISSUANCE
OF LICENSE**

(a) All applicants for licensure or examination shall file an application in the Board office on a form provided by the Board.
(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or

heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service; maintenance or repair activity; work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board; or work as a field representative of this Board; or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate experience which involves the kind of work set out above less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization; or
- (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing, government or university facility which provides or arranges academic and practical training in fire sprinkler inspections consistent with NFPA-25.

(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification must submit evidence adequate to establish that the applicant was engaged in business in North Carolina as owner or officer in an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections in North Carolina.

(g) Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to April 1, 2005, must submit

evidence of 4000 hours experience at the place for which license is sought as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems as described in 21 NCAC 50 .0515 of this Chapter. Applicants for initial licensure in the Limited Fire Sprinkler Maintenance classification after April 1, 2005, must submit evidence of 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems as described in 21 NCAC 50. 0515 of this Chapter or 2000 hours of such experience, together with six hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants who have held Maintenance license previously are not required to demonstrate experience in addition to the experience at the time of initial licensure but shall present evidence of two hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service relevant to the systems in the new place of employment.

History Note: Authority G.S. 87-18; 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994; November 1, 1993; April 1, 1991; May 1, 1990; Temporary Amendment Eff. August 31, 2004; Amended Eff. March 1, 2005.

21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress.

(b) The provisions of the North Carolina Building Code, including the provisions of codes and standards incorporated by reference, to the extent adopted by the Building Code Council of North Carolina from time to time is the minimum standard of competence applicable to contractors licensed by the Board. Licensees shall design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code, manufacturer's specifications, and installation instructions and standards prevailing in the industry.

(c) Limited Fire Sprinkler Maintenance Technicians and Limited Fire Sprinkler Inspection Technicians shall be present in person at all times work is being carried out on the system pursuant to the license held by that person.

History Note: Authority G.S. 87-18; 87-23; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. March 1, 2005; January 1, 2004; July 1, 2003; July 1, 1991; October 1, 1989; May 1, 1989.

21 NCAC 50 .0508 HEATING: GROUP 3 LICENSE REQUIRED

(a) A license in heating, group No. 3 is required for the installation or replacement of a furnace, ductwork or condenser in a heating, group No. 3 system.

(b) A license in heating, group No. 3 is required to install or replace a self-contained fireplace unit if the unit utilizes ducts or a blower to distribute air to areas not immediately adjacent to the fireplace itself.

(c) A license in heating, group No. 3 is required when air conditioning of less than 15 tons is added to an already installed heating, group No. 3 system.

(d) A heating, group No. 2 license is required for the installation or replacement of equipment or ductwork in a Heating Group No. 2 system, unless exempted by G.S. 87-21(a)(3).

History Note: Authority G.S. 87-18; 87-21(a)(3); 87-21(a)(5); 87-21(c); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2002; May 1, 1989; August 1, 1982; Temporary Amendment Eff. August 31, 2001; Amended Eff. March 1, 2005; August 1, 2002.

21 NCAC 50 .0513 LIMITED FIRE SPRINKLER INSPECTION TECHNICIAN LICENSE

(a) License in the Limited Fire Sprinkler Inspection Technician classification is required of the technician who carries out periodic inspection of fire sprinkler systems consistent with NFPA-25.

(b) Periodic observation and testing of systems other than NFPA-25 system certification may be carried out by Maintenance Technicians licensed under Rule .0515 of this Chapter. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule. All NFPA-25 reports and system tags must display the name and signature of the licensee who performed the actual inspection as well as the licensee number of the inspection contractor; except that where the Inspection Technician license is issued in the name of a manufacturing, government, university or hospital facility as set out in this Rule, the NFPA-25 report and system tags must display the name, signature and license number of the Inspection Technician.

(c) Licenses shall be issued based on demonstrated experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually.

(d) The duties of inspection technicians may be carried out as employees of inspection contractors or as full-time employees at a manufacturing, government, university or hospital facility which provides or arranges academic and practical training in fire sprinkler inspections consistent with NFPA-25. Inspection Technician licenses shall be issued and listed either as sublicensees of inspection contractors or as a technician license in the name of the manufacturing, government, university or hospital facility where the technician is employed.

History Note: Authority G.S. 87-21;
Eff. January 1, 2004;
Amended Eff. March 1, 2005.

21 NCAC 50 .0514 LIMITED FIRE SPRINKLER INSPECTION CONTRACTOR LICENSE

(a) License in the Limited Fire Sprinkler Inspection Contractor classification is required of persons who engage in the business of contracting to perform or performing independent testing and inspections of fire sprinkler systems consistent with NFPA-25. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

(b) Where the NFPA-25 inspection is carried out by the Inspection Contractor, the NFPA-25 report and system tags must display the name, signature and license number of the Inspection Contractor.

(c) Licenses shall be issued based on experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually.

History Note: Authority G.S. 87-21;
Eff. January 1, 2004;
Amended Eff. March 1, 2005.

21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE TECHNICIAN LICENSE

(a) License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance observation or testing of water-based fire protection systems. Licenses shall be issued based on experience and training, as described in Rules .0301 and .0306 of this Chapter and expire annually. This license is limited to work on the systems at the locations of the employer of the licensee for which experience was demonstrated. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license be obtained for the systems at the new place of employment by compliance with the requirements of Rule .0306 of this Chapter. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

(b) Persons holding Limited Fire Sprinkler Maintenance license may only:

- (1) Operate and lubricate hydrants and control valves;
- (2) Adjust valve and pump packing glands;
- (3) Bleed moisture and condensation from air compressors, air lines and dry pipe system auxiliary drains;
- (4) Clean strainers;
- (5) Check for painted, damaged or corroded sprinklers, corroded or leaking piping and verify control valves are open;

- (6) Replace painted, corroded or damaged sprinkler head, using identical serial numbers;
- (7) Replace missing or loose hangers;
- (8) Replace gauges;
- (9) Clean water motor gong;
- (10) Perform air compressor maintenance;
- (11) Reset dry pipe valves;
- (12) Exercise fire pumps (no flow);
- (13) Periodic maintenance observation or testing, not including the annual NFPA-25 inspections; or
- (14) Perform repairs other than the foregoing on an emergency basis where necessary to restore a system to operation, provided the holder of the Limited Fire Sprinkler Maintenance license documents his efforts and inability to obtain the services of the holder of a license as an unlimited Fire Sprinkler Contractor prior to performing the repairs, but obtains such services within 72 hours thereafter.

History Note: Authority G.S. 87-21;
Eff. January 1, 2004;
Amended Eff. March 1, 2005.

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer a license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00).

(b) An application to issue or transfer a license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00).

(c) An application for a license by examination requires a fee of one hundred dollars (\$100.00), consisting of an application fee of twenty-five dollars (\$25.00) and an examination fee of seventy-five dollars (\$75.00), which is nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50.1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain a license for the following year rather than the year in which the exam was passed.

History Note: Authority G.S. 87-18; 87-22.1; 87-22; 87-26;
Eff. May 1, 1989;
Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;
Amended Eff. August 1, 2000; November 1, 1993;
March 1, 1990;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. March 1, 2005; December 1, 2003; April 1, 2003;
December 4, 2002.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC .01C .1004 REDUCTION IN FORCE

(a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work,

abolishment of a position or other material change in duties or organization. Retention of employees in classes affected shall, as a minimum, be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the workforce and length of service. However, neither temporary, probationary nor trainee employees in their initial six months of training shall be retained where an employee with a permanent appointment must be separated in the same or related class.

(b) Agency Responsibility.

- (1) Each agency shall develop a written policy for reduction-in-force which meets its particular needs and provides assurance to employees that potential reductions shall be considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force policy. The policy of each department/agency/institution shall be filed with the Office of State Personnel as a public record.
- (2) Each employing agency shall inform the employee of separation as soon as possible and inform the employee of the priority reemployment consideration available. The agency must provide employees with a minimum of 30 calendar days written notification of separation prior to the effective date of the reduction in force.

(c) Appeals. A career state employee who is separated due to reduction-in-force may appeal to the State Personnel Commission for a review to assure that systematic procedures were applied. Provisions of the agency appeal procedure shall first be followed.

(d) Equal Employment Opportunity. In accordance with the Uniform Guidelines on Employee Selection Procedures affecting equal employment opportunity, any application of the reduction-in-force policy must be analyzed by the agency to determine its impact in this area.

(e) Severance Salary Continuation. Severance salary continuation shall be administered in accordance with the rules contained at 25 NCAC 01D .2700. Pursuant to G.S. 143-27.2, the Office of State Budget and Management is responsible for determining whether severance salary continuation is applicable. Prior approval shall be received from the Office of State Budget and Management before severance salary continuation is paid.

History Note: Authority G.S. 126-4(2); Eff. February 1, 1976; Amended Eff. May 1, 1980; January 1, 1980; Emergency Amendment (a) Eff. March 16, 1981 for a Period of 77 Days to Expire on June 1, 1981; Emergency Amendment (a) Made Permanent with Change Eff. April 8, 1981; Amended Eff. December 1, 1995; March 1, 1994; November 1, 1990; March 1, 1987; Recodified from 25 NCAC 01D .0504 Eff. December 29, 2003; Amended Eff. March 1, 2005.

25 NCAC 01D .1925 OVERTIME COMPENSATION

(a) Employees shall be paid a premium rate of time and one-half in the form of monetary compensation or time off for hours worked in excess of 40 within a work week, with exception of employees exempt from the Fair Labor Standards Act.

(b) Agency heads and supervisors shall prohibit employees from working more than a 40-hour workweek except in those cases where excess hours of work are necessary because of weather conditions, necessary seasonal activity or emergencies.

(c) The practice of overtime work is subject to review by the Office of State Personnel. The review shall take into consideration organizational structure, scheduling of work, position complement, and personnel classifications.

History Note: Authority G.S. 126-4; Eff. January 1, 1989; Amended Eff. March 1, 2005.

25 NCAC 01D .1928 COMPENSATION – NON-EXEMPT

(a) The State of North Carolina shall, whenever possible, give compensatory time off, in lieu of monetary compensation for hours worked in excess of 40 hours per work week. The decision as to whether to give compensatory time off, rather than monetary compensation, for overtime worked is solely within the discretion of management. Compensatory time off shall be scheduled by management, although reasonable effort shall be made to accommodate the employee as to such scheduling.

(b) An employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond 40 hours during a week. Compensatory time may be accumulated up to a maximum of 240 hours (160 hours straight time) and shall be taken within 12 months from the date the overtime is performed. If compensatory time off is not given by the end of the 12-month period, the overtime pay shall be included in the employee's next regular paycheck. Any overtime worked above this amount shall be paid in the employee's next regular paycheck. Overtime worked shall be recorded and compensated in units of one-tenth of an hour.

This Paragraph is not applicable to persons in law enforcement or fire protection activities and in residence employees.

(c) Prior to employment, each successful candidate for state employment in a position subject to hours of work and overtime pay standards must sign a form acknowledging that it has been explained to him that it is the state's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the state; failure or refusal to sign such agreement shall prevent employment of that person. This signed form shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from state employment.

(d) Upon transfer to another agency or termination of employment, an employee shall be paid for unused compensatory time off at a rate of compensation not less than either the average regular rate received by such employee during the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

History Note: Authority G.S. 126-4;

*Eff. January 1, 1989;
Amended Eff. March 1, 2005; December 1, 1995;
March 1, 1994.*

25 NCAC 01D .1929 HOURLY RATE OF PAY

- (a) An employee's hourly rate of pay is obtained by dividing the annual salary by 2080 hours (52 weeks multiplied by 40 hours per week).
- (b) The rate that must be used in computing overtime is referred to as the regular hourly rate. The regular hourly rate must include all remuneration for employment paid to, or on behalf of, the employee, except payments specifically excluded by the Federal Fair Labor Standards Act.

*History Note: Authority G.S. 126-4;
Eff. January 1, 1989;
Amended Eff. March 1, 2005.*

25 NCAC 01D .1945 SPECIAL PROVISIONS

- (a) Agricultural Workers:
 - (1) Hours worked by agricultural workers may be averaged over a 12-month period. The number of hours worked shall not exceed 2,080 hours. Upon leaving state service, an agricultural worker shall be paid for any accumulated overtime.
 - (2) Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, engage in dairying, or who raise livestock, bees or poultry, or perform closely related research.
- (b) Student Workers - A student shall be considered an employee subject to the State Personnel Act only if the student-employee is employed by the institution the student attends on a full-time permanent basis (as defined by rules of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.
- (c) In-Resident Employment - In-Resident employment includes employees such as Cottage Parents and Dormitory Directors who reside on the employer's premises, or who are usually on duty or subject to call at all times except when the facility is closed. It is necessary that these employees be required to work irregular schedules. The employing agency shall arrive at an agreement with the employee as to what constitutes the normal number of hours worked during a given workweek, taking into consideration the time that the employee engages in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the facility for personal reasons. The following basis of pay may be adopted for employees in such categories:
 - (1) Salary - The annual salary and monthly salary rates of an employee shall be established under current personnel policy. With the employee's agreement, this salary shall represent the employee's straight-time pay for the agreed upon normal number hours on duty per week.
 - (2) Overtime Compensation - It is anticipated that weekly schedules will fluctuate. When it is

necessary to work in excess of the agreed upon workweek hours, the employees shall be paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.

- (d) Registered Nurses:
 - (1) When possible, the compensation shall be in the form of time off. When the employee normally has 24 hours responsibility, (as in the case of some supervisors and most directors), overtime compensation provisions shall not be applicable.
 - (2) Where an employee is assigned duties at a lower classification level; the base rate of pay may not exceed the maximum rate of the lower level assignment.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1989;
Amended Eff. March 1, 2005; August 1, 2004.*

25 NCAC 01J .1201 GENERAL PROVISIONS

- (a) This Section contains general provisions for two grievance procedure options: the Employee Appeals and Grievance Process, 25 NCAC 01J .1301 and the Employee Mediation and Grievance Process, 25 NCAC 01J, 1400.
- (b) Agencies may choose to adopt the Employee Appeals and Grievance Process, which does not offer mediation, or choose to adopt the Employee Mediation and Grievance Process. The provisions of 25 NCAC 01J .1201 through .1208 apply to both processes.
- (c) An employee who has access to the agency grievance procedure shall initiate the grievance proceeding no later than 15 calendar days after the last act that constitutes the basis of the grievance.
- (d) For the purpose of this Section, except for appeals brought under G.S. 126-25, the term "career state employee" as used in this Section shall have the meaning assigned to it by the State Personnel Act. The employee must have attained career status at the time the act, grievance or employment practice that is the basis of the grievance occurs.
- (e) Neither the agency nor the employee shall be represented by any outside parties during any internal grievance or mediation proceedings.

*History Note: Authority G.S. 126-1.1; 126-4(17); 126-25;
126-34; 126-35; 126-39;
Eff. March 1, 2005.*

25 NCAC 01J .1203 AGENCY GRIEVANCE REPORTS

- (a) Every agency shall, semi-annually and as otherwise requested by the Office of State Personnel, compile information on employee grievances. These reports shall be due to the Office of State Personnel on the first business day of each of the following months: January and July.
- (b) The Office of State Personnel shall make reports to the full State Personnel Commission at its February and August meetings based upon the information supplied in these semi-annual agency reports.

*History Note: Authority G.S. 126-4(9);
Eff. March 1, 2005.*

**25 NCAC 01J .1204 DISCRIMINATION AND
RETALIATION / SPECIAL PROVISIONS**

Employees alleging illegal discrimination or retaliation may choose to follow the agency grievance procedure, including mediation, or choose to appeal directly to the State Personnel Commission. The 30-day timeframe to file a grievance alleging discrimination must be adhered to whether the employees choose to follow the agency grievance procedure, including mediation, or whether they choose to appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings. The 30 day timeframe is not applicable to discrimination complaints filed with the Equal Employment Opportunity Commission.

*History Note: Authority G.S. 126-4(9); 126-16; 126-17;
126-34.1(a); 126-36(a);
Eff. March 1, 2005.*

**25 NCAC 01J .1205 UNLAWFUL WORKPLACE
HARASSMENT**

Employees alleging unlawful workplace harassment or retaliation concerning unlawful workplace harassment shall follow the procedure established in the agency Unlawful Workplace Harassment Policy, as required by 25 NCAC 01J .1101(f), in order to bring a subsequent appeal to the State Personnel Commission. Employees may by-pass any step in the agency's grievance procedure involving discussions with or review by the alleged harasser. The agency shall complete processing of an allegation of unlawful workplace harassment or retaliation within 60 days. Nothing in this Rule extends the amount of time an agency has in which to complete a review of such an allegation, even if the employee chooses mediation as an option in the agency's Unlawful Workplace Harassment Policy.

*History Note: Authority G.S. 126-4(9); 126-4(11);
126-34.1(a); 126-36(b)(1),(2)
Eff. March 1, 2005.*

25 NCAC 01J .1207 FINAL AGENCY ACTION

In every employee grievance in which the grievant has the right of appeal to the State Personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final agency decision must be made to the SPC within 30 days after receipt of notice of the decision or action which triggers the right of appeal. Further, the agency shall inform the grievant in writing that an appeal to the SPC shall be made by filing a petition for contested case hearing with the Office of Administrative Hearings, 424 North Blount Street, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.

*History Note: Authority G.S. 126-4(9); 126-7.2; 126-35;
126-37; 126-38; 150B-23(a);
Eff. March 1, 2005.*

25 NCAC 01J .1301 MINIMUM PROCEDURAL

REQUIREMENTS

The following provisions are the requirements of an agency employee appeals and grievance process for approval by the State Personnel Commission.

- (1) An employee with a grievance that does not allege unlawful discrimination as defined by G.S. 126-16 or G.S. 126-36, that does not allege a violation of G.S. 126-7.1(a) or (c), that does not allege a violation of G.S. 126-82, or that does not allege a denial of employment or promotion in violation of G.S. 126-14.2 shall be required to first discuss the problem with the immediate supervisor. Where the grievance does not fall within the administrative or decision-making authority of the immediate supervisor, the immediate supervisor, shall within 48 hours of receipt of the grievance, refer the grievance to the lowest level supervisor with administrative or decision-making authority over the subject matter of the grievance and notify the employee of the fact of and the basis for the referral. The agency grievance procedure shall outline those issues in addition to contested case issues under G.S. 126-34.1, if any, that are grievable under each agency's internal grievance procedure and whether and to what extent persons who have not attained career status under G.S. 126-1.1 may utilize the agency grievance procedure.
- (2) The employee shall have the right to have the decision of the immediate supervisor reviewed. The step or steps after the immediate supervisor's step shall include a step at which the employee has the right to orally present the grievance and where the reviewer is outside the employee's chain of command.
- (3) Any decision rendered after the step of the supervisor's decision shall be issued in writing and the final agency decision shall be issued within a reasonable period of time as defined in 25 NCAC 01J .1206(b).
- (4) At the step involving the reviewer (person or body) outside the employee's chain of command, the employee shall have the right to challenge whether the reviewer can render an unbiased decision. The agency grievance procedure shall establish a process for challenging the reviewer's impartiality and the process for the selection of a replacement when necessary.
- (5) For matters that are contested case issues under G.S. 126-34.1, if the employee is not satisfied by the final decision of the agency head, the employee shall have the right to appeal to the State Personnel Commission within 30 days of receipt of the final agency decision. If the employee is unable within a

reasonable period of time to obtain a final agency decision, the employee's right of appeal is governed by G.S. 150B-23(f).

- (6) The agency shall state the methods of notifying current employees and newly appointed employees of any change to the agency grievance procedure no later than 30 days prior to the effective date of the change.
- (7) The agency shall establish the time limit for the agency and employee to respond at each step in the grievance procedure. No time limit for an agency to respond or to act shall be more than twice the time limit for the employee.
- (8) The grievance procedure shall include the effective date of the procedure and of any changes to the procedure.
- (9) The grievance procedure shall comply with the requirements of 25 NCAC 01J .0615.

History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; Eff. March 1, 2005.

25 NCAC 01J .1401 MINIMUM PROCEDURAL REQUIREMENTS

- (a) Mediation involves the services of a neutral third person that assists an employee and an agency representative in resolving an employee grievance in a mutually acceptable manner.
- (b) In situations where mediation does not produce agreement or if a grievance involves an issue that the agency has identified as not subject to mediation, employees may present the grievance to a Hearing Officer or Hearing Panel within the agency. The Hearing Officer or Hearing Panel shall forward a recommendation to the Agency Head for a Final Agency Decision (FAD).
- (c) Employees may appeal the FAD to the Office of Administrative Hearings (OAH) where an Administrative Law Judge will render a recommended decision to the State Personnel Commission. The State Personnel Commission will issue a Final Decision and Order.
- (d) Grievances alleging discrimination may, at the grievant's choice, proceed either through the agency procedure or may proceed directly to the OAH. Complaints of unlawful workplace harassment shall proceed through the agency's Unlawful Workplace Harassment procedure as required by 25 NCAC 01J, .1100.

History Note: Authority G.S. 126-4(1); 126-4(9); 126-34; 126-34.1; 126-16; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; Eff. March 1, 2005.

25 NCAC 01J .1402 FLEXIBILITY

Agencies shall have the flexibility to decide which grievable issues will not be subject to mediation. In addition, agencies may choose to mediate nongrievable issues by developing internal agency policies and procedures outside the scope of the

rules in this Section. Agencies may utilize mediators serving in the OSP Mediator Pool, 25 NCAC 01J .1410, for mediating nongrievable issues. In such situations, OSP and the requesting agency shall work out a mutually acceptable process to access the mediator pool of resources.

History Note: Authority G.S. 126-4(9); 126-4(10); Eff. March 1, 2005.

25 NCAC 01J .1403 INFORMAL MEETING WITH SUPERVISOR

For all grievable issues, the agencies shall encourage employees to first attempt to resolve a grievable issue with their immediate or other supervisor in the employee's chain of command.

History Note: Authority G.S. 126-4(9). 126-4(10); Eff. March 1, 2005.

25 NCAC 01J .1404 MEDIATION PROCEDURE

(a) Where an agency has designated an issue as subject to mediation, mediation is Step 1 in the Employee Mediation and Grievance Process. Mediation follows unsuccessful attempts by employees to resolve grievable issues with their immediate or other supervisor in the employee's chain of command. An employee must begin the grievance process by filing a grievance in accordance with the agency's grievance procedure. An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance or after unsuccessfully attempting to resolve the grievance informally, whichever is longer.

(b) The Office of State Personnel (OSP) shall assign mediators to grievances. The mediation process shall be concluded within 45 calendar days from the filing of the grievance unless the parties agree in writing to a longer period of time.

(c) Mediations shall be conducted in a location approved by the mediator and shall be scheduled for an amount of time determined by the mediator to be sufficient. Mediations may be recessed by the mediator and reconvened at a later time.

(d) Only mediators in the OSP Mediation Pool, 25 NCAC 01J .1410, shall mediate grievances presented by state agency employees.

(e) The following pertains to attendance at the mediation proceedings:

- (1) A designated agency representative with the authority to reach an agreement shall attend on behalf of the agency.
- (2) In situations where the selected mediator cannot attend the mediation, there must be an emergency substitution of a mediator. This substitution must be approved by the OSP Mediation Administrator or designee.
- (3) OSP Mediation Administrator and designees may attend as observers.
- (4) Representatives, advisors and attorneys are not permitted to attend.
- (5) Audiotape, videotape or other automated recordings are not permitted.

(f) Because mediation is Step 1 of the internal agency grievance process, attorneys are not permitted to participate directly in the

process. However, because a mediation that resolves an employee's grievance will result in a Mediation Agreement, either party may ask for a recess at any time during the mediation in order to obtain legal advice regarding the terms of the Mediation Agreement.

History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-34; 126-35; Eff. March 1, 2005.

25 NCAC 01J .1405 CONCLUSION OF MEDIATION

(a) At the end of mediation, the mediator shall prepare either a Mediation Agreement that is signed by the parties, or a statement that mediation did not result in resolution.

(b) When mediation resolves a grievance, the following shall occur:

- (1) Employee and agency representative sign a Mediation Agreement.
- (2) Each party receives a copy of the signed Mediation Agreement.
- (3) Mediation Agreements shall be maintained on file in the agency for not less than three years.
- (4) Mediation Agreements shall not transfer to another agency if the employee transfers.
- (5) Mediation Agreements shall be binding on both parties.

(c) Mediation Agreements are considered public documents under G.S. 132-1.3.

History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); Eff. March 1, 2005.

25 NCAC 01J .1406 LIMITATIONS ON A MEDIATION AGREEMENT

(a) Parties to the mediation shall not enter into an agreement that would exceed the scope of their authority. The Mediation Agreement shall:

- (1) serve as a written record;
- (2) not contain any provision contrary to State Personnel Commission rules, and applicable state and federal law; and
- (3) not be transferable to another state agency.

(b) When mediation resolves a grievance but it is later determined that one or more provisions of the Mediation Agreement do not comply with State Personnel Commission rules, applicable state or federal law, the parties may return to mediation to resolve those issues that can be resolved by the parties.

(c) Any resolution achieved through mediation, to the extent that it involves a grievance or a contested case issue, shall be treated as a settlement agreement and, as such, is subject to approval by the State Personnel Director and the State Personnel Commission as outlined in Rule .1412 of this Section.

History Note: Authority G.S. 126-4(9); 126-4(10); Eff. March 1, 2005.

25 NCAC 01J .1407 POST MEDIATION

(a) Employees and supervisors who breach a mediated agreement may be subject to disciplinary action up to and including dismissal based on unacceptable personal conduct.

(b) Except for the Mediation Agreement itself, all other documents generated during the course of mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

(c) When mediation does not result in agreement, the employee may proceed to Step 2, 25 NCAC 01J .1411(6) through (8), in the grievance process following written notice to the employee that mediation did not result in resolution of the grievance.

History Note: Authority G.S. 126-4(6); 126-4(7); 126-4(10); 126-34; Eff. March 1, 2005.

25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE POLICY

The following are minimum procedures for an agency grievance process:

- (1) The agency grievance procedure shall state the issues that, in addition to those listed in G.S. 126 may be grieved at the agency level.
- (2) The agency grievance procedure shall list which issues are subject to mediation (Step 1) and which issues shall proceed directly to a grievance hearing (Step 2).
- (3) The agency grievance procedure shall encourage direct communication between employees and their immediate supervisor or other supervisor in the chain of command to attempt to resolve the grievance.
- (4) All decisions issued by the agency after the discussion between the employee and the immediate supervisor or other supervisor in the chain of command shall be in writing and a copy provided to the employee.
- (5) For those issues subject to mediation, the agency grievance process shall require both the employee and an agency representative to mediate a dispute by attending a scheduled mediation.
- (6) If mediation does not result in agreement, the employee is entitled to proceed to Step 2. The agency shall notify the employee within 10 days of the unsuccessful mediation of the option to present the grievance orally to a reviewer or reviewers outside of the chain of command, e.g., Hearing Officer or Hearing Panel.
- (7) The employee shall have the right to challenge whether the person, or body of persons outside of the chain of command review level, can render an unbiased recommendation. The agency procedure shall establish a process for the challenge as well as the procedure for selection of a replacement reviewer, when necessary.

- (8) The agency shall set up time limits for appeal and for the employee and the agency to respond to each other during the grievance procedure. The agency may not set any time limit for itself that is more than twice the time limit established for employees.
- (9) An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance unless the internal agency procedure provides for a longer period.
- (10) Neither party to the grievance shall be represented by attorneys or other persons during the internal agency grievance procedure or during any mediation procedure.

- (4) evaluating training for employees consistent with organizational needs and state policy. In addition, each agency shall work closely with other agencies and the Office of State Personnel to promote the use of interagency training programs and resources wherever possible.
- (4) Office of State Personnel. The Office of State Personnel shall be responsible for statewide planning, coordination and review of human resource development programs, as well as for direct delivery of some specified interagency training
- (5) State Universities, the Community College System, and Public Instruction. The Office of State Personnel and state agencies are responsible for utilizing the state's universities, Community College System, and public instruction to the fullest degree possible in securing professional, management, and vocational education to meet their human resource development needs.

History Note: Authority G.S. 126-4(9); 126-4(10); 126-34.1(a);
Eff. March 1, 2005.

25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

The Office of State Personnel shall:

- (1) review each proposed Employee Mediation and Grievance Process for conformity with State Personnel Commission rules, and applicable state and federal law;
- (2) present the procedure to the State Personnel Commission for consideration and approval at its next available scheduled meeting; and
- (3) provide consultation and technical assistance to agencies as needed.

History Note: Authority G.S. 126-4;
Eff. January 1, 1979;
Amended Eff. March 1, 2005.

History Note: Authority G.S. 126-4(9); 126-4(10);
Eff. March 1, 2005.

25 NCAC 01K .0105 CENTERS OF RESPONSIBILITY

(a) Adequate training and development of state employees shall be accomplished through the combined efforts of employees, supervisors on the job, departmental management, and the Office of State Personnel in cooperation with the state's institutions of higher education.

(b) Human resource development programs shall recognize the following roles:

- (1) Employees. State employees at all levels ultimately retain an obligation to advance their own careers by pursuing appropriate opportunities for development and education.
- (2) Managers and Supervisors. Managers and supervisors have the initial responsibility for ensuring access to job-related training and development for their employees. In fulfilling this responsibility, managers and supervisors shall identify the individual training needs of their employees and work with employees to prepare and effect plans for their development.
- (3) State Agencies. State agencies are responsible for planning, budgeting, implementing and

25 NCAC 01K .0106 COST OF TRAINING

(a) If training is specifically required by an agency, full costs of salary, tuition, travel, and subsistence shall be borne by the agency.

(b) Education deemed beneficial to both the employee and the agency may be eligible for the state's Academic Assistance Program (25 NCAC 01K .0300).

History Note: Authority G.S. 126-4;
Eff. January 1, 1979;
Amended Eff. March 1, 2005.

25 NCAC 01K .0209 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT GROUP PURPOSE

The Office of State Personnel Human Resource Development Group shall provide policy direction, programs, and supportive services to assist in improving the performance of state agencies and employees.

History Note: Authority G.S. 126-4;
Eff. January 1, 1979;
Amended Eff. March 1, 2005.

25 NCAC 01K .0210 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT GROUP OBJECTIVES

The Office of State Personnel Human Resource Development Group shall:

- (1) recommend policy and procedures to the State Personnel Commission concerning the state's system of human resource development,

- educational leave, academic assistance, and the use of non-state resources for training;
- (2) plan, coordinate, monitor and evaluate effectiveness of state government human resource development in cooperation with agencies, state universities, and the Community College System;
- (3) provide programs and services that most cost-effectively enhance organizational and individual performance when operated at the central level in state government. These programs and services include organizational improvement consultation, management and supervisory development, and clerical office skills training as well as human resource management and professional development initiatives.

History Note: Authority G.S. 126-4; Eff. January 1, 1979; Amended Eff. March 1, 2005.

25 NCAC 01K .0402 DETERMINATION OF NEED FOR TRAINING

Before utilizing non-state sources for training and development activities, an agency must determine that:

- (1) agency employees currently lack the requisite competencies to meet the specified performance need.
- (2) education and training is not available within North Carolina state government to meet the agency's need(s); Education and training is not available when:
- (a) existing programs in state government will not meet the need;
- (b) new programs cannot be cost-effectively established to meet the need;
- (c) inquiry has failed to disclose available, cost-effective programs in other state agencies, the Office of State Personnel, public education, higher education institutions, or elsewhere in state government.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. March 1, 2005; January 1, 1979.

25 NCAC 01K .0403 SELECTION OF NON-GOVERNMENT SOURCES

When there is a choice between outside training sources, the agency shall consider the following factors:

- (1) demonstrated effectiveness in similar situations in delivering the particular training;
- (2) accessibility of the training source due to geographic proximity and technological capability;

- (3) availability of training at the particular time or place it is needed;
- (4) comparative cost as determined by the Division of Purchase and Contract Rules;
- (5) practicality of necessary administrative arrangements;
- (6) significance of the training source's accreditation; and
- (7) unique advantages that might result from arrangements with one of several equally acceptable available source.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. March 1, 2005; January 1, 1979.

25 NCAC 01K .0404 PROCEDURE FOR APPROVAL OF NON-STATE SOURCES

Consistent with 01 NCAC 05B .0301, should any state agency have a human resource development need that cannot be met by resources within state government, a justification memorandum from the purchasing agency to the State Purchase and Contract must document:

- (1) an explanation of how the achievement of the identified human resource development objectives contribute to the goals, and
- (2) that no state government institution or agency can cost-effectively meet the educational or training need in a timely manner. This memo shall include a list of the agencies contacted and the responses of each agency.

History Note: Authority G.S. 126-4; 143-64.20; 143-64.24; Eff. February 1, 1976; Amended Eff. March 1, 2005; January 1, 1979.

25 NCAC 01K .0701 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM ADMINISTRATION

- (a) The State of North Carolina shall provide competency-based training for mid-level managers through the North Carolina Certified Public Manager Program.
- (b) The North Carolina Certified Public Manager Program is a joint effort of North Carolina State Government and The University of North Carolina System. The program shall be based in and administered by the Office of State Personnel.

History Note: Authority G.S. 126-4; Eff. February 1, 1982; Amended Eff. March 1, 2005; December 1, 1995.

25 NCAC 01K .0702 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM PURPOSE

- (a) The North Carolina Certified Public Manager Program shall provide participants with practical training that will increase their managerial performance in public sector organizations. The ultimate goal is to impact the efficiency and productivity of state government operations.
- (b) The focus of the program shall be upon middle managers employed in various state agencies.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1982;
Amended Eff. March 1, 2005; December 1, 1995.*

25 NCAC 01K .0705 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM PARTICIPATION

(a) The North Carolina Certified Public Manager Program Director shall design and implement a process that allows each agency an equitable opportunity to participate in the North Carolina Public Manager Program. Agency management shall be responsible for initial selection and recommendation of applicants; the Office of State Personnel shall approve participation for those applicants who meet prerequisite requirements.

(b) The employing agency and the North Carolina Public Manager Program Director shall keep the following records of each participant in the employee's personnel file: the completed application form, agency approval, and program accomplishments.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1982;
Amended Eff. March 1, 2005; December 1, 1995;
January 1, 1989.*

25 NCAC 01K .0706 CERTIFICATE OF COMPLETION OF NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM

A certificate of completion shall be awarded to participants of the North Carolina Certified Public Manager Program upon completion of the program.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1982;
Amended Eff. March 1, 2005.*

25 NCAC 01O .0101 POLICY

(a) Top management within each agency shall initiate and maintain an operative Performance Management System that maximizes the utilization of the knowledge, skills, abilities and behaviors of its employees through an understanding of the relationship between an employee's work assignments and the mission and goals of the agency.

(b) This system shall be based on the importance of two-way, continuous communication between supervisors and employees to determine job responsibilities, performance requirements, accomplishments, and areas for improvement in meeting job requirements. It shall ensure that all employees:

- (1) are aware of what is expected of them,
- (2) are provided with continuous feedback about their performance,
- (3) are provided with opportunities for education, training and development, and
- (4) are rewarded in a fair and equitable manner.

(c) Each agency shall have a system for managing performance with a twofold purpose:

- (1) Establishing, monitoring, and evaluating organizational goals, and

- (2) Establishing individual expectations.
- (d) This system shall address establishing individual expectations. Once organizational goals are established and communicated, individual expectations shall be set based on these goals so that each employee understands and can relate assigned duties to the agency's mission and goals.

*History Note: Authority G.S. 126-4; 126-7;
Eff. January 1, 1990;
Amended Eff. March 1, 2005.*

25 NCAC 01O .0201 PERFORMANCE MANAGEMENT PROCESS

(a) The state's Performance Management System shall consist of a one-year work planning and performance evaluation cycle. The steps in the one-year review cycle are:

- (1) Work plan developed for an employee at the beginning of the review cycle.
- (2) Interim Review (assessment) of each employee's progress is completed by the supervisor and discussed with the employee six months into the cycle.
- (3) Improvement Plan that addresses any deficient performance.
- (4) Development plan that addresses career development needs.
- (5) Performance Appraisal at the end of each review period evaluates an employee's accomplishments against the goals, objectives and competency requirements that were established at the start of the cycle. Each employee receives an overall rating. Any employee who receives an Unsatisfactory or Below Good rating must have a developmental plan indicating where improvements are needed and that specifies training and development activities to improve performance.

(b) The Performance Management Process is the sequence of actions that supervisors and managers take when interacting with employees about their performance. The three parts of this Process are:

- (1) Planning - At the beginning of the work cycle, the supervisor and the employee shall meet to develop the employee's work plan.
- (2) Managing - This part of the Performance Management process includes the day-to-day tracking of the employee's progress toward achieving the performance expectations by:
 - (A) Feedback through coaching and reinforcing discussions.
 - (B) Interim review - Every supervisor must meet with each employee at least at the midpoint of the work cycle for an interim review of performance.
- (3) Appraising - At the end of the work cycle, the supervisor shall meet with each employee to discuss the employee's actual performance and

record the actual results and behavior for each expectation as follows:

- (A) Supervisor rates each responsibility and records the rating on the work plan.
- (B) Supervisor rates each competency and records the rating on the work plan.
- (C) The overall rating is discussed with the employee and recorded on the work plan.
- (D) The overall summary statements supporting the rating are written.

- (2) Any proposed personnel action as mentioned in this Rule shall be consistent with the overall rating of the employee's performance.
- (3) In cases in which the personnel action recommended by the supervisor appears inconsistent with the current overall rating, the supervisor shall write a justification to accompany the recommendation.

History Note: Authority G.S. 126-4; 126-7; Eff. January 1, 1990; Amended Eff. March 1, 2005; July 1, 1991.

History Note: Authority G.S. 126-4; 126-7; Eff. January 1, 1990; Amended Eff. March 1, 2005; July 1, 1991.

25 NCAC 010 .0203 RELATIONSHIP/PERFORMANCE MGMT/OTHER HUMAN RESOURCES SYSTEMS

- (a) Performance management shall be an integral part of the total management of an organization. Information obtained during the Performance Management Process about individual employees or from specific units of the organization shall be a consideration in making other personnel management decisions. The design of the job shall be the basis for job analysis, which determines the content of the performance appraisal. Information obtained from performance appraisals must influence selection, staffing, discipline, training, and development.
- (b) Performance appraisal information shall be one consideration in making other personnel decisions such as promotions, reductions in force, performance salary increases, and all performance-based disciplinary actions. Personnel policies dealing with these actions also require consideration of other information. Performance appraisal alone shall not determine such decision.
- (c) In order to achieve internal consistency in personnel administration, agencies shall adopt procedures that meet the following requirements:
 - (1) A current (within the past 12 months) Performance Appraisal Summary shall be on file for an employee before any of the

25 NCAC 010 .0204 RESPONSIBILITIES OF THE STATE PERSONNEL COMMISSION

The State Personnel Commission shall submit a report on the Performance Management System annually in accordance with G.S. 126-7(c)(9). The report shall include, in addition to statutorily mandated information, recommendations for improving and correcting any inconsistencies in the total Performance Management System and in each agency.

History Note: Authority G.S. 126-4(8); 126-7; Eff. January 1, 1990; Amended Eff. March 1, 2005.

25 NCAC 010 .0205 RESPONSIBILITIES OF THE OFFICE OF STATE PERSONNEL

The Office of State Personnel, under the authority of G.S. 126-3, shall administer and enforce all Rules for the performance management system throughout North Carolina State Government. Each agency shall submit information annually for each cycle. This shall include submission of planning documents as well as participating in audits conducted by the Office of State Personnel.

History Note: Authority G.S. 126-4; 126-7; Eff. January 1, 1990; Amended Eff. March 1, 2005.

This Section contains information for the meeting of the Rules Review Commission on Thursday March 17, 2005, 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 Monday, March 14, 2005 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
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

April 21, 2005
June 16, 2005
August 18, 2005
October 20, 2005
May 19, 2005
July 21, 2005
September 15, 2005
November 17, 2005
December 15, 2005

**RULES REVIEW COMMISSION
MARCH 17, 2005
MINUTES**

The Rules Review Commission met on Thursday, March 17, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jim Funderburk, Jennie Hayman, Thomas Hilliard, Jeffrey Gray, Robert Saunders, Lee Settle, Dana Simpson, and John Tart.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Judy O'Neal	Wake Med
Bill Atkinson	Wake Med
Betsy Sullivan	Wake Med
John Jennings	Wake Med
Jean Stanley	Board of Nursing
Veronica Wilson	DSS
Rhonda McLamb	DSS
Gerald Canipe	Home Inspector Licensing Board
Andy Patron	Home Inspector Licensing Board
Sue Grayson	DENR
Susan Dail	DENR
Daniel Nelson	UNC Hospital
Cindy O'Neal	Justice
Del Williams	DHHS
Carlotta Dixon	DSS
Ross McKinnay Jr.	Duke
John Falletta	Duke
Duncan Yaggy	Duke
Ellie Sprenkel	Department of Insurance
Frank Folger	Department of Insurance
Joe Moore	NCGA/Res. Div.
Jayne Bunn	DFS

Nadine Pfeiffer	DFS
Jeff Horton	DFS
Barbara Ryan	DFS
Collen Crowley	
Carolyn Hall	
Nancy Pate	DENR
Debbie Young	Department of Transportation
Peggy Oliver	Office of State Personnel
Judith Tillman	Attorney General's Office
John Barkley	Attorney General's Office
Ronnie Herring	DHHS/DPH
Mercidee Benton	DFS
Bill Warren	DFS
Doug Barrick	DFS
Glenda Artis	DAAS
Jeff Manning	DENR/DWQ
David Hance	DENR/DWQ
Stefanie Shore	Cosmetic Art Examiners
Mike Lopazanski	DCM
Penny DePas	Board of Podiatry Examiners

APPROVAL OF MINUTES

The meeting was called to order at 10:07 a.m. with Chairman Hayman presiding.

She reminded the Commissioners of their obligations under the Governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the February 17, 2005 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

25 NCAC 01D .1924: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

25 NCAC 01J .0615; .1408; .1409; .1410: State Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

25 NCAC 01K .0104; .0212: State Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

25 NCAC 01O .0206: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

10A NCAC 13B .4511: Medical Care Commission – The Commission objected to the rule due to failure to comply with the Administrative Procedure Act. The change in (a)(2) is a substantial change for which no notice was given. There was no notice given that the agency was considering amending this item, and the change is more than just technical. "Storage", "distribution" and "monitoring the effects" of medication were not required to be addressed in facilities' policies and procedures prior to the change.

10A NCAC 13F .1104: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (a) and (e), it is not clear what is meant by a resident's "personal needs allowance" nor how this amount is determined, nor where it comes from.

The Commission had to change the order of review of the log due to missing pages in the Commissioner's notebooks.

Temporary Rule: 10A NCAC 13B .3302: Medical Care Commission – Commissioner Funderburk made a motion not to accept staff opinion and to approve this rule. Commissioner Gray made a motion to amend Commissioner Funderburk's motion as follows: By finding pursuant to 150B-21.1(a1) that the Commission has determined that the substantial period of time of eight and one-half years

is out-weighted by the degree of public benefit; the fact that the agency did not have knowledge of the conflict in the law; that the agency had public hearings in this matter and as stated on the record that the majority of the opposition was resolved before the rule was promulgated; that the need for the waiver is for all the research to continue; that the research was ongoing without the knowledge of those hospitals and medical providers performing it that they were violating an administrative rule; and that the agency has not previously requested a waiver from this Commission. The rule was approved with Commissioner Funderburk opposed to amendment.

The Commission received the copies needed to continue the review of the log.

10A NCAC 13G .0303: Medical Care Commission – The Commission objected to the rule due to ambiguity. Paragraphs (a) and (b)(1) are not consistent. Paragraph (a) requires homes to be located so that hazards to occupants are minimized while (b)(1) requires the home site to be free from exposure to hazards. It is not clear if the rule requires an absolute prohibition on hazards or not.

10A NCAC 13G .0309: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (b), it is not clear what standards the Division of Facility Services uses in determining requirements for the size and number of bathrooms. This objection applies to exiting language in the rule.

10A NCAC 13G .0601: Medical Care Commission – The Commission objected to the rule due to ambiguity. While paragraph (e) gives factors the Division of Facility Services will use in making a determination of the need for additional staff, it is still not clear what the standards for the determination are.

10A NCAC 13G .1103: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (a) and (f), it is not clear what is meant by “personal needs allowance,” nor how this amount is determined, nor where it comes from. This objection applies to exiting language in the rule.

Commissioner Hayman did not participate nor vote on the Facility Services rule. Commissioner Funderburk chaired the meeting while that rule was discussed. The rule was approved.

Commissioner Gray did not participate nor vote on the Alarm Systems Licensing Board rule. The rule was approved.

15A NCAC 18A .2609: Commission for Health Services – The Commission objected to the rule due to ambiguity. Paragraphs (i) and (j) appear to be identical except for the fact that (i) is directed towards food “held for service for immediate consumption” and (j) is for food “held for customer take-out.” The only differences in the two paragraphs seems to be that food held for “immediate” (on-premises) consumption can stay out longer. It is unclear if food in the second category could be converted to the first category merely by pronouncing that it is now no longer “held for customer take-out.” It is also unclear how to tell the difference between the two. And it is unclear how the agency is going to be able to enforce the distinction between the two.

Commissioner Settle recused himself from any discussion or vote concerning the Securities Division of the Secretary of State’s Office.

18 NCAC 06 .1313: Secretary of State – The Commission objected to the rule due to ambiguity. Paragraph (d), lines 34 - 35 contains a waiver provision. It provides that the administrator (in the Secretary of State’s Office) may modify or waive certain requirements in this rule. The standard for this waiver is “upon the showing of good cause.” An agency may waive any part of their rules under the APA. G.S. 150B-19(6) allows the agency to do this if the rule “establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.” The RRC has consistently taken the position that a “good cause” standard is not a specific enough guideline. It is so broad as to be meaningless. It does not help the agency or the persons subject to the rule or protected by the rule to have any notion of what is meant by “good cause.” There is also a further waiver in lines 36 – 37. It allows the administrator to “require higher investor suitability standards” in certain situations. The guideline for this waiver is “where necessary for the protection of the investors.” This is a standard; but it is not much of a standard. Both waivers need to be rewritten.

21 NCAC 06O .0112: Board of Barber Examiners – This rule was withdrawn by the agency. No notice of text was ever published. The remaining rules were approved.

21 NCAC 14A .0101: Board of Cosmetic Art Examiners – The Commission objected to the rule due to failure to comply with the Administrative Procedure Act. The agency apparently has not actually formally adopted the rule at the conclusion of the comment period.

21 NCAC 36 .0702: Board of Nursing – The Commission extended the period of review on the above captioned rule. It did this in accordance with N.C.G.S. 150B-21.10(3) in order to obtain some additional information about the rule. The RRC needs to determine

RULES REVIEW COMMISSION

if the Nursing Board has sufficient authority to adopt this rule. This appears to depend largely on whether the rule is a uniform rule adopted by the Compact administrators. This is in compliance with G.S. 90-171.87(4) and G.S. 90-171.89(c).

21 NCAC 52 .0205: Board of Podiatry Examiners – The Commission objected to the rule due to ambiguity. There are two discretionary components in this rule. The first is in lines 4 and 5 where the board “may require” applicants to “attend a practice – and ethics – orientation prior to receiving his/her license.” The second is in the second sentence, in lines 5 and 6, where the board “may require” an applicant to spend time in a trial period. In both cases it is unclear what the standards are for exercising the discretionary components of these rules.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioner Hayman gave instructions on how to fill out new reimbursement forms.

Mr. DeLuca provided a draft of rules concerning how the Commission should handle letters of objection regarding certain rules that have been or may be filed with the Rules Review Commission. The Commission reviewed the draft and asked Mr. DeLuca to add the agency rulemaking coordinators contact information in the form letter that would accompany any return of those letters.

Mr. DeLuca informed the Commission that the Pharmacy Board Court of Appeals hearing will be on April 19, 2005.

The meeting adjourned at 12:14 p.m.

The next meeting of the Commission is Thursday, April 21, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
March 17, 2005 Meeting**

SOCIAL SERVICES COMMISSION

Nature and Purpose of State Adult Day Care Fund 10A NCAC 06T .0201

MEDICAL CARE COMMISSION

Medical Orders	10A NCAC 13B .3707
Patient Medical Records	10A NCAC 13B .3905
Definitions	10A NCAC 13F .0101
Training on Cardio-Pulmonary Resuscitation	10A NCAC 13F .0507
Management of Facilities with a Capacity or Census of Sev...	10A NCAC 13F .0601
Management of Facilities with a Capacity or Census of 81 ...	10A NCAC 13F .0603
Personal Care and Other Staffing	10A NCAC 13F .0604
Resident Assessment	10A NCAC 13F .0801
Resident Care Plan	10A NCAC 13F .0802
Personal Care and Supervision	10A NCAC 13F .0901
Health Care	10A NCAC 13F .0902
Medication Administration Policies and Procedures	10A NCAC 13F .1001
Medication Orders	10A NCAC 13F .1002
Medication Labels	10A NCAC 13F .1003
Medication Administration	10A NCAC 13F .1004
Self-Administration of Medications	10A NCAC 13F .1005
Medication Storage	10A NCAC 13F .1006
Medication Disposition	10A NCAC 13F .1007

Controlled Substances	10A NCAC 13F .1008
Pharmaceutical Care	10A NCAC 13F .1009
Pharmaceutical Services	10A NCAC 13F .1010
Management of Residents Funds	10A NCAC 13F .1101
Refund Policy	10A NCAC 13F .1102
Legal Representative or Payee	10A NCAC 13F .1103
Refund or Personal Funds	10A NCAC 13F .1105
Settlement of Costs of Care	10A NCAC 13F .1106
Disposal of Resident Records	10A NCAC 13F .1202
Report of Admissions and Discharges	10A NCAC 13F .1203
Reporting of Accidents and Incidents	10A NCAC 13F .1212
Availability of Corrective Action and Survey Reports	10A NCAC 13F .1213
Definitions	10A NCAC 13G .0101
Application to License an Existing Building	10A NCAC 13G .0204
Application to License a Newly Constructed or Renovated B...	10A NCAC 13G .0205
Capacity	10A NCAC 13G .0206
Termination of License	10A NCAC 13G .0210
Application of Physical Plant Requirements	10A NCAC 13G .0301
Design and Construction	10A NCAC 13G .0302
Living Arrangements	10A NCAC 13G .0304
Living Room	10A NCAC 13G .0305
Dining Room	10A NCAC 13G .0306
Kitchen	10A NCAC 13G .0307
Bedrooms	10A NCAC 13G .0308
Corridor	10A NCAC 13G .0311
Outside Entrance and Exits	10A NCAC 13G .0312
Laundry Room	10A NCAC 13G .0313
Floors	10A NCAC 13G .0314
Housekeeping and Furnishings	10A NCAC 13G .0315
Fire Safety and Disaster Plan	10A NCAC 13G .0316
Building Service Equipment	10A NCAC 13G .0317
Outside Premises	10A NCAC 13G .0318
Resident Assessment	10A NCAC 13G .0801
Resident Care Plan	10A NCAC 13G .0802
Personal Care Plan and Supervision	10A NCAC 13G .0901
Health Care	10A NCAC 13G .0902
Medication Administration	10A NCAC 13G .1001
Medication Orders	10A NCAC 13G .1002
Medication Administration	10A NCAC 13G .1004
Controlled Substances	10A NCAC 13G .1008
Pharmaceutical Services	10A NCAC 13G .1010
Management of Residents Funds	10A NCAC 13G .1101
Legal Representative or Payee	10A NCAC 13G .1102
Refund Policy	10A NCAC 13G .1104
Refund of Personal Funds	10A NCAC 13G .1105
Settlement of Cost of Care	10A NCAC 13G .1106
Disposal of Resident's Records	10A NCAC 13G .1203

Report of Admissions and Discharges	10A NCAC 13G .1204
Reporting of Accidents and Incidents	10A NCAC 13G .1213
Availability of Corrective Action	10A NCAC 13G .1214
Investigating and Reporting Health Care Personnel	10A NCAC 13O .0102

HHS-FACILITY SERVICES

Performance Standards	10A NCAC 14C .3303
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HEALTH SERVICES, COMMISSION FOR

Control Measures HIV	10A NCAC 41A .0202
General	10A NCAC 41D .0101
Pre-Decontamination Assessment	10A NCAC 41D .0102
Decontamination	10A NCAC 41D .0103
Post-Decontamination	10A NCAC 41D .0104
Enforcement	10A NCAC 41D .0105

SOCIAL SERVICES COMMISSION

Medical Deductions for Medicare Prescription Drug Card Be...	10A NCAC 71U .0216
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HOME INSPECTOR LICENSURE BOARD

Definitions	11 NCAC 08 .1101
Purpose and Scope	11 NCAC 08 .1103
General Exclusions	11 NCAC 08 .1105
Structural Components	11 NCAC 08 .1106
Exterior	11 NCAC 08 .1107
Roofing	11 NCAC 08 .1108
Plumbing	11 NCAC 08 .1109
Electrical	11 NCAC 08 .1110
Heating	11 NCAC 08 .1111
Air conditioning	11 NCAC 08 .1112
Interiors	11 NCAC 08 .1113
Insulation and Ventilation	11 NCAC 08 .1114
Built-in Kitchen Appliances	11 NCAC 08 .1115
Board Staff	11 NCAC 08 .1203

ALARM SYSTEMS LICENSING BOARD

Fees for Registration	12 NCAC 11 .0302
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ENVIRONMENTAL MANAGEMENT COMMISSION

Groundwater Quality Standards	15A NCAC 02L .0202
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COASTAL RESOURCES COMMISSION

Specific Conditions	15A NCAC 07H .1105
Purpose	15A NCAC 07H .2701

Approval Procedures	15A NCAC 07H .2702
Permit Fee	15A NCAC 07H .2703
General Conditions	15A NCAC 07H .2704
Specific Conditions	15A NCAC 07H .2705

HEALTH SERVICES, COMMISSION FOR

Definitions	15A NCAC 18A .2601
Grading	15A NCAC 18A .2606
Shellfish	15A NCAC 18A .2612
Utensils and Equipment	15A NCAC 18A .2617
Drinking Water Fountains	15A NCAC 18A .2621

SECRETARY OF STATE, DEPARTMENT OF

Limited Offerings Pursuant to G.S. 78A-17(9)	18 NCAC 06 .1205
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BARBER EXAMINERS, BOARD OF

Forms and Fees	21 NCAC 06N .0101
Schedule of Penalties	21 NCAC 06O .0101
Licensing of Barber Shops	21 NCAC 06O .0102
Licensing of Barber Schools	21 NCAC 06O .0103
Unsupervised Apprentice	21 NCAC 06O .0104
Unlicensed Barber	21 NCAC 06O .0105
Display of Current License	21 NCAC 06O .0106
Fraudulent Misrepresentations or Submission of Fraudulent...	21 NCAC 06O .0107
Inspections of Shops and Schools	21 NCAC 06O .0108
Expired License	21 NCAC 06O .0109
Adequate Premises	21 NCAC 06O .0110
School Instructors	21 NCAC 06O .0111

MEDICAL BOARD

Fee	21 NCAC 32F .0103
Annual Registration	21 NCAC 32S .0105
Fees	21 NCAC 32S .0117

PHARMACY, BOARD OF

Hours Records Providers Correspondence	21 NCAC 46 .2201
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PODIATRY EXAMINERS, BOARD OF

Application	21 NCAC 52 .0201
Fee for Validation of Licensee Lists	21 NCAC 52 .0210
Temporary License	21 NCAC 52 .0211
Application for Examination	21 NCAC 52 .0601
Notice Mailing List	21 NCAC 52 .0804

Procedures for Conducting Elections 21 NCAC 52 .1302

STATE PERSONNEL COMMISSION

State Employees Subject to the Fair Labor Standards Act 25 NCAC 01D .1924
 Special Provision 25 NCAC 01J .0615
 Employee Responsibilities for Mediation 25 NCAC 01J .1408
 Agency Responsibilities for Mediation 25 NCAC 01J .1409
 Office of State Personnel Responsibilities 25 NCAC 01J .1410
 State Human Resource Development Policy 25 NCAC 01K .0104
 Office of State Personnel Human Resource Development Facilities 25 NCAC 01K .0212
 Responsibilities of Agencies 25 NCAC 01O .0206

**Commission Review/Permanent Rules
 Log of Filings #220
 February 22, 2005 through March 21, 2005**

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 02 concern environmental management and are promulgated by the Environmental Management Commission.

The rules in Subchapter 02D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); and transportation conformity (.2000).

Prevention of Significant Deterioration 15A NCAC 02D .0530
 Amend/*
 Sources In Non attainment Areas 15A NCAC 02D .0531
 Amend/*

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

Importation of Wild Animals and Birds 15A NCAC 10B .0101
 Amend/*
 Migratory Game Birds 15A NCAC 10B .0105
 Amend/*
 Black Bear (formerly Black Bear and Wild Boar) 15A NCAC 10B .0107
 Amend/*
 Taking Big Game with Handguns 15A NCAC 10B .0120
 Amend/*
 Bear 15A NCAC 10B .0202
 Amend/*
 Deer 15A NCAC 10B .0203
 Amend/*
 Turkey 15A NCAC 10B .0209

Amend/*				
Crow	15A	NCAC	10B	.0215
Amend/*				
Open Seasons	15A	NCAC	10B	.0302
Amend/*				
Bag Limits	15A	NCAC	10B	.0303
Amend/*				

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100), general rules (.0200), game fish (.0300), non-game fish (.0400) and primary nursery areas (.0500).

Special Regulations Joint Waters	15A	NCAC	10C	.0107
Amend/*				
Management Responsibility for Estuarine Striped Bass	15A	NCAC	10C	.0110
Amend/*				
Implementation of Estuarine Striped Bass Management Plans	15A	NCAC	10C	.0111
Amend/*				
Public Mountain Trout Waters	15A	NCAC	10C	.0205
Amend/*				
Trotlines and Set-Hooks	15A	NCAC	10C	.0206
Amend/*				
Transportation of Live Fish	15A	NCAC	10C	.0209
Amend/*				
Possession of Certain Fishes	15A	NCAC	10C	.0211
Amend/*				
Inland Game Fishes	15A	NCAC	10C	.0301
Amend/*				
Open Seasons: Creel and Size Limits	15A	NCAC	10C	.0305
Amend/*				
Manner of Taking Non game Fishes	15A	NCAC	10C	.0401
Amend/*				
Permitted Special Devices and Open Seasons	15A	NCAC	10C	.0407
Amend/*				

The rules in Subchapter 10D are game lands rules.

Hunting on Game lands	15A	NCAC	10D	.0102
Amend/*				

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

Clay County	15A	NCAC	10F	.0308
Amend/*				
Granville, Vance and Warren Counties	15A	NCAC	10F	.0311
Amend/*				
Montgomery County	15A	NCAC	10F	.0327
Amend/*				
Perquimans County	15A	NCAC	10F	.0355
Amend/*				
Macon County	15A	NCAC	10F	.0366

Amend/*
Town of Swansboro 15A NCAC 10F .0369
Amend/*

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), and controlled fox hunting preserves (.1200).

Quality of Birds Released 15A NCAC 10H .0104
Amend/*
Game Bird Propagation 15A NCAC 10H .0901
Amend/*
Disposition of Birds or Eggs 15A NCAC 10H .0904
Amend/*

The rules in Subchapter 10J cover wildlife conservation areas.

General Regulations Regarding use of Conservation Areas 15A NCAC 10J .0102
Amend/*

COMMUNITY COLLEGES, BOARD OF

The rules in Chapter 02 concern Community Colleges.

The rules in Subchapter 02C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

Local College Personnel Policies 23 NCAC 02C .0210
Amend/*

The rules in Subchapter 03A cover proprietary schools including business, trade, and technical schools (.0100); and correspondence schools (.0200).

Definitions and Application for Initial License 23 NCAC 03A .0101
Amend/*
Application for Renewal of License 23 NCAC 03A .0102
Amend/*

AGENDA
RULES REVIEW COMMISSION
April 21, 2005, 10:00 A.M.

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Medical Care Commission – 10A NCAC 13B .4511 (Bryan)

- B. Medical Care Commission – 10A NCAC 13F .1104 (Bryan)
 - C. Medical Care Commission – 10A NCAC 13G .0303; .0309; .0601; .1103 (Bryan)
 - D. Commission for Health Services – 15A NCAC 18A .2609 (DeLuca)
 - E. Secretary of State – 18 NCAC 06 .1313 (DeLuca)
 - F. Board of Cosmetic Art Examiners – 21 NCAC 14A .0101 (DeLuca)
 - G. Board of Nursing – 21 NCAC 36 .0702 (DeLuca)
 - H. Board of Podiatry Examiners – 21 NCAC 52 .0205 (DeLuca)
- IV. Review of Rules (Log Report #220)
- V. Review of Temporary Rules (if any)
- VI. Commission Business
- VII Next meeting: May 19, 2005

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 <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A. B. Elkins II*

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ABC COMMISSION</u>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
ABC Commission v. Fat Dragon, Inc. T/A Akumi	04 ABC 0868	Lassiter	02/10/05	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
Christopher C. Searcy v. Crime Victims Compensation Commission	04 CPS 1305	Gray	01/21/05	
Jason Israel Chandler v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1368	Lassiter	01/10/05	
Regina Rose Hargrave v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1500	Lassiter	01/10/05	
Isaac Cornell Mitchell v. Victim and Justice Services	04 CPS 1529	Gray	01/13/05	
Belinda D. Clegg v. Crime Victims Compensation Commission	04 CPS 1637	Mann	02/07/05	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
Ricky Nelson Allen v. Dept. Crime Control & Public Safety	04 CPS 1916	Lassiter	01/05/05	
Bennett Lee Sullivan v. Johnston County Sheriff's Dept.	04 CPS 2041	Wade	01/06/05	
Dolphine Holder v. Crime Control & Public Safety, Victim Compensation Services Division	04 CPS 2135	Chess	01/05/05	
Daniel A. Young, Sr v. Crime Victims Compensation Commission	05 CPS 0023	Wade	02/21/05	

DEPARTMENT OF AGRICULTURE

CONTESTED CASE DECISIONS

NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04
<u>DEPARTMENT OF ADMINISTRATION</u>			
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04
<u>HEALTH AND HUMAN SERVICES</u>			
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Medical Assistance	03 DHR 1113	Gray	10/15/04
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
Brenda Rena Hairston v. DHHS	04 DHR 0183	Wade	02/04/05
Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kitz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Evelyn Deloris Johnson v. DHHS	04 DHR 0261	Elkins	02/10/05
Terry T. Nixon v. DHHS, Division of Facility Services	04 DHR 0287	Lassiter	01/05/05
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Ralm, Inc v. DHHS, DFS, Mental Health Licensure	04 DHR 0482	Lassiter	02/15/05
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc. (Lessor) and Clayton Dialysis Center., Inc. (Lessee)	04 DHR 0516	Elkins	12/17/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Ralm, Inc v. DHHS, DFS, Mental Health Licensure and Certification	04 DHR 0540	Lassiter	02/17/05
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Francho Peoples v. DHHS, Division of Medical Assistance	04 DHR 0596	Elkins	11/23/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
The Braxton Home, Alfred F. Braxton v. DHHS, Division of Facility Services	04 DHR 0633	Wade	02/01/05
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Velma J. Thomas, Thomas Child Care v. Div of Child Development	04 DHR 0645	Conner	12/03/04

CONTESTED CASE DECISIONS

Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Christy Robinson v. DHHS	04 DHR 0704	Elkins	02/14/05
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Rudolph Lofton v. Medicaid Program	04 DHR 0788	Wade	11/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Michelle Cross v. DHHS	04 DHR 0811	Morrison	11/24/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Ralph Robinson, Jr., Neuse Center for MH/DD/SAS	04 DHR 0897	Gray	01/31/05
Lisa Robinson v. Neuse Center for MH/DD/SAS	04 DHR 0898	Gray	01/31/05
Triad Imaging, Inc v. DHHS, DFS, CON Section and Diagnostic Radiology & Imaging, LLC	04 DHR 0908	Gray	02/17/05
Linda Brown v. DHHS, Div. of Medical Assistance	04 DHR 0919	Gray	01/19/05
K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	04 DHR 0967	Mann	12/10/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
James Phillip Chavis, Jr., DHHS, Div. of Medical Assistance	04 DHR 1071	Wade	02/04/05
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
Roger Penland, Jr v. DHHS, Division of Facility Services	04 DHR 1096	Gray	11/29/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Sandy Reichard v. Satana T. Deberry, DHHS	04 DHR 1162	Wade	02/17/05
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Charleese K. Garrison, as Mother of Jasmine C. Garrison v. DHHS, Div of Medical Assistance	04 DHR 1168	Gray	02/15/05
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Janet K. Faison v. DHHS, Div. of Facility Services	04 DHR 1181	Wade	02/01/05
Cynthia R. Hill, DHHS, Division of Facility Services	04 DHR 1183	Wade	02/01/05
Charlynn Keough v. Cherokee Co. DSS, BeBe McClure S.H., by his parent/guardian D.H. v. DHHS	04 DHR 1225	Wade	01/24/05
Alicia Colon v. DHHS, Division of Facility Services	04 DHR 1250	Creech	11/30/04
Monica Dockery v. DHHS	04 DHR 1280	Mann	11/16/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1281	Wade	12/02/04
Faye Rice, CEO Rice & Rice Co., Inc v. Marvin Sanders DHHS, Div of MH Dev. Disabilities	04 DHR 1301	Wade	10/19/04
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1303	Wade	01/24/05
Lakresha McIver v. Health Care Registry	04 DHR 1310	Wade	11/01/04
Vonzella Malone v. DHHS, Division of Facility Services	04 DHR 1330	Elkins	11/10/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1331	Gray	11/23/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1359	Wade	10/14/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1364	Elkins	11/10/04
Ghazaelleh Abdel-Kader v. DHHS, WIC, Division of Public Health	04 DHR 1366	Mann	11/09/04
Adib Abdullah v. DHHS	04 DHR 1373	Gray	12/15/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1380	Gray	10/22/04
Bio-Medical Applications of NC, Inc., DHHS, Div. of Facility Services, Div. of Medical Facilities Planning Section, Total Renal Care of NC, LLC and Renal Systems Management, LLC and Garner Dialysis Center, Inc	04 DHR 1381	Wade	10/14/04
Craven Regional Medical Authority d/b/a Craven Regional Medical Center v. DHHS, DFS, CON and Coastal Carolina Health Care, PA d/b/a Coastal	04 DHR 1384	Elkins	02/04/05
Kim Haley, Cap/C, DHHS	04 DHR 1428	Chess	01/21/05
Carolina Imaging	04 DHR 1443	Gray	01/21/05
Red Sea Grocery, Weldegebriel Ucbeab v. DHHS	04 DHR 1453	Elkins	01/04/05
Dorothy Ragland v. DHHS, DFS	04 DHR 1468	Gray	02/09/05
Charlenia Ferguson v. Child Care Division	04 DHR 1489	Mann	01/07/05
Tammy S. Edge v. NC Tax Administrator, Dept. of Revenue	04 DHR 1565	Lassiter	01/26/05
Jannaj J. Peters v. NC Nurse Aide I Program	04 DHR 1566	Gray	02/15/05
Kathleen Barker v. DHHS	04 DHR 1584	Gray	01/04/05
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Joyce Miller Moore v. DHHS	04 DHR 1621	Lassiter	01/26/05
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04
Rebecca Hamilton, Beck's Play & Learn v. DHHS, Div. of Child Dev.	04 DHR 1802	Lassiter	02/18/05
Angela Maria Dozier v. Franklin County Dept. of Social Services	04 DHR 1866	Lassiter	02/18/05
Morgan M. Lambert v. DHHS, Div of Facility Services	04 DHR 2050	Chess	02/16/05
Richard D. Bullock v. DHHS, Div of Medical Assistance	04 DHR 2099	Morrison	02/17/05
Wendy Dawn Cooke, Dept. of Health and HR/State Board of CNAs	04 DHR 2148	Elkins	02/10/05
Laverne Luck v. Health Care Personnel Registry	04 DHR 2148	Elkins	02/10/05
Kevin L. Peppers, PB Interventions, Inc v. DHHS, DFS	04 DHR 2301	Elkins	02/10/05
Donnell B. Buckner, PB Interventions, Inc v. DHHS, DFS	04 DHR 2310	Lassiter	02/11/05
Rena Lawson v. DHHS, NA Register	04 DHR 2311	Lassiter	02/24/05
	04 DHR 2312	Lassiter	02/24/05
	04 DHR 2330	Elkins	02/16/05

CONTESTED CASE DECISIONS

Louise Dowd v. NC Nurse Aid I and Health Care Personnel Registry 05 DHR 0090 Elkins 02/23/05

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncsoh.com/decisions.

DEPARTMENT OF JUSTICE

Larry Mitchel Batton, Jr. v. Criminal Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Training Stds. Comm	03 DOJ 1702	Conner	05/10/04
Cindy L. Schumacher v. Sheriff's Educ. & Training Stds. Comm	03 DOJ 2341	Chess	12/29/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
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Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriff's Education & Training Standards Comm.	04 DOJ 0318	Mann	06/24/04
Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0490	Wade	11/01/04
Guy Wesley Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Creo Melvin Meiver, II v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0567	Gray	10/15/04
Roger Wayne Alvarico v. Sheriff's Education & Training Standards Comm	04 DOJ 0636	Gray	11/29/04
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- 1 Combined Cases
- 2 Combined Cases
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STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 DST 1396

Estate of Charles Michael Epley, by)
Joshua G. Epley, Administrator,)
Petitioner,)
)
v.)
)
The Board of Trustees of the Teachers')
and State Employees' Retirement System,)
Respondent.)

DECISION

This matter came on for hearing before Administrative Law Judge Beryl E. Wade on December 8, 2004, in Asheville, North Carolina.

APPEARANCES

For Petitioners: Charles A. Brady, III, Lenoir, N.C.
For Respondent: Robert M. Curran, Assistant Attorney General.

ISSUES

Whether the Respondent properly determined that Petitioner's decedent, Charles Michael Epley, was neither an "employee" nor a "teacher" as those terms are defined, and thus not entitled to participate in the Retirement System.

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. §§ 135-1(25).

WITNESSES

For Petitioners: Petitioner
J. Marshall Barnes, III
For Respondent: J. Marshall Barnes, III

Based upon careful consideration of the testimony and evidence presented at the hearing, and the arguments of the parties, the undersigned makes the following:

FINDINGS OF FACT

1. The Appalachian Consortium is a private, non-profit corporation, which was incorporated in North Carolina in 1971. Among the incorporators were individuals affiliated with Appalachian State University and other educational institutions in the Appalachian Region, as well as other individuals. The stated purposes of the organization are to "preserve and promote the heritage of Appalachia" through various means.
2. Charles Michael Epley was initially hired as Interim Executive Director of Appalachian Consortium, Inc., in February, 1991, and shortly thereafter was appointed Acting Executive Director. The February 19, 1991 letter of appointment as Interim Executive Director was written on the letterhead of the Appalachian Consortium, and signed by Woodward S. Bousquet, Chair, Appalachian Consortium Board of Directors. The letter states that Mr. Epley "should take this letter of appointment to Dr. R. Clinton Parker, Associate Chancellor for Academic Affairs at Appalachian State University (ASU). Dr. Parker's office can assist you in handling the necessary paperwork for being placed on the payroll of ASU, which handles accounting for the Consortium."

3. Thereafter, Mr. Epley worked as Director of the Appalachian Consortium in office space provided by the University and his salary was paid by ASU, which was reimbursed by the Consortium. ASU enrolled Mr. Epley in the State Health Plan, as well as in the Teachers' and State Employees' Retirement System ("TSERS"), and made all required employer and employee contributions to the Retirement System for Mr. Epley, while being reimbursed for those expenses by the Consortium. For at least some period of his employment with the Consortium, ASU also permitted Mr. Epley the use of a state-owned vehicle.

4. The position description for Mr. Epley's position states that the Director "serves as the executive officer of the Consortium and is responsible to the Board of Directors for carrying out the purposes of the organization" under the supervision of the Consortium's Board of Directors. The position's responsibilities include directing the operations of the Consortium and implementing the policies of the Consortium's Board of Directors. No evidence was introduced which showed Mr. Epley's job responsibilities other than this position description as Executive Director of the Consortium.

5. In approximately January, 2003, Mr. Epley's participation in the TSERS was called into question by an audit conducted by the State Auditor's Office. Pursuant to that audit, in January, 2003, ASU provided the Retirement System with Mr. Epley's position description, letters of appointment, the Consortium's articles of incorporation, and a request that the Retirement System confirm Mr. Epley's eligibility to participate in TSERS.

6. In March, 2003, the Retirement System forwarded the information it had received from ASU to the Attorney General's Office and requested advice concerning Mr. Epley's eligibility to participate in the TSERS. The University subsequently provided additional information to the Attorney General's Office concerning Mr. Epley.

7. Prior to a determination being made concerning his participation in the Retirement System, Mr. Epley died on May 27, 2003.

8. In August, 2003, the Retirement System received the advice from the Attorney General's Office that Mr. Epley's participation in the TSERS was improper, on the basis that Mr. Epley should be considered an employee of Appalachian Consortium rather than ASU.

9. In November, 2003, the Retirement System refunded to the University Mr. Epley's employee contributions plus interest from February, 1991 through December, 2002, and instructed the University to take a credit on its next payroll report to recover the employee and employer contributions reported on Mr. Epley during 2003. The University in turn paid the employee contributions with interest to the Petitioner as Administrator of the Estate.

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

CONCLUSIONS OF LAW

1. Participation in the Teachers' and State Employees' Retirement System is limited to "employees" and "teachers." "Teacher" is defined as "any teacher, . . . librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State." G.S. § 135-1(25).

2. For tax purposes, an officer of a corporation is generally considered an employee of the corporation. 26 C.F.R. § 31.3121(d)-1(b), Employment Tax Regs. Further, § 31.3121(d)-1(c)(2) of the Employment Tax Regs. defines the common law employer-employee relationship as follows:

Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done.

Among the factors to which the courts have looked in determining the existence of an employment relationship are the following: (1) The degree of control exercised over the details of the work; (2) investment in the work facilities; (3) opportunity for profit or loss; (4) whether the type of work is part of the principal's regular business; (5) right to discharge; (6) permanency of the relationship; and (7) the relationship the parties think they are creating. *United States v. Silk*, 331 U.S. 704, 716 (1947). Although no one factor is controlling, the test usually considered fundamental is "whether the person for whom the work is performed has the right to control the activities of the individuals whose status is in issue, not only as to results but also as to the means and method to be used for accomplishing the result." *Packard v. Commissioner*, 63 T.C. 621, 629 (1975).

3. The Internal Revenue Code specifically addresses the situation of employee leasing. 26 U.S.C. § 414(n) provides that employees who are “leased” pursuant to a written agreement with a recipient employer on a substantially full-time basis for at least one year are considered, for tax purposes, to be employees of the recipient employer, rather than the lessor employer. Application of this holding to the present situation would lead to the conclusion that Mr. Epley be considered an employee of the Consortium, and not of the University. Inclusion of such employment as creditable service under the Retirement System would be contrary to the System’s organization and status as a “governmental plan” as defined in the Internal Revenue Code [26 U.S.C. § 414(d)] and ERISA [29 U.S.C. § 1002(32)].

4. Further, the fundamental “right to control” factor, when applied to Mr. Epley’s situation, dictates the conclusion that Mr. Epley was an employee of the Consortium, rather than the University. This is so because Mr. Epley was hired by the Consortium, rather than the University, and functioned in a capacity which served to carry out the purposes and policies of the Consortium, rather than the University. His salary and benefits, while paid directly by the University, were allocated to the University by the Consortium. The job description states that the position in question reports to the Consortium’s Board of Directors, and has no reporting responsibility to the University. While it was presented that Mr. Epley received “local supervision” from Dr. Clinton Parker, a University Vice Chancellor, it appears that Dr. Parker was a Board member, and at times Board Chair, of the Consortium, and that his supervision of Mr. Epley was on behalf of the Consortium.

Based upon the above Findings and Conclusions, the undersigned makes the following:

DECISION

The Retirement System properly determined that Petitioner’s decedent, Charles Michael Epley, was not eligible to participate in the Teachers’ and State Employees’ Retirement System while he was employed as the Director of the Appalachian Consortium, Inc.

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, NC 27699-6714, in accordance with G.S. § 150B-36(b).

NOTICE

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

The agency is required by G.S. § 150B-36(b3) to serve a copy of the final decision on all parties and to furnish a copy to the parties’ attorney of record and to the Office of Administrative Hearings.

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

This the 17th day of February, 2005.

Beryl E. Wade
Administrative Law Judge