

NORTH CAROLINA REGISTER

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PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 733-2678
Fax (919) 733-3462*

*Julian Mann, III, Director
Camille Winston, Deputy Director
Molly Masich, Codifier of Rules
Dana Vojtko, Publications Coordinator
Julie Edwards, Editorial Assistant
Felicia Williams, Editorial Assistant*

Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
Capehart-Crocker House
424 North Blount Street
Raleigh, North Carolina 27601-2817
(919) 733-2678
(919) 733-3462 FAX

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605
(919) 733-2721
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928
Angela Person, Administrative Assistant angela.person@ncmail.net (919) 733-2721

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-4000

contact: Anita Watkins awatkins@ncml.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2008 – December 2008

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 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

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.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Castle & Cooke North Carolina, LLC**

Pursuant to N.C.G.S. 130A-310.34, Castle & Cooke North Carolina, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Kannapolis, Cabarrus and Rowan Counties, North Carolina. The Property includes the former site of the Pillowtex Corporation's textile operations, comprises approximately 154 acres, and consists of the land at 1 Lake Circle Drive (Cabarrus County Property Identification Number ("PIN") 5614611712, 5614608851, 5614711129, 5614617402, 5614614508, 5614619276, 5614624080, 5614713034, 5614717889/Rowan County PIN 149137), 681 North Loop Road (Cabarrus County PIN 5614620503), 218 Chestnut Avenue (Cabarrus County PIN 5614500434) and Water Vault Plant #1 (Cabarrus County PIN 5614507359). The Property is bordered to the north, west and south by Dale Earnhardt Boulevard (formerly Loop Road) and a mix of residential and commercial property; and to the east by Main Street and tracks of the Southern Railroad. Environmental contamination exists on the Property in groundwater and soil.

Castle & Cooke North Carolina, LLC has committed itself to allow no use of the Property other than for mixed use, in the form of a campus devoted to health, nutrition, agricultural and other research that may encompass business offices, laboratory facilities, medical clinics and offices, biogenic contract-manufacturing activities, educational facilities, research and development facilities, a math and science high school, government offices, retail shops, a hotel and conference center, a wellness center, restaurants, residences, entertainment and cultural activities, walking trails, bike paths, parks and green space, a central energy facility, utilities and parking. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Castle & Cooke North Carolina, 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 the Kannapolis Branch of the Cabarrus County Public Library, 850 Mountain Street, Kannapolis, NC 28081 (which may be contacted at (704) 920-1180 or tbprather@cabarruscounty.us), through Annie Gardner at the Reference Desk; the Frank T. Tadlock South Rowan Regional Library, 920 Kimball Road, China Grove, NC 28203 (which may be contacted at (704) 216-7727), through Suzanne White, the Branch Manager, or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Castle & Cooke North Carolina, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on May 16, 2008. 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
Riverfront Holdings II, LLC**

Pursuant to N.C.G.S. 130A-310.34, Riverfront Holdings II, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Wilmington, New Hanover County, North Carolina. The Property, which is part of what is known as the former Almont Shipping Terminal site, consists of 23.37 acres and is located on the east bank of the Northeast Cape Fear River, generally between Hanover Street and Cowan Street. Environmental contamination exists on the Property in soil and groundwater. Riverfront Holdings II, LLC has committed itself to mixed use of the Property, which may include high-density residential, marina, hotel, office, retail, performance/concert hall, meeting/convention facility, open space/outdoor recreation and related automobile parking uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Riverfront Holdings II, 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 the Main Branch, New Hanover County Library, 201 Chestnut Street, Wilmington, NC, 28401 by contacting Ms. Dorothy Hodder at 910-798-6301 or by fax at 910-798-6312; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Riverfront Holdings II, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on May 16, 2008. 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**

Wake Forest University Health Sciences, BRF A1a, LLC

Pursuant to N.C.G.S. 130A-310.34, Wake Forest University Health Sciences and BRF A1a, LLC have filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Winston-Salem, Forsyth County, North Carolina. The Property, the former site of the Camel City Manufactured Gas Plant and Camel City Dry Cleaners, consists of approximately 1.27 acres and is located at 415 East Third Street in Winston-Salem, Forsyth County, North Carolina. Environmental contamination exists on the Property in soil and groundwater. Wake Forest University Health Sciences and BRF A1a, LLC have committed themselves to redevelop the Brownfields Property as a biotechnology research and office facility. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Wake Forest University Health Sciences and BRF A1a, 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 the Forsyth County Public Library North Carolina Room by contacting Mr. Billy King at 660 West Fifth Street, Winston-Salem, North Carolina 27101, telephone number 336-703-3070; or at NC Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, 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 30 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 21 days after the period for written public comments begins. Thus, if Wake Forest University Health Sciences and BRF A1a, LLC, as they plan, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on May 16, 2008. 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

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1910 promulgated as of December 14, 2007, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Updating OSHA Standards Based on National Consensus Standards
(72 FR 71061-71070, December 14, 2007)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

STATE BOARD OF ELECTIONS

6400 Mail Service Center (Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

April 21, 2008

Ms. Susan Valauri, President
North Carolina Professional Lobbyists Association
Post Office Box 905
Raleigh, North Carolina 27602

Re: Advisory Opinion Concerning Lobbyist Involvement in Campaigns pursuant to N. C.
Gen. Stat. § 163-278.23

Dear Ms. Valauri:

I am in receipt of your letter dated February 28, 2008, in which you request an opinion on behalf of the North Carolina Professional Lobbyists Association ("NCPLA"). As stated in your letter, the 2007 North Carolina General Assembly recodified the restrictions on lobbyist campaign contributions as N.C. Gen. Stat. § 163-278.13C. In order to provide guidance to members of your Association on the scope of these restrictions, you have posed several questions for consideration. The questions you posed and my responses to them are as follows:

1. May a lobbyist make recommendations to a third party regarding contributions to a legislative or executive branch candidate or candidate political committee? And, if "yes," may such a recommendation include a specific recommended contribution amount?

N.C. Gen. Stat. § 163.278.13C provides that a lobbyist may not make contributions "to a candidate or candidate campaign committee" when the candidate is a legislator or a public servant. Additionally, it provides that a lobbyist may not collect and/or deliver multiple contributions to candidates or their committees for those candidates defined in (a)(1) and (2). There are no provisions that restrict a lobbyist from making recommendations to third parties about possible contributions and the amounts of those contributions. However, N.C. Gen. Stat. § 163-278.13B provides additional restrictions while the North Carolina General Assembly ("General Assembly") is in regular session. During regular sessions of the General Assembly, a lobbyist may not solicit a contribution from any individual or political committee on behalf of a limited contributee, which for purposes of this statute includes a member or candidate for the Council of State or a member or candidate for the General Assembly. Therefore, it is our opinion that a lobbyist could make recommendations to a third party regarding contributions including specific amounts, but the lobbyist could not solicit a third party

LOCATION: 506 NORTH HARRINGTON STREET (RALEIGH, NORTH CAROLINA 27603 (919) 733-7173

Ms. Susan Valauri
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on behalf of the candidate during a regular session of the General Assembly. As the terms “recommend” and “solicit” are not defined by statute, in order to provide clarity, I have defined them, by drawing on dictionary definitions, as follows:

- **“recommend” - Upon being asked, provide another with a suggestion about possible recipients and amounts of contributions.**
 - **“solicit” - To request a contribution.**
2. So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to make recommendations to multiple third parties regarding contributions to a particular legislative or executive branch candidate or candidate committee?

For the reasons outlined in question one, the answer is “yes” with the same restrictions during regular sessions of the General Assembly.

2(a). If “yes”, may the lobbyist attend a fundraising event for a legislative or executive branch candidate in which more than one of the above third parties contributes to the candidate (again assuming the lobbyist does not physically collect contributions from the contributors, take physical possession of such contributions, or physically transfer or deliver such contributions)?

The lobbyist could attend a fundraising event as long as the lobbyist did not make a monetary contribution or give anything of value. This would include payment of admission to the event.

3. So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to solicit multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee?

Except when the General Assembly is in regular session, a lobbyist is not prohibited from soliciting multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee. Under the statute, the lobbyist could not collect contributions from multiple contributors and transfer or deliver the collected contributions. While the General Assembly is in regular session, lobbyists are prohibited from soliciting third parties to make contributions on behalf of legislative or executive branch candidates.

4. When a principal is associated with a PAC, may a lobbyist employed by that principal communicate to a candidate or campaign committee that the PAC has decided to contribute to the candidate and the amount of the contribution? Does it matter to the answer whether the PAC checks are cut and mailed from a location separate from the lobbyist directly to the candidate or committee(i.e. the lobbyist never takes possession)?

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April 21, 2008

N.C. Gen. Stat. § 163-278.13C does not prohibit a lobbyist from communicating with a candidate or campaign committee on any subject. Therefore, a lobbyist would be permitted to communicate to a candidate that the PAC they are associated with intends to make a contribution to that candidate's campaign. As long as the lobbyist doesn't take possession of multiple checks and deliver them to the candidate or campaign committee, the location where the checks were cut or mailed from would not be relevant. As has been stated above, there are prohibitions on soliciting contributions from individuals and other political committees on behalf of legislative and executive branch candidates while the General Assembly is in regular session.

5. Does N.C. Gen. Stat. § 163-278.13C allow a lobbyist or employee of a principal to host or organize a fundraiser for a candidate?

N.C. Gen. Stat. § 163-278.13C does not address the activities of a lobbyist's principal or an employee of a principal. It only addresses a registered lobbyist as defined by Chapter 120C of the General Statutes. While the General Assembly is in regular session, a lobbyist's principal is included in the definition of "limited contributor" and is subject to the same limitations as a lobbyist. At times when the General Assembly is not in regular session, a lobbyist is prohibited from making contributions to legislative and executive branch candidates who meet the definitions referenced in N.C. Gen. Stat. § 163-278.13C(a) (1) & (2). The definition of "contribution" includes "anything of value whatsoever" given to a candidate in support of their nomination or election. Therefore, a lobbyist could not spend any of their own funds in organizing or hosting a fundraiser. This would include but not be limited to invitations, catering expenses, entertainment, or anything purchased for the event. If there were any rental expenses associated with the location of the event, the lobbyist could not provide payment to anyone for those costs.

Often fundraisers are held at the homes of a host. It has been the position of this office not to place a fair market value on a home if that home is not rented for similar events. It is difficult, however, to host an event and not incur any expenses for that event. If a lobbyist were to pay for anything it would be considered an in-kind contribution which would violate N.C. Gen. Stat. § 163-278.13C.

6. Can a lobbyist or employee of a principal set up a meeting with a third party and a candidate for the purpose of that third party giving the candidate a contribution? Can the lobbyist or employee of a principal attend the meeting? If so, can the lobbyist or employee of a principal do so with multiple but separate third parties?

While the General Assembly is in regular session, a lobbyist is prohibited from making and bundling contributions. Activities outside of those two prohibitions are not addressed by N.C. Gen. Stat. § 163-278.13C and are therefore not subject to regulation by the State Board of Elections. Planning and attending meetings (while the General Assembly is not in regular session) between potential contributors and candidates is not prohibited. Therefore, the number of meetings organized or third parties involved would not be relevant.


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April 21, 2008

7. How do the statutes limit campaign involvement by a lobbyist or employee of a principal? Can the lobbyist or employee of a principal serve as campaign manager or county chair for a candidate? Can the lobbyist or employee of a principal volunteer to make calls or put a yard sign up for a candidate? Give strategic advice to a candidate?

Lobbyists may not make contributions, therefore any activities that would involve giving anything of value to a legislative or executive branch candidate or their committee as defined by N.C. Gen. Stat. § 163-278.13C(a)(1) & (2) would not be allowed. Providing volunteer services to a candidate is not considered a contribution under N.C. Gen. Stat. § 163-278.6(6) and would be allowed. Volunteer services could include making calls (if expenses were not incurred) and putting up yard signs for a candidate. As long as the lobbyist does not normally charge candidates for strategic advice, such advice could be given without violating any statute in Chapter 163 of the General Statutes.

This opinion is based upon the information provided in your letter of February 28, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett

cc: Julian Mann, III, Codifier of Rules

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 NC Medical Care Commission intends to adopt the rules cited as 10A NCAC 13D .3034 - .3041 and amend the rule cited as 10A NCAC 13D .2102.

Proposed Effective Date: October 1, 2008

Public Hearing:

Date: July 8, 2008

Time: 10:00 a.m.

Location: Room 201 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The purpose of these rules is to establish rules for Special Care Units for Adult Care Home beds in combination Nursing Homes and to add a section on the nursing home license to identify those combination homes with Special Care Units.*

Procedure by which a person can object to the agency on a proposed rule: *An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.*

Comments may be submitted to: Nadine Pfeiffer, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, NC 27699-2711, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net

Comment period ends: July 14, 2008

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .2100 - LICENSURE

10A NCAC 13D .2102 ISSUANCE OF LICENSE

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

(b) Licenses are not transferable.

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

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

(e) A facility that advertises, markets or otherwise promotes itself as having a special care unit for residents with Alzheimer's Disease or related disorders in the adult care home portion of a combination facility and meets the requirements in Section .3000 for specially designated units and the rules set forth in this Subchapter shall be licensed as a nursing home with a special care unit in the adult care home portion of a combination facility. The license shall indicate that a special care unit for residents with Alzheimer's Disease or related disorders is provided.

Authority G.S. 131E-104; 131E-114.

SECTION .3000 - SPECIALLY DESIGNATED UNITS

10A NCAC 13D .3034 DEFINITIONS APPLICABLE TO SPECIAL CARE UNITS

The following definitions apply to Rules .3034 through .3041 of this Section:

- (1) "Alzheimer's Disease" means a progressive, degenerative disease that attacks the brain and

results in impaired memory, thinking and behavior. Characteristic symptoms of the disease include gradual memory loss, impaired judgment, disorientation, personality change, difficulty in learning, and loss of language skills.

- (2) "Related disorders" means dementing or memory impairing conditions characterized by irreversible memory dysfunction.
- (3) "Special care unit for persons with Alzheimer's Disease or related disorders" means an entire facility or any section, wing or hallway within an adult care home portion of a combination home separated by closed doors from the rest of the home, or a program provided by an adult care home of a combination home, that is designated or advertised especially for special care of residents with Alzheimer's Disease or related disorders.
- (4) "Care coordinator" means a staff person in a special care unit who oversees resident care and coordinates, supervises and evaluates resident services to assure that each resident receives services appropriate to the individual's needs.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3035 SPECIAL CARE UNIT DISCLOSURE

(a) Only those facilities with units that meet the requirements of this Section in Rules .3034 through .3041 may advertise, market or otherwise promote themselves as providing special care units for persons with Alzheimer's Disease or related disorders.

(b) The facility shall disclose information about the special care unit according to G.S. 131E-114 and which addresses policies and procedures listed in Rule .3037 of this Section.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3036 SPECIAL CARE UNIT BUILDING REQUIREMENTS

(a) Special care units housing adult care home beds located in nursing-home facilities shall meet all applicable building codes and licensure regulations for nursing homes contained in Sections .3100 through .3400 of this Subchapter with the following exceptions: Rule .3101(e), .3201(b)(1), .3201(b)(2), .3201(d)(2), .3201(e), .3201(f), .3201(j), and .3301(2).

(b) Special-care units housing adult care home beds located in nursing home facilities shall meet the following additional requirements:

- (1) If the special care unit is part of the nursing-home facility, the unit shall be separated from the rest of the facility by closed doors.
- (2) The unit shall be located so that other residents, staff, and visitors do not have to routinely pass through the unit to reach other areas of the facility.

(3) Unit exit doors and other doors in the means of egress may be locked only if the locking devices meet the requirements outlined in the North Carolina State Building Code for either delayed egress locks or special locking arrangements.

(4) Where exit doors and unit control doors are not locked, a system of security monitoring shall be provided.

(5) Dining, activity, and living space shall be provided within the unit at a total rate of 30 square feet per resident. At least 50 percent of the required dining, activity and living area shall be enclosed with walls and doors. Required dining, activity and living areas shall have windows with views to the outside. The glazing material for the windows shall not be less than eight percent of the floor area required for each dining, activity, or living space. The dining area may be used for activities as well as dining.

(6) Bathing fixtures shall be provided within the unit at the rate of one for each 10 residents or portion thereof. At least one tub and one shower shall be provided within the unit for staff-assisted bathing.

(7) Resident sleeping rooms shall be provided with operable windows having an area equal to at least eight percent of the floor area of the room. The glazing material for the windows shall not be less than eight percent of the floor area required for the bedroom.

(8) All operable exterior windows shall be equipped with mechanisms to limit window openings to no less than four inches and no greater than six inches to prevent elopement.

(9) There shall be direct access from the special care unit to a secured outside area. The area shall be a minimum area of 250 square feet or designed at the rate of 25 square feet per bed, whichever is greater.

(10) Task lighting and at least one electrical receptacle per resident connected to the emergency generator shall be provided in each resident bedroom.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3037 SPECIAL CARE UNIT POLICIES AND PROCEDURES

The facility shall assure that special care unit policies and procedures are established, implemented by staff and available for review within the facility. In addition to all applicable policies and procedures for adult care home portions of combination facilities, there shall be policies and procedures that address the following:

- (1) the philosophy of the special care unit which includes a statement of mission and objectives regarding the specific population to be served by the unit which shall address the following:

- (a) safe, secure, familiar and consistent environment that promotes mobility and minimal use of physical restraints or psychotropic medications;
- (b) a structured but flexible lifestyle through a program of care which includes activities appropriate for each resident's abilities;
- (c) individualized care plans that stress the maintenance of residents' abilities and promote the highest possible level of physical and mental functioning; and
- (d) methods of behavior management which preserve dignity through design of the physical environment, physical exercise, social activity, medication administration, nutrition and health maintenance;
- (2) the process and criteria for admission to and discharge from the unit;
- (3) a description of the special care services offered in the unit;
- (4) resident assessment and care planning, including opportunity for family involvement in care planning, and the implementation of the care plan, including responding to changes in the resident's condition;
- (5) safety measures addressing dementia specific dangers such as wandering, ingestion, falls and aggressive behavior;
- (6) staffing in the unit;
- (7) staff training based on the special care needs of the residents;
- (8) physical environment and design features that address the needs of the residents;
- (9) activity plans based on personal preferences and needs of the residents;
- (10) opportunity for involvement of families in resident care and the availability of family support programs; and
- (11) additional costs and fees for the special care provided.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3038 ADMISSION TO THE SPECIAL CARE UNIT

In addition to meeting all requirements, according to the declared rule selection specified on the annual renewal application pursuant to Rule .2104(a)(3) of this Subchapter for the admission of residents to the home, the facility shall assure that the following requirements are met for admission to the special care unit:

- (1) A physician specifies a diagnosis on the resident's FL-2 that meets the conditions of the specific group of residents to be served. An FL-2 form is an assessment of a person's functional capacity and care needs that is

- submitted to a nursing home prior to admission.
- (2) There is a documented pre-admission screening by the facility to evaluate the appropriateness of an individual's placement in the special care unit.
- (3) Family members seeking admission of a resident to a special care unit are provided disclosure information required in G.S. 131E-114 and any additional written information addressing policies and procedures listed in Rule .3037 of this Subchapter that is not included in G.S. 131E-114. This disclosure shall be documented in the resident's record.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3039 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN

In addition to the requirements in Rules 10A NCAC 13F .0801 and .0802, or Rule .2301 of this Subchapter:

- (1) Within 30 days of a resident's admission to the special care unit and quarterly thereafter, the facility shall develop a written resident profile containing assessment data that describes the resident's behavioral patterns, self-help abilities, level of daily living skills, special management needs, physical abilities and disabilities, and degree of cognitive impairment.
- (2) The resident care plan as required in Rule 10A NCAC 13F .0802 or Rule .2301 of this Subchapter shall be developed or revised based on the resident profile and specify programming that involves environmental, social and health care strategies to help the resident attain or maintain the maximum level of functioning possible and compensate for lost abilities.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3040 SPECIAL CARE UNIT STAFFING

(a) Staff shall be present in the unit at all times in sufficient number to meet the needs of the residents; but at no time shall there be less than one staff person, who meets the orientation and training requirements in Rule .3041 of this Subchapter, for up to eight residents on first (7 a.m. – 3 p.m.) and second shifts (3 p.m. – 11 p.m.) and one hour of staff time for each additional resident; and one staff person for up to 10 residents on third shift (11 p.m. – 7 a.m.) and .8 hours of staff time for each additional resident.

(b) There shall be a care coordinator on duty in the unit at least eight hours a day, five days a week. The care coordinator may be counted in the staffing required in Paragraph (a) of this Rule for units of 15 or fewer residents.

(c) In units of 16 or more residents there shall be a care coordinator as required in Paragraph (b) of this Rule in addition to the staff required in Paragraph (a) of this Rule.

Authority G.S. 131E-104; 131E-114.

10A NCAC 13D .3041 SPECIAL CARE UNIT STAFF ORIENTATION AND TRAINING

The facility shall assure that special care unit staff receive at least the following orientation and training:

- (1) Prior to establishing a special care unit, the administrator shall document receipt of at least 20 hours of training specific to the population to be served for each special care unit to be operated. The administrator shall have in place a plan to train other staff assigned to the unit that identifies content, texts, sources, evaluations and schedules regarding training achievement.
- (2) Within the first week of employment, each employee assigned to perform duties in the special care unit shall complete six hours of orientation on the nature and needs of the residents.
- (3) Within six months of employment, staff responsible for personal care and supervision within the unit shall complete 20 hours of training specific to the population being served in addition to the training and competency requirements in 10A NCAC 13F .0501 and the six hours of orientation required by this Rule or Rule .2304 of this Subchapter.
- (4) Staff responsible for personal care and supervision within the unit shall complete at least 12 hours of continuing education annually, of which six hours shall be dementia specific.

Authority G.S. 131E-104; 131E-114.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – MH/DD/SAS intends to adopt the rules cited as 10A NCAC 27A .0401 - .0404; 27I .0301 - .0305.

Proposed Effective Date: *February 1, 2009*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Reason for Proposed Action:

10A NCAC 27A .0401 - .0404 – *The proposed rules are necessary to formally incorporate the process and procedures related to LME SM (Local Management Entity Systems*

Management) funding and payments into rule form. The major change incorporated into these rules from current policy is the actual settlement of the LME SM payments.

10A NCAC 27I .0301 - .0305 – *G.S. 122C-112.1(14) directs the Secretary to adopt rules for the implementation of the uniform portal process.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net*

Comment period ends: *July 14, 2008*

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: *A copy of the fiscal note can be obtained from the agency.*

- ☒ **State** *10A NCAC 27A .0401 - .0404*
- ☐ **Local**
- ☐ **Substantive** (*≥\$3,000,000*)
- ☒ **None** *10A NCAC 27I .0301 - .0305*

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27A – FISCAL RULES

SECTION .0400 - PAYMENT, REPORTING AND SETTLEMENT FOR LOCAL MANAGEMENT ENTITIES SYSTEMS MANAGEMENT

10A NCAC 27A .0401 SCOPE

The purpose of this Section is to set forth procedures for the payment, reporting and settlement of Local Management Entities System Management (LME SM) funding provided by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to Local Management Entities.

Authority G.S. 122C-112.1.

10A NCAC 27A .0402 DEFINITIONS

(a) Systems Management Funding means when used in the Section: Funding provided, pursuant to the LME SM Cost Model, to Local Management Entities (LME's) to enable LME's to carry out system management responsibilities set forth in G.S 122C-115.4, "Functions of Local Management Entities".

(b) LME SM Cost Model means Cost Model produced under contract, with all subsequent adjustments, as a tool to predict the cost of LME's performing system management responsibilities set forth in G.S 122C-115.4, "Functions of Local Management Entities".

(c) State Funding from State Appropriations means the amount of State appropriation required to fund the LME SM cost as projected via the LME SM Cost Model as determined for each LME.

Authority G.S. 122C-112.1.

10A NCAC 27A .0403 MONTHLY PAYMENTS AND MONTHLY REPORTING

(a) Prior to the Division making any LME SM payments to an LME, the LME and Department shall sign a Memorandum of Agreement (MOA), as required in G.S. 122C-115.2(d), and such MOA shall be in place for the period of time for which an LME SM payment is to be made.

(b) Subject to Paragraphs (a), (c), (d), (e) and (f) of this Rule, the Division shall pay LMEs their LME SM funds in monthly one-twelfth installments based on their annual LME SM allocation from the Division.

(c) Subject to the availability of sufficient allotment approved by the Office of State Budget and Management, each LME SM one-twelfth monthly payment shall be made within 15 business days following receipt of a correctly submitted and signed "Monthly LME Report of Expenditures" to the DHHS Office of the Controller for the month of expenditures being reported.

(d) The "Monthly LME Report of Expenditures" is to be submitted in accordance with reporting instructions issued jointly by the Division and DHHS Office of the Controller. The LME Monthly Expenditure Reporting Form and instructions can be accessed at no cost at <http://www.dhhs.state.nc.us/mhddsas>.

(e) The Division shall not participate in the portion of salary for personnel, other than Doctors of Medicine and Doctors of Osteopathic Medicine, in excess of the current Level I of the Executive Schedule as published by the United States Office of Personnel Management, which can be obtained free of charge at <http://www.opm.gov/oca/>. In order for Doctors of Medicine and Doctors of Osteopathic Medicine to be exempt from this cap on funding participation, such individuals must be primarily performing duties which require the utilization of their medical training and licensure; otherwise, they are also subject to the limitation set forth in this Rule.

(f) The portion of a salary which exceeds the limitation set forth in Paragraph (e) of this Rule, and the related fringe benefits, shall be considered disallowable for reporting purposes on "Monthly LME Report of Expenditures" and shall not be reported by the LME as an allowable cost.

Authority G.S. 122C-112.1; 122C-115.2.

10A NCAC 27A .0404 SETTLEMENT OF LME SYSTEMS MANAGEMENT PAYMENTS

(a) LME SM payments shall be settled annually for each LME individually taking into consideration actual LME SM expenditures, the earning of Medicaid administrative funds and the retention of up to 15 percent for Fund Balance. The settlement process set forth in this Rule is based on the Division having paid the LME the LME's full Division allocated LME SM funding prior to the time of settlement.

(b) The settlement process shall not result in any LME receiving:

- (1) LME SM payments greater than the amount of its total annual LME SM allocation from the Division; or
- (2) State Funding from State Appropriation in an amount greater than the amount projected in the cost model.

(c) To determine the settlement of LME SM payments for an LME, DHHS shall utilize the following format:

<u>Line 1: Lesser of Full Annual LME SM Payment Made to the LME by the Division or Actual Allowable LME SM Reported Expenditures.....</u>	\$ _____
<u>Line 2: Actual Medicaid Earnings Based on Actual Allowable LME SM Expenditures Reported.....</u>	\$ _____
<u>Line 3: Difference of Line 1 Minus Line 2.....</u>	\$ _____
<u>Line 4: State Funding from State Appropriations as defined in Rule .0302 (c) of this Section.....</u>	\$ _____
<u>Line 5: If Line 3 is equal to or greater than Line 4, settlement is finalized at this point and no refund is due to the Division by the LME. If Line 3 is less than Line 4, continue with settlement computations by entering the difference of Line 4 minus Line 3.</u>	\$ _____

Line 6: Enter 15% of the amount from Line 1 above... \$ _____

Line 7: If Line 5 is equal to or less than Line 6, settlement is finalized at this point and no refund is due to the Division by the LME. If Line 5 is greater than Line 6, continue with settlement computations by entering the difference between Line 5 minus Line 6; this is the amount of refund owed by the LME to the Division. \$ _____

Authority G.S. 122C-112.1.

SUBCHAPTER 27I – AREA AUTHORITY OR COUNTY PROGRAM REQUIREMENTS

health, developmental disabilities or substance abuse problems.

SECTION .0300 – DESIGNATION OF UNIFORM PORTAL

Authority G.S. 122C-3(39); 122C-112.1(14).

10A NCAC 27I .0301 SCOPE

Each Local Management Entity (LME) shall coordinate an accessible system of entry to care among all eligible providers for the residents of its catchment area who are seeking publicly funded mental health, developmental disabilities or substance abuse services by implementing a standardized 24-hour a day, seven-day a week, 365-day a year screening, triage and referral process. The uniform portal process as set forth in G.S. 122C-3(39) includes but is not limited to this screening, triage and referral process.

Authority G.S. 122C-3(39); 122C-112.1(14).

10A NCAC 27I .0302 DEFINITIONS

As used in this Section, the following terms, in order of severity of need, have the meanings specified:

- (1) "Emergent need for service" means:
 - (a) an individual presents with a condition or circumstance that poses an imminent risk of harm to self or others in the clinical judgment of a qualified professional; or
 - (b) an individual is incapacitated in the clinical judgment of a qualified professional in one or more area(s) of physical, cognitive, or behavioral functioning related to mental health, developmental disabilities or substance abuse problems.
- (2) "Urgent need for service" means an individual has an imminent risk of incapacitation in the clinical judgment of a qualified professional in one or more area(s) of physical, cognitive, or behavioral functioning related to mental health, developmental disabilities or substance abuse problems.
- (3) "Routine need for service" means an individual has a risk of incapacitation in the clinical judgment of a qualified professional in one or more area(s) of physical, cognitive, or behavioral functioning related to mental

10A NCAC 27I .0303 SCREENING, TRIAGE AND REFERRAL TELEPHONE ACCESS LINE

(a) Each LME shall maintain a screening, triage and referral toll-free telephone access line that shall be staffed continuously by at least one qualified professional 24 hours per day, seven days per week and each day of the year. Each call to the toll-free telephone access line shall be answered within a maximum of 30 seconds. The qualified professional shall respond to each caller immediately and shall conduct a screening, triage and referral interview as set forth in Rule .0304 of this Section.

(b) The screening, triage and referral toll-free telephone access line shall be publicized throughout the catchment area for which the LME is responsible.

(c) The toll-free telephone access line shall be TTY capable and accessible for persons who have a hearing impairment, and for those who require foreign language interpretation.

Authority G.S. 122C-3(39); 122C-112.1(14).

10A NCAC 27I .0304 SCREENING/TRIAGE/REFERRAL INTERVIEW REQUIREMENTS

(a) Each LME shall conduct a standardized screening/triage/referral interview with an individual who is seeking initial access to services through the LME and who is not currently receiving services in the publicly funded system. A qualified professional shall conduct each interview in person or by telephone.

(b) A screening/triage/referral interview shall be conducted upon request from an individual, family member, collateral agency, or provider.

(c) A Medical enrolled service provider or an LME contracted service provider may elect to offer a standardized screening/triage/referral interview to an individual who is seeking initial access to services through the provider and who is not currently receiving services in the publicly funded system. A qualified professional shall conduct each interview in person or by telephone. A provider that conducts this interview shall submit a copy of the interview to the applicable LME within five calendar days of the interview on a form provided by the Secretary. A provider that elects to conduct a screening/triage/referral interview shall make a telephone available to the individual requesting service and offer to contact

the LME in the catchment area for completion of a screening/triage/referral interview.

(d) Each screening/triage/referral interview shall include the following:

- (1) an identification of the individual's presenting problem;
- (2) a determination of the severity of need including triage response timeframes as set forth in Rule .0305 of this Section; and
- (3) recommendation(s) for disposition.

(e) Each screening/triage/referral interview shall be documented on a form provided by the Secretary. The form shall include the interview elements as set forth in Paragraph (d) of this Rule. The form shall be considered a confidential document and shall be subject to applicable state and federal requirements.

Authority G.S. 122C-3(39); 122C-112.1(14).

10A NCAC 27I .0305 TRIAGE RESPONSE REQUIREMENTS

(a) The qualified professional who conducts a screening/triage/referral interview and determines an individual has an emergent need for service shall facilitate and make the necessary arrangements for an immediate disposition to include prompt receipt of fact-to-face crisis and emergency services from a provider. The disposition and necessary arrangements shall be completed immediately for receipt of such services by the individual within two hours of the individual's initial request for services.

(b) The qualified professional who conducts a screening/triage/referral interview and determines an individual has an urgent need for service shall facilitate a disposition to include arrangements for the prompt receipt of face-to-face services from a provider. The disposition shall be completed immediately and necessary arrangements shall be made by scheduling an appointment with the provider selected for receipt of such services by the individual within 48 hours of the individual's initial request for services.

(c) The qualified professional who conducts a screening/triage/referral interview and determines an individual has a routine need for service shall facilitate a disposition to include arrangements for the prompt receipt of face-to-face services from a provider. The disposition shall be completed immediately and necessary arrangements shall be made by scheduling an appointment with the provider selected for receipt of such services by the individual within seven calendar days of the individual's initial request for services.

(d) The qualified professional who conducts a screening/triage/referral interview and determines that an individual does not require a publicly funded services shall assist the individual by identifying natural supports and community resources that may be available.

Authority G.S. 122C-3(39); 122C-112.1(14).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10A NCAC 70G .0501 - .0513; 70G .0401 - .0402; 70H .0201, .0301 - .0302, .0401 - .0409; 70I .0901 - .0918; 70K .0103, .0201, .0206 - .0210, .0301 - .0317; 70L .0201, .0301; 70M .0303 - .0304, amend the rules cited as 10A NCAC 70F .0101 - .0102, .0201 - .0208; 70I .0102, .0201 - .0204, .0301 - .0307, .0401 - .0407, .0501 - .0506, .0601 - .0602, .0604 - .0606 .0609 - .0610, .0612 - .0615; 70J .0101, .0103, .0201 - .0206; 70K .0101 - .0102, .0201 - .0204; 70L .0102; 70M .0101, .0201, .0302, .0502, and repeal the rule(s) cited as 10A NCAC 70F .0209 - .0213; 70G .0101 - .0102, .0201 - .0209, .0301 - .0302; 70H .0101 - .0113; 70I .0304, .0603, .0701 - .0713, .0801 - .0802; 70K .0205; 70L .0101.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: July 16, 2008

Time: 10:00 a.m.

Location: Albemarle Building, Conference Room 832 (8th Floor), 325 Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The proposed amendments and adoptions of these Administrative Rules will provide consistency in the licensing of child-placing agencies for foster care and adoption, residential child-care facilities and maternity homes. The language will be the same across rules. For example, the term executive director will be used rather than administrator, director, etc. The educational experience requirements for executive directors will be consistent across agencies. The term parents, guardian or legal custodian will be used to define the individuals or agency legally responsible for placing children in foster care, residential child-care or maternity care.*

Procedure by which a person can object to the agency on a proposed rule: *By submitting your objection in writing to Lisa Johnson, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401 or email lisa.johnson@ncmail.net and by telephone (919) 733-3055*

Comments may be submitted to: *Lisa Johnson, APA Rulemaking Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)-733-3055, fax (919) 733-9386, email lisa.johnson@ncmail.net*

Comment period ends: July 16, 2008

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 70 – CHILDREN'S SERVICES

**SUBCHAPTER 70F –CHILD-PLACING AGENCIES AND
RESIDENTIAL MATERNITY HOMES**

SECTION .0100 - GENERAL

10A NCAC 70F .0101 SCOPE

The rules in this Subchapter apply to ~~persons defined in 10A NCAC 70F .0201(b) who agencies that receive children for the purpose of placement in family foster homes and homes, therapeutic foster homes, adoptive homes, and who operate residential maternity homes.~~ In addition, if ~~the persons defined in 10A NCAC 70F .0201(b) agencies provide behavior mental health treatment therapeutic foster care services,~~ the rules in 10A NCAC 27G .0203 and .0204; 10A NCAC 70E; and 10A NCAC 70G.0204 shall apply. The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for child-placing agencies for adoption, child-placing agencies for foster care, and residential maternity homes.

Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70F .0102 LICENSURE

(a) ~~Licenses issued shall be in effect for~~ may be issued for a ~~period of no more than two years unless suspended or revoked.~~ Appeal procedures specified in 10A NCAC 70L .0402 .0301 shall apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.

(b) ~~Licensure shall be denied to an applicant when an applicant meets any of the following conditions:~~(1) ~~Owns owns a facility or agency facility, agency, or operates a foster home licensed under G.S. 122C or G.S. 131D and that facility or agency facility, agency, or foster home had its license revoked; revoked until 60 months after the date of the revocation.~~

~~(2)(c)~~ Licensure shall be denied to an applicant when an applicant ~~Owns owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or 122C until 60 months after the date of the penalty.~~

~~(3)(d)~~ Licensure shall be denied to an applicant when an applicant ~~Owns facility or agency owns a facility, agency, or operates a foster home licensed under G.S. 122C or G.S. 131D and that facility or agency facility, agency, or foster home had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.~~

Article 1A until 60 months after the date of the suspension or provisional status.

~~(e)(e)~~ The denial of licensure pursuant to Paragraph (b) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at www.ncleg.net/Statutes/Statutes.html.

(f) The agency shall inform the licensing authority of any current licenses or licenses held in the past five years for child-placing agencies, maternity homes, or residential child-care facilities in other states. The agency shall provide written documentation from the licensing authority in other states regarding violations, penalties, or probationary status imposed in that state. The licensing authority shall take this information into consideration when granting a North Carolina license.

Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.

**SECTION .0200 – ORGANIZATION AND
ADMINISTRATION**

10A NCAC 70F .0201 GOVERNANCE

~~(a) The agency shall have a governing body which exercises authority over and has responsibility for the operation, policy, and practices of the agency~~

~~(b) The governing body shall be~~

- ~~(1) a board of directors in the case of a non-profit organization or a for-profit organization;~~
- ~~(2) commissioners or appointed officials of a governmental unit;~~
- ~~(3) the proprietor in case of sole proprietorship; or~~
- ~~(4) the general partners in case of a partnership~~

(a) A private child-placing agency and a residential maternity home operate under articles of incorporation that shall be filed with the Department of the Secretary of State (<http://www.secretary.state.nc.us>). A private child-placing agency and a residential maternity home shall submit a copy of the articles to the licensing authority. The articles shall have a statement of purpose that describes the geographic area to be served, kinds of clients to be served, and the range of services to be provided. An official copy shall be submitted to the licensing authority.

(b) A private child-placing agency and residential maternity home shall have a governing body that exercises authority and has responsibility for its operation, policies, and practices. The private child-placing agency shall notify the licensing authority of the type and structure of the governing body.

(c) In the case of non-profit or for-profit corporations, the governing body shall:

- (1) be composed of no fewer than six members to include men and women;
- (2) provide for a system of rotation for board members and limitation to the number of consecutive terms a member may serve;
- (3) establish standing committees;
- (4) provide orientation for new members; and
- (5) meet at least four time annually with a quorum present.

(d) An agency shall submit to the department licensing authority a list of members of the governing body. This list must shall

indicate the name, address, and term of membership of each member and ~~must~~shall identify each officer and the term of that office.

~~(e)(e)~~ A governmental agency shall ~~have documents which fully identify the statutory basis for its authority to operate a child-placing agency and a residential maternity home. existence and the administrative framework of the governmental departments within which it operates.~~

(f) The agency shall permanently maintain meeting minutes of the governing body and committees.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0202 RESPONSIBILITIES OF THE GOVERNING BODY

(a) The governing body shall provide leadership for the agency and ~~shall be~~is responsible for establishing the agency's policies, programs, and guiding its development.

(b) The governing body shall ~~assure the employment of~~employ an administrator-executive director who is located in the administrative office within the geographical boundaries of North Carolina and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.

(c) The governing body shall require the executive director provide a signed statement that the executive director has no criminal, social or medical history that would adversely affect his or her capacity to work with children and adults. The governing body shall ensure that the criminal histories of an executive director are checked prior to employment and based on the criminal history; a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that he or she has not abused, neglected or exploited a disabled adult and that he or she has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

~~(e)(d)~~ The governing body shall annually evaluate the ~~administrator-executive director's~~ performance except a sole proprietor or partner is exempt from this Rule if ~~he~~he or she serves as executive director, administrator,

~~(d)(e)~~ The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. ~~The governing body shall provide for an annual audit of agency financial records.~~ Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

~~(e) The governing body shall establish and utilize personnel practices for selection and retention of staff which are sufficient to operate the agency.~~

(f) The governing body shall ~~establish and utilize policies and procedures for periodic evaluation of~~periodically evaluate the agency's services. This evaluation ~~must~~shall include the agency's interaction with other community agencies to serve its clients.

~~(g) The governing body or their appointed advisory boards or committees shall meet as often as necessary with a minimum of four meetings a year. A quorum of its members shall be present at all meetings at which decisions with respect to the agency are made. Meeting minutes of the governing body shall be permanently maintained.~~

~~(h)(g)~~ The governing body shall establish in writing the policies and procedures for control and access to ~~or~~and receipt, use, and or release of information about its clients.

(h) The governing body of child-placing agencies providing foster care services shall develop a written disaster plan that is provided to agency personnel and foster parents. The disaster plan shall be prepared and updated at least annually and reviewed by the emergency management agency, or the agency designated to coordinate special needs sheltering during disasters where the corporate headquarters of the agency is located. The governing body of residential maternity homes shall comply with 10A NCAC 70K .0315(g). (See www.ncem.org.)

(i) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and long term storage of ~~ease-client~~ records. The specifics of this plan ~~must~~shall be submitted to the licensing authority before the actual closing of the agency.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0203 FINANCES, FEES AND INSURANCE

(a) ~~Budget.~~ The agency Child-placing agencies and residential maternity homes shall have a written line item budget, showing planned expenditures and ~~resources-revenues~~ available to ~~carry out~~operate the agency ~~program of service~~ for a 12 month period. A copy of the budget ~~must~~shall be submitted to the ~~Department~~ licensing authority prior to initial licensure and ~~annually~~ biennially thereafter.

(b) ~~Audit.~~ The agency shall have financial records audited annually by an independent accountant or by the appropriate government auditing authority. A copy of the annual audit must be submitted to the Department. Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall

submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

(c) ~~Fees. If fees are charged, the agency~~ Child-placing agencies and residential maternity homes shall have a written policy on fees for services which must shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency shall make the policy available to applicants for services at the time an application for service is made and to the public-public upon request.

(d) Adoption agencies that provide international adoption services shall inform prospective adoptive parents of the estimated or actual expenses associated with an international adoption that includes:

- (1) application fees;
- (2) preplacement assessment (homestudy) fees;
- (3) pre-adoption service fees;
- (4) government and facilitator fees;
- (5) placement service fees;
- (6) post-placement and post-adoption service fees;
- (7) travel and other costs and fees in the child's country of origin; and
- (8) additional costs associated with the adoption.

(e) Child-placing agencies and residential maternity homes shall notify the licensing authority, parents, guardian, and legal custodian (if applicable) of its status related to liability insurance for the agency and staff to applicants for services at the time an application for service is made.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0204 AGENCY SETTING

(a) The agency shall maintain an administrative office within the geographical boundaries of North Carolina from which the activities carried out under the North Carolina license are handled.

(b) The agency shall provide and maintain office space, equipment and supplies to ensure the following:

- (1) confidentiality and safekeeping of records;
- (2) privacy for interviewing and conferences; and
- (3) availability of visiting rooms for families and children.

(c) The current license ~~must shall~~ be posted at all times in a conspicuous place in the primary administrative North Carolina office of the agency.

(d) The administrative office of a child-placing agency for foster care and a child-placing agency for adoption shall not be located in a private residence that is occupied, a group home or maternity home that is occupied, a crisis pregnancy center or any other similar occupied dwelling, business, or facility. The office of a residential maternity home may be located in the maternity home.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0205 RESPONSIBILITY TO LICENSING AUTHORITY

(a) The agency shall ~~annually submit to the Department of Health and Human Services submit~~, biennially to the licensing authority, the information and materials to document compliance with the licensure regulations and to support issuance of a license.

(b) The agency shall submit to the ~~Department of Health and Human Services an annual licensing authority~~ a biennial statistical report of program activities.

(c) The agency shall provide written notification immediately to the ~~Department of Health and Human Services licensing authority of a change in the executive director, administrator.~~

(d) The agency shall provide written notification to the licensing authority of any changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70E, 70F, 70G, 70H, or 70K. The agency shall receive written approval from the licensing authority before instituting any changes in policies and procedures.

(e) Child-placing agencies for foster care shall comply with requirements related to the handling and reporting of critical incidents in accordance with 10A NCAC 70G .0513. Residential maternity homes shall comply with requirements related to the handling and reporting of critical incidents in accordance with 10A NCAC 70K .0210.

(d) ~~When the agency receives a report alleging abuse or neglect in a home supervised or a facility operated by the agency, the agency shall immediately notify the legal custodian and the Department of Health and Human Services.~~

(e) ~~The agency shall submit to the, Department of Health and Human Services, within 30 days of the case decision, a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report shall be reviewed and evaluated by the Department of Health and Human Services and used in consultation and technical assistance with the agency and the county department of social services conducting the investigation to assist them in providing services to protect children in placement.~~

(f) When there is a death of a child or resident in placement in a home supervised by the agency, the executive director or his-his or her designee shall immediately notify the licensing authority. ~~Department of Health and Human Services.~~

(g) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner and holds at least five percent interest of the agency. ~~owner.~~

(h) The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.

(i) The agency shall notify the ~~mental health area program or county program-local management entity responsible for the catchment area where services are being provided~~ within 24 hours of placement that a child may require MH/SAS/DD Mental Health, Developmental Disability or Substance Abuse services.

(j) ~~If the a child-placing agency for foster care is monitored by a mental health area program or county program, local management entity,~~ the agency shall provide data to the mental

~~health area program or county program~~ local management entity, as required by Department of Health and Human Services for monitoring and reporting to the General Assembly.

Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70F .0206 PERSONNEL POLICIES

(a) The agency shall have written policies for all employees (full-time, part-time and contracted) which include the following:

- (1) written job descriptions and titles for each position defining the qualifications, duties, and lines of authority;
- (2) salary scales;
- (3) a description of employee benefits;
- (4) opportunities for professional growth through supervision, orientation, in-service training, and staff development;
- (5) procedures for annual evaluation of the work and performance of each staff member which includes provision for employee participation in the evaluation process;
- (6) a description of the termination procedures established for resignation, retirement, or discharge; and
- (7) a written grievance procedure for employees.

(b) The agency shall have a personnel file for each ~~employee~~, employee (full-time, part-time and, contracted) which includes the following:

- (1) the application for employment, including record of ~~previous employment~~; relevant work experience;
- (2) documentation of at least three professional references; reference contacted;
- (3) applicable professional credentials or ~~certifications~~; certifications (prior to employment certified college transcripts shall be obtained for positions requiring college degrees);
- (4) signed statement indicating the employee's understanding of and willingness to comply with confidentiality requirements;
- (5) signed statement that the employee has no criminal, social, or medical history which would adversely affect the employee's capacity to work with children and adults;
- (6) criminal record checks certified by the Clerk of Superior Court;
- (7) results of the search of the North Carolina Sex Offender and Public Protection Registry;
- (8) results of the search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256);
- (9) results of the Responsible Individuals List as defined in 10A NCAC 70A .0102 that will indicate the employee has not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;

(10) signed statement that the applicant has not abused or neglected a child, has been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child;

(11) signed statement that the applicant has not abused, neglected, or exploited a disabled adult;

(12) signed statement that the applicant has not been a domestic violence perpetrator;

(13) log of training;

~~(4)~~(14) annual performance evaluations;

~~(12)~~(15) documentation of disciplinary actions;

~~(13)~~(16) documentation of grievances files;

~~(5)~~(17) employee's starting and termination dates; and

~~(6)~~(18) reason for termination.

(c) The agency shall have written procedures which safeguard the confidentiality of the personnel records.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0207 STAFF

(a) The agency shall verify prior to employment the personal qualifications of employees through at least three ~~character~~ professional references.

(b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults. Prior to employment, the agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the applicant has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The agency shall require that each applicant provide a signed statement that the applicant has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Prior to employment, a certified criminal record check for the applicant shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness for employment. The agency shall require that each applicant provide a signed statement that the applicant has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(c) The agency shall employ qualified staff to perform administrative, supervisory, direct care, social work, therapeutic, and placement services.

(d) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff ~~must~~ shall maintain strict confidentiality concerning contents of the case records.

(e) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart ~~must shall~~ be submitted prior to initial licensure and ~~annually~~ biennially thereafter.

(f) An agency which uses volunteers and interns as unpaid staff to work directly with clients shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require ~~three personal references~~; references relevant to the role and responsibilities to be assumed;
- (3) designate a staff member to supervise and evaluate ~~volunteers; and volunteers and~~ interns;
- (4) develop and implement a plan for the orientation and training of volunteers and interns in the philosophy of the agency and the needs of the clients and their ~~families~~; and
- (5) require that each volunteer and intern provide a signed statement that they have no criminal, social or medical history that would adversely affect their capacity to work with children and adults. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the intern or volunteer has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness to serve as a volunteer or intern. Prior to beginning volunteer or intern duties, a certified criminal record check shall be obtained and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness to serve as a volunteer or intern. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused or neglected a child, been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused, neglected, or exploited a disabled adult and has not been a domestic violence perpetrator.

~~(g) Abuse and Neglect. The agency shall have and follow procedures for handling any suspected incidents of child or adult~~

~~abuse and neglect involving staff, foster or adoptive parents. The procedure must include:~~

- ~~(1) a provision for recording any suspected incident of abuse or neglect and for immediately reporting it to the executive director or to the governing body or advisory board;~~
- ~~(2) a provision for immediately reporting any allegations of abuse or neglect to the county department of social services for investigation;~~
- ~~(3) a provision for promptly notifying the licensing authority of any allegations of abuse or neglect;~~
- ~~(4) a provision for preventing a recurrence of the alleged incident pending investigation;~~
- ~~(5) a provision for notifying the licensing authority of any findings of such an investigation of abuse or neglect; and~~
- ~~(6) a policy concerning personnel action to be taken when the incident involves a staff member.~~

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10A NCAC 70F .0208 CONFIDENTIALITY

(a) ~~The agency's~~ agency shall develop and enforce a policy on confidentiality that shall:

- (1) identify the individuals with access to or control over confidential information;
- (2) specify that persons who have access to records or specified information in a record be limited to persons authorized pursuant to law. These persons shall include the client; the ~~birth~~ parent-parents or guardian or legal custodian when the client is a minor; agency staff; auditing, licensing, or accrediting personnel; and those persons for whom the agency has obtained a signed consent for release of confidential information; and
- (3) require that when a client's information is disclosed, a signed consent for release of information is obtained on a consent for release form signed by the parent(s), guardian, legal custodian or client, if age 18 or older. is signed when client information is disclosed.

~~(b) The agency shall:~~

- ~~(1)(4)~~ provide a secure place for the storage of records with confidential information;
- ~~(2)(5)~~ inform any individual with access to confidential information of the provisions of this Rule;
- ~~(3)(6)~~ ensure that, upon employment and whenever revisions are made to the policy, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
- ~~(4)(7)~~ permit a ~~child-client~~ child-client to review ~~his-his~~ his or her case record in the presence of agency personnel on the agency premises, in a manner

that protects the confidentiality of other family members or other individuals referenced in the record, unless agency personnel determines the information in the ~~child's~~ client's case record would be harmful to the ~~child;~~ client;

- (5)(8) in cases of perceived harm to the ~~child;~~ client, document in writing any refusals to share information with the ~~child, birth parent~~ client, parents, guardian or legal custodian;
- (6)(9) maintain a confidential case record for each ~~child;~~ client;
- (7)(10) maintain confidential personnel records for all ~~employees;~~ employees (full-time, part-time and contracted); and
- (8)(11) maintain confidential records for all ~~volunteers;~~ volunteers and interns;

~~(e)(b) The~~ A child-placing agency for foster care and a residential maternity home may destroy in ~~office~~ office:

(1) the closed record of a child or resident who has been discharged from foster care or residential maternity care for a period of three years unless included in a federal or state fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits; and

(2) ~~or may destroy in office~~ a record three years after a child or resident has reached age 18, unless included in a federal fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.

(c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of G.S. 8-45.1, following which the original files may be destroyed by a shredding process. The adoption agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application, unless included in a federal or state fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70F .0209 CLIENT RIGHTS

~~(a) The agency shall develop and implement policies and procedures to protect the individual rights and dignity of children or residents and families who are provided services by the agency.~~

~~(b) The agency shall have a client's and family's rights policy, which includes that each child or resident has the right to:~~

- (1) ~~privacy;~~
- (2) ~~be provided adequate food, clothing, and shelter;~~
- (3) ~~have access to family time and have telephone conversations with family members, when not contraindicated in the child's intervention plan or individualized service plan;~~
- (4) ~~have personal property and a space for storage;~~
- (5) ~~express opinions on issues concerning the child's or resident's care or treatment;~~

- (6) ~~receive care in a manner that recognizes variations in cultural values and traditions;~~
- (7) ~~be free from coercion by foster parents or staff with regard to religious or cultural decisions. The agency shall have a process to assure that, whenever practical, the wishes of the birth parents with regard to a child's or resident's religious and cultural participation are ascertained and followed;~~
- (8) ~~not be identified in connection with publicity for the agency which shall bring the child or resident, or the child's or resident's family embarrassment; and~~
- (9) ~~not be forced to acknowledge dependency on or gratitude to the agency.~~

~~(c) The agency shall have a policy that prohibits direct involvement by a child or resident in funds solicitation for the agency.~~

~~(d) The agency shall have a policy, which prohibits the child's or resident's participation in any activities involving audio or visual recording and research without the voluntary signed, time limited consent of the child or resident and the child's legal custodian.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70F .0210 GRIEVANCE PROCEDURES

~~(a) The agency shall provide to each child or resident and birth parents or legal custodians, upon placement:~~

- (1) ~~a written description of policies and procedures that the child or resident and his birth parents or legal custodians follow to register complaints;~~
- (2) ~~information about client's and family's rights;~~
- (3) ~~the process for appealing a decision or action of the agency; and~~
- (4) ~~the process of resolution of a complaint.~~

~~(b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the case record.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70F .0211 SEARCHES

~~(a) The agency shall have written policies and procedures regarding foster parents conducting searches of children's rooms and possessions that shall be discussed with each child and their birth parents or legal custodians prior to or upon placement.~~

~~(b) The search policies and procedures shall include:~~

- (1) ~~Circumstances under which searches are conducted;~~
- (2) ~~Persons who are allowed to conduct searches; and~~
- (3) ~~Provision for documenting searches and informing the agency of searches.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70F .0212 MEDICATION ADMINISTRATION

~~(a) The agency shall have written policies and procedures regarding foster parents or staff administering medications to children placed in their home or residents that shall be discussed with each child or resident, and the child's birth parents or legal custodians prior to or upon placement.~~

~~(b) These policies and procedures shall address medication:~~

- ~~(1) Administration;~~
- ~~(2) dispensing, packaging, labeling, storage and disposal;~~
- ~~(3) review;~~
- ~~(4) education and training; and~~
- ~~(5) documentation, including medication orders, Medication Administration Record (MAR); orders and copies of lab tests; and, if applicable, administration errors and adverse drug reactions.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70F .0213 HOME-SCHOOLING

~~(a) The agency shall have written policies and procedures regarding foster parents providing home schooling to children placed in their home that shall be discussed with each child and their birth parents or legal custodians prior to or upon placement.~~

~~(b) The home schooling policies and procedures shall include:~~

- ~~(1) a requirement for the foster parents to meet the Department of Non Public Education's legal requirements for a home school;~~
- ~~(2) an educational assessment of the child that establishes the need for home schooling;~~
- ~~(3) qualifications of the foster parents to meet the requirements of the educational assessment;~~
- ~~(4) expectation of the child's placement to remain stable for the time period of home schooling; and~~
- ~~(5) parental consent, if the birth parents' consents can be obtained.~~

Authority G.S. 131D-10.5; 143B-153.

**SUBCHAPTER 70G – CHILD PLACING AGENCIES:
FOSTER CARE**

SECTION .0100 – GENERAL

10A NCAC 70G .0101 SCOPE

~~The rules in this Subchapter apply to persons defined by governing bodies in 10A NCAC 70F .0201(b) who receive children for the purpose of placement in family foster homes, or therapeutic foster homes.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0102 ORGANIZATION AND ADMINISTRATION

~~Persons licensed or seeking a license to provide foster care or behavioral mental health treatment services for children shall comply with 10A NCAC 70C, 70E, 70F, and 70G.~~

Authority G.S. 131D-10.5; 143B-153.

SECTION .0200 - MINIMUM LICENSING STANDARDS

10A NCAC 70G .0201 PERSONNEL

~~(a) Staff Qualifications and Functions:~~

- ~~(1) Administrator. The Administrator shall be responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The Director employed after the effective date of these standards must have at a minimum a bachelor's degree from a school, accredited by the Association of Colleges and Schools and at least four years experience in a human services program of which a minimum of two years has been in administration.~~
- ~~(2) Social Work Supervisor. The social work supervisor shall be responsible for supervising, evaluating, and monitoring the work and progress of the social services staff. The social work supervisor employed after the effective date of the rules of this Subchapter must have at a minimum a master's degree in social work or related area of study from a school, accredited by the Association of Colleges and Schools and at least two years of social work experience; or a bachelor's degree and four years of experience in social work or related field.~~
- ~~(3) Social Services Worker. The social services worker shall be responsible for intake services, providing casework or group work services for children and their families, conducting home finding and assessment studies related to family foster parents and planning and coordinating the services and resources affecting children and their families. The social services worker must have either a master's degree in social work or related field of study from a school, accredited by the Association of Colleges and Schools or a bachelor's degree in social work or a related field and two years experience working directly with children. If social work staff are not supervised by a person meeting the qualifications in (a)(2) of this Rule, all social work staff shall meet the qualifications in (a)(2) of this Rule.~~

~~(b) Staffing Requirements.~~

- (1) ~~When an agency employs five or more social services staff, the agency shall employ a social work supervisor.~~
- (2) ~~Social workers' caseloads must take into consideration the geographic area served, and must be limited to allow for the required contacts with the families, children, foster families, and collateral parties. The child placing agency's office must be no more than 150 miles from the most distant client or foster family. Branch offices must be established if broader coverage is desired. If branch offices are established, they must be equipped and maintained in a manner similar to that of the main office.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0202 INTAKE PROCEDURES AND PRACTICES

- (a) ~~The policies for acceptance of an applicant for services must be clearly defined in writing and must relate to the stated purpose of the agency.~~
- (b) ~~Acceptance of an applicant for services shall be limited to those for whom the agency is qualified by staff, program and services to give appropriate service.~~
- (c) ~~There must be an application for services signed by the parent, legal custodian, or authorized representative of the agency having legal authority to place the child and a written intake study which includes identification of the specific needs of the child and family which warrant consideration of removal and placement of the child.~~
- (d) ~~The child must be accepted for placement by written placement agreement signed by the parent, legal custodian or authorized representative of the agency having legal authority to place the child or by court order.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0203 CASE PLAN

- (a) ~~The agency shall develop a written case plan upon completion of the intake study and prior to placement. The plan must be developed in cooperation with the child and his family or legal custodian when possible and appropriate. In cases of emergency placements, the assessment and case plan must be initiated within one week and completed within six weeks of placement. The case plan must include:~~
 - (1) ~~goals stated in specific, realistic, and measurable terms; and~~
 - (2) ~~plans that are action oriented, including specific responsibilities of staff, family members and the child if appropriate.~~
- (b) ~~When the agency has a written contract with another human services agency to provide home finding services only, and the contract specifies that the contracting agency meet the provisions of (a) of this Rule, then the child placing agency is not required to comply with the provisions of (a) of this Rule. A copy of the contract must be submitted to the Department.~~

- (c) ~~The case plan must be based upon an assessment of the needs of the child and his family.~~
- (d) ~~The case plan must be reviewed at least every three months to determine the child's and family's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the plan.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0204 PLACEMENT SERVICES

(a) Services to Parents:

- (1) ~~The agency shall make every reasonable effort to help the parent assume or resume their parental roles and responsibilities when appropriate to the case plan.~~
- (2) ~~The agency shall help the family gain access to the services necessary to preserve and strengthen the family and to accomplish the case plan goals. While the child is in care, the agency shall assist the parent with the problems and needs that brought about the need for placement.~~
- (3) ~~The agency shall encourage contacts between parents and children after placement, in accordance with the case plan.~~
- (4) ~~The agency shall have a signed agreement with the parents of the child in care which includes the expectations and responsibilities of the agency and the parents for carrying out the steps to meet the case plan goals, the financial arrangements for the child in care, and visitation plans.~~

(b) Selection of Care:

- (1) ~~The agency shall select the most appropriate form of care for the child consistent with the child's and family's needs for family foster care or residential group care. In choosing such care, the agency shall provide for any specialized services the child may need and shall make every effort when placing to select the least restrictive and most appropriate setting closest to the child's home.~~
- (2) ~~The agency shall document any need to place a child in a family foster home or residential group care facility that is beyond a radius of 150 miles from the child placing agency and the child's family.~~
- (3) ~~The agency, when selecting care, shall take into consideration a child's racial, cultural, ethnic, and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care.~~
- (4) ~~The agency shall involve the parents in the selection of the placement to the maximum extent possible.~~
- (5) ~~The foster home or residential child care facility must be licensed.~~

(c) Preplacement Preparation:

- (1) ~~The agency social worker for the child shall become acquainted with the child and family prior to placement, except when a child is placed on an emergency basis or in the case of an infant.~~
- (2) ~~The agency social worker shall help the child understand the reasons for placement and prepare him for the new environment. The social worker shall, except when placing under emergency conditions, plan and participate in at least one preplacement visit and shall be available to the child, the parents, and foster parents for supportive services.~~
- (3) ~~The agency shall arrange for a physical examination performed by a physician, physician's assistant or nurse practitioner for each child at the time of placement or within 30 days of placement, unless there is written documentation of a physical examination within the 12 month period preceding placement.~~
- (4) ~~The agency shall obtain and record a developmental history for each child as appropriate.~~

(d) Services During Care.

- (1) ~~The agency shall supervise the care of the child and shall coordinate the planning and services for the child and family as stated in the case plan.~~
- (2) ~~The agency worker shall see a child as often as necessary to carry out the case plan. For children in family foster homes or residential child care facilities, visits shall be no less than once a quarter.~~
- (3) ~~The agency worker shall meet with the parents or legal custodian, and children, either separately or together on a regular basis to assess and work on the following:~~
 - (A) ~~progress in resolving problems which precipitated placement;~~
 - (B) ~~parent and child relationship difficulties;~~
 - (C) ~~adjustment to separation;~~
 - (D) ~~adjustment to placement; and~~
 - (E) ~~achievement of case plan goals.~~
- (4) ~~The agency shall refer the child's family to other agencies in the community providing appropriate services when they require services which the agency does not offer. The agency shall maintain communication with the agency providing service when cooperative effort has been arranged.~~
- (5) ~~The agency shall make provisions for specialized services and health care services as stated in the case plan.~~
- (6) ~~The agency shall give foster parents assistance, training, consultation, and emotional support in caring for children and in~~

~~resolving problems related to their role as foster parents.~~

- (e) ~~Contracting for Homefinding Services. When the child placing agency has a written contract with another human services agency to provide homefinding services only, and the contract specifies that the contractor meets the provisions of (a), (c) and (d)(1-5) of this Rule, then the child placing agency is not required to comply with the provisions of (a) (c) (d)(1-5) of this Rule. A copy of the contract shall be submitted to the Department.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0205 RECORDS

- (a) ~~The agency shall maintain an individual record for each child which contains:~~

- (1) ~~application for services which includes demographic information including name, address, sex, race, birth date, and birth place of child; names, addresses, telephone numbers, Social Security numbers, birth dates, races, religion and marital status of the child's parents; the names, addresses, and telephone numbers of siblings and other significant relatives; and when available a record of the child's prior placements with names of caregivers, addresses and dates of care;~~
- (2) ~~legal documents of importance to the child including a birth record and any court dispositions;~~
- (3) ~~medical reports including medical history, cumulative health history, immunization records, and available psychological and psychiatric reports;~~
- (4) ~~educational records and reports of school age children;~~
- (5) ~~intake study which includes initial social assessment and background of family members and the circumstances leading to the decision to place the child;~~
- (6) ~~signed case plan along with case reviews which reflect the status of all family members in relation to the case plan; any achievements or changes in the goals of the plan; the child's contacts with family members and an assessment of their relationships;~~
- (7) ~~dictation which reflects the dates and content of worker's visits with the child; the agency's involvement with the parents or legal custodian, including services offered, delivered, or rejected; and dictation which includes the content of any administrative or outside service reviews; and~~
- (8) ~~discharge summary including date of discharge, and the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care,~~

needs which remain to be met, and plans for the services needed to meet these goals.

~~(b) When the child placing agency has a written contract with another human services agency to provide homefinding services only, and the contract specifies that the contractor meets the provisions of (a) of this Rule, then the child placing agency is not required to comply with (a) of this Rule. A copy of the contract must be submitted to the Department.~~

~~(c) If the agency maintains a separate record on the family of children whom they place into care, the family's record must contain:~~

- ~~(1) demographic information including names, addresses, birth dates, races, religion, family composition, and Social Security numbers of significant family members;~~
- ~~(2) social histories, including any psychological or psychiatric reports and medical histories;~~
- ~~(3) strengths and needs of the family and the services required;~~
- ~~(4) signed agreements between the agency and family;~~
- ~~(5) summary of dates of contacts and progress toward goals;~~
- ~~(6) case review reports; and~~
- ~~(7) discharge summary.~~

~~(d) The agency shall keep all records current and shall document in the record the following events within one month of their occurrence: intake study, case plan, case plan reviews, and major events in the lives of the child or family members.~~

~~(e) The agency shall keep separate records for each family foster home which contain:~~

- ~~(1) application;~~
- ~~(2) home study;~~
- ~~(3) medical reports;~~
- ~~(4) dates and content of worker's contacts with the foster family;~~
- ~~(5) references from at least three sources;~~
- ~~(6) annual assessment of strengths and weaknesses of the foster family in providing care to children;~~
- ~~(7) chronological record of all placements of children receiving care in the home, including the dates of their care and an assessment of the care;~~
- ~~(8) annual licensing compliance study and reports connected with it; and~~
- ~~(9) when closed, a summary containing reasons for the closing of the home.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0206 ASSESSMENT AND TREATMENT/HABILITATION OR SERVICE PLAN

~~(a) When behavioral mental health treatment services are provided, the agency shall complete an assessment for each child prior to the delivery of services that shall include, but not be limited to:~~

- ~~(1) the child's presenting problem;~~
- ~~(2) the child's needs and strengths;~~

~~(3) the provisional or admitting diagnosis with an established diagnosis determined within 30 days of placement;~~

~~(4) a social, family and medical history; and~~

~~(5) evaluations or assessments, such as psychiatric, psychological, substance abuse, medical, vocational and educational, as appropriate to the child's needs.~~

~~(b) When services are provided prior to the establishment and implementation of the treatment/habilitation or service plan, hereafter referred to as the "plan", strategies to address the child's presenting problem shall be documented.~~

~~(c) The plan shall be developed based on the assessment, in partnership with the child, if age appropriate, and the legal custodian. A preliminary treatment plan shall be developed within 24 hours following placement. A comprehensive treatment plan shall be developed within 30 days of placement for children who are expected to receive services beyond 30 days of placement.~~

~~(d) The plan shall include:~~

- ~~(1) outcomes that are anticipated to be achieved by the provision of the service and a projected date of achievement;~~
- ~~(2) strategies for achieving the outcomes;~~
- ~~(3) staff responsibilities;~~
- ~~(4) foster parent responsibilities;~~
- ~~(5) a schedule for review of the plan at least annually in consultation with the child and the legal custodian;~~
- ~~(6) basis for an evaluation or assessment of outcome achievement; and~~
- ~~(7) written consent or agreement by the child and legal custodian or a written statement by the agency stating the reason such consent could not be obtained.~~

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10A NCAC 70G .0207 CLIENT RECORDS FOR CHILDREN RECEIVING MENTAL HEALTH TREATMENT SERVICES

~~(a) A client record shall be maintained for each child accepted for behavioral mental health treatment services. This record shall contain, but need not be limited to:~~

- ~~(1) an identification face sheet that includes:
(A) name (last, first, middle);
(B) client record number;
(C) Social Security Number;
(D) date of birth;
(E) race;
(F) gender;
(G) placement date; and
(H) discharge date;~~
- ~~(2) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition—Revised (DSM-IV);~~
- ~~(3) documentation of screening and assessment;~~

- ~~(4) treatment/habilitation or service plan;~~
- ~~(5) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred physician;~~
- ~~(6) a signed statement from the child and legal custodian granting permission to seek emergency care from a hospital or physician;~~
- ~~(7) documentation of services provided;~~
- ~~(8) documentation of progress toward outcomes;~~
- ~~(9) educational assessments, records and reports of school age children;~~
- ~~(10) incident reports, including name of child or children involved, date and time of the incident, brief description of the incident, action taken by parents and the agency, need for medical attention, name of staff or parent completing the report, name of child's legal custodian, date and time of notification to the legal custodian and signature of agency staff reviewing the report;~~
- ~~(11) documentation of searches, including date and time of the search, action taken by parents and the agency, name of parent informing the agency, the time the agency is informed of the search, the name of the child's legal custodian and the date and time of notification and signature of agency staff; and~~
- ~~(12) if applicable:~~
 - ~~(A) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);~~
 - ~~(B) medication orders and Medication Administration Record (MAR);~~
 - ~~(C) orders and copies of lab tests;~~
 - ~~(D) documentation of medication and administration errors;~~
 - ~~(E) documentation of adverse drug reactions;~~
 - ~~(F) legal documents; and~~
 - ~~(G) record of prior placements.~~

~~(b) Each agency shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.~~

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10A NCAC 70G .0208 MEDICATION REQUIREMENTS

~~(a) Medication disposal. The agency shall dispose of controlled substances in accordance with the North Carolina Controlled Substances Act, G.S. 90, Article 5, including any subsequent amendments.~~

~~(b) Medication education:~~

- ~~(1) The agency shall ensure that each child started or maintained on a medication by a physician receives either oral or written education~~

~~regarding the prescribed medication by the physician or their designee. In instances where the ability of the child to understand the education is questionable, the agency shall ensure that a responsible person receives either oral or written education regarding the prescribed medication by the physician or their designee and provides either oral or written instructions to the child.~~

- ~~(2) The agency shall ensure that the medication education provided is sufficient to enable the child or other responsible person to make an informed consent, to safely administer the medication and to encourage compliance with the prescribed regimen.~~

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10A NCAC 70G .0209 BEHAVIOR MANAGEMENT AND DISCIPLINE

~~When an agency has policies and procedures regarding physical restraints, the agency shall:~~

- ~~(1) Within 48 hours of each physical restraint hold, review the incident report to ensure that correct steps were followed and forward the report to the legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the agency shall immediately report the death of the child to the legal custodian and to the licensing authority;~~
- ~~(2) Submit a summary report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted;~~
- ~~(3) For foster parents who utilize physical restraint holds, provide or arrange for at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators, and debriefing children and parents involved in physical restraint holds. Thereafter, the agency shall ensure that foster parents authorized to use physical restraint holds annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior; and~~
- ~~(4) Complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. The review of the policies and techniques shall be documented and submitted biennially at the time of licensure as part of the application process.~~

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

SECTION .0300 – BEST PRACTICE STANDARDS

10A NCAC 70G .0301 STAFFING REQUIREMENTS

~~(a) Effective July 1, 2008, social workers or case managers serving children in family foster homes shall serve no more than 15 children. Effective July 1, 2008, licensing social workers shall serve no more than 32 foster families. Effective July 1, 2008, agencies providing family foster care services may combine the duties of the social worker or case manager and licensing social worker, and serve no more than ten children and ten foster families. Effective July 1, 2008, social workers or case managers serving children in therapeutic foster homes shall~~

~~serve no more than 12 children. Effective July 1, 2008, agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing social worker, and serve no more than eight children and eight foster families.~~

~~(b) When an agency employs five or more social workers or case managers, the agency shall employ a social work supervisor.~~

~~(c) Supervision of social workers or case managers shall be assigned as follows:~~

Supervisors Required	Social Workers or Case Managers
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0302 TRAINING REQUIREMENTS

~~(a) Effective July 1, 2008, social workers or case managers serving children in foster care shall receive 24 hours of continuing education annually.~~

~~(b) Effective July 1, 2008, social work supervisors shall receive 24 hours of continuing education annually.~~

Authority G.S. 131D-10.5; 143B-153.

SECTION .0400 – GENERAL

10A NCAC 70G .0401 SCOPE

The rules in this Subchapter apply to persons who receive children for the purpose of placement in family foster homes and therapeutic foster homes. Persons licensed or seeking a license to provide family foster care and therapeutic foster care services for children shall comply with 10A NCAC 70C, 70D, 70E, 70F and 70G. In addition, persons licensed or seeking a license to provide therapeutic foster care services shall comply with 10A NCAC 27G .0203 and .0204. The North Carolina Department of Health and Human Services, Division of Social Services is the licensing authority for child-placing agencies for foster care.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70G .0402 DEFINITIONS

Except when the context of the Rule indicates that the term has a different meaning the following definitions shall apply to the rules in Subchapter 70G:

- (1) "Agency" means a child placing agency as defined in G.S. 131D-10.2 that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.

- (2) "Family Foster Home" has the meaning as defined in G.S. 131D-10.2(8).

- (3) "Family Foster Care" means a planned, goal-directed service in which the temporary protection and care of children take place in a family foster home. Family foster care is a child welfare service for children and their parents who must live apart from each other for a period of time due to abuse, neglect, dependency, or other circumstances necessitating out-of-home care.

- (4) "Guardian" means an individual as defined in G.S. 7B-600 who is appointed by the court to serve as the guardian of the person for a juvenile. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces and enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. Guardian also means an individual appointed by the clerk of court in North Carolina to exercise all the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21A of Chapter 35A whose authority has actually commenced and also means an individual appointed in another jurisdiction

- according to the law of that jurisdiction who has the powers consistent with G.S. 35A-1241.
- (5) "Legal Custodian" means a person or agency that has been awarded legal custody of a juvenile by a court of competent jurisdiction.
- (6) "Licensing Authority" means the North Carolina Division of Social Services.
- (7) "Out-of-Home Family Services Agreement" is a Division of Social Services document required of all children in the custody of a county department of social services receiving family foster care services or therapeutic foster care services. This agreement is used to define the primary permanency plan; to identify the family's strengths and needs; to set objectives and case activities to assist the family in resolving those issues that place the child at risk; to specify consequences if the plan does or does not succeed; and to establish the alternative permanency plan if the primary plan does not succeed. The agreement must address the services to be provided or arranged; the visitation plan designed to maintain links with the family; expectations of the family, agency, placement provider and community members; target dates; and expected outcomes.
- (8) "Owner" means any person who holds an ownership interest of five percent or more of the applicant. A person includes a sole proprietor, co-owner, partner or shareholder, principal or affiliate, or any person who is the applicant or any owner of the applicant.
- (9) "Parent" means the birth parent or adoptive parent.
- (10) "Person-Centered Plan" is a Division of Mental Health, Developmental Disabilities and Substance Abuse Services document and must be completed on all children receiving therapeutic foster care services. The person-centered plan is the umbrella under which all planning for treatment, services and supports occurs. Person-centered planning begins with the identification of the reason the individual/family is requesting assistance. It focuses on the identification of the individual's/family's needs and desired life outcomes--not just a request for a specific service. The plan captures all goals and objectives and outlines each team member's responsibilities within the plan.
- (11) "Supervising Agency" means a county department of social services or a private child- placing agency that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes. Supervising agencies are responsible for recruiting, training, and supporting foster parents. Supervising agencies recommend the

licensure of foster homes to the licensing authority.

- (12) "Therapeutic Foster Care" means a foster home where the foster parent has received additional training in providing care to children with behavioral mental health or substance abuse problems.

Authority G.S 131D-10.1; 131D-10.3; 131D-10.5; 143B-153.

SECTION .0500 - MINIMUM LICENSING STANDARDS

10A NCAC 70G .0501 PERSONNEL

(a) The executive director shall be responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory and at least four years experience in a human services program of which a minimum of two years has been in supervision, administration or management.

(b) The social work supervisor shall be responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall have at a minimum a master's degree in social work or related area of study from a college or university listed in the most current edition of the Higher Education Directory and at least two years of social work experience; or a bachelor's degree and four years of experience in social work or related field. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker shall be responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall have either a master's degree in social work or related field of study from a college or university listed in the most current edition of the Higher Education Directory or a bachelor's degree in social work or a related field and two years experience working in social work or a related field. If social work staff are not supervised by a person meeting the qualifications in Paragraph (b) of this Rule, all social work staff shall meet the qualifications in Paragraph (b) of this Rule. Social workers shall receive 24 hours of continuing education annually.

(d) Weekly supervision is provided to therapeutic foster parents by qualified professionals as specified in the Service Definitions of the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (<http://www.ncdhhs.gov/dma/bulletin/1201spec.htm#level234>). Qualified professionals shall meet the requirements specified in 10A NCAC 27G .0104.

(e) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Licensing social workers shall serve no more than 32 foster families. Agencies

providing family foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than 10 children and 10 foster families. Agencies providing therapeutic foster care services may combine the

duties of the social worker or case manager and licensing worker and serve no more than eight children and eight foster families.
(f) Supervision of social workers or case managers shall be assigned as follows:

<u>Supervisors Required</u>	<u>Social Workers or Case Managers</u>
<u>0</u>	<u>0-4</u> <u>Executive director serves as social work supervisor)</u>
<u>1</u>	<u>5</u>
<u>2</u>	<u>6-11</u>
<u>3</u>	<u>12-17</u>
<u>shall be one additional supervisor for every one to five additional social workers.</u>	

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0502 APPLICATION PROCEDURES AND PRACTICES

- (a) The policies for acceptance of an applicant for services shall be in writing and shall relate to the stated purpose of the agency.
- (b) Acceptance of an applicant for services shall be limited to those for whom the agency is qualified by staff, program and services to provide appropriate service.
- (c) There shall be an application for services to place a child signed by the parent, guardian, legal custodian, or authorized representative of the legal custodian.
- (d) The child shall be accepted for placement by a written placement agreement signed by the parent, guardian, legal custodian or authorized representative of the legal custodian.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0503 PLACEMENT SERVICES

- (a) The agency shall assist the parents or guardian to assume or resume their parental roles and responsibilities as specified in the out-of-home family services agreement or person-centered plan.
- (b) The agency shall assist the parents or guardian to gain access to the services necessary to accomplish the goals and objectives specified in the out-of-home family services agreement or person-centered plan.
- (c) The agency shall encourage contacts between parents or guardian and children after placement, in accordance with the visitation and contact plan.
- (d) The agency shall have a signed agreement with the parents, guardian or legal custodian of the child in care which includes the expectations and responsibilities of the agency and the parents, guardian or legal custodian for carrying out the steps to meet the out-of-home family services agreement or person-centered plan goals, the financial arrangements for the child in care, visitation and contact plans.
- (e) The agency shall select the most appropriate form of care for the child consistent with the needs of the child, parents and guardian for family foster care or therapeutic foster care. The agency shall provide for any specialized services the child may need and shall make every effort when placing the child to select the least restrictive and most appropriate setting closest to the child's home.

- (f) The agency shall document any need to place a child in a family foster home or therapeutic foster home that is beyond a radius of 150 miles from the child placing agency and the child's parents or guardian.
- (g) The agency, when selecting care, shall take into consideration a child's racial, cultural, ethnic, and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care.
- (h) The agency shall involve the parents or guardian in the selection of the placement.
- (i) The family foster home or the therapeutic foster home shall be licensed.
- (j) The agency social worker for the child shall become acquainted with the child and family prior to placement, except when a child is placed on an emergency basis or in the case of an infant;
- (k) The agency social worker shall help the child understand the reasons for placement and prepare him or her for the new environment. The social worker shall, except when placing under emergency conditions, arrange at least one preplacement visit for the child and shall be available to the child, the parents or guardian, and foster parents for supportive services.
- (l) No child shall be accepted into a foster home without having had a current medical examination by a licensed medical provider (physician, physician's assistant or nurse practitioner). Medical examinations completed by a licensed medical provider within 12 months prior to the admission of the child in foster care are considered current. If a child has not had a medical examination by a licensed medical provider within 12 months prior to admission, the agency shall arrange a medical examination for the child within two weeks after admission or sooner if indicated by the child's health condition. The medical examination shall include a signed statement by a licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the foster home. If a child is in the custody of a county department of social services, is already scheduled to have and is having a medical examination completed annually, and is entering a foster home, the schedule of annual medical examinations do not have to be changed. A copy of the most

recent medical examination shall be obtained from the responsible county department of social services by the agency.

(m) The agency shall obtain and record a developmental history for each child as appropriate.

(n) The agency shall supervise the care of the child and shall coordinate the planning and services for the child and family as stated in the out-of-home family services agreement or person-centered plan;

(o) Children in family foster homes and therapeutic foster homes shall have a monthly face-to-face contact by the social worker or case manager or more if specified in the out-of-home family services agreement or person-centered plan. The parents or guardian of children in family foster care and therapeutic foster care shall have a monthly face-to-face contact by the social worker or case manager unless the out-of-home family services agreement or person-centered plan indicates a different schedule of face-to-face contacts.

(p) The agency social worker or case manager shall meet with the children and the parents, guardian or legal custodian, either separately or together based on the out-of-home family services agreement or person-centered plan to assess and work on the following:

- (1) progress in resolving problems which precipitated placement;
- (2) parent and child relationship difficulties;
- (3) adjustment to separation;
- (4) adjustment to placement; and
- (5) achievement of out-of-home family services agreement goals or person-centered plan goals.

(q) The agency shall refer the child's parents or guardian to other agencies in the community if they require services the agency does not provide and it is specified in the out-of-home family services agreement or person-centered plan. The agency shall receive reports from the agency providing services regarding the parents' or guardian's progress or lack of progress.

(r) The agency shall make provisions for specialized services and health care services as stated in the out-of-home family services agreement or person-centered plan.

(s) The agency shall give foster parents assistance, training, consultation, and emotional support in caring for children and in resolving problems related to their role as foster parents. Family foster care parents shall have one face-to-face contact per month by the social worker or case manager unless the out-of-home family services agreement indicates a different schedule of face-to-face contacts for each family foster care child placed in the home. Periodic phone support and 24-hour on-call support shall be provided to family foster care parents. Therapeutic foster care parents shall have at least 60 minutes of supervision by a qualified professional on a weekly basis for each therapeutic foster child placed in the foster home. Therapeutic foster care parents providing treatment to sex offender children and youth shall receive supervision from a qualified professional with sex offender specific treatment expertise. Therapeutic foster care parents providing treatment to children and youth with substance abuse treatment needs shall receive supervision from a qualified professional or associate professional who meet the requirements specified for a qualified professional or associate professional status for substance abuse according to 10A NCAC 27G. Phone support and 24-hour on-call support shall be provided to

therapeutic foster care parents. The agency shall provide each foster parent with a Foster Parent Handbook that outlines agency procedures, requirements and expectations.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

(a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home. The out-of-home family services agreement shall be developed in cooperation with the child, parents, guardian or legal custodian and foster parents when possible and appropriate. The out-of-home family services agreement shall be based upon an assessment of the needs of the child, parents or guardian. The out-of-home family services agreement shall include goals stated in specific, realistic, and measurable terms and plans that are action oriented, including specific responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents and the child, if appropriate.

(b) The out-of-home family services agreement shall be reviewed by the agency within 60 days of placement, the second out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months. Parents, guardian, legal custodian, foster parents, the child, if appropriate, as well as any individual or agency designated as providing services, shall participate in the reviews to determine the child's and parents' or guardian's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the child-placing agency, the department of social services, parents or guardian, foster parents, other service providers and child (if appropriate) should develop a single out-of-home family services agreement. The child-placing agency and foster parents should attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) can serve as the out-of-home family services agreement for the child-placing agency if the documents reflect input and participation by the child-placing agency and foster parents.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0505 PERSON-CENTERED PLAN FOR CHILDREN RECEIVING THERAPEUTIC FOSTER CARE SERVICES

(a) When therapeutic foster care services are provided, the agency shall complete an assessment for each child prior to the delivery of services that shall include:

- (1) the child's presenting problem;
- (2) the child's needs and strengths;

- (3) the provisional or admitting diagnosis with an established diagnosis determined within 30 days of placement;
- (4) a social, family and medical history; and
- (5) evaluations or assessments, such as psychiatric, psychological, substance abuse, medical, vocational and educational, as appropriate to the child's needs.

(b) When services are provided prior to the establishment and implementation of the person-centered plan, strategies to address the child's presenting problem shall be documented.

(c) The person-centered plan shall be developed based on the assessment, in partnership with the child if appropriate and the parents, guardian and the legal custodian if applicable. A preliminary person-centered plan shall be developed within 24 hours following placement. A comprehensive person-centered plan shall be developed within 30 days of placement for children who are expected to receive services beyond 30 days of placement.

(d) The person-centered plan for each therapeutic foster child shall include:

- (1) outcomes that are anticipated to be achieved by the provision of the service and a projected date of achievement;
- (2) strategies for achieving the outcomes;
- (3) staff responsibilities;
- (4) responsibilities of the child, parents, guardian or legal custodian and the responsibilities of the foster parents;
- (5) a schedule for review of the person-centered plan at least annually in consultation with the child, parents, guardian or legal custodian;
- (6) basis for an evaluation or assessment of outcome achievement; and
- (7) written consent or agreement by the child, parents, guardian and legal custodian if applicable or a written statement by the agency stating the reason such consent could not be obtained.

(e) If a child is in the custody of a county department of social services and is placed in a therapeutic foster home, an out-of-home family services agreement shall also be completed. The outcomes, objectives and strategies of the person-centered plan and the out-of-home family services agreement shall be consistent and compatible.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156; S.L. 1999-237.

10A NCAC 70G .0506 CLIENT RECORDS

(a) The agency shall maintain an individual record for each child receiving foster care services which contains:

- (1) an application for services that includes:
 - (A) demographic information about the child, including name, address, sex, race, birth date, birth place, educational information, medical information and client record number;

(B) demographic information about the parents or guardian of the child, including names, addresses, telephone numbers, birth dates, races, religion and marital status;

(C) demographic information about the siblings and other relatives of the child, including names, addresses, and telephone numbers;

(D) the reasons the child was removed from the home of his or her parents;

(E) a record of the child's prior placements with names and addresses of foster parents and other caregivers and dates of care provided by each foster parent or caregiver; and

(F) the services the agency shall provide the child and his or her parents or guardian.

(2) legal documents of importance to the child including a birth certificate and any court dispositions;

(3) copies of a medical examination obtained within two weeks of admission and subsequent medical examinations;

(4) medical reports including medical history, cumulative health history, immunization records, and available psychological and psychiatric reports; and if applicable:

(A) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Revised DSM IV;

(B) documentation of screening and assessment;

(C) medication orders and Medication Administration Record (MAR);

(D) documentation of medication administration errors;

(E) documentation of adverse drug reactions; and

(F) orders and copies of lab tests;

(5) educational assessments, records and reports of school-age children;

(6) intake study which includes initial social assessment and background of parents or guardian and the circumstances leading to the decision to place the child;

(7) signed out-of-home family services agreement or person-centered plan along with out-of-home family services agreement or person-centered plan reviews which reflect the status of the child, parents or guardian in relation to the out-of-home family services agreement or person-centered plan and any progress or lack of progress in the goals of the out-of-home

- family services agreement or person-centered plan;
- (8) documentation of services provided;
 - (9) documentation which reflects the dates and content of social worker's or case manager's visits with the child;
 - (10) documentation of the agency's involvement with the parents, guardian or legal custodian, including services offered, delivered, or rejected;
 - (11) documentation which includes the content of any administrative or service reviews;
 - (12) a visitation and contact plan that specifies the child's contacts with parents, guardian, siblings and other family members and individuals who may have contact with the child;
 - (13) consents for release of information;
 - (14) a signed statement from the parents, guardian or legal custodian, granting permission to seek emergency care from a hospital or licensed medical provider;
 - (15) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred licensed medical provider;
 - (16) authorization from the parents, guardian, legal custodian or licensed medical provider to administer non-prescription medications;
 - (17) consents for overnight travel and other travel consents based on the requirements of the parents, guardian or legal custodian;
 - (18) consents for time-limited audio-visual recordings signed by the parents, guardian or legal custodian, and child, if 12 years of age or older;
 - (19) documentation of searches for drugs, weapons, contraband or stolen property, including date and time of the search, action taken by foster parents and the agency, name of foster parent informing the agency, the date and time the agency is informed of the search, the date and time of the notification to the child's parents, guardian or legal custodian; and
 - (20) discharge summary including date and time of discharge, the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met, and plans for the services needed to meet these goals.

(b) If the agency maintains a separate record on the parents and guardians of children whom they place into care, the parents' or guardians' record shall contain:

- (1) demographic information including names, addresses, birth dates, races, religion, family composition;

- (2) social histories, including any psychological or psychiatric reports and medical histories;
- (3) strengths and needs of the parents or guardian and the services required;
- (4) signed agreements between the agency and parents or guardian;
- (5) summary of dates of contacts and progress toward goals;
- (6) case review reports; and
- (7) discharge summary.

(c) Documentation shall be entered into the child's, parents' or guardian's records within five days of occurrence.

(d) The agency shall keep separate records for each family foster home which contains:

- (1) application;
- (2) mutual home assessment;
- (3) medical examination reports;
- (4) fire inspection safety report;
- (5) environmental conditions checklist;
- (6) proof of high school diploma or GED;
- (7) dates and content of worker's contacts with the foster family;
- (8) training record that includes all required and ongoing training;
- (9) foster parent agreement signed by foster parents and agency representative;
- (10) discipline agreement signed by foster parents and agency representative;
- (11) three references relevant to the role and responsibilities of a foster parent;
- (12) annual assessment of strengths and needs of the foster family in providing foster care to children;
- (13) chronological record of all placements of children receiving care in the home, including the dates of their care and an assessment of the care;
- (14) written approval letter from executive director or his or her designee authorizing foster parents to administer physical restraint holds, if applicable;
- (15) signed statement by the foster parents and adult members of the household that they have not been found to have abused or neglected a child or have not been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child.
- (16) signed statement by the foster parents and adult members of the household that they have not been confirmed or substantiated for abusing, neglecting or exploiting a disabled adult;
- (17) documentation of the results of the search of the Responsible Individual's List as defined in 10A NCAC 70A .0102 for all adult members of the household that indicate they have not had child protective services involvement

- resulting in a substantiation of child abuse or serious neglect;
- (18) signed statement by the foster parents and adult members of the household that they have not been a domestic violence perpetrator;
 - (19) documentation of the results of the search of the North Carolina Sex Offender and Public Protection Registry of all adult members of the household;
 - (20) documentation of the results of the search of the North Carolina Nurse Aide Registry pursuant to G.S. 131E-255 of all adult members of the household;
 - (21) documentation of the results of the search of the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256 of all adult members of the household;
 - (22) copies of approved waivers, if applicable; and
 - (23) when closed, a summary containing reasons for the closing of the home and an assessment of the strengths and needs of the foster family in providing foster care to children.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0507 CLIENT RIGHTS

- (a) The agency shall develop and implement policies and procedures to protect the individual rights and dignity of children and families who are provided services by the agency.
- (b) The agency shall have a client's and family's rights policy that complies with 10A NCAC 70E .1101(a).
- (c) The agency shall have a policy that prohibits direct involvement by a child in funds solicitation for the agency.
- (d) The agency shall have a policy, which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian or legal custodian and child, if 12 years of age or older.
- (e) Each agency shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0508 GRIEVANCE PROCEDURES

- (a) The agency shall provide to each child and parents, guardian or legal custodian, upon placement:
 - (1) a written description of policies and procedures that the child and parents, guardian or legal custodian follow to register complaints;
 - (2) information about client's and parents', guardian's or legal custodian's rights;
 - (3) the process for appealing a decision or action of the agency; and
 - (4) the process of resolution of a complaint.

- (b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the child's record.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0509 SEARCHES

- (a) The agency shall have written policies and procedures regarding foster parents conducting searches of children's rooms and possessions that shall be discussed with the parents, guardian or legal custodian, and child prior to or upon placement.
- (b) The search policies and procedures shall include:
 - (1) circumstances under which searches are conducted;
 - (2) persons who are allowed to conduct searches;
 - (3) provision for documenting searches and informing the agency, parents, guardian and legal custodian of searches; and
 - (4) provision for removing and disposing of items seized as a result of searches.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0510 MEDICATION ADMINISTRATION REQUIREMENTS

- (a) The agency shall have written policies and procedures regarding foster parents administering medications to children placed in their home that shall be discussed with each child and the child's parents, guardian or legal custodian, prior to or upon placement.
- (b) These policies and procedures shall address medication:
 - (1) administration;
 - (2) dispensing, packaging, labeling, storage and disposal;
 - (3) review;
 - (4) education and training; and
 - (5) documentation, including medication orders, Medication Administration Record (MAR), orders and copies of lab tests, and medication administration errors and adverse drug reactions.

- (c) Upon discharge of a child from foster care, the foster parents or the agency shall return prescription medication to the person or agency legally authorized to remove the child from foster care. The agency shall dispose of unwanted, out-dated, improperly labeled, damaged, adulterated or discontinued prescription medications in accordance with the North Carolina Pharmacy Practice Act and 21 NCAC 46 .3001. See <http://www.ncbop.org/LawsRules/RulesApril2006.pdf> and <http://www.ncbop.org/Forms%20and%20Applications%20-%20Pharmacists/DrugDisposalForm.pdf>
- (d) The agency shall ensure that each child started or maintained on a medication by a licensed medical provider receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee. In instances where the ability of the child to understand the education is questionable, the agency shall ensure that a responsible person

receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee and provides either oral or written instructions to the child. The agency shall ensure that the medication education provided is sufficient to enable the child or other responsible person to make an informed consent, to safely administer the medication and to encourage compliance with the prescribed regimen.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156; S.L. 1999-237.

10A NCAC 70G .0511 HOME-SCHOOLING

(a) The agency shall have written policies and procedures regarding foster parents providing home-schooling to children placed in their home that shall be discussed with the child and the child's parents, guardian or legal custodian prior to or upon placement.

(b) The home-schooling policies and procedures shall include:

- (1) a requirement for the foster parents to meet the Department of Non-Public Education's legal requirements for a home school;
- (2) an educational assessment of the child that establishes the need for home-schooling;
- (3) expectation of the child's placement to remain stable for the time period of home-schooling; and
- (4) parental or guardian consent, if the parents' or guardian's consent can be obtained and consent of the legal custodian.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70G .0512 PHYSICAL RESTRAINT HOLDS, BEHAVIOR MANAGEMENT AND DISCIPLINE

(a) Agencies using physical restraint holds shall review the incident involving a physical restraint hold within 72 hours, review the incident report to ensure that correct steps were followed and forward the report to the parents, guardian or legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the agency shall immediately report the death of the child to the parents, guardian, or legal custodian and to the licensing authority.

(b) Agencies shall submit a summary report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted.

(c) Agencies shall maintain reports of physical restraint holds in a manner consistent with the agency's risk management policies (clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency) and be made available to the licensing authority upon request.

(d) Foster parents who utilize physical restraint holds shall receive at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital

indicators, and debriefing children and foster parents involved in physical restraint holds. Foster parents authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. Foster parents shall be trained by instructors who have met the following qualifications and training requirements: trainers shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions; trainers shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint; trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program; the training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course; the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and shall include, but not be limited to, presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures; trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint; trainers shall be currently trained in CPR; trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach, trainers shall teach a program on the use of physical restraints at least once annually; and trainers shall complete a refresher instructor training at least every two years. Foster parents shall only use physical restraint holds specified at the following web site: <http://www.dhhs.state.nc.us/mhddsas/training/> (Training to Prevent Use of Restraints and Seclusion). Foster parents shall receive written approval from the executive director or his or her designee of the supervising agency to administer physical restraint holds. A copy of this letter shall be placed in the foster home record.

(e) Agencies shall complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. The review of the policies and techniques shall be documented and submitted to the licensing authority at the time of relicensure as part of the reapplication process.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156; S.L. 1999-237.

10A NCAC 70G .0513 CRITICAL INCIDENTS

(a) The agency shall have written policies and procedures for reporting critical incidents.

(b) The agency shall follow policies and procedures for handling any suspected incidents of abuse or neglect of a child involving staff, subcontractors, volunteers, interns or foster parents in a foster home supervised by the agency. The policies and procedures shall include:

- (1) a provision for reporting any suspicion of abuse or neglect to the appropriate county department of social services for investigation;

- (2) a provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body;
- (3) a provision for immediately notifying parents, guardian or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) policy concerning the action to be taken when the incident involves a foster parent;
- (7) a provision for submitting a critical incident report to the licensing authority within 72-hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (8) a provision for submitting written notification to the licensing authority within 72-hours of the case decision by the county department of social services conducting the investigative assessment.

(c) Critical incident reports shall be submitted to the licensing authority by the executive director or his or her designee on a form provided by the licensing authority within 72 hours of the critical incident. Critical incidents involving a child in placement in a foster home supervised by the agency include the following:

- (1) a death of a child;
- (2) reports of abuse and neglect;
- (3) admission to a hospital;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours; and
- (6) arrest for violations of state, municipal, county or federal laws.

(d) Documentation of critical incidents shall include:

- (1) name of child or children involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) name of child's parent, guardian or legal custodian notified and the date and time of notification; and
- (8) approval of supervisory or administrative staff reviewing the report.

(e) When there is a death of a child in placement in a foster home supervised by the agency, the executive director or his or her designee shall notify the parent, guardian or legal custodian and the licensing authority within 72 hours of the death of the child.

(f) Critical incident reports shall be maintained in manner consistent with the agency's risk management policies that include clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors

and reduce the risk of loss to the agency and shall be made available to the licensing authority upon request.

Authority G.S. 131D-1; 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156; S.L. 204-164.

SUBCHAPTER 70H - CHILD-PLACING AGENCIES: ADOPTION

SECTION .0100 - APPLICABILITY

10A NCAC 70H .0101 APPLICABILITY

~~Rules in 10A NCAC 70H shall apply to all persons intending to organize, develop, or provide adoption services as defined in 10A NCAC 70P.~~

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70H .0102 ORGANIZATION AND ADMINISTRATION

~~(a) Persons licensed or seeking license to provide adoption services shall comply with administrative and organizational requirements of 10A NCAC 70F, Chapter 48 of the General Statutes of North Carolina, and G.S. 7B-3800 (previously G.S. 110-57.1 et seq.).~~

~~(b) The caseload of social workers providing adoption services shall be limited to allow for the required contacts with biological parents and families, children, adoptive families and collateral parties. A case is defined as any of the following:~~

- ~~(1) an expectant parent or parents receiving problem pregnancy services from the agency prior to the child's birth and relinquishment for adoption;~~
- ~~(2) biological parents receiving services from the agency following relinquishment of the child to the agency for adoption;~~
- ~~(3) a child or sibling group to be placed together referred to the agency for adoptive placement from another licensed or authorized child-placing agency and for whom an adoption home is being sought and considered;~~
- ~~(4) a child, or siblings, together with biological parents for as long as the legal parent and child relationship exists;~~
- ~~(5) a child, or siblings for whom the goals for adoption are the same, following relinquishment for adoption;~~
- ~~(6) a single person or married couple applying for or licensed to provide foster care for children released for adoption to the agency;~~
- ~~(7) a single person or married couple applying for or approved for adoptive placement of a child or children;~~
- ~~(8) a child or sibling group and adoptive parents after placement occurs; and~~
- ~~(9) biological parents, or adoptive parents and adopted child, or adult adoptee following entry of the decree of adoption.~~

Authority G.S. 48-3-204; 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70H .0103 INTAKE PROCEDURES AND PRACTICES

Persons licensed or seeking license to provide adoption services shall comply with intake procedures and practices as defined and set forth in 10A NCAC 70G in working with biological parents, children, and adoptive applicants.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0104 CASE PLAN

Persons licensed or seeking license to provide adoption services shall comply with case plan regulations set forth in 10A NCAC 70G.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0105 PLACEMENT SERVICES TO FAMILIES AND CHILDREN

(a) Persons licensed or seeking license to provide adoption services shall comply with regulations set forth in 10A NCAC 70G .0202 .0205.

(b) Additionally, those persons providing as part of their adoption services program problem pregnancy services shall:

- (1) respect the client's prerogative for choice of alternatives to the problem pregnancy;
- (2) assure the clients of confidential handling of and restricted access to the case record;
- (3) offer alternate plans of care for the child and give supportive services or make appropriate referrals to other resources, should the client elect to keep the child in the family instead of releasing the child for adoption; and
- (4) assist the client in obtaining maternity home care during her pregnancy, if desired and appropriate.

(c) The agency shall help those parents reaching the decision to relinquish their children to the agency for adoptive placement to have a thorough understanding of the meaning of adoption and its potential impact on the child's and their lives. The agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) At the point a parent executes the relinquishment for adoption, the agency shall ascertain that the parent has a thorough understanding of the effects of this action and of the time period allowed for revocation of the relinquishment for adoption. When the agency has received the parent's relinquishment for adoption, the executive director or administrator shall indicate acceptance of the relinquishment document by signing the appropriate form for this purpose. A copy of the relinquishment for adoption and of the agency's acceptance shall be given to the parent. The Director or Administrator shall designate the agency's supervisor of adoptions or the adoptions social worker handling the case to accept the relinquishment for adoption in the event the Director or Administrator will not be available to perform this task in person. An agency shall acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a

relinquishment pursuant to G.S. 48, Part 7 of Article 1, or by terminating the rights and duties of a parent or guardian of the minor.

(e) In addition to providing services to the child in compliance with 10A NCAC 70G, agencies providing adoption services shall involve a child in the selection of an adoptive home and in preparation for adoptive placement, as is appropriate to the age of the child.

Authority G.S. 48-3-204; 131D-10.5; 143B-153.

10A NCAC 70H .0106 ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division to ensure compliance with the Act. If the plan is found to be out of compliance, it will be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.

Authority G.S. 48-3-204; 131D-10.5; 143B-153.

10A NCAC 70H .0107 ADOPTIVE HOME APPLICATION

The agency shall provide an application form for prospective adoptive parents and shall determine in response to the completed application whether, within the scope of the agency's program, it is appropriate to conduct an adoptive study with the applicants. While the age of applicants is among the factors that should be considered in determining whether the agency should conduct an adoptive study with the applicants, there shall be no fixed chronological age at which applicants should be automatically rejected for study.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0108 PREPLACEMENT ASSESSMENT

(a) The agency shall conduct a preplacement assessment within 90 days after the request has been accepted. The assessment process must include at least one personal interview, and separate face to face interviews with each member of the household above six years of age. The assessment process must be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any assessment that was completed one year or more before placement of a child occurs must be updated to include current information about the family. Physical examinations of family members must be current to within 12 months of the assessment.

(b) The agency shall assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' reasons for wanting to adopt;
- (2) the strengths and needs of each member of the household;

- ~~(3) the attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children not born to them;~~
- ~~(4) the attitudes of the applicants toward the biological parents and in regard to the reasons the child is in need of adoption;~~
- ~~(5) the applicants' attitudes toward child behavior and discipline;~~
- ~~(6) the applicants' plan for discussing adoption with the child;~~
- ~~(7) the emotional stability and maturity of applicants;~~
- ~~(8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;~~
- ~~(9) the applicants' ability to give and receive affection;~~
- ~~(10) the applicants' child caring skills and willingness to acquire additional skills needed for the child's development;~~
- ~~(11) the applicants' ability to provide for the child's physical and emotional needs;~~
- ~~(12) whether the applicant has ever been convicted of a crime other than a minor traffic violation;~~
- ~~(13) the strengths and needs of birth children or previously adopted children;~~
- ~~(14) the applicant's physical and mental health, including any addiction to alcohol or drugs;~~
- ~~(15) current financial information provided by the applicant, including property and income;~~
- ~~(16) the applicants' personal character references;~~
- ~~(17) the applicant's religious orientation, if any;~~
- ~~(18) the location and physical environment of the home;~~
- ~~(19) the plan for child care if parents work;~~
- ~~(20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;~~
- ~~(21) any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;~~
- ~~(22) whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, abandoned, or delinquent, and the outcome of the proceeding;~~
- ~~(23) whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non-identifying description of the parent and the child;~~
- ~~(24) the applicants' age, date of birth, nationality, race or ethnicity, and any religious preference;~~
- ~~(25) the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;~~

- ~~(26) the applicant's educational and employment history and any special skills; and~~
- ~~(27) any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of functioning of any children in the household.~~

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

~~(c) The assessment must be prepared and typed for review by the agency's adoption review committee, and it must become part of the applicants' permanent record.~~

~~(d) Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include specific documentation of the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall include specific documentation of the factors which support that determination.~~

Authority G.S. 48-2-502; 48-3-303; 131D-10.5; 143B-153.

10A NCAC 70H .0109 NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT

~~(a) The agency shall notify applicants in writing within 30 days of completion of the preplacement assessment of the acceptance or denial of their application.~~

~~(b) When applicants are not accepted, the agency shall share with them the reasons a child cannot be placed in their home.~~

~~(c) If the applicant disagrees with the unfavorable preplacement assessment, the applicant may request an internal review by the agency director.~~

~~(d) The applicant, after exhausting the agency's procedures for internal review, may prepare and file a written response with the Division of Social Services and the agency. The Division shall acknowledge receipt of the response within 30 days, but shall have no authority to take any action with respect to the response. A copy of the response shall be attached to the unfavorable assessment.~~

~~(e) Following an unfavorable preplacement assessment being filed with the Division, the county department of social services shall be notified by the Division and shall take appropriate action regarding any child placed in the home of the prospective adoptive parent who is the subject of the unfavorable assessment.~~

~~(f) An unfavorable preplacement assessment and any response filed with the Division under this Section shall not be public records as set forth in G.S. 132.~~

Authority G.S. 48-3-303; 131D-10.5; 143B-153.

10A NCAC 70H .0110 SERVICES TO ADOPTIVE APPLICANTS AND FAMILIES

~~(a) The agency shall provide upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian in the selection process. This~~

~~statement shall include a schedule of any fees or expenses charged by the agency and a summary of the provisions of G.S. 48 that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.~~

~~(b) The agency shall discuss the children potentially available for adoption with the adoptive applicants. The selection of a prospective adoptive parent for a minor shall be made by the agency, and based on the preplacement assessment. The selection may be based on criteria requested by a parent who relinquishes the child to the agency.~~

~~(c) Following completion of a preplacement assessment, the agency shall prepare the adoptive applicants for the placement of a particular child. Preparation must include:~~

- ~~(1) information about the needs and expectations of the child and of the adoptive family;~~
- ~~(2) information to the extent allowed by law as specified in G.S. 48-3-205 about the child's background and the health history of the child's biological parents and other relatives; and~~
- ~~(3) visits with the child prior to placement.~~

~~(d) The agency worker shall visit in the home of the adoptive family after the placement of a child and prior to the decree of adoption. The first visit must occur within two weeks after placement. Frequency of visits thereafter shall be determined by the child's and family's needs. Observations made during the visits shall be used in making recommendations to the court of adoptions in regard to the decree of adoption, or in regard to dismissal of the adoption petition.~~

~~(e) When applicable, the agency shall take steps necessary to assure that the adoptive placement comes into compliance with the interstate compact on the placement of children.~~

~~(f) The agency shall make post adoption services available to the adoptive parents, the biological parents, and the adoptee after the decree of adoption has been entered.~~

Authority G.S. 48-2-502; 48-3-203; 48-3-204; 48-3-205; 110-57.1; 131D-10.5; 143B-153.

10A NCAC 70H .0111 LEGAL PROCESS

~~(a) The agency shall instruct the adoptive parents in procedures regarding the legal process for adoption and shall instruct them to file their adoption petition within 30 days.~~

~~(b) The agency shall prepare and file the required consents and other legal documents and reports with the court at the appropriate times once the adoption petition has been filed.~~

~~(c) During the process of preparing court reports, the petitioner, and each member of the petitioner's home shall be interviewed in the petitioner's home. In addition, at least one interview shall be conducted in the presence of the petitioner and the adoptee to observe interactions between them. The report to the court must be in writing and contain the information required by G.S. 48-2-502(b).~~

~~(d) The agency shall give the petitioner a copy of each report filed with the court, and retain a copy, except, pursuant to G.S. 48-10-105, the agency shall not release to the petitioner a copy of any court order, judgment, decree, or pending legal proceeding containing identifying information.~~

Authority G.S. 48-2-302; 48-2-502; 48-10-105; 131D-10.5; 143B-153.

10A NCAC 70H .0112 RECORDS

~~(a) The agency shall maintain children's and biological parent's records in accordance with rules set forth in 10A NCAC 70G.~~

~~(b) The agency shall keep separate records for each adoptive applicant and family. These records must contain the following:~~

- ~~(1) application form;~~
- ~~(2) copies of marriage certificates, if applicable;~~
- ~~(3) documentation of marriage termination, if applicable;~~
- ~~(4) current medical records on all family members and psychological or psychiatric reports, if applicable;~~
- ~~(5) references from at least three sources;~~
- ~~(6) preplacement assessment conducted by the agency;~~
- ~~(7) copies of correspondence to, from, and in regard to the applicants;~~
- ~~(8) summary and dates and content of contacts prior to and following approval for adoption until the decree of adoption is entered;~~
- ~~(9) copies of information given to the applicant and family concerning the child or children to be placed for adoption with them;~~
- ~~(10) copies of all legal documents pertaining to the adoption; and~~
- ~~(11) summary containing the placement decision, pre-placement and post-placement contacts with the family and child.~~

~~(c) In the event the applicants were not accepted or did not have a child placed with them, the record shall contain a narrative indicating the reasons and the manner in which the decision was presented to the applicants.~~

~~(d) All individual child and adoptive family records shall be permanently retained by the agency. If necessary, the files shall be microfilmed in accordance with provisions of G.S. 8-45.1, following which the original files shall be destroyed by a shredding process.~~

~~(e) All child and adoptive applicant and family records shall be kept in securely locked quarters and information from the files shall be divulged only in compliance with provisions of G.S. 48-9-105.~~

Authority G.S. 48-3-303; 131D-10.5; 143B-153.

10A NCAC 70H .0113 FEES

~~(a) County departments of social services may charge reasonable fees for the preparation of a preplacement assessment or report to the court in accordance with G.S. 48-3-304(a) and G.S. 48-2-504(a). No fee shall be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation. The fee agreement shall not be based on the outcome of the report or the adoption proceeding.~~

~~(b) Maximum fees for the preparation of the reports shall not exceed:~~

- (1) ~~One thousand five hundred dollars (\$1500) for the preplacement assessment and report to the court; and~~
- (2) ~~Two hundred dollars (\$200.00) for report to the court only.~~
- (e) ~~No fee shall be charged when one or more of the following circumstances exists:~~
 - (1) ~~The head of household for the prospective adoptive family is an AFDC or SSI recipient;~~
 - (2) ~~The family unit's income is below the State's Established Income (or 150% of the 1992 Federal Poverty Level); or~~
 - (3) ~~The family has identified an adoptee who is in the custody and placement responsibility of the Department of Social Services, and provided that the adoptive family continues to pursue the adoption of the identified child.~~
- (d) ~~Fees for the above reports may be reduced or waived if it can be documented in the case record that the prospective adoptive family cannot pay the required fee. Unless reduced or waived, the entire fee shall be paid in accordance with local policy.~~

Authority G.S. 48-2-404; 48-3-304.

SECTION .0200 – SCOPE

10A NCAC 70H .0201 SCOPE

- (a) Rules in 10A NCAC 70H shall apply to all persons intending to provide adoption services which includes:
- (1) the provision of casework and other supportive services to biological parents considering adoption;
 - (2) provision of casework and other supportive services to the child considered for adoption;
 - (3) provision of casework and other supportive services to adoptive applicants through pre-placement studies;
 - (4) selection of home and placement process;
 - (5) supervision after placement;
 - (6) fulfillment of social and legal responsibilities;
 - (7) compilation and preservation of complete case records; and
 - (8) provision of post-adoption consultation services.
- (b) County departments of social services are the public agencies in North Carolina mandated by G.S. 108A-14 to provide adoption services and they shall comply with requirements of 10A NCAC 70M.
- (c) The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for adoption child-placing agencies.

Authority G.S. 131D-10.3; 131D-10.5.

SECTION .0300 - APPLICABILITY

10A NCAC 70H .0301 ORGANIZATION AND ADMINISTRATION

- (a) Persons licensed or seeking license to provide adoption services shall comply with requirements of 10A NCAC 70F, Chapter 48 of the General Statutes of North Carolina, and G.S. 7B-3800, the Interstate Compact on Placement of Children.
- (b) The caseload of social workers providing adoption services shall be limited to allow for the required contacts with birth parents and families, children, adoptive families and collateral parties. A case is defined as any of the following:
- (1) a parent or parents receiving unplanned pregnancy services from the agency prior to the child's birth and relinquishment for adoption;
 - (2) birth parents receiving services from the agency following relinquishment of the child to the agency for adoption;
 - (3) a child or sibling group to be placed together referred to the agency for adoptive placement from another licensed or authorized child-placing agency and for whom an adoption home is being sought and considered;
 - (4) a child, or siblings, together with birth parents for as long as the legal parent and child relationship exists;
 - (5) a child, or siblings for whom the adoption goals are the same, following relinquishment for adoption;
 - (6) a single person or married couple applying for or licensed to provide foster care for children released for adoption to the agency;
 - (7) a single person or married couple applying for or approved for adoption;
 - (8) a child or sibling group and adoptive parents after placement occurs; and
 - (9) birth or adopted child or an adult adoptee and the birth or adoptive parents following entry of the decree of adoption.

Authority G.S. 48-3-204; 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70H .0302 CONFLICT OF INTEREST

- (a) County departments of social services and private child-placing agencies shall not supervise adoptive placements of members of their board of directors, governance structure, social services board, and county commission.
- (b) County departments of social services and private child-placing agencies shall not supervise adoptive placements of agency employees and relatives of agency employees. Relatives include birth and adoptive parents, blood and half blood relative and adoptive relative including brother, sister grandparent, great-grandparent, great-great grandparent, uncle, aunt, great-uncle, great-aunt, great-great uncle, great-great aunt, nephew, niece, first cousin, stepparent, stepbrother, stepsister and the spouse of each of these relatives.
- (c) Private child-placing agencies shall not supervise adoptive placements of agency owners.

Authority G.S. 48-3-204; 131D-10.3; 131D-10.5; 143B-153.

SECTION .0400 – MINIMUM LICENSING STANDARDS

10A NCAC 70H .0401 PERSONNEL

(a) The executive director shall be responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory and at least four years experience in a human services program of which a minimum of two years has been in supervision, administration or management.

(b) The social work supervisor shall be responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall have at a minimum a master's degree in social work or related area of study from a college or university listed in the most current edition of the Higher Education Directory and at least two years of social work experience; or a bachelor's degree and four years of experience in social work or related field. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker shall be responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall have either a master's degree in social work or related field of study from a college or university listed in the most current edition of the Higher Education Directory or a bachelor's degree in social work or a related field and two years experience working in social work or a related field. If social work staff members are not supervised by a person meeting the qualifications in Paragraph (b) of this Rule, all social work staff shall meet the qualifications in Paragraph (b) of this Rule. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers counseling birth families, preparing and assessing adoptive applicants for infant placements and supporting these families shall serve no more than 25 to 50 families depending on the required contacts with families, children and collateral parties, the complexity of cases, time required for travel and time required for non-direct service activities.

(e) Social workers preparing children ages six and above or children having special needs shall serve no more than 15 children.

(f) Social workers preparing and assessing adoptive applicants for the placement of children ages six and above or children who have special needs shall serve no more than 20 families.

(g) Social workers preparing and assessing families for international adoptions shall serve no more than 35 families.

(h) Supervision of adoption social workers shall be assigned as follows:

<u>Supervisors Required</u>	<u>Social Workers</u>
<u>0</u>	<u>0-4</u> <u>ive director serves as social</u> <u>work supervisor)</u>

<u>1</u>	<u>5</u>
<u>2</u>	<u>6-11</u>
<u>3</u>	<u>12-17</u>
<u>There shall be one additional supervisor for every one to five additional social workers.</u>	

(i) Staff members of the adoption agency may maintain dual employment or serve as volunteers with maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center. Staff members, owners, officers directors of the adoption agency may serve on the board of directors of maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0402 INTAKE PROCEDURES AND OUT-OF-HOME FAMILY SERVICES AGREEMENT

(a) The policies for acceptance of an applicant for adoption services shall be defined in writing and shall relate to the stated purpose of the agency. Acceptance of an applicant for services shall be limited to those for whom the agency is qualified by staff, program and services to give appropriate services.

(b) Applicants for international adoptions shall receive information that includes the following topics:

- (1) the characteristics of children who need adoptive families;
- (2) the criteria by which the adoption agency and sending countries determine eligibility for adoptive parents;
- (3) the adoption services that will be available, when they will be available and how long they will be available;
- (4) steps in the adoption process;
- (5) immigration and obtaining citizenship;
- (6) average waiting time;
- (7) risks associated with international adoptions;
- (8) adoption requirements of the sending county; and
- (9) the use of other organizations or individuals to provide services.

(c) The agency shall develop a written out-of-home family services agreement for children within 30 days of acceptance as a client if the child is placed in foster care and a permanent placement has not been achieved. The out-of-home family services agreement shall be developed in cooperation with the child and the child's parents, guardian or legal custodian when possible and appropriate.

(d) The out-of-home family services agreement shall include goals stated in specific, realistic and measurable terms and plans that are action oriented, including specific responsibilities of staff, family members and the child (if appropriate).

(e) The out-of-home family services agreement shall be based upon an assessment of the needs of the child and the child's parents.

(f) The out-of-home family services agreement shall be reviewed within 60 days of placement, the second out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months to determine the child's and family's progress or lack of progress towards meeting the goals, and to determine changes that need to be made in the out-of-home family services agreement.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0403 PLACEMENT SERVICES TO FAMILIES AND CHILDREN

(a) Those persons providing as part of their adoption services program unplanned pregnancy services shall:

- (1) respect the client's choice of alternatives to the unplanned pregnancy;
- (2) assure the clients of confidential handling of and restricted access to the case record;
- (3) offer alternate plans of care for the child and give supportive services or make appropriate referrals to other resources for clients who do not release the child for adoption; and
- (4) assist the client in obtaining maternity home care during her pregnancy.

(b) The agency shall help those parents reaching the decision to relinquish their children to the agency for adoptive placement to have an understanding of the meaning of adoption and its potential impact on the child's and their lives. The agency may notify the birth parents when a placement has occurred and when an adoption decree is issued if the birth parents and adoptive parents are in agreement about this notification.

(c) At the point a parent executes the document for relinquishment of a child for adoption, the agency shall ascertain that the parent has an understanding of the effects of this action and of the time period allowed for revocation of the relinquishment document. When the agency has received the parent's relinquishment document, the executive director shall indicate acceptance of the relinquishment document by signing the appropriate form for this purpose. A copy of the relinquishment document for adoption and of the agency's acceptance document shall be given to the parent. The executive director shall designate the agency's supervisor of adoptions or the adoptions social worker handling the case to accept the document for relinquishment of a child for adoption in the event the executive director is not available to accept the relinquishment document. An agency shall acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Chapter 48 of the General Statutes or by terminating the rights and duties of a parent or guardian of the minor.

(d) In addition to providing services to the child, agencies providing adoption services shall include a child, if appropriate, in the selection of an adoptive home and in preparation for adoptive placement.

Authority G.S. 48-3-204; 131D-10.5; 143B-153.

10A NCAC 70H .0404 ADOPTIVE HOME APPLICATION

The agency shall provide an application form for prospective adoptive parents and shall determine in response to the completed application whether, within the scope of the agency's program, it is appropriate to conduct a preplacement assessment with the applicants. While the age of applicants is among the factors that may be considered in determining whether the agency conducts a preplacement assessment with the applicants, there shall be no fixed chronological age at which applicants are automatically rejected for study.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70H .0405 PREPLACEMENT ASSESSMENT

(a) The agency shall complete a preplacement assessment within 90 days after the application for adoption has been approved and the request for the assessment has been received. In a case involving a single adoptive applicant, there shall be two separate face-to-face interviews occurring on two different dates. In a case involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. At least one interview shall be conducted in the applicants' home. There shall be separate face-to-face interviews with each member of the household 10 years of age or older. The assessment process shall be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any assessment that was completed 18 months or more before placement of a child occurs shall be updated to include current information about the family. Any agency updating a preplacement assessment not originally completed by that agency assumes responsibility for the entire assessment, and the new assessment shall reflect that it is the responsibility of the agency conducting the update. Physical examinations of family members shall be current to within 18 months of the assessment.

(b) The agency shall assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' reasons for wanting to adopt;
- (2) the strengths and needs of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and other individuals involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the birth parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;

- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (13) the strengths and needs of birth children or previously adopted children,
- (14) the applicant's physical and mental health, including any addiction to alcohol or drugs;
- (15) current financial information provided by the applicant, including property and income;
- (16) the applicants' personal character references;
- (17) the applicant's religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work;
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;
- (21) any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
- (22) whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, dependent, undisciplined or delinquent, and the outcome of the proceeding or whether the individual has been found to have abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child;
- (23) whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non identifying description of the parent and the child;
- (24) the applicants' age, date of birth, nationality, race or ethnicity, and any religious preference;
- (25) the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;
- (26) the applicant's educational and employment history and any special skills; and
- (27) any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of functioning of any children in the household.

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

(c) The assessment shall be prepared and typed for review by the agency's adoption review committee, signed and dated by an authorized agency representative when complete and final, and it shall become part of the applicants' permanent record.

(d) Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include specific documentation of the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall state the specific facts that support the determination. A specific concern is one that reasonably indicates the placement of any minor, or a particular minor, in the home of the applicant would pose a significant risk of harm to the well-being of the minor.

(e) The agency preparing the preplacement assessment may redact from the assessment provided to the placing parent or guardian information reflecting the prospective adoptive parent's financial account balances and information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses.

Authority G.S. 48-2-502; 48-3-303; 131D-10.5; 143B-153.

10A NCAC 70H .0406 NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT

(a) The agency shall notify the client who was the subject of a preplacement assessment whether the assessment was favorable or unfavorable within 30 days after the agency completes the assessment.

(b) The agency shall share with the client the specific reasons a child cannot be placed in their home if the preplacement assessment is unfavorable.

(c) The client may request an internal review by the executive director of the adoption agency if the client disagrees with the unfavorable preplacement assessment.

(d) The client may file a response with the Division of Social Services, Adoption Unit, and the adoption agency after exhausting the agency's procedures for internal review. The Division of Social Services, Adoption Unit, shall acknowledge receipt of the response within 30 days, but has no authority to take any action with respect to the response. A copy of the response shall be attached to the unfavorable preplacement assessment.

(e) The Division of Social Services, Adoption Unit shall notify the county department of social services of an unfavorable preplacement assessment and the county department of social services shall take appropriate action regarding any child placed in the home of the prospective adoptive parent who is the subject of an unfavorable assessment.

(f) An unfavorable preplacement assessment and any response filed with the Division of Social Services, Adoption Unit, under this Section is not a public record as set forth in Chapter 132 of the General Statutes.

Authority G.S. 48-3-303; 131D-10.5; 143B-153.

10A NCAC 70H .0407 SERVICES TO ADOPTIVE APPLICANTS AND FAMILIES

(a) The agency shall provide a written statement of the adoption services it provides and of its procedure for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian and any criteria requested by the child's parent or guardian in the selection process. This statement shall include a schedule of any fees or expenses charged by the agency and a summary of the provisions of Chapter 48 of the General Statutes that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent. An agency which prepares preplacement assessments shall state whether it is available to provide post-placement services, including the report to the court pursuant to G.S. 48-2-501, and whether it can provide adoption services to the adoptee and adoptive parents after the decree of adoption has been entered.

(b) The agency shall discuss the children available for adoption with the adoptive applicants. The selection of a prospective adoptive parent for a minor shall be made by the agency.

(c) Following completion of a preplacement assessment, the agency shall prepare the adoptive applicants for the placement of a particular child. Preparation shall include:

- (1) information about the needs and expectations of the child and of the adoptive family;
- (2) information to the extent allowed by law as specified in G.S. 48-3-205 about the child's background and the health history of the child's birth parents and other relatives; and
- (3) visits with the child prior to placement.

(d) An agency social worker shall visit in the home of the adoptive family after the placement of a child and prior to the decree of adoption. The first visit shall occur within two weeks after placement. Frequency of visits thereafter shall be determined by the child's and family's needs. Observations made during the visits shall be used in making recommendations to the court in regard to the decree of adoption.

(e) When applicable, the agency shall take steps necessary to assure that the adoptive placement is in compliance with the Interstate Compact on the Placement of Children, G.S. 7B-3800.

Authority G.S. 48-2-502; 48-3-203; 48-3-204; 48-3-205; 110-57.1; 131D-10-5; 143B-153.

10A NCAC 70H .0408 LEGAL PROCESS

(a) The agency shall instruct the adoptive parents in procedures regarding the legal process for adoption and shall instruct them to file their adoption petition pursuant to G.S. 48-2-302(a) within 30 days of placement of the child for adoption unless that time is extended by the clerk.

(b) The agency shall prepare and file the required consents and other documents and reports with the court at the appropriate times once the adoption petition has been filed.

(c) During the process of preparing court reports, the petitioner, and each member of the petitioner's home shall be interviewed by the agency social worker in the petitioner's home. An additional interview shall be conducted in the presence of the petitioner and the adoptee to observe interactions between them.

The report to the court shall be in writing and contain the information required by G.S. 48-2-502(b).

(d) The agency shall give the petitioner a copy of each report filed with the court and retain a copy. In an agency adoption, pursuant to G.S. 48-2-502(b), the agency shall not release to the petitioner a copy of any court order, judgment, decree, or pending legal proceeding containing identifying information that could reasonably be expected to lead directly to the identify of the adoptee at birth or any former parent or family member of the adoptee.

Authority G.S. 48-2-302; 48-2-502; 48-10-105; 131D-10.5; 143B-153.

10A NCAC 70H .0409 RECORDS

(a) The agency shall keep separate records for each adoptive applicant and family that contain the following:

- (1) application form;
- (2) certified copies of marriage certificates, if applicable;
- (3) certified documentation of marriage termination, if applicable;
- (4) current medical records on all family members and psychological or psychiatric reports, if applicable;
- (5) references from at least three sources;
- (6) preplacement assessment conducted by the agency;
- (7) copies of correspondence to, from, and in regard to the applicants;
- (8) summary and dates and content of contacts prior to and following approval for adoption until the decree of adoption is entered;
- (9) copies of information given to the applicant and family concerning the child or children to be placed for adoption with them;
- (10) copies of all legal documents pertaining to the adoption; and
- (11) summary containing the placement decision, pre-placement and post-placement contacts with the family and child.

(b) In the event the applicants were not accepted or did not have a child placed with them, the record shall contain a narrative indicating the reasons and the manner in which the decision was presented to the applicants. The agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application or application denial, unless included in a federal or state fiscal or program audit that is unresolved. The agency may destroy the record in office when released from all audits.

(c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of G.S. 8-45.1, following which the original files may be destroyed by a shredding process.

(d) All children, birth parents and adoptive applicant and family records shall be kept in locked quarters and information from the

files may be divulged only in compliance with provisions of G.S. 48-9-103 and G.S. 48-9-105.

Authority G.S. 48-3-303; 131D-10.5; 143B-153.

SUBCHAPTER 70I - MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD-CARE

SECTION .0100 - GENERAL LICENSING REQUIREMENTS

10A NCAC 70I .0102 LICENSING PROCESS

(a) The license process for a residential child-care facility shall consist of an application phase, an investigatory phase and a decision making phase.

(b) Application Phase. An applicant ~~must~~ shall apply for a license to operate a residential child-care facility to the ~~Department of Health and Human Services, Division of Social Services, licensing authority~~ prior to the first child being accepted for full-time care. An applicant ~~must~~ shall apply for renewal of a license to operate a residential child-care facility to the ~~Department of Health and Human Services, Division of Social Services, licensing authority~~ prior to the expiration of the current license.

(c) Investigatory Phase. During ~~this the~~ the investigatory phase, the applicant ~~must~~ shall submit to the ~~Division of Social Services, Children's Services Section~~ licensing authority information on the proposed program and projected methods of operation. For proposed private and public residential child-care facilities, the ~~Division of Social Services, Children's Services~~ licensing authority staff, together with those seeking licensure, shall complete ~~this the~~ the investigatory phase. ~~For agency residential child-care facilities, the supervising agency shall complete this phase.~~

(d) Decision Regarding Licensure. An applicant ~~must~~ shall submit all the materials required by Subchapters 70I and 70J, ~~if applicable, to the Division of Social Services, Children's Services Section~~ to the licensing authority prior to the decision to issue a license to operate.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0200 - MINIMUM LICENSURE STANDARDS

10A NCAC 70I .0201 DEFINITIONS

In addition to the definitions found in G.S. 131D-10.2, the following definitions apply to the rules in Subchapters 70I and 70J of this Chapter. ~~70J.~~

- (1) ~~Case Plan means a written document, the Family Services Case Plan, that describes the social and child welfare services and activities to be provided by the county department of social services or other state and local agencies for the purpose of achieving a permanent family relationship for the child.~~
- (2)(1) ~~Child-Caring Institution~~ "Child-caring institution" means a residential child-care facility utilizing permanent buildings located on one site for ~~40~~ 13 or more foster children.

- (3)(2) ~~Children's Foster Care Camp~~ "Children's foster care camp" means a residential child-care facility that provides foster care at either a permanent camp site or in a wilderness setting.
- (4)(3) ~~Direct Service Personnel~~ "Direct service personnel" means staff responsible for the direct services provided to children and their families ~~including, but not limited to,~~ including child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.
- (6)(4) ~~Emergency Shelter Care~~ "Emergency shelter care" means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with 10A NCAC 70J .0200.
- (5) ~~Director~~ "Executive director" means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential ~~child-care~~ child-care and services.
- (7) ~~Family Time means specific period arranged for a child who resides in a residential child-care facility to spend with kin either on-site or away from the residential child-care facility.~~
- (8)(6) ~~Foster Child~~ "Foster child" means an individual less than 18 years of age who has not been emancipated under North Carolina law, or one who is 18 to 21 years of age and continues to reside in ~~the~~ a residential child-care facility, who is dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined, delinquent, or otherwise in need of care away from home and not held in detention.
- (9)(7) ~~Full License~~ "Full license" means a license issued for ~~one year~~ two years when all licensing requirements are met.
- (10)(8) ~~Group Home~~ "Group home" means a residential child-care facility operated either under public or private auspices that receives for 24-hour care no more than ~~nine~~ 12 children. This number includes the caregivers' own children and other relative children ~~relatives~~ residing in the home under the age of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of 12. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.
- (11) ~~Individualized Service Plan means a written document that describes a child's needs, goals and objectives in a residential child-care facility and the direct services staff tasks and assignments to meet a child's and family's needs, goals and objectives.~~

- (12)(9) ~~License~~—"License" means permission granted in writing to a corporation, agency or county government by the ~~Department of Health and Human Services~~ licensing authority to engage in the provision of full-time ~~child-care~~ residential child-care or child-placing activities based upon an initial determination, and ~~annually—biennially~~ thereafter, that such corporation, agency, or a county government has met and complied with standards set forth in this Subchapter.
- (10) "Licensing authority" means the North Carolina Department of Health and Human Services, Division of Social Services.
- (11) "Licensed medical provider" means a physician, physician's assistant or certified nurse practitioner.
- (12) "Out-of-home family services agreement" means a document developed with the child's custodian that identifies a child's permanency plan (return to parents, placement with relatives, guardianship, and adoption). The out-of home family services agreement documents are what must change in order for the parents to meet the needs of the child. Basic goal planning steps include: involving the family in the process; identifying goals that are both realistic and achievable; using family strengths when outlining objectives and activities to attain the goals; spelling out the steps necessary for success; documenting who will do what and when they will do it; and providing for review. This document also describes a child's needs, goals and objectives in a residential child-care facility and the tasks and assignments of the staff of the residential child-care facility to meet a child's and family's needs, goals and objectives.
- (13) ~~Owner~~—"Owner" means any individual who is a sole proprietor, co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the residential ~~child care~~ child-care facility.
- (14) ~~Private Agency Residential Child Care Facility~~ "Private agency residential child-care facility" means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.
- (15) ~~Private Residential Child Care Facility~~ "Private residential child-care facility" means a residential child-care facility under the control, management and supervision of a private non-profit or for-profit corporation, sole proprietorship or partnership that operates independently of a licensed child-placing agency or any other residential child-care facility.
- (16) ~~Provisional License~~ "Provisional license" means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.
- (17) ~~Public Agency Residential Child Care Facility~~ "Public agency residential child-care facility" means a residential child-care facility under the control, management or supervision of a county department of social services.
- (18) Public Residential Child-Care Facility "Public residential child-care facility" means a residential child-care facility under the control, management or supervision of a county government other than a county department of social services.
- (19) "Staff" means full-time, part-time and contracted staff persons.
- (20) "Visitation and contact plan" means a specific document that is developed by the child's custodian for each child that specifies whom the child may visit with and have contact with and the circumstances under which the visits and contacts shall take place.
- (19) ~~Visiting Resource~~ means volunteers from the community whose homes children visit on the weekends, holiday or vacations.
- (20)(21) ~~Volunteer~~—"Volunteer" means a person working in a staff position for an agency who is not paid.

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70I .0202 RESPONSIBILITY TO LICENSING AUTHORITY

- (a) ~~The A~~ residential child-care facility shall ~~annually biennially~~ submit to the licensing authority ~~Division of Social Services~~ the information and materials required by rules in Subchapters 70I and 70J to document compliance and to support issuance of a license.
- (b) ~~The A~~ residential child-care facility shall submit to the licensing authority a biennial ~~Division of Social Services an~~ annual statistical report of program activities as required in Subchapters 70I and 70J.
- (c) ~~The A~~ residential child-care facility shall provide written notification to the licensing authority ~~Division of Social Services~~ of a change in the executive director, ~~director~~.
- (d) A residential child-care facility shall provide written notification to the licensing authority of any changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70I and 70J. The residential child-care facility shall receive written approval from the licensing authority before instituting any changes in policies and procedures.

(d)(e) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.

~~(e)(f)~~ The current license of a residential child-care facility shall be posted at all times in a conspicuous place within the facility.

~~(f)~~ When there is a report alleging abuse or neglect in a residential child-care facility, the director or his designee shall immediately notify the Division of Social Services.

~~(g)~~ The residential child-care facility shall submit to the Division of Social Services a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information, shall be reviewed and evaluated by the Division of Social Services and used in consultation and technical assistance to the residential child-care facility to improve services to protect children in placement in the residential child-care facility.

~~(h)(g)~~ The A residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of child abuse or neglect in accordance with Rule .0614 of this Subchapter. neglect involving staff. The policies and procedures must include:

- ~~(1)~~ A provision for reporting any allegations of abuse or neglect to the appropriate county department of social services for investigation in accordance with G.S. 7B-301.
- ~~(2)~~ A provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body or advisory board.
- ~~(3)~~ A provision for promptly notifying the Division of Social Services of any allegations of abuse or neglect of any child in care.
- ~~(4)~~ A provision for preventing a recurrence of the alleged incident pending investigation.
- ~~(5)~~ A provision for written notification to the Division of Social Services of any findings of such an investigation of child abuse or neglect, specifying only whether there was substantiation or unsubstantiation of the case.

~~(i)(h)~~ When there is a death of a child who is a resident of a residential child-care facility, the executive director or his his or her designee shall immediately notify the licensing authority in accordance with Rule. 0614 of this Subchapter. authority.

~~(j)(i)~~ The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner.

~~(k)(j)~~ The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.

~~(l)(k)~~ The A residential child-care child-care facility shall notify the mental health area program or county program responsible for the catchment area local management entity where services are being provided within 24 hours of placement that a child may require MH/SAS/DD mental health, developmental disabilities or substance abuse services.

~~(m)(l)~~ If the a residential child-care child-care facility is monitored by a mental health area program or county program, local management entity the a residential child-care child-care

facility shall provide data to the ~~mental health area program or county program~~ local management entity as required by Department of Health and Human Services, pursuant to 10A NCAC 27G .0608, for monitoring and reporting to the General Assembly.

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70I .0203 SUBSTANTIATIONS OF NEGLECT AGAINST THE FACILITY

(a) When there is a substantiation of neglect against the a residential child-care child-care facility by a county department of social services, a corrective action plan shall be submitted by the executive director or his/her designee to the Division of Social Services licensing authority within 30 days of the case decision by the county department of social services conducting the investigative assessment. substantiated report.

(b) Following the receipt of the corrective action plan, the Division of Social Services licensing authority may shall make one unannounced on-site visit to the facility within the 30 days following the receipt of the corrective action plan.

(c) The Division of Social Services licensing authority may shall make subsequent onsite visits at varying frequencies and times throughout the ensuing year to determine that the corrective actions have been implemented.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0204 LICENSURE PROCEDURES

(a) Private Residential Child-Care Facility Licensure Procedures: Procedures.

- (1) The A private residential child-care facility shall submit the following materials shall be submitted to the Division of Social Services licensing authority during the application phase:

- (A) Articles of Incorporation;
- (B) Bylaws; and
- (C) Governing Board board—list with names, addresses, occupations, length of time and terms on the board, and board positions held and number of terms, if applicable.

- (2) The A private residential child-care facility shall submit the following materials shall be submitted to the Division of Social Services licensing authority during the investigatory phase before an initial license can may be issued, with the exception of Part (K) of this Subparagraph which will shall be maintained at the facility for review:

- (A) License Application and Summary.
- (B) Program policies and procedures stating the purpose, outlining admission criteria, as well as defining areas of responsibilities for services which the facility will assume for children in care and for services to be

- provided by the referring agency or individual, and discharge criteria.
- (C) Description of the child-care program and evaluation method.
 - (D) Program forms.
 - (E) Budget outlining anticipated costs and sources of revenue for the first year of operation.
 - (F) Personnel policies.
 - (G) Organizational chart.
 - (H) Job descriptions.
 - (I) Staff resumes.
 - (J) Full and part-time staff work schedules.
 - (K) A medical examination report completed by a licensed medical provider on all full-time and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or relative children of direct care personnel residing in the facility within 12 months prior to the license date. There shall be documentation that all adult direct care personnel residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical history form (DSS-5017) shall be completed by all direct care personnel residing in the facility at the time of initial licensure. A medical examination report, TB test (if required) and a medical history form (DSS-5017) shall be completed on any children or relative children of direct care personnel who subsequently begin residing in the facility. Medical reports including TB skin test results on full and part-time direct care personnel and any relatives in the home. The medical reports must be completed by a licensed medical provider within six months prior to the license date.
 - (L) Fire and Building Safety Inspection Report (for fewer than seven residents, for seven to nine residents or 10 or more residents), completed and approved by the ~~local fire county building inspector or fire marshal~~.
 - (M) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian.
 - (N) Written approval from the local zoning authority. Floor plan indicating room dimensions, usage of each room, window and door locations and sizes and method of heating.
 - (O) Written approval from the Division of Health Service Regulation. Division of Facility Services for a design capacity of seven to nine residents or 10 or more residents.
- (3) ~~Division of Social Services~~ The licensing authority shall make one or more visits to the residential child-care facility to complete the licensing study.
 - (4) Based on information obtained during the investigatory phase, ~~Division of Social Services~~ licensing authority staff shall evaluate the residential child-care facility's proposed program and methods of operation to determine compliance with rules in Subchapters 70I and 70J.
 - (5) The ~~Division of Social Services~~ licensing authority shall notify the residential child-care facility in writing of the licensure decision, conditions of the license and any recommendations regarding the child-care program.
- (b) Licensure Procedures for Private Agency, Public Agency and Public Residential Child-Care Facilities.
- (1) ~~The A private agency, public agency and public residential child-care facility shall submit the following materials shall be submitted to the Division of Social Services licensing authority before a license may be issued, with the exception of Part (I) of this Subparagraph which will shall be maintained at the facility for review:~~
 - (A) License Application and Summary.
 - (B) Program policies and procedures stating purpose, outlining admission criteria, as well as defining areas of responsibilities and discharge criteria.
 - (C) Description of the child-care program and evaluation method.
 - (D) Program forms.
 - (E) Budget outlining anticipated costs and sources of revenue for the first year of operation.
 - (F) Job descriptions.
 - (G) Staff resumes.

- (H) Full and part-time staff work schedules.
- (I) A medical examination report completed by a licensed medical provider on all full- and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or relative children of direct care personnel residing in the facility within 12 months prior to the license date. There shall be documentation that all adult direct care personnel residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be required to be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical history form (DSS-5017) shall be completed by all direct care personnel residing in the facility at the time of initial licensure. A medical examination report, TB test (if required) and a medical history form (DSS-5017) shall be completed on any children or relative children of direct care personnel who subsequently begin residing in the facility. ~~Medical reports including TB skin test results on full and part-time direct care personnel and any relatives in the home. The medical reports must be completed by a licensed medical provider within six months prior to the license date.~~
- (J) Fire and Building Safety Inspection Report (for fewer than seven residents, seven to nine residents, or 10 or more residents), completed and approved by the county building local fire inspector, or fire marshal.
- (K) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian.
- (L) Written approval from the zoning authority. Floor plan indicating room dimensions, usage of each room, window and door locations and sizes and method of heating.
- (M) Written approval from the Division of Health Service Regulation. ~~Division of Facility Services for a design capacity of seven to nine residents or 10 or more residents.~~
- (2) ~~Department of Health and Human Services~~ The licensing authority staff shall notify the residential child-care facility in writing of the licensure decision, conditions of the license, and any recommendations regarding the residential child-care program.
- (c) Licensure Procedures Following First Second Year of Operation for all residential child-care facilities.
- (1) Prior to the license expiration date, the ~~Division of Social Services~~ licensing authority shall notify ~~the~~ a residential child-care facility in writing of the licensure renewal requirements.
- (2) ~~The~~ A residential child-care facility shall submit the following materials shall be submitted to the Division of Social Services licensing authority before a license for a residential child-care facility can may be renewed, with the exception of, Parts (E) and (F) of this Subparagraph, which will shall be maintained at the facility for review:
- (A) License Application and Summary.
- (B) Governing board list with names, addresses, occupations, length of time and terms on the board, and board positions held and number of terms, if applicable.
- (C) Budget outlining anticipated costs and sources of revenue of the next operating year, with estimation of daily cost of care per child for past year.
- (D) Annual statistical report of program activities as required by Rule .0202(b).~~.0202~~ of this Section.
- (E) A medical examination report completed by a licensed medical provider on all full- and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or other relative children residing in the living unit prior to employment. ~~Biennial medical reports including TB skin test results on full and part-time direct care personnel staff and any relatives in the facility. The medical reports must be completed by a licensed medical provider.~~
- (F) A medical history form completed by all full- and part-time direct care personnel residing in the facility (this

includes any staff member who may serve in the capacity of direct care staff) who have been employed since the last relicensing period and any children or other relative children residing in the facility. A residential child-care facility shall have documentation that all full- and part-time direct care personnel residing in the facility who have been employed since the last relicensing period have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be required to be tested for TB only if one or more of the parents test positive for TB. There shall be documentation that adopted children and other relative children residing in the facility have had a TB skin test or chest x-ray unless contraindicated by a licensed medical provider. Health Questionnaire including TB skin test results on the year when the physical examination is not required.

- (G) ~~Fire and Building Safety Inspection Report (for fewer than seven residents, seven to nine residents, or 10 or more residents), completed and approved by the county building inspector or fire marshal. The residential child-care facility shall have current fire inspections from the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority biennially with the licensure renewal application.~~
- (H) ~~Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian. The residential child-care facility shall have current sanitation inspections from the county sanitarian. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority biennially with the licensure renewal application.~~
- (I) Updated or revised materials to include, but not limited to, including policies, procedures, forms, or amendments to Bylaws or Articles.
- (J) Independent annual financial audit, if a private residential child care facility. If the agency receives foster

care maintenance payments of State funds, it must submit an annual audit of its financial statements that is in compliance with 10A NCAC 70D .0105(a)(5).

- (3) ~~With the exception of residential child-care facilities which are accredited by the Council on Accreditation, the Division of Social Services~~ The licensing authority shall annually biennially conduct onsite visits to private residential child-care facilities, private agency residential child-care facilities, public agency residential child-care facilities or facilities and conduct desk reviews of the licensure materials of private agency, public agency or public residential child-care facilities to determine if minimum licensure standards for residential child-care facilities continue to be met. The licensing authority may conduct announced and unannounced on-site visits to residential child-care facilities.
- (4) ~~For residential child-care facilities which are accredited by the Council on Accreditation, the Division of Social Services shall conduct onsite visits to these residential child care facilities every other year in accordance with the agreement between the Division of Social Services and the Council on Accreditation.~~

Authority G.S. 131D-10.5; 143B-153.

SECTION .0300 - ORGANIZATION AND ADMINISTRATION

10A NCAC 70I .0301 GOVERNANCE

- (a) ~~Charter: When a~~ A private residential child-care child-care facility operates under a charter articles of incorporation, the charter incorporation that shall be filed with the Department of the Secretary of State (<http://www.secretary.state.nc.us>). A private residential child-care facility shall submit a copy of the articles of incorporation to the licensing authority. State. The charter articles of incorporation shall have a statement of purpose which describes the geographic area to be served, kinds of children to be admitted, and the range of services to be provided, an official copy of which shall be submitted to the Division of Social Services. licensing authority.
- (b) ~~Governing Body:~~ A private residential child-care child-care facility shall have a governing body which that exercises authority over and has responsibility for its operation, policies and practices. The residential child-care facility shall notify the licensing authority of the type and structure of the governing body.
- (c) ~~The governing body shall be one of the following:~~
 - (1) ~~a board of directors in the case of a non-profit or for profit corporation; or~~
 - (2) ~~commissioners or appointed officials of a governmental unit; or~~
 - (3) ~~a proprietor in case of a sole proprietorship; or~~
 - (4) ~~partners in case of a partnership.~~

~~(4)(c)~~ In the case of a non-profit or for-profit corporations, the governing body shall:

- (1) be composed of no fewer than six members to include men and women; women with varying abilities, experience, and cultural backgrounds;
- (2) provide for a system of rotation for board members, for limitation to the number of consecutive terms a member may serve;
- (3) establish standing committees;
- (4) provide orientation for new members; and
- (5) meet at least four times annually with a quorum present. twice annually.

(d) Public residential child-care facilities operated by governmental agencies shall be governed by appointed officials of a governmental unit.

~~(e) The executive committee shall meet at least quarterly with a quorum present.~~ A residential child-care facility shall submit to the licensing authority a list of members of the governing body. This list shall indicate the name, address and terms of membership of each member and shall identify each officer and the term of that office.

(f) A residential child-care facility shall permanently maintain meeting minutes of the governing body and committees.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0302 RESPONSIBILITIES OF THE GOVERNING BODY

The governing body shall:

- (1) adopt administrative, personnel, and program policies which are reviewed at least every two years;
- (2) review and approve a budget prior to the beginning of the fiscal year;
- (3) establish and periodically review policies on fundraising and investment management; management and obtain professional assistance and consultation as needed;
- (4) annually review and formally accept the financial audit; audit, in the case of a private residential child-care facility;
- (5) employ an executive director a chief executive officer (director, executive director, (CEO, director, president, superintendent) and delegate authority to that person to employ and dismiss staff, implement board policies, and manage day-to-day operation of the facility;
- (6) shall ensure that the criminal history of an executive director is checked prior to employment, and based on the criminal history, a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the

individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70I .0102, to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he/she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that the executive director has not abused, neglected or exploited a disabled adult and that the executive director has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

- ~~(6)(7)~~ permit the chief executive director officer or his or her designee to attend all meetings of the governing body and committees with the exception of those held for the purpose of reviewing his performance, status, or compensation;
- ~~(7)(8)~~ annually evaluate and document the chief executive director's officer's performance through specific criteria and objectives;
- ~~(8)(9)~~ initiate and review an annual evaluation of services and direct needed changes based on the evaluation;
- ~~(9)(10)~~ annually review facility needs related to risk management; and
- ~~(10)(11)~~ maintain a long range plan and review annually.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0303 FINANCES AND INSURANCE

(a) Fiscal Management: The chief executive director officer shall:

- (1) implement sound financial practices in order to prepare and periodically review the budget, and to be accountable to the community; and
- (2) report to the governing body at least quarterly or more frequently, as requested, if requested by any member of the governing body, on present financial status and anticipated problems.

(b) ~~The A~~ residential child-care child-care facility shall:

- (1) have a plan of financing which assures sufficient funds to enable it to carry out its defined purposes and provide proper care and services for children;
- (2) develop adequate resources and manage them prudently in order to obtain the revenues that support its programs and prevent the interruption of needed care and services to clients;
- (3) have a written budget specifying income and expenditures which serves as the plan for management of its financial resources for the program year; and
- (4) have a written policy on fees for services which shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency shall make the policy available to applicants for services at the time an application for services is made. annually analyze the comprehensive unit cost of providing each service to monitor trends, reflect current experience, use in contracting, billing, and establishing a fee schedule, if a fee schedule is utilized.

(c) Audit:

- (1) ~~An independent accountant approved by the governing body or by the appropriate governmental auditing authority shall perform an audit of the residential child care facility's financial statements annually. If the agency receives foster care maintenance payments of State funds, it must submit an annual audit of its financial statements that is in compliance with 10A NCAC 70D .0105(a)(5).~~

~~(2) The residential child care facility shall submit a copy of the annual audit to the Division of Social Services~~

(d) Insurance: A residential child-care facility shall notify the licensing authority, parents, guardian and legal custodian (if applicable) of its status related to liability insurance for the agency and staff. A residential child-care facility shall provide a written statement of its status related to liability insurance for the residential child-care facility and staff to applicants for services at the time an application for service is made.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0304 INTERNAL OPERATING PROCEDURES

~~The residential child care facility shall adopt and annually review operating procedures for each administrative and program area in order to effectively carry out its policies and shall make the internal operating procedures available to clients, and legal custodians.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0305 RECORDKEEPING AND REPORTING

(a) ~~The A residential child-care facility's facility shall develop and enforce a policy on confidentiality that shall:~~

- (1) identify the individuals with access to or control over confidential information;
- (2) specify that persons who have access to records or specified information in a record be limited to be persons authorized by law specifically including the client, parents, guardian the parent or legal custodian (if applicable) and children (12 years of age and older), when the client is a minor, agency staff and auditing, licensing, or accrediting personnel or personnel; and those persons for whom the agency has obtained a signed consent for release of confidential information; information signed by the parents, guardian or legal custodian; and
- (3) require that when client a child's information is disclosed a signed consent for release of information is obtained on a consent for release form.

(b) ~~The A residential child-care facility shall:~~

- (1) provide a secure place for the storage of records with confidential information;
- (2) inform any individual with access to confidential information of the provisions of this Rule;
- (3) ensure that, upon employment and whenever revisions are made, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
- (4) permit a child to review his his or her case record in the presence of facility personnel on the facility premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record record, unless facility personnel determines determine the information in the child's case record would be harmful to the child;
- (5) in cases of perceived harm to the child, document in writing any refusals to share information with the child, parents, guardian parent or and legal custodian (if applicable) and child (12 years of age and older); eustodian;
- (6) maintain a confidential case record for each child;
- (7) maintain confidential personnel records for all employees; and
- (8) maintain confidential records for all volunteers.

(c) ~~The A residential child-care facility may destroy in office a closed record in which a child has been discharged for a period of three years unless included in a federal or state fiscal or program audit that is unresolved. years or A residential child-care facility may destroy in office a record three years after a child has reached age 18, unless included in a federal or state~~

fiscal or program audit that is ~~unresolved, then unresolved~~. The agency may destroy these closed records in office when the federal or state fiscal or program audits have been resolved and the agency is released from all audits.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0306 CLIENT RIGHTS

(a) ~~The A~~ residential child-care facility shall develop and implement policies and procedures to protect the individual rights and dignity of children and families.

(b) ~~The A~~ residential child-care facility shall have a client's and family's rights policy which includes that each child has the right to:

- (1) privacy;
- (2) be provided adequate food, clothing, and shelter;
- (3) have access to family time and have telephone conversations with family members, when not contraindicated in the child's ~~intervention plan or individualized service~~ visitation and contact plan;
- (4) have personal property and a space for storage;
- (5) express opinions on issues concerning the child's care or treatment;
- (6) receive care in a manner that recognizes variations in cultural values and traditions;
- (7) be free from coercion by facility personnel with regard to religious decisions. The facility shall have a process to assure that, whenever practical, the wishes of the parents or guardians with regard to a child's religious participation are ascertained and followed;
- (8) not be identified in connection with publicity for the facility which shall bring the child or the child's family embarrassment; and
- (9) not be forced to acknowledge dependency on or gratitude to the facility.

(c) ~~The A~~ residential child-care facility shall have a policy which prohibits direct involvement by a child in funds solicitation for the facility.

(d) ~~The A~~ residential child-care facility shall have a policy which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian or legal custodian and child (12 years of age and older), ~~and the child's legal custodian~~.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0307 GRIEVANCE PROCEDURES

(a) ~~The A~~ residential ~~child-care~~ child-care facility shall provide to each child and ~~parents~~ parents, guardian or legal custodian ~~custodian~~, upon admission:

- (1) a written description of policies and procedures which the ~~child and his parent(s)~~ child, parents, guardian or legal custodian follow to register complaints;
- (2) information about ~~client~~ a child's rights;

(3) the process for appealing a decision or action of the facility; and

(4) the process for resolution of a complaint.

(b) Upon resolution of a grievance, ~~the a residential child-care~~ child-care facility shall maintain a copy of the complaint and the resolution in the case record.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0400 – PERSONNEL

10A NCAC 70I .0401 PERSONNEL POLICIES

~~The A~~ residential ~~child-care~~ child-care facility shall have written personnel policies and procedures which shall be provided to all employees (full-time, part-time and contracted). ~~employees~~. Revisions of all personnel policies shall be in writing and provided to employees. ~~employees on a timely basis~~. Policies and procedures shall address the following areas:

- (1) ~~Recruitment~~ recruitment and hiring;
- (2) ~~Compensation~~ compensation structure and benefits;
- (3) ~~Orientation~~ orientation plan for new employees;
- (4) ~~Training~~ training and staff development;
- (5) ~~Regulations~~ regulations regarding use of equipment and assets;
- (6) ~~Notification~~ notification of work schedule;
- (7) ~~Description~~ description of leave policy, including time-off duty for disciplinary actions for direct care staff;
- (8) ~~Termination~~; termination;
- (9) ~~Operational~~ operational procedures regarding grievances which provide the opportunity and means to lodge complaints and appeals;
- (10) ~~Description~~ description of the process for revision of personnel policies;
- (11) ~~Annual~~ annual evaluations;
- (12) ~~Staff~~ staff quarters and searches; and
- (13) ~~Disciplinary~~ disciplinary measures.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0402 PERSONNEL DEPLOYMENT

(a) ~~The A~~ residential child-care facility shall ensure that the deployment of personnel supports the stated mission of the facility.

(b) There shall be a written job description for each position, which includes duties, responsibilities, qualifications, and to whom the position is responsible. Job descriptions shall be consistent with duties being performed.

(c) ~~The A~~ residential child-care facility shall have procedures for annual evaluation of the work performance of each employee which provides for employee participation in the process.

(d) ~~The A~~ residential child-care facility shall have an organizational plan which delineates the number of staff and levels of supervisors/managers, taking into account the complexity and size of the workload of each staff. The plan ~~must~~ shall demonstrate supervision of staff in accordance with the rules in Subchapters 70I and 70J, if applicable.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0403 PERSONNEL FILE

The ~~A residential child-care~~ child-care facility shall maintain a personnel file for each employee (full-time, part-time and contracted) which includes the following:

- (1) ~~The~~ application for employment including the record of previous employment;
- (2) ~~Documentation~~ documentation of at least three professional references; ~~two references and a criminal record check;~~
- (3) applicable position specific credentials or certifications (prior to employment certified college transcripts shall be obtained for positions requiring college degrees);
- ~~(3)(4)~~ Medical ~~medical~~ information required for each staff by licensure ~~standards; standards (initial and biennial medical examinations, initial TB test and medical history form);~~
- ~~(4)(5)~~ Signed ~~signed~~ statement indicating the employee's understanding of and willingness to comply with confidentiality agreement requirements; ~~if applicable;~~
- ~~(5)~~ Position specific credentials/certifications;
- (6) signed statement that the employee has no criminal convictions that would adversely affect his or her capacity and ability to provide care, safety and security for the children in residence;
- (7) criminal record checks certified by the Clerk of Superior Court;
- (8) results of the search of the North Carolina Sex Offender and Public Protection Registry;
- (9) results of the search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256);
- (10) results of the search of the Responsible Individuals List as defined in 10A NCAC 70A .0102 which indicates the employee has not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
- (11) a signed statement that the employee has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child;
- (12) signed statement that the employee has not abused, neglected or exploited a disabled adult;
- (13) signed statement that the employee has not been a domestic violence perpetrator;
- ~~(6)(14)~~ Record ~~record~~ of completed orientation; ~~orientation and ongoing staff development;~~
- (15) log of training;
- (16) written approval letter from executive director or his or her designee authorizing employee to

administer physical restraint holds, if applicable;

- ~~(7)(17)~~ Annual ~~annual~~ performance evaluations;
- ~~(8)(18)~~ Documentation ~~documentation~~ of disciplinary actions;
- ~~(9)(19)~~ Documentation ~~documentation~~ of grievances filed;
- ~~(10)(20)~~ Employee's ~~employee's~~ starting and termination dates;
- ~~(11)(21)~~ Reason ~~reason~~ for termination;
- ~~(12)(22)~~ Signed ~~signed~~ and dated release or notation of employee's waiver of release for future employment references; and
- ~~(13)(23)~~ Documentation ~~documentation~~ of a driving record check, if applicable.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0404 PERSONNEL QUALIFICATIONS

- (a) Criminal Records Check by the Residential Child-Care Facility. ~~Check.~~ Applicants, ~~employees or volunteers~~ employees, volunteers or interns who have a history of criminal convictions that would adversely affect their capacity and ability to provide care, safety and security for the children in residence shall not be employed or utilized as volunteers or interns, ~~permitted to provide direct child care.~~ A signed statement shall be obtained attesting that the applicant, ~~employee~~ employee, volunteer or intern ~~volunteer~~ does not have such a record prior to beginning employment volunteer duties or internships. ~~providing direct child care.~~ Prior to employment or before beginning volunteer duties or internships, a certified criminal record check for the applicant, volunteer or intern shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these searches, a decision shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70A .0102, to determine if the applicant, employee, volunteer or intern has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall require that each applicant, employee, volunteer or intern provide a signed statement that the applicant, employee, volunteer or intern has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. A signed statement shall be obtained attesting that the applicant, volunteer or intern has not abused, neglected or exploited a disabled adult and has not been a domestic violence perpetrator.
- (b) Child Abuse. ~~Employees or~~ Employees, volunteers or interns who have a criminal conviction of child abuse shall not be permitted any contact with children.
- (c) Driver's License. ~~Employees or~~ Employees, volunteers or interns driving a residential ~~child-care~~ child-care facility vehicle

~~must~~ shall possess a valid driver's license appropriate for the type of vehicle used.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0405 PERSONNEL POSITIONS

(a) Executive Director. There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 children.

(b) The executive director employed after July 1, 2008, shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, and at least four years experience in a human services program of which a minimum of two years has been in supervision, administration or management. A director shall have management skills that enable the utilization of the residential child-care facility's human and financial resources and the coordination of the facility's services with those provided by other community resources.

(c) The executive director shall:

- (1) ~~Be~~ be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing board and licensing requirements;
- (2) ~~Explain~~ explain licensing standards, residential child-care standards and the residential child-care facility's services to the board, the facility's constituency, other human service agencies and the public;
- (3) ~~Initiate~~ initiate and carry out the program of residential child-care as approved by the governing board;
- (4) ~~Report~~ report to the governing board on all phases of operation at least quarterly;
- (5) ~~Delegate~~ delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) ~~Establish~~ establish and oversee fiscal practices, present the annual operating budget and quarterly reports to the governing board;
- (7) ~~Evaluate~~, evaluate, at least annually, the training needs of the staff; plan and implement staff training and consultation to address identified needs;
- (8) ~~Employ~~ employ and discharge staff and meet on a regular basis with administrative and management staff to review, discuss and formulate policies and procedures;
- (9) ~~Supervise~~ supervise staff who report directly to the executive director; and
- (10) ~~Conduct~~ conduct an annual individual written evaluation of each staff member who reports directly to the executive director. This evaluation shall contain both a review of job responsibilities and goals for future job performance.

(d) Clerical, Maintenance and Other Support Personnel. The residential child-care facility shall employ or contract ~~qualified~~ qualified personnel qualified to perform all clerical, support and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting and financial functions.

(f) Direct Care Service Personnel. Any staff member who assumes the duties of direct care service personnel in the living unit shall comply with all the standards for direct care services personnel in the living unit.

(1) Direct care service personnel, hired after ~~the effective date of these Rules, July 1, 2008,~~ shall:

(A) be 21 years of age or older;

~~(A)(B)~~ Have education or have at a minimum a high school diploma or GED and experience to meet the responsibilities of the job; job.

(C) complete a medical history form prior to assuming the position;

~~(B)(D)~~ Have a physical have a medical examination by a licensed medical provider 12 months prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease which may pose a significant risk of transmission in the residential child-care facility. After the initial examination, the cost of the physical medical examinations as required by licensure shall be at the expense of the facility; facility.

~~(C)(E)~~ Have have a TB skin test, test or chest x-ray, unless the medical provider advises against this test, prior to assuming the position; position and annually thereafter.

(2) Standards for direct care service personnel in the living unit:

(A) ~~There shall be at least one direct service personnel assigned to every 10 children six years of age and older and at least one direct care personnel assigned for every five children younger than six years of age. Supervisory personnel within voice range shall be allowed to be included in the child to staff ratio; There shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.~~

(B) A residential child-care facility shall ensure that a staff member trained in cardiopulmonary resuscitation (CPR) and first aid, such as those provided

by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the children in care; and that direct care service personnel shall receive training in first aid and CPR within the first 30 days of employment. Training in CPR shall be appropriate for the ages of children in care. First aid and CPR training shall be updated as required by the American Red Cross, the American Heart Association or equivalent organizations.

~~(B)(C)~~ (C) The ~~A~~ residential child-care facility shall ensure that direct care service personnel receive supervision and training in the areas of, first aid and CPR, of child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct care service personnel in accordance with the needs of the client population, including, training in child sexual abuse. ~~abuse~~. Direct care service personnel shall receive 24 hours of continuing education annually.

~~(C)(D)~~ (D) The ~~A~~ residential child-care facility shall ensure that direct care service personnel receive supervision in food preparation and nutrition when meals are prepared in the living unit. ~~unit~~; and

~~(D)(E)~~ (E) Any duties other than direct care services duties assigned to direct care service personnel shall be specified in writing and assigned in accordance with the residential child-care program.

(3) Direct care service supervisory personnel, hired after July 1, 2008, shall:

- (A) be 21 years of age or older; and
- (B) have at a minimum a high school diploma or GED and experience to meet the responsibilities of the job.

~~(3)(4)~~ (4) Standards for direct care service supervisory personnel:

- (A) There shall be at least one supervisor for every 15 direct care service personnel.
- (B) Supervisory staff shall be selected on the basis of the knowledge,

experience and competence required to manage direct service personnel.

(C) Direct care service supervisory personnel shall receive 24 hours of continuing education annually.

~~(4)~~ Standards for other direct service personnel: For residential child care facilities that employ staff as social workers, the following applies:

(g) Social work supervisors shall be employed by the residential child-care facility to supervise, evaluate and monitor the work and progress of the social work staff.

(1) Social work supervisors shall have at a minimum a master's degree in social work or a related field of study from a college or university listed in the most current edition of the Higher Education Director, and at least two years of social work experience or a bachelor's degree in social work or a related field and four years of experience in social work or a related field. Social work supervisors shall receive 24 hours of continuing education annually.

(2) Supervision of social workers shall be assigned as follows:

~~(A)~~ There shall be at least one social worker assigned for every 16 children. Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
0	0-5 4 (executive director serves as social work supervisor)
1	6-5
2	7-12 6-10
3	13-18 11-15
There shall be one additional supervisor for every one to six five additional social workers.	

~~(B)~~ The residential child care facility shall ensure that staff employed as social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse;

~~(C)~~ Staff employed as social workers shall be familiar with community resources for children and their families in addition to the agency's services; and

~~(D)~~ Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance

~~with the residential child-care program.~~

(h) Social workers shall be employed by the residential child-care facility to provide social work services to the children in care and their families in accordance with the out-of-home family services agreement.

- (1) Social workers shall have either a master's degree in social work or related field of study from a college or university listed in the most current edition of the Higher Education Director, or a bachelor's degree in social work or a related field from a college or university listed in the most current edition of the Higher Education Director, and two years experience in social work or related field. If social work staff are not supervised by a person meeting the qualifications in Subparagraph (g)(1) of this Rule, all social work staff shall meet the qualifications in Subparagraph (g)(1) of this Rule. Social workers shall receive 24 hours of continuing education annually.
- (2) There shall be at least one social worker assigned for every 15 children.
- (3) A residential child-care facility shall ensure that social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse.
- (4) Social workers shall be familiar with community resources for children and their families in addition to the agency's services.
- (5) Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance with the residential child-care program.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0407 VOLUNTEERS

~~The A residential child-care child-care facility shall have a written description of the specific responsibilities and the provision of supervision of all volunteers. Volunteers shall:~~

- (1) ~~Meet~~ meet the personnel qualifications specified in 10A NCAC 70I .0404; .0404.
- (2) ~~Meet~~ meet the qualifications and implement the duties of the position as specified; ~~specified.~~
- (3) ~~Be~~ be provided sufficient orientation, training and supervision to enable knowledge of the facility's purpose and services, the needs of children and families served and the role and responsibilities to be assumed; ~~assumed.~~
- (4) ~~Provide two~~ provide three references relevant to the role and responsibilities to be assumed; ~~assumed.~~
- (5) have documentation in their personnel files of a search of the Responsible Individual's List as

defined in 10A NCAC 70A .0102; documentation of a criminal record check; documentation of a search conducted of the North Carolina Sex Offender, Public Protection Registry; and documentation of a search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-356). Volunteers shall provide signed statements prior to employment that they have not abused or neglected a child or have been a respondent in a juvenile court proceeding that resulted in the removal of a child or have had child protective services involvement that resulted in the removal of a child. Volunteers shall also provide signed statements that they have not abused, neglected or exploited a disabled adult and that they have not been a domestic violence perpetrator; and

- (5)(6) ~~Agree~~ agree in writing to abide by the confidentiality policies of the agency.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0500 - SERVICE PLANNING

10A NCAC 70I .0501 ADMISSION POLICIES

(a) The residential ~~child-care~~ child-care facility shall have written admission policies which ~~clearly~~ clearly define and describe the age, sex and type of child to be served.

(b) The residential ~~child-care~~ child-care facility shall limit admissions to children who need out of home care apart from their families and for whom the facility is qualified by staff, program, buildings and services to give appropriate care.

(c) In the case of private referrals, the residential ~~child-care~~ child-care facility shall:

- (1) document reasonable efforts to prevent placement;
- (2) establish that the facility provides the least restrictive setting for the child; and
- (3) develop and implement ~~a case plan~~ an out-of-home family services agreement with the child's family for reunification, when possible.

(d) In the case of ~~out-of-state referrals~~, out-of-state referrals (both public and private), the residential ~~child-care~~ child-care facility shall not admit a child to the facility without the approval of Interstate Compact on the Placement of Children. Children approval.

(e) The residential ~~child-care~~ child-care facility shall provide ~~the~~ each applicant a handbook of admission procedures which includes:

- (1) a description of the admissions process;
- (2) the ~~application~~; application, including any fees for services;
- (3) the preplacement activities for the ~~child, his parent(s), guardian, or child, parents, guardian or legal custodian~~; and
- (4) an explanation of the group assignment method.

(f) The residential ~~child-care~~ child-care facility shall maintain a referral log which includes:

- (1) child's name, age, sex, and race;
- (2) names of parents, guardian or legal custodian; and
- (3) disposition of admission.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0502 ADMISSION PROCEDURES

(a) ~~The A~~ residential ~~child-care~~ child-care facility shall establish and implement an intake process which includes:

- (1) receipt of an application and a face-to-face interview with the child, parents, guardian or legal custodian, and family whenever possible, with a specific effort to help the child understand the purpose of and need for out of home care and residential child-care services; and
- (2) an exchange of information about the facility's program and the child's needs, and to provide written information required in 10A NCAC 70I .0307(a) and 10A NCAC 70I .0504(a).

(b) The agency requesting placement shall complete A written intake study ~~shall be completed~~ for each child accepted into residential care which includes:

- (1) circumstances that led to the need for placement, and the child's understanding of the placement;
- (2) assessment of family issues and justification that the facility meets the needs of the child and family;
- (3) ~~short-term~~ short-term placement goals and long range permanent plan, including the ~~parent(s)/~~ parent's, guardian's or legal custodian's expectations;
- (4) description of the child's family and significant others;
- (5) description of the child's behavior;
- (6) child specific information, including:
 - (A) medical history, including any current medical problems;
 - (B) developmental history and current level of functioning;
 - (C) educational history, if applicable; and
 - (D) the results of current psychological testing, if applicable.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0503 ADMISSION AGREEMENT

(a) At admission, the residential child-care facility ~~must~~ shall develop a written agreement between the ~~parents-parents,~~ guardian or legal custodian and the facility which specifies the services to be provided by the facility and the responsibilities of the ~~parents-parents,~~ guardian or legal custodian which includes the following:

- (1) statement of consent for placement by the ~~parents-parents,~~ guardian or legal custodian, with the date of admission;
- (2) plan for providing admission information on the child's care, developmental, educational, medical, and psychological needs to the ~~parent(s)-parents,~~ guardian or legal custodian, the frequency of out-of-home family service agreement plan reviews, and receipt of program information required by 10A NCAC 70I .0307(a) and 10A NCAC 70I .0504(a);
- (3) statement of facility responsibility for working with the child's parents, guardian or legal custodian; ~~parents;~~
- (4) statement related to the provision of religious training and practices and consent to these by the ~~parents~~ parents, guardian or legal custodian;
- (5) ~~plan for family time; visitation and contact plan;~~
- (6) fees and plan for payment of care;
- (7) plan for discharge to include projected length of stay; and
- (8) statement of facility responsibility for aftercare services.

(b) For foster children 18 years of age and older residing in the residential child-care facility or reentering the facility, the facility shall obtain a voluntary placement consent signed by the foster child ~~which~~ that specifies the conditions for residential ~~child-care care~~ and services.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0504 ORIENTATION

(a) The residential ~~child-care~~ child-care facility shall provide information and discuss the program policies governing ~~the~~ residential care and services ~~of~~ for children with the child's ~~parents-parents,~~ guardian or legal custodian and the child at or before admission, which include:

- (1) family time, mail, gifts, personal possessions, money, and telephone calls and restrictions which may be imposed on these;
- (2) discipline and behavior management, including the use of searches of children's rooms and possessions;
- (3) program of religious training and practices;
- (4) educational resources;
- (5) trips away from the facility;
- (6) use of volunteers ~~or visiting families,~~ if any;
- (7) physical restraint practices;
- (8) client rights and grievance procedures; and
- (9) daily and seasonal schedules.

(b) The residential ~~child-care~~ child-care facility shall obtain the ~~ease-plan~~ out-of-home family services agreement from the county department of social services at or before admission, when the county department of social services is the legal custodian. In the case of a private placement, the facility shall

develop an out-of-home family services agreement. ~~combine the case plan and the individualized service plan.~~

(c) The residential ~~child-care~~ child-care facility shall develop a written ~~individualized service plan~~ out-of-home family services agreement for each child within 30 days of admission. ~~This plan~~ The out-of-home family services agreement shall be reviewed initially within 60 days, the second review shall be within 90 days of the initial review and the third and subsequent reviews shall be held every six months, inviting ~~parents;~~ parents or guardian, the legal custodian, if different, the child, as well as any individual or agency designated as providing ~~service~~ services to participate.

(d) The ~~individualized service plan~~ out-of-home family services agreement shall be developed utilizing information from an assessment of the child's and family's needs and include goals based on normal developmental tasks and needs. The goals and objectives shall be based on identified issues, be behaviorally specific, time limited and measurable and include staff assignments and specific strategies to be taken to meet the goals in the following areas:

- (1) special interests and personal goals;
- (2) intellectual, academic and vocational;
- (3) psychological and emotional;
- (4) ~~physical;~~ medical;
- (5) social and family relationships;
- (6) cultural and spiritual; and
- (7) basic living skills.

(e) A visitation and contact family time plan shall be ~~part of the individualized service plan~~ developed for each ~~child~~ child by the parents, guardian or legal custodian, if different.

(f) A written discharge plan shall be part of the out-of-home family services agreement. ~~individual service plan for each child.~~

(g) Direct care staff shall be informed about the child's ~~initial individualized service plan~~ out-of-home family services agreement by the executive director of the residential child-care facility or his or her designee and shall participate or provide input at the reviews as described in Paragraph (c) of this Rule. ~~10A NCAC 701.0504(e).~~

(h) A copy of the child's ~~individualized service plan~~ out-of-home family services agreement shall be provided to the ~~parent(s)~~ parents, guardian and the executive director of the residential child-care facility or his or her designee or by the county department of social services serving as the legal custodian. ~~When appropriate, the~~ The child's individualized plan out-of-home family services agreement shall be provided to ~~other agencies and the individuals listed as providing service.~~ services to the child and his or her parents or guardian. An age appropriate version of the ~~individualized service plan~~ out-of-home family services agreement shall be written and provided to each ~~child.~~ child by the legal custodian.

(i) The child's ~~individualized service plan~~ out-of-home family services agreement review shall include:

- (1) an evaluation of progress towards meeting identified needs;
- (2) any new needs identified since the child's ~~individualized service plan~~ out-of-home family services agreement was developed or last reviewed and behaviorally-specific strategies

to meet these needs, including instructions to staff;

- (3) an update of the estimated length of stay and discharge plan; and
- (4) signatures of the persons participating in the review.

(j) If the legal custodian is a county department of social services, the residential child-care agency, department of social services, parents or guardian, other service providers and child (if appropriate) should develop a single out-of-home family services agreement. The residential child-care staff should attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) can serve as the out-of-home family services agreement for the residential child-care facility if the documents reflect input and participation by the residential child-care facility.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 701.0505 DISCHARGE POLICIES AND PROCEDURES

(a) The residential ~~child-care~~ child-care facility shall have written discharge policies that will establish the guidelines for terminating the facility's residential care and services to the child and family to include the following:

- (1) opportunity for the ~~parent(s)~~ parents, guardian or legal custodian to be informed and have opportunity to discuss the decision to discharge the child;
- (2) designation of a timeframe for the child to be discharged which allows sufficient time for the child and facility to prepare for departure and for arrangements to be made for the child's care;
- (3) discharge of a child under 18 years of age only to the parents, guardian or legal custodian;
- (4) completion of a summary within 30 days of discharge, which includes the following:
 - (A) ~~date~~ date, time and circumstances of discharge;
 - (B) name, address and telephone number of the parents, guardian, legal custodian or authorized individual to whom the child ~~shall be~~ was discharged;
 - (C) services provided and evaluation;
 - (D) recommendations for needed services; and
 - (E) provision of or referral for after care services.

(b) Upon a child's departure, the residential ~~child-care~~ child-care facility shall provide a copy of the child's educational, medical and dental records, clinical materials (as available) and other related ~~materials, as appropriate,~~ materials to the ~~parent(s)~~ parents, guardian or legal custodian.

(c) Upon a child's departure, the residential ~~child-care~~ child-care facility shall send all personal clothing and belongings with the child.

(d) Upon a child's departure, the residential child-care facility shall return prescription medications to the person or agency legally authorized to remove the child from residential child-care.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0506 CLIENT RECORDS

(a) The residential child-care facility shall maintain a client record for each child which contains the following:

- (1) documentation of placement authority by parents, guardian or legal custodian;
- (2) written placement consent and agreement;
- ~~(4)(3)~~ (3) intake study and related documents;
- ~~(5)(4)~~ (4) completed application for services that includes demographic information on the child and the child's family; services;
- ~~(3)(5)~~ (5) documentation that verifies the child's birth;
- (6) pre-admission ~~physical~~ medical examination report or a medical examination report completed within two weeks of admission (unless the child's health status indicates the completion of a medical examination report sooner) and copies of subsequent medical examination reports; records;
- (7) immunization records;
- (8) ~~intervention plan~~ out-of-home family services agreement and reviews;
- (9) ~~written service plan and review; court orders;~~
- (10) ~~documentation of all family time; visitation and contact plan, including type, duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement; the facility shall maintain documentation of all family time;~~
- (11) consents for release of information;
- (12) consent for emergency medical treatment;
- (13) consents for out-of-state field trips;
- (14) consents for time-limited audio-visual recording signed by both the child and parents or guardian, and legal custodian (if applicable);
- (15) ongoing record of medical and dental care;
- (16) documentation of medical insurance;
- (17) ~~physical restraint and incident reports; progress notes; and~~
- (18) ~~discharge summary-~~ summary including date of discharge, time of discharge and the name, address, telephone number and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met and plans for the services needed to meet these goals.

(b) The residential child-care facility shall maintain client records for the purpose of:

- (1) protecting the legal rights of the child, ~~the parents~~ parents, guardian or and legal custodian, and the facility;
- (2) documenting service provision to the child and family, including an evaluation of effectiveness of services provided; and
- (3) providing a source of information about individual children, as well as information for the facility in planning its program of care and services.

(c) Staff members recording entries in client records shall date, initial or sign entries, be dated and either initialed or signed

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

SECTION .0600 - SERVICE DELIVERY

10A NCAC 70I .0601 PROGRAM POLICIES AND PRACTICES

(a) The residential ~~child-care~~ child-care facility shall have a written program description and written program policies and procedures.

(b) The residential ~~child-care~~ child-care facility shall design a program to provide opportunities for positive learning experiences and to meet the needs of children and families.

(c) The residential ~~child-care~~ child-care facility shall provide a daily schedule of activities to meet the needs of children, which allows time for privacy and individual pursuits.

(d) The residential ~~child-care~~ child-care facility shall consider each child an unique individual, providing opportunities which take into consideration each child's ethnic and cultural backgrounds.

(e) The residential ~~child-care~~ child-care facility shall give each child individual attention and nurturing.

(f) The residential ~~child-care~~ child-care facility shall provide each child with the opportunity to have interaction with adults and children of both sexes.

(g) The residential ~~child-care~~ child-care facility shall instruct and supervise each child in personal care, hygiene, and grooming appropriate for the age, sex, race and developmental capacity of the child.

(h) The residential ~~child-care~~ child-care facility shall ensure that each child has normal contacts in the community in which the facility is located through participation in events such ~~as, but not limited to,~~ as school functions, recreational facilities, church youth groups, part-time paid employment, community service and volunteer work. An exception shall be made when community contact is inconsistent with the program design.

(i) The residential ~~child-care~~ child-care facility shall encourage each child to form friendships with children outside the facility, to visit friends in the community, and have their friends visit them at the facility. An exception shall be made when contact with friends is inconsistent with the program design or out-of-home family services agreement. service plan.

(j) The residential ~~child-care~~ child-care facility shall provide residents with access to telephones to maintain contact with friends and family members.

(k) The residential ~~child-care~~ child-care facility shall maintain a log of children in residence which includes:

- (1) child's name, age, sex and race;
- (2) name of parents, guardian or legal custodian; and
- (3) dates of admission and discharge.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0602 FAMILY INVOLVEMENT

(a) The residential ~~child-care~~ child-care facility shall have written policies and procedures regarding family involvement which support and encourage families to participate in planning, communication and family time.

~~(b) Family involvement shall include:~~

~~(1)(b) Planning.~~ The facility shall afford parents, guardians and legal custodians family members opportunities to participate in planning events for their child and themselves.

~~(2)(c) Communication.~~ The facility Parents, guardians and legal custodians shall allow children to send and receive unopened mail and to have telephone conversations with parent(s) or parents, guardians, other family members and other individuals. ~~members.~~ An exception shall be made if it is determined that the child's best interest, ~~individualized service plan~~ out-of-home family services agreement, visitation and contact plan or a court order necessitates restrictions.

~~(3)(d) Family Time.~~ The facility shall afford children and parents, guardians, other family members and individuals opportunities for family time, based on the purpose of placement and in support of the child's goals and in compliance with the child's visitation and contact plan. ~~goals.~~

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0603 VISITING RESOURCES

~~(a) The residential child-care facility shall have written policies and procedures regarding visiting resources, which include that:~~

- ~~(1) no financial support shall be paid to the visiting resource;~~
- ~~(2) written consent shall be obtained from each child and each legal custodian prior to a visit;~~
- ~~(3) resources, support and supervision shall be provided to ensure the needs of the child are met during the visit;~~
- ~~(4) responsibility for the child during visits with the visiting resource shall be retained by the facility;~~
- ~~(5) the child's interests, needs, and welfare as identified in the child's individualized service plan shall be assessed by the facility in determining a visiting resource;~~
- ~~(6) prior to an overnight visit, visits between the visiting resource and the child shall be arranged to occur both at the agency and at the home of the visiting resource; and~~

~~(7) orientation to foster care, training on the types of children served and information on the child for whom they will be providing care shall be provided.~~

~~(b) The residential child-care facility shall conduct an initial assessment of each visiting resource and subsequent annual assessments, which include:~~

- ~~(1) a home visit to ensure the building is safe and in good repair;~~
- ~~(2) a completed application;~~
- ~~(3) a brief social history, including an evaluation of parenting skills and abilities;~~
- ~~(4) an agreement signed between the visiting resource and the facility, which specifies the responsibilities of each;~~
- ~~(5) three references affirming the visiting resource parenting skills and abilities;~~
- ~~(6) local criminal record checks on adult members residing in the home; and~~
- ~~(7) documentation that the visiting resource's residence is located within a 50 mile radius of the facility or of the reason the visiting resource is beyond the 50 mile radius.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0604 HEALTH SERVICES

Medical Program.

~~(1) Medical Requirements for Admission.~~

(a) No child shall be accepted into a residential ~~child-care~~ child-care facility without having had a physical-medical examination by a licensed medical provider within ~~six~~ 12 months prior to admission, or a medical examination by a licensed medical provider within two weeks after admission or sooner if indicated by the child's health status. The medical examination ~~which~~ shall include a signed statement by ~~a~~ the licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a ~~significant~~ risk of transmission in the facility. If a child is in the custody of a department of social services, is already scheduled to have and is having a physical-medical examination report completed annually, and is entering a facility, the schedule of annual physicals-medical examination reports shall not be changed. A copy of the most recent physical-medical examination report shall be obtained from the responsible county department of social services by the facility.

(b) A child admitted to a residential ~~child-care~~ child-care facility shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), rubella, mumps, and any other disease as required by 10A NCAC 41A .0400, as age appropriate, prior to admission. The facility shall obtain documentation of immunization. A copy of 10A NCAC 41A .0400 may be accessed at the following website (<http://www.oah.state.nc.us/rules/>) obtained from the Office of Administrative Hearings, PO Drawer 27447, Raleigh, North Carolina, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at the time of adoption of this Rule.

~~(2) Routine Medical Care.~~

~~(a)(c)~~ ~~Arrangements shall be made~~ A residential child-care facility shall make arrangements with one or more licensed medical providers or medical clinics and with at least one dentist for the care of the children.

~~(b)(d)~~ Each child shall have a ~~physical-medical~~ examination at least once a year and more often as needed. A child shall not be allowed to participate in activities that pose ~~unreasonable risk~~ risks to ~~his-his or her~~ health. Any illness, disease or medical condition of a child shall be identified and treated promptly through proper medical care. Children shall have a psychiatric or psychological examination or both when indicated and treatment when indicated.

~~(e)(e)~~ Children ~~must-shall~~ have had a dental examination, by a licensed dentist, within one year prior to admission or arrangements ~~must-shall~~ be made for an exam within six weeks after admission and annually thereafter. The facility shall document dental services in the child's record.

~~(d)(f)~~ The facility shall instruct direct ~~child-care-child-care~~ staff on medical care which may be given by them without specific orders from a licensed medical provider. The facility shall instruct direct ~~child-care-child-care~~ staff in the procedures for obtaining medical care beyond home health care and handling medical emergencies.

~~(3)(g)~~ Hospital Care. The residential ~~child-care-child-care~~ facility shall arrange with a hospital for the admission of children from the facility in the event of serious illness or emergency.

~~(4)~~ First Aid.

~~(a)(h)~~ The residential ~~child-care-child-care~~ facility shall obtain a mouthpiece, utilize universal precautions and other precautionary equipment for administering CPR for the children in residence.

~~(b)(i)~~ The residential ~~child-care-child-care~~ facility shall ensure that first aid kits are available for immediate use in each living unit, recreation area and in vehicles used to transport children.

~~(5)~~ On-Site Health Care.

~~(a)(j)~~ The residential ~~child-care-child-care~~ facility shall not engage in any home health care practices that conflict with the control measures for communicable diseases in 10A NCAC 41A .0200. A copy of 10A NCAC 41A .0200 may be accessed at the following website (<http://www.oah.state.nc.us/rules/>) ~~obtained from the Office of Administrative Hearings, PO Drawer 27447, Raleigh, North Carolina, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at the time of adoption of this Rule.~~

~~(b)(k)~~ Direct ~~child-care-child-care~~ staff shall be able to recognize common symptoms of illnesses in children and be alert to any infectious condition and take proper precautions to prevent the spread of such a condition.

~~(e)(l)~~ Direct ~~child-care-child-care~~ staff shall be able to provide home health care. A thermometer shall be kept available for use. When there is risk of transmission, arrangements shall be made for isolation and attendant care of a child with a communicable disease.

~~(d)(m)~~ Prescription medications shall be administered only when approved by a licensed medical provider.

(n) Non-prescription medication shall be administered only when approved by the parents, guardian, legal custodian or a licensed medical provider.

~~(e)(o)~~ All medicines, prescription and non prescription, shall be stored in a locked cabinet, closet or box not accessible to children.

~~(6)~~ Medical Records. ~~Each child shall have a medical record which contains:~~

~~(a)(p)~~ Each child shall have a medical record which contains ~~Written-written~~ consent from the legal custodian or parent authorizing routine medical and dental treatment and emergency treatment.

~~(b)~~ A medication log which documents all medications dispensed.

~~(e)(q)~~ Each child shall have a medical record which contains ~~The-the~~ preadmission ~~physical-examination,~~ medical examination report, or a medical examination report within two weeks after admission (or sooner if indicated by the child's health status), immunization records, and records of ongoing medical and dental care and examinations received, including ~~but not limited to~~ hospitalizations, ~~significant~~ illnesses or accidents and treatment provided.

(r) A residential child-care facility shall have written policies and procedures regarding the administration of medications to children placed in the residential child-care facility. The executive director of a residential child-care facility, or his or her designee, shall discuss and provide these policies and procedures to the parents, guardian or legal custodian, and the child (if 12 years of age or older), upon admission.

(s) The residential child-care facility shall maintain a Medication Administration Record (MAR) for each child that documents all medications administered.

(t) The residential child-care facility shall document medication errors, adverse drug reactions and medication orders in the child's Medication Administration Record (MAR).

(u) Upon discharge of a child, the residential child-care facility shall return prescription medications to the person or agency legally authorized to remove the child from residential child-care. The residential child-care facility shall provide oral or written education to the person or agency legally authorized to remove the child from residential child-care regarding the medications.

(v) The residential child-care facility shall dispose of unwanted, out-dated, improperly labeled, damaged, adulterated or discontinued prescription medications in accordance with the North Carolina Pharmacy Practice Act and 21 NCAC 46 .3001 (See <http://www.ncbop.org/LawsRules/RulesApril2006.pdf> and <http://www.ncbop.org/Forms%20and%20Applications%20-%20Pharmacists/DrugDisposalForm.pdf>).

Authority G.S. 131D-10.5; 143B-153; 143B-15; 143B-155-143B-156.

10A NCAC 70I .0605 ROUTINE ASPECTS OF HEALTH, PERSONAL HYGIENE, AND SAFETY

~~(a) Infection Control.~~ Staff shall receive training in and routinely apply general infection control measures and procedures which shall ~~include, but are not limited to,~~ include Universal Precautions specified by the Centers on Disease Control, U.S. Department of Health and Human Services, Public Health Services, Atlanta, Georgia. A copy of general infection control procedures may be obtained from National Technical

Information Services, 5285 Part Royal Road, Springfield, Virginia, 22161, (703) 487-4650, at a cost established by National Technical Information Services. ~~of seven dollars (\$7.00) at the time of the adoption of this Rule.~~

(b) ~~Sleep.~~ Each child in a residential ~~child-care~~ child-care facility shall have enough sleep for his or her age at regular and reasonable hours and under conditions conducive to rest.

(c) ~~Hygiene.~~ Staff of a residential child-care facility shall teach children the importance of cleanliness. Children shall be taught and helped and how to keep themselves clean. They shall receive. ~~Staff of a residential child-care shall provide training in all aspects of personal hygiene.~~

(d) ~~Toilet Articles.~~ (1) Each child shall have his or her own toothbrush, comb, towel and wash cloth and his or her own separate place for keeping these personal articles. (2) ~~Towels,~~ wash cloths, and bed linens shall be changed weekly or more often as required by good hygiene.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0606 NUTRITION

(a) Meals served ~~must~~ shall meet nutritional requirements as advised by the National Research Council (Recommended Daily Dietary Allowances – USDA Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200N, Washington, DC 20036). ~~Allowances).~~

(b) Any modified food needs of an individual child shall be provided under the direction of a licensed medical provider or a registered dietitian or nutritionist.

(c) Menus shall be planned by or in consultation with a registered nutritionist or dietitian biennially. ~~at least once per year.~~ The facility shall obtain documentation of consultation.

(d) Staff who eat with children shall be served the same food except ~~for~~ staff may be served tea and coffee. An exception shall be made if differences in age or special dietary needs are factors.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0609 RECREATION AND LEISURE ACTIVITIES

(a) ~~The A~~ residential ~~child-care~~ child-care facility shall develop a written schedule of planned recreational, leisure, or physical exercise activities with input from both staff and children which meets ~~their~~ the children's developmental needs, and which shall be posted in each facility. ~~cottage.~~

(b) ~~The A~~ residential ~~child-care~~ child-care facility shall provide a variety of indoor and outdoor, individual and group recreational opportunities, with suitable space and competent adult supervision, appropriate to the age, interests, and needs of each child.

(c) ~~The A~~ residential ~~child-care~~ child-care facility shall provide recreational opportunities for children to play with children of both genders. An exception shall be made when the program cares for only one gender.

(d) ~~The A~~ residential ~~child-care~~ child-care facility shall have an individualized recreation plan for any child who has special recreational needs.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0610 RELIGION AND SPIRITUAL DEVELOPMENT

(a) The residential ~~child-care~~ child-care facility shall have written policies and procedures on religious training and practices and shall provide these policies to children and their ~~parents~~ parents, guardian or legal custodian ~~eustodians~~ prior to admission.

(b) The residential ~~child-care~~ child-care facility shall develop a plan for each child to meet the child's spiritual needs which takes into account the ~~parent's~~ parent's, guardian's or legal custodian's position regarding a child's religious participation.

(c) The residential ~~child-care~~ child-care facility shall have written policies and procedures which include that each child is free from coercion with regard to religious decisions.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0612 WORK

(a) The residential child-care facility shall provide opportunities for each child to learn the value of work and the development of good work habits.

(b) The residential child-care facility shall comply with the provisions of the NC Wage and Hour Act concerning age, abilities, hours of labor and hazardous occupations in the assignment of work to children.

(c) The residential child-care facility shall not substitute children for employed staff in assigning work.

(d) The residential child-care facility shall not require children to be solely responsible for any major phase of operation or maintenance of the home such as cooking, laundering, housekeeping, farming, or repair work.

(e) The residential child-care facility shall not require ~~a child~~ children to work for the purpose of paying the facility for ~~his~~ their cost of care except when ~~a child~~ adolescents or young adults preparing for independent living ~~enters~~ enter into an agreement ~~written agreements~~ with the facility ~~in which he is~~ and are paid for his ~~their~~ work and ~~assumes~~ assume a gradual degree of responsibility for ~~his~~ their own needs.

(f) The residential child-care facility shall provide children who are on work assignments with adult supervision.

(g) The residential child-care facility shall ensure that children's work assignments do not interfere with school, recreation, study period, adequate sleep, community contacts and family time.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0613 DISCIPLINE AND BEHAVIOR MANAGEMENT

(a) ~~The A~~ residential ~~child-care~~ child-care facility shall have written policies and procedures on discipline and behavior management, including the type and use of physical restraint holds, if utilized. A copy of the written policies and procedures shall be provided to and discussed with each child and the child's ~~parents~~ parents, guardian or legal custodian ~~eustodians~~ prior to

or at the time of admission. Policies and procedures shall include:

- (1) ~~Proactive~~ proactive means for interacting with and teaching children which emphasize praise and encouragement for exhibiting self control and desired behavior; and
- (2) ~~Methods~~ methods for protecting children and others when a child is out of control.

(b) ~~The A residential child care child-care~~ facility shall implement standards for behavior which are reasonable and developmentally appropriate.

(c) ~~The A residential child care child-care~~ facility shall not engage in discipline or behavior management which includes:

- (1) ~~Corporal/physical corporal and physical~~ punishment;
- (2) ~~Cruel, cruel,~~ severe, or humiliating actions;
- (3) ~~Discipline discipline~~ of one child by another child;
- (4) ~~Denial denial~~ of food, sleep, clothing or shelter;
- (5) ~~Denial denial~~ of family contact, including family time, telephone or mail contacts with family;
- (6) ~~Assignment assignment~~ of extremely strenuous exercise or work;
- (7) ~~Verbal verbal~~ abuse or ridicule;
- (8) ~~Mechanical mechanical~~ restraints;
- (9) ~~Drug a~~ drug used as a restraint, except as outlined in Paragraph (e) of this Rule; 10A NCAC 701.0613(e);
- (10) ~~Seclusion seclusion~~ or isolation time-out; or
- (11) ~~Physical physical~~ restraints except as outlined in Paragraph (f) of this Rule. 10A NCAC 701.0613(f);

(d) Time-out means the removal of a child to a separate unlocked room or area from which the child is not physically prevented from leaving. The residential ~~child care child-care~~ facility may use time-out as a behavioral control measure when the facility provides it within hearing distance and sight of a staff member. The length of time alone shall be appropriate to the child's age and development.

(e) ~~Drug A~~ drug used as a restraint means a medication used to control behavior or to restrict a child's freedom of movement and is not a standard treatment for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, staff convenience or as a substitute for adequate staffing.

(f) Physical restraint of a child means physically holding a child who is at imminent risk of harm to himself or others until the child is calm. A residential child-care facility shall only use physical restraint holds approved by the North Carolina Interventions (NCI) Quality Assurance Committee. Approved physical restraint holds can be found at the following web site: <http://www.dhhs.state.nc.us/mhddsas/training/rscurricula/agencylist10-18-06web.pdf> (Reviewed Restrictive and Physical Interventions Curricula by Name) which are hereby incorporated by reference including subsequent amendments and editions. If physical restraints are utilized:

~~(4)(g)~~ Physical restraint holds shall be administered only by staff trained in the use of physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another ~~child, child;~~

~~(2)(h)~~ Before employing a physical restraint, the residential ~~child care child-care~~ facility shall take into consideration the child's medical condition and any medications the child may be taking.

~~(3)(i)~~ No child shall be physically restrained utilizing a protective or mechanical device. Physical restraint holds shall:

- ~~(A)(1)~~ not be used for purposes of discipline or convenience;
- ~~(B)(2)~~ only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
- ~~(C)(3)~~ be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
- ~~(D)(4)~~ end when the child becomes calm.

~~(4)(j)~~ ~~The A residential child care child-care~~ facility shall:

~~(A)(1)~~ Ensure ensure that any physical restraint hold utilized on a child is administered by a trained staff member with a second trained staff member in attendance. An exception may occur when no other staff member is present or can be called for immediate assistance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a staff member shall shall monitor the child's breathing, ascertain the child is verbally responsive and motorically in control, and ensure the child remains conscious without any complaints of pain.

- ~~(i) monitor the child's breathing;~~
- ~~(ii) ascertain that the child is verbally responsive and motorically in control; and~~
- ~~(iii) shall ensure that the child remains conscious without any complaints of pain.~~

If at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control, the staff member administering the physical restraint hold shall immediately terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time the child appears to be in distress, a staff member shall immediately seek medical attention for the child. Following the use of a physical restraint hold, a staff member shall conduct an interview with the child about the incident, and

- the staff administering the physical restraint hold shall be interviewed about the ~~incident; incident.~~
- (B)(2) ~~Document~~ document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include the following: include: the child's name, age, height and weight; the type of hold utilized; the duration of the hold; the staff member administering the hold; the staff member witnessing the hold; the supervisory staff who reviewed the incident report; less restrictive alternatives that were attempted prior to utilizing physical restraint; the child's behavior which necessitated the use of physical restraint; whether the child's condition necessitated medical attention; planning and debriefing conducted with the child and staff to eliminate or reduce the probability of reoccurrence; and the total number of restraints of the child since admission. Within 48 ~~72~~ hours, supervisory staff shall review the incident report to ensure that correct steps were followed and shall forward the report to the parents, guardian or legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the residential ~~child care~~ child-care facility shall ~~immediately~~ report the death of the child to the parents, guardian or legal custodian and to the licensing authority within 72 hours; ~~authority.~~
- (i) ~~the child's name, age, height and weight;~~
 - (ii) ~~the type of hold utilized;~~
 - (iii) ~~the duration of the hold;~~
 - (iv) ~~the staff member administering the hold;~~
 - (v) ~~staff member witnessing the hold;~~
 - (vi) ~~supervisory staff who reviewed the incident report;~~
 - (vii) ~~less restrictive alternatives that were attempted prior to utilizing physical restraint;~~
 - (viii) ~~the child's behavior which necessitated the use of physical restraint;~~
 - (ix) ~~whether the child's condition necessitated medical attention;~~

- (x) ~~planning and debriefing conducted with the child and staff to eliminate or reduce the probability of reoccurrence; and~~
 - (xi) ~~the total number of restraints of the child since admission.~~
- (C)(3) ~~Submit~~ submit a summary report to the ~~Division of Social Services~~ licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted;
- (D)(4) ~~Ensure~~ ensure that any physical restraint hold utilized on a child is administered by a trained staff member who has completed at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of the child's breathing, verbal responsiveness and motor control. Training shall also include debriefing children and staff involved in physical restraint holds. Thereafter, staff authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. Instructor qualifications and training requirements shall include: trainers shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions; trainers shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint; trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program; the training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course; the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and shall

include, but not be limited to, presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures; trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint; trainers shall be currently trained in CPR; trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach, trainers shall teach a program on the use of physical restraints at least once annually; and trainers shall complete a refresher instructor training at least every two years. Residential child-care facilities shall only use physical restraint holds specified at the following web site: <http://www.dhhs.state.nc.us/mhddsas/training/> (Training to Prevent Use of Restraints and Seclusion). Only staff members who have received written approval from the executive director or his or her designee shall administer physical restraint holds; behavior; and

- (E)(5) ~~Complete~~ complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. This review shall be documented and submitted to the licensing authority as part of the annual biennial licensing renewal application; and application.
- (6) maintain reports of physical restraint holds in a manner consistent with the agency's risk management policies (clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency) and make them available to the licensing authority upon request.

~~physical aggression by children, use of physical restraints by staff, and children who run away from the facility, which include:~~ Critical incident reports shall be submitted to the licensing authority by the executive director or designee on a form developed by the licensing authority within 72 hours of the critical incident. Critical incidents involving a child who is a resident of a residential child-care facility include the following:

- (1) a death of a child;
- (2) reports of abuse and neglect;
- (3) admission to a hospital;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours; and
- (6) arrest for violations of state, municipal, county or federal laws.

(c) Documentation of critical incidents shall include:

- (1) name of child or children involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) name of child's parents, guardian or legal custodian notified and date and time of notification, and
- (8) ~~Signature~~ approval of supervisory or administrative staff reviewing the report.

~~(e)(d)~~ When there is a death of a child who is a resident of a residential child-care facility, the executive director or ~~his~~ his or her designee shall immediately notify the parents, guardian or legal custodian and the licensing authority.

(e) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of abuse or neglect of children involving staff, subcontractors, volunteers or interns. The policies and procedures shall include:

- (1) a provision for reporting any suspicions of abuse or neglect to the appropriate county department of social services for an investigative assessment in accordance with G.S. 7B-301;
- (2) a provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or governing body;
- (3) a provision for immediately notifying the parents, guardian or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (7) a provision for submitting written notification to the licensing authority within 72 hours of

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10A NCAC 70I .0614 CRITICAL INCIDENTS AND CRITICAL INCIDENT REPORTS

- (a) The residential child-care facility shall have written policies and procedures for handling and reporting critical incidents.
- (b) ~~The residential child care facility shall document critical incidents, including accidents or injuries to the child, acts of~~

the case decision by the county department of social services conducting the investigative assessment.

(f) Critical incident reports shall be maintained in a manner consistent with the agency's risk management policies and shall be made available to the licensing authority upon request.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0615 SEARCHES

(a) The residential ~~child care~~ child-care facility shall have written policies and procedures on conducting searches of children's rooms and possessions which shall be discussed with each child, ~~their parents~~ their parents, guardian or legal custodian prior to or upon admission.

(b) The search policies and procedures shall include:

- (1) ~~Circumstances~~ circumstances under which searches are conducted;
- (2) ~~Personnel~~ personnel authorized to conduct searches; ~~and~~
- (3) ~~Provision~~ provision for documenting searches and informing supervisory personnel of searches; and searches.
- (4) provision for removing and disposing of items seized as a result of searches.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

SECTION .0700 - BUILDINGS, GROUNDS AND EQUIPMENT

10A NCAC 70I .0701 REQUIREMENTS FOR APPROVAL

~~(a) Floor plans for new residential child care facilities housing six or fewer children all of whom are able to evacuate the facility without assistance must be submitted to and approved by the Division of Social Services, Children's Services Section as a condition for licensure, prior to beginning service/operation.~~

~~(b) Floor plans for new and renovated existing residential child care facilities housing as many as seven and fewer than 10 children and for residential child care facilities housing six or fewer, no more than three of whom are unable to evacuate the facility without assistance, must be submitted to and approved by the Department of Health and Human Services, Division of Facility Services, Construction Section prior to beginning construction.~~

~~(c) Preliminary and final construction drawings for new facilities, conversions of existing facilities, or renovations of existing facilities housing 10 or more children must be submitted to and approved by the Department of Health and Human Services, Division of Facility Services, Construction Section prior to beginning construction. Three sets of drawings must be submitted to the Construction Section for their review and distribution to the Division of Environmental Health and the Department of Insurance.~~

~~(d) When a question arises in determining whether an existing building used for child care purposes meets the requirements of the North Carolina State Building Code, an interpretation must~~

~~be obtained by submitting a floor plan of the building, together with details of construction, to the Department of Health and Human Services, Division of Facility Services, Construction Section.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0702 CONSTRUCTION AND RENOVATION

~~(a) Construction plans for new, reconstructed or renovated buildings must be compatible with the residential child care function of the facility and its program needs. A residential child care facility must not have two unrelated types of occupancy in the same building.~~

~~(b) The construction of a new residential child care facility, the conversion of an existing building for residential child care purposes, or the remodeling of an existing residential child care facility must comply with all applicable local zoning regulations and local and state building codes.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0703 APPLICABLE BUILDING CODES

~~(a) Newly constructed buildings to be used for residential child care purposes must meet the requirements of the North Carolina State Building Code for the type of occupancy for which the building is to be used. The North Carolina State Building Code is hereby incorporated by reference including subsequent amendments and additions. The North Carolina State Building code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina, 27603 at a cost of one hundred eighteen dollars (\$118.00).~~

~~(b) Residential child care facilities keeping 10 or more children must meet requirements for INSTITUTIONAL UNRESTRAINED OCCUPANCY of the North Carolina State Building Code and Volume I-C requirements for handicapped accessibility.~~

~~(c) Residential child care facilities keeping as many as seven and fewer than 10 unrestrained children must meet the requirements of the North Carolina State Building Code Volume I for "RESIDENTIAL CARE FACILITIES."~~

~~(d) Residential child care facilities keeping six or fewer unrestrained children with no more than three unable to evacuate the facility without assistance must meet the North Carolina State Building Code Volume I for "RESIDENTIAL CARE FACILITIES."~~

~~(e) Residential child care facilities keeping six or fewer unrestrained children who are able to evacuate the facility without assistance must meet the North Carolina State Residential Building Code Volume VII.~~

~~(f) Mobile homes, whether mobile or permanently situated, shall not be used for residential child care facilities.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0704 FIRE AND BUILDING SAFETY

- ~~(a) Each building shall have a non pay telephone available at all times. Emergency telephone numbers shall be posted at the telephone.~~
- ~~(b) Care must be exercised by the staff in allowing children to use matches or to handle combustible materials.~~
- ~~(c) Emergency plans and fire evacuation plans approved by the local fire authority must be developed and posted on each floor of each building.~~
- ~~(d) Fire drills must be held monthly at different times during the day and quarterly at night for both children and staff. Documentation of fire drills must be kept.~~
- ~~(e) The staff and children residing in a facility must be trained in the proper reporting of a fire and the ways of escaping from a fire. New residents must be instructed within the first day upon admittance.~~
- ~~(f) For every 2,500 square feet of floor area or portion thereof and for each floor there must be at least one fire extinguisher. Fire extinguishers must be provided in accordance with the standards of the National Fire Protection Association Standard for Portable Fire Extinguishers NFPA Number 10. They must be inspected annually and kept charged and filled at all times in accordance with NFPA Number 10. NFPA Number 10 is hereby incorporated by reference including subsequent amendments and additions. The NFPA Number 10 may be obtained from NFPA, 11 Tracy Drive, Avon, Massachusetts, 02322 at a cost of twenty-four dollars and seventy-five cents (\$24.75).~~
- ~~(g) When there are seven or more children residing in the residential child care facility, each floor level must be separated from other floors in accordance with the requirements of the applicable building code, and by not less than walls and a solid core, self closing, 20 minute fire rated door.~~
- ~~(h) Each floor level must be provided with a minimum of two remotely located, exits as determined by the code enforcement official.~~
- ~~(i) Fire exits and all exit access paths including doors, hallways, and stairs, must be well lighted and kept clear of obstructions.~~
- ~~(j) No locks shall be installed on exit or room doors which would prevent occupants from getting out of the building by the simple operation of a single knob or lever.~~
- ~~(k) Emergency lighting must be provided for exiting from the building.~~
- ~~(l) Windows in children's bedrooms must be openable without the use of keys or special tools.~~
- ~~(m) Fire alarm and smoke detector systems must be installed in each residential child care facility in accordance with the North Carolina State Building Code, be audible throughout the building, be kept in working order and be readily identifiable by the staff and children.~~
- ~~(n) All electrical and heating equipment must be UL listed or be listed by a testing agency recognized by the NC Department of Insurance; the electrical wiring in the building must conform to the requirements stated in the National Electrical Code for the applicable occupancy. The National Electrical Code is hereby incorporated by reference including subsequent amendments and additions. The National Electrical Code may be obtained from the Department of Insurance, Code Council Section, 410 Boylan Avenue, Raleigh, North Carolina 27603 at a cost of forty five dollars (\$45.00).~~

- ~~(o) Hot water at fixtures used by residents for bathing or hand-washing must be maintained at a minimum of 100 degrees Fahrenheit and a maximum of not more than 116 degrees Fahrenheit.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0705 GENERAL SANITATION

- ~~(a) The water supply, sewage disposal, solid waste disposal, and food service must meet applicable rules of the Commission for Health Services.~~
- ~~(b) Kitchens providing food service to 13 or more children must meet the requirements of "Rules Governing the Sanitation of Hospitals, Nursing Homes, Rest Homes, Sanitariums, and Educational and Other Institutions" adopted by the Commission for Health Services in 15A NCAC 18A .1300.~~
- ~~(c) Kitchens providing food service to no more than 12 children must meet the requirements of "Rules Governing the Sanitation of Residential Care Facilities" adopted by the Commission for Health Services in 15A NCAC 18A .1300.~~
- ~~(d) Laundry facilities must be provided.~~
- ~~(e) To assure compliance with all local and state sanitation regulations, construction plans for a new residential child care facility for seven or more residents, renovations of an existing building for a residential child care facility, or the reconstruction of an existing residential child care facility must be submitted to and approved by the county health department in which the facility is located.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0706 BATHING AND TOILET AREAS

- ~~(a) Facilities licensed for the first time after the effective date of Subchapters 70I and 70J, shall provide at least one toilet, one lavatory with hot and cold water, and one tub or shower with hot and cold water must be provided for each six children or fraction thereof. For children under five years old a tub must be provided.~~
- ~~(b) Toilet and bathing facilities for direct care staff must be separate from facilities used by children living in the facility.~~
- ~~(c) Bathrooms must be located as conveniently as possible to the children's bedrooms.~~
- ~~(d) The entrance to a bathroom must not be through another resident's bedroom or bathroom.~~

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0707 SLEEPING AREAS

- ~~(a) Bedrooms in existing facilities licensed before October 31, 1977 must provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single occupancy bedrooms. Floor area shall not include closets or wardrobes.~~
- ~~(b) Except as provided in Paragraph (c) of this Rule, bedrooms in facilities licensed or developed after October 31, 1977 must provide a minimum of 80 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 100~~

square feet of floor space in single occupancy bedrooms. Floor area shall not include closets or wardrobes.

~~(c) Bedrooms in facilities housing children with a maximum stay of not more than 15 days must provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single occupancy bedrooms. Floor area shall not include closets or wardrobes.~~

~~(d) The only door access to a bedroom must not be through another room.~~

~~(e) No child may share a bedroom with a staff member.~~

~~(f) No bedroom shall house more than four children.~~

~~(g) Children of different sexes more than five years of age must not share a bedroom.~~

~~(h) Each child must have a bed of his or her own.~~

~~(i) Bunk beds shall be limited to no more than one bed above the other bed with at least four feet vertical clearance between the lower and upper beds.~~

~~(j) Individual beds must be at least three feet apart at the head, foot and sides; bunk beds must be at least five feet apart, horizontally, at the head, foot and sides.~~

~~(k) Each bed must be provided with a mattress in good repair.~~

~~(l) No day bed, convertible sofa or other bedding of a temporary nature may be used.~~

~~(m) Bedrooms must be provided with a minimum of 48 cubic feet of closet or wardrobe space per child and four cubic feet of drawer space per child.~~

~~(n) Each bedroom must be provided with window area equal to eight percent of the floor area of the room.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0708 LIVING/ACTIVITY AREAS

~~(a) The living/activity areas must be accessible from an outside entrance without going through sleeping, food service, or food preparation areas.~~

~~(b) A minimum total living area of 200 square feet or 40 square feet per child, whichever is greater, must be provided.~~

~~(c) Each required living/activity room must be provided with window area equal to eight percent of the floor area of the room.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0709 DINING AREAS

~~(a) A minimum dining area of 120 square feet or 14 square feet per child, whichever is greater, must be provided convenient to the kitchen.~~

~~(b) Each dining room must be provided with window area equal to eight percent of the floor area of the room.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0710 HEAT, LIGHT AND VENTILATION

~~(a) Heat. Heating equipment must be provided that maintains the temperature in the facility at no less than 65 degrees Fahrenheit.~~

~~(b) Ventilation.~~

~~(1) Living rooms, dining rooms and bedrooms shall have openable windows to the outside.~~

~~(2) Rooms including toilets, baths, and kitchens, without openable windows must have mechanical ventilation to the outside.~~

~~(c) Air conditioning or at least one fan per bedroom, living, and dining area must be provided when the temperature in the facility exceeds 85 degrees Fahrenheit.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0711 EXTERIOR SPACE

~~(a) Outdoor recreational space must be provided.~~

~~(b) All structures on the grounds of the facility accessible to children must be free from hazards to health or safety.~~

~~(c) The grounds of the facility and the outdoor recreational space must be maintained free from any hazards to health or safety.~~

~~(d) Garbage and rubbish which is stored outside must be stored securely in non-combustible, covered containers and must be removed on a regular basis.~~

~~(e) Trash collection receptacles and incinerators must be kept separate from play areas and must be located to avoid being a nuisance to neighbors.~~

~~(f) Fences must be kept in good repair.~~

~~(g) Areas determined to be unsafe, including but not limited to, steep grades, cliffs, open pits, swimming pools, high voltage boosters, and high speed roads, must be fenced off or have natural barriers to protect children.~~

~~(h) Play and recreational equipment must be located, installed, and maintained to ensure the safety of children.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0712 INSPECTIONS

~~The residential child care facility must request and obtain inspections at least annually from the local sanitarian and from the local building inspector or fire inspector. Reports of such inspections must be submitted to the Division of Social Services.~~

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0713 VEHICLES USED FOR TRANSPORTATION OF CHILDREN

~~(a) Vehicle Requirements.~~

~~(1) Vehicles must comply with all motor vehicle laws and regulations for the State of North Carolina.~~

~~(2) Motor vehicles must be maintained in a safe operating condition, must be properly registered, and must have current, valid inspection stickers for the State of North Carolina.~~

~~(3) A first aid kit must be in all motor vehicles.~~

~~(4) The bed of an open body or a stake bed vehicle must not be used for transporting children.~~

~~(b) Driver Requirements. The name of and a photostatic copy of a valid driver's license for each person transporting children shall be maintained in a separate file.~~

~~(c) Safety Practices.~~

- (1) ~~The interior of each vehicle must be maintained in a clean and safe condition with clear passage to operable doors.~~
- (2) ~~The driver must assure that all passengers follow current North Carolina laws regarding seat belt usage and shall adhere to child passenger restraint laws when transporting children.~~
- (3) ~~The driver shall not transport more persons, including children and adults, than allowed by the design capacity of the vehicle.~~
- (4) ~~Children shall have at least one 30 minute rest stop for every four hours of continuous travel.~~
- (5) ~~Children shall not be transported for more than 10 hours in any 24 hour period.~~

(d) ~~Transportation Records. Insurance verification and the vehicle identification certificate must be kept in the vehicle in accordance with State law. Emergency medical information must be kept in the vehicle for each child occupying the vehicle.~~

(e) ~~Insurance. If the residential child care facility's transportation services are provided by a private individual, a firm under contract, or by another arrangement, the facility must~~

~~maintain a file copy of the individual's or firm's insurance coverage.~~

(f) ~~Emergency Transportation. The residential child care facility must have a plan for transporting children in case of an emergency.~~

Authority G.S. 131D-10.5; 143B-153.

SECTION .0800 – BEST PRACTICE STANDARDS

10A NCAC 70I .0801 STAFFING REQUIREMENTS

- (a) ~~There shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.~~
- (b) ~~There shall be one direct care supervisor for every 15 direct care service personnel.~~
- (c) ~~There shall be one social worker assigned for every 15 children.~~
- (d) ~~When an agency employs five or more social workers, the agency shall employ a social work supervisor.~~
- (e) ~~Supervision of social workers shall be assigned as follows:~~

Supervisors Required	Social Workers
0	0-4
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

Authority G.S. 143B-153.

10A NCAC 70I .0802 TRAINING REQUIREMENTS

- (a) ~~Direct care staff personnel shall receive 24 hours of continuing education annually.~~
- (b) ~~Direct care supervisors shall receive 24 hours of continuing education annually.~~
- (c) ~~Social workers shall receive 24 hours of continuing education annually.~~
- (d) ~~Social work supervisors shall receive 24 hours of continuing education annually.~~

Authority G.S. 143B-153.

SECTION .0900 - PHYSICAL PLANT

10A NCAC 70I .0901 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

- (a) New construction and existing buildings proposed for use as a residential child-care facility shall comply with the requirements of this Section.
- (b) Except where otherwise specified, existing licensed facilities or portions of existing licensed facilities shall meet licensure and code requirements in effect at the time of construction, initial licensure, change in service, change in resident capacity or

evacuation capability of the residents, addition, renovation or alteration.

(c) New additions, alterations, modifications and repairs made to the building shall meet the requirements of this Section.

(d) A residential child-care facility shall not have two different types of occupancies in the same building.

(e) Rules contained in this Section are the Physical Plant requirements and do not prohibit buildings, systems or operational conditions that exceed these requirements.

(f) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant requirements shall be approved by the Division of Health Service Regulation when the facility can demonstrate to the Division of Health Service Regulation's satisfaction, that the intent of the physical plant requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

(g) The residential child-care facility must comply with all applicable local, state and federal regulations.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0902 DESIGN AND CONSTRUCTION

- (a) Any building licensed for the first time as a residential child-care facility shall meet the applicable requirements of the North

Carolina State Building Code. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for One and Two Family Dwellings, Licensed Residential-Care Facilities or Institutional Occupancy as determined by the Division of Health Service Regulation based on the number and age of the licensed children residents and any other dependents of the live-in staff. Information regarding the purchase of all applicable volumes of The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments can be accessed by reviewing the following web site: (http://www.ncdoi.com/OSFM/Engineering/CodeServices/engineering_codeservices_sales.asp) or calling 919-681-6550.

(b) Mobile homes, whether mobile or permanently situated, shall not be used for residential child-care facilities.

(c) Each facility shall be planned, constructed, equipped and maintained to provide the services offered in the facility.

(d) Any existing building converted from another use to a residential child-care facility shall meet all the requirements of a new facility.

(e) Any existing licensed residential child-care facility when the license is terminated for more than 60 days shall meet all requirements of a new facility prior to being relicensed.

(f) Any existing licensed residential child-care facility that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(g) Any existing licensed residential child-care facility that plans to have new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his appointed representative to the Division of Health Service Regulation, Construction Section for review and approval prior to commencement of the work.

(h) The applicant for a resident child-care facility shall consult the local code enforcement official for information on required permits and building code requirements before starting any construction or renovations.

(i) If the building is two stories in height and is classified as a Residential Occupancy, it shall meet the following requirements:

(1) Children less than six years old are not to be housed on any floor other than the level of exit discharge with adult supervision.

(2) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection.

(j) The basement and the attic shall not to be used for storage or sleeping.

(k) The ceiling shall be at least seven and one-half feet from the floor.

(l) All windows shall be maintained operable.

(m) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the North Carolina Division of Environmental Health, which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult

Care Homes and Other Institutions", 15A NCAC 18A .1300 and the "Rules Governing Sanitation of Residential Care Facilities" 15A NCAC 18A .1600 are available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632 at no cost.

(n) The residential child-care facility shall request and obtain current inspections from the local sanitarian and the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority with the licensure renewal application.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0903 LOCATION

(a) A residential child-care facility shall be in a location approved by local zoning boards.

(b) The facility shall be located so that hazards to the residents are minimized.

(c) The site of the facility shall:

(1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;

(2) be accessible to fire fighting and other emergency services;

(3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;

(4) meet all local ordinances; and

(5) be free from exposure to pollutants known to the applicant or licensee.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0904 LIVING ARRANGEMENT

A residential child-care facility shall provide living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons. There shall be a designated room for residents to talk privately with staff and to receive visitors.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0905 LIVING/ACTIVITY AREAS

(a) Residential child-care facilities shall have a living room area of a minimum of 200 square feet for a capacity of six or less and 15 square feet per each additional resident.

(b) All living rooms shall have operable windows to meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

(c) The living and activity areas shall be accessible from an outside entrance without going through sleeping, food services or food preparation areas.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0906 DINING AREAS

- (a) Residential child-care facilities shall have a minimum dining area of 120 square feet for a capacity of six or less and 14 square feet for each additional resident (including children of live-in staff).
- (b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas and shall not be included in the required square footage.
- (c) Each dining room shall be provided with operable windows and be lighted to provide 30 foot candles of light at the floor level.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0907 KITCHEN

- (a) The kitchen in a residential child-care facility shall be large enough to provide for the preparation and preservation of food and the washing of dishes.
- (b) The kitchen floor shall have a non-slippery, water-resistant covering.
- (c) The kitchen shall be approved by the local sanitarian for the total number of children as well as any live-in staff and their dependents.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0908 LAUNDRY ROOM

Laundry facilities shall be provided. The laundry equipment shall be located out of the living, dining and bedroom areas.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0909 SLEEPING AREAS

- (a) Bedrooms in existing facilities licensed before October 31, 1977 shall provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single-occupancy bedrooms. Floor area shall not include closets or wardrobes.
- (b) Bedrooms in facilities licensed or developed after October 31, 1977 shall provide a minimum of 80 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 100 square feet of floor space in single-occupancy bedrooms. Floor area shall not include closets or wardrobes.
- (c) There shall be bedrooms sufficient in number and size to meet the individual needs of residential child-care facility residents, the live-in staff and their dependents.
- (d) Only rooms authorized by the Division of Health Service Regulation as bedrooms by plan review or field inspection shall be used for bedrooms.
- (e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation by plan review or field inspection for that particular bedroom.

- (f) A room where access is through a bathroom, kitchen or other bedroom shall not be approved for a resident's bedroom.
- (g) No child shall share a bedroom with a live-in staff member or children of staff.
- (h) No bedroom shall house more than four children.
- (i) Except for siblings, children of different sexes shall not share a bedroom.
- (j) Each child shall have a bed of his or her own.
- (k) Bunk beds shall be limited to no more than one bed above the other bed with at least three feet vertical clearance between the lower and upper beds. Bunk beds shall have guardrails on both sides of the top bunk. All spaces between the guardrails and bed frame and in the head and foot boards on the top bunk shall be less than 3 ½ inches. Bunk beds shall be provided with secured ladders.
- (l) Individual beds shall be at least three feet apart at the head, foot and sides; bunk beds shall be at least five feet apart, horizontally, at the head, foot and sides.
- (m) Each bed shall be provided with a mattress in good repair.
- (n) No day-bed, convertible sofa or other bedding of a temporary nature shall be used as a bed.
- (o) Bedrooms shall be provided with a minimum of 48 cubic feet of closet or wardrobe space per child and four cubic feet of drawer space per child.
- (p) Each bedroom shall be provided with a window that meets the North Carolina State Building Code for emergency egress. These windows shall be openable without the use of keys or tools.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0910 BATHING AND TOILET AREAS

- (a) Facilities licensed for the first time after the effective date of Subchapters 70I and 70J of this Chapter, shall have one full bathroom for each five or fewer persons including live-in staff and family. For children under five years old a tub shall be provided. Live-in staff and their dependents shall have a separate bathroom from children in care.
- (b) The bathrooms shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have privacy partitions for each water closet. Each tub or shower shall have privacy partitions or curtains.
- (c) Bathrooms shall be located as conveniently as possible to the children's bedrooms.
- (d) The entrance to a bathroom shall not be through a kitchen, another resident's bedroom or bathroom.
- (e) The bathrooms shall be lighted to provide 30 foot candles of light at the floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.
- (f) The bathroom floor shall have a non-slippery water-resistant covering.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0911 CORRIDORS

- (a) Corridors shall be a minimum clear width of three feet.
- (b) Corridors shall be lighted with night lights providing one foot-candle of light at the floor.

(c) Corridors shall be free of all equipment and other obstructions.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0912 OUTSIDE ENTRANCES AND EXITS

(a) In residential child-care facilities, all floor levels shall have at least two exits. If there are only two, the exit or exit access doors shall be located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.

(b) At least one entrance and exit door shall be a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) If the residential child-care facility has any child that requires physical assistance with evacuation, the facility shall have at least one principal outside entrance and exit for the residents' use which shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance and exit is one that is most often used by residents for vehicular access.

(d) All exits and room door locks and latches shall be easily operable from the inside at all times without keys.

(e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.

(g) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0913 FLOORS

(a) All floors shall be of smooth, non-skid material and constructed to be easily cleanable.

(b) All floors shall be kept in good repair.

Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70I .0914 HOUSEKEEPING AND FURNISHINGS

(a) Each residential child-care facility shall:

- (1) have walls, ceilings and floors or floor coverings kept clean and in good repair;
- (2) have no chronic unpleasant odors;
- (3) have furniture clean and in good repair;
- (4) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
- (5) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets and additional coverings adequate for resident use on hand at all times;

(6) have television and radio, each in working order;

(7) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;

(8) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and

(9) have at least one non-pay telephone available at all times that does not depend on electricity or cellular service to operate. Emergency telephone numbers shall be posted at the telephone.

(b) Each bedroom shall have the following furnishings in good repair and clean for each child:

(1) a bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Each bed shall include:

(A) at least one pillow with clean pillow case;

(B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and

(C) clean bedspread and other clean coverings as needed;

(2) a bedside type table and lamp or overhead light, that provides a minimum of 30 foot-candle power of illumination for reading.

(3) a chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents.

(4) a wall or dresser mirror that can be used by each resident.

(5) a minimum of one comfortable chair.

(c) The living room shall have functional living room furnishings for the comfort of residents, with coverings that are easily cleanable.

(d) The dining room shall include:

(1) tables and chairs to seat all residents eating in the dining room; and

(2) high chairs and booster seats for infants and children who need them.

(e) This Rule shall apply to new and existing facilities.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0915 FIRE SAFETY AND DISASTER PLAN

(a) Care shall be exercised by the staff of a residential child-care facility in allowing children to use matches or to handle combustible materials.

(b) A written fire evacuation plan (including a diagrammed drawing) that has the approval of the local code enforcement official shall be prepared with a minimum of 1/8 inch high letters and posted in a central location on each floor of the building.

(c) A written disaster plan that has the written approval of, or has been documented as submitted to, the local emergency

management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the facility.

(d) Fire drills shall be held monthly at different times during the day and quarterly at night for both children and staff. A residential child-care facility shall document fire drills including the date and time of the rehearsals, staff members present and a short description of what the rehearsal involved.

(e) The executive director of a residential child-care facility, or his/her designee, shall instruct staff and children residing in a residential child-care facility and shall train the staff and children in the proper reporting of a fire and the ways of escaping from a fire. New residents shall be instructed within the first day upon admittance.

(f) Fire extinguishers shall be provided in a residential child-care facility that meet the following minimum requirements:

- (1) one five pound or larger (net charge) "A-B-C" type centrally located.
- (2) one-five pound or larger "A-B-C" or "CO/2" type located in the kitchen.
- (3) any other location as determined by the code enforcement official.

(g) When there are seven or more children residing in the residential child-care facility, and it is classified as a residential occupancy by the Division of Health Service Regulation, each floor level shall be separated from other floors in accordance with the requirements of the applicable building code, and by not less than walls and a solid core, self-closing, 20 minute fire-rated door.

(h) Fire exits and all exit-access paths including doors, hallways and stairs shall be well lighted and kept clear of obstructions.

(i) The building shall be provided with the smoke detectors as required by the North Carolina State Building Code in effect at the time of initial licensing or renovations.

(j) Heat detectors shall be located in the attic and connected to a dedicated sounding device. This Paragraph shall not apply to existing licensed facilities that have had no additions or renovations.

(k) Smoking shall not be permitted in a residential child-care facility.

(l) Any fire safety requirements required by city ordinances or county building inspectors shall be met.

(m) This Rule shall apply to new and existing licensed facilities except where otherwise specified.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0916 BUILDING SERVICE EQUIPMENT

(a) The building and all fire safety, electrical, mechanical and plumbing equipment in a residential child-care facility shall be maintained in a safe and operating condition.

(b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected to avoid hazards to the children and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.

(c) Air conditioning or at least one fan per resident bedroom, living and dining areas shall be provided when the temperature in the facility exceeds 80 degrees F (26.7 degrees C).

(d) The hot water tank shall provide hot water to the kitchen, bathrooms and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:

- (1) 30 foot-candle of light for reading; and
- (2) 10 foot-candle of light for general lighting.

(f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed to avoid a burn hazard to children. Solid fuel burning fireplace inserts and wood stoves shall be labeled and approved by a third party testing agency accredited by the North Carolina Building Code Council for solid fuel heating equipment.

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent children and furnishings from burns.

(h) This Rule shall apply to new and existing licensed facilities.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0917 OUTSIDE PREMISES

(a) Outdoor recreational space shall be provided and maintained in a clean and safe condition.

(b) The grounds and all structures on the grounds of the residential child-care facility shall be maintained to minimize hazards to the health or safety of the children.

(c) Play and recreational equipment shall be located, installed and maintained to ensure the safety of children.

(d) Garbage and rubbish that is stored outside shall be stored securely in covered containers and shall be removed on a regular basis.

(e) Trash collection receptacles and incinerators shall be kept separate from play areas and must be located to avoid being a nuisance to neighbors.

(f) Fences shall be kept in good repair and shall not prevent adult staff from exiting or entering freely or be hazardous.

(g) Areas determined by the Division of Health Service Regulation to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, and high-speed roads, shall be fenced off or have natural barriers to protect children.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70I .0918 VEHICLES USED FOR TRANSPORTATION OF CHILDREN

(a) Vehicle Requirements for Transporting Children.

- (1) Vehicles shall comply with all motor vehicle laws and regulations for the State of North Carolina.
- (2) Motor vehicles shall be maintained in a safe operating condition, shall be properly registered, and shall have current, valid inspection stickers for the State of North Carolina.

- (3) A first-aid kit shall be in all motor vehicles.
- (4) The bed of an open body or a stake bed vehicle shall not be used for transporting children.

(b) Driver Requirements. The name of and a copy of a valid driver's license for each person transporting children shall be maintained in a separate file at the facility.

(c) Safety Practices for Transporting Children.

- (1) The interior of each vehicle shall be maintained in a clean and safe condition with clear passage to operable doors.
- (2) The driver shall assure that all passengers follow current North Carolina laws regarding seat belt usage and shall adhere to child passenger restraint laws when transporting children.
- (3) The driver shall not transport more persons, including children and adults, than allowed by the design capacity of the vehicle.
- (4) Children shall have at least one 30 minute rest stop for every four hours of continuous travel.
- (5) Children shall not be transported for more than 10 hours in any 24-hour period.

(d) Transportation Records. Insurance verification and the vehicle identification certificate shall be kept in the vehicle in accordance with State law. Emergency medical information shall be kept in the vehicle for each child occupying the vehicle.

(e) Insurance. If a residential child-care facility's transportation services are provided by a private individual, a firm under contract, or by another arrangement, the facility shall maintain a file copy of the individual's or firm's insurance coverage.

(f) Emergency Transportation. A residential child-care facility shall have a plan for transporting children when emergency situations arise that includes:

- (1) the need for immediate medical care;
- (2) picking a child up at school before the end of the school day; and
- (3) transporting the child during adverse weather conditions.

Authority G.S. 131D-10.5; 143B-153.

SUBCHAPTER 70J - MINIMUM LICENSING STANDARDS FOR SPECIALIZED RESIDENTIAL CHILD CARE PROGRAMS

SECTION .0100 - CHILDREN'S FOSTER CARE CAMPS

10A NCAC 70J .0101 APPLICABILITY

In addition to the rules in ~~10A NCAC 70I~~, 10A NCAC 70I .0100 through .0501, the rules in this Section shall apply to all persons licensed or seeking licensure for a children's foster care camp as defined in 10A NCAC 70I .0201.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0103 PERSONNEL

(a) Direct service personnel and supervisory personnel, in addition to supervision and training specified in 10A NCAC 70I

~~.0405(f)(2)(B)~~, .0405(f)(2)(B), (C) and (f)(4)(C), shall be provided supervision and training in the following areas:

- (1) rescue evacuation, updated every three years; and
- (2) basic emergency water safety course, with certification documented in the camp files and updated every three years.

(b) There shall be a minimum of two counselors with certification in Basic Rescue and Water Safety for each 10 children participating in activities involving water, including, but not limited to: swimming, boating, canoeing, and rafting.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0200 - EMERGENCY SHELTER CARE PROGRAM

10A NCAC 70J .0201 APPLICABILITY

In addition to the rules in 10A NCAC 70I .0100, .0200, .0300, .0400, .0501, .0600 and ~~.0700; .0900~~, the rules in this Section shall apply to all persons licensed or seeking licensure for an emergency shelter care program as defined in 10A NCAC 70I .0201.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0202 ADMISSION PROCEDURES

(a) At the time of admission, the residential child care facility shall obtain the following information:

- (1) ~~The~~ the name, sex, race, birth date and birth place of the child;
- (2) ~~When~~ when available, the ~~parents~~ parents' names, addresses, telephone numbers, birth dates, races, religion and marital status;
- (3) ~~When~~ when available, the names, addresses and telephone numbers of siblings and other ~~significant~~ relatives; a record of the child's prior placements with names of care givers, addresses and dates of care; and
- (4) ~~If~~ if the child has had prior placements, the names of care-givers, addresses and dates of prior placements.

(b) Within 72 hours of admission, the facility shall obtain the following:

- (1) a written agreement for admission from the parents, guardian or legal custodian;
- (2) consent for release of information;
- (3) consent for emergency medical treatment; and
- (4) consent for family time/visitation.

(c) Within two weeks of admission, the facility shall obtain the following:

- (1) a medical examination report from a licensed medical provider which shall include a signed statement by the licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the facility;

- and ~~Report of the physical examination in accordance with 10A NCAC 70I .0604; and~~
- (2) ~~A~~ a social summary from the agency placing the child which includes background information on the child, his/her family, his/her presenting problems, and current circumstances.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0203 ADMISSION CRITERIA

The residential child care facility shall enter into and obtain a written agreement from the child's parents or guardian, or legal custodian within 72 hours of the child's admission which contains the following:

- (1) ~~A~~ a statement documenting the parent's, guardian's or legal custodian's authority to place the child and designating the parent's, guardian's or legal custodian's consent for the child's admission;
- (2) completed application for services that includes demographic information on the child and the child's parents or guardian;
- ~~(2)(3)~~ Information information which sets forth the role and responsibilities to be performed by the staff in the facility during the child's stay in the program;
- ~~(3)(4)~~ Information information that specifies the expectations of the parents, guardian or legal custodian during the child's stay in the program;
- ~~(4)(5)~~ Specification specification of the anticipated length of the child's stay; and
- ~~(5)(6)~~ Specification specification of the projected goals for the family-child's parents or guardian during the child's stay in the program.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0204 RECORDKEEPING

Client case record. An individual case record shall be maintained on each child ~~which that~~ contains the following:

- (1) ~~Written~~ written consent for placement;
- (2) ~~Documentation~~ documentation of placement authority;
- (3) ~~Demographic~~ completed application for services that includes demographic information on the child and the child's family;
- (4) ~~Consents~~ consents for release of information, emergency medical treatment, family time/visitation;
- (5) a medical examination report completed within two weeks after admission unless the child's health status indicates the completion of a medical examination report sooner and copies of subsequent medical examination reports;
- ~~(5)(6)~~ Medical medical records ~~records, including the child's physical and immunization records;~~

- ~~(6)~~ Social summary;
- ~~(7)~~ intake study and related documents;
- ~~(7)(8)~~ Individualized service plan out-of-home family services agreement and biweekly reviews; reviews, including family time plan;
- ~~(9)~~ family contact and visitation plan, including type, duration, location both on-site and off-site and frequency, as well as any rationale for restrictions on family involvement. The facility shall maintain documentation of all family time;
- ~~(10)~~ birth certificate or other documentation that verifies the child's birth;
- ~~(11)~~ court orders;
- ~~(12)~~ documentation of medical insurance;
- ~~(13)~~ consents for time-limited, audio-visual recording signed by both the child and parent or guardian, or legal custodian;
- ~~(8)(14)~~ Progress progress notes; and
- ~~(9)(15)~~ Discharge summary. discharge summary including date of discharge, time of discharge and the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met and plans for the services needed to meet these goals.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0205 SERVICE PLANNING

Within one week of admission, an ~~individualized service plan out-of-home family services agreement~~ shall be developed and reviewed every other week, thereafter, by the shelter home staff, ~~parents, parents, guardian, or and legal custodian-custodian~~ of the child, child, when appropriate. The individualized service plan out-of-home family services agreement shall include:

- (1) ~~The the~~ expectation and goals to be reached by the child while in care;
- (2) ~~The the~~ tasks and activities of the shelter home staff to meet the needs of the child while in care;
- (3) ~~The the~~ tasks and activities of the parents, parents, guardian or and legal custodian custodian to meet the needs of the child while in care;
- (4) ~~The the~~ projected discharge plan;
- (5) ~~The the~~ projected length of stay; and
- (6) ~~The the~~ signatures of the shelter home staff, the child, the child's parents, parents, guardian or and the child's legal custodian and child, if 12 years of age and older. custodian if different from the child's parents.

Authority G.S. 131D-10.5; 143B-153.

10A NCAC 70J .0206 DISCHARGE SERVICES

- (a) The residential ~~child care~~ child-care facility shall establish a policy which specifies that no child shall remain in care longer

than 90 days. An exception may be made to this policy if the facility has an established policy which specifies the length of time and the circumstances by which a child will remain in shelter care longer than 90 days.

(b) Prior to discharge, the staff of the residential ~~child-care~~ child-care facility shall develop a plan with the child to determine if follow-up services will be provided, the type of services to be provided and the timeframe for conducting these services.

Authority G.S. 131D-10.5; 143B-153.

SUBCHAPTER 70K - RESIDENTIAL MATERNITY HOMES

SECTION .0100 - GENERAL

10A NCAC 70K .0101 DEFINITION

For the purposes of the rules in this Subchapter, "Residential Maternity Home"-"residential maternity home" means a facility child-caring institution which provides continuing full time care for adolescent women during pregnancy and after delivery when delivery takes place in a licensed hospital and a facility for adult women during pregnancy and after delivery when delivery takes place in a licensed hospital. The rules in this Subchapter shall apply to persons intending to organize, develop, or operate a residential maternity home. After July 1, 2008, residential maternity homes shall not be licensed for two or more types of programs and shall not hold dual licenses under G.S. 131D and G.S. 122C. The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for residential maternity homes.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0102 ORGANIZATION AND ADMINISTRATION

Persons licensed or seeking licensure to provide residential maternity home care shall comply with requirements as specified in 10A NCAC 70F and 10A NCAC 70K. 70F.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0103 LICENSING ACTIONS

(a) License.

(1) The Department of Health and Human Services, Division of Social Services, licensing authority shall issue a license when it determines that the residential maternity home is in compliance with rules in Subchapters 70F and 70K of this Chapter.

(2) A license shall be issued for a maximum period of two years.

(b) Changes in any information on the license.

(1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70F and 70K of this Chapter.

(2) A residential maternity home shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70F and 70K of this Chapter.

(c) Termination.

(1) When a residential maternity home voluntarily discontinues operations, either temporarily or permanently, the residential maternity home shall notify the licensing authority in writing of the date, reason and anticipated length of closing.

(2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.

(3) When the license of any existing residential maternity home is terminated for more than 60 days, the home shall meet all requirements of a new facility prior to being relicensed.

(4) Any existing licensed residential maternity home that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(d) Adverse licensure action.

(1) The licensing authority shall deny, suspend or revoke a license when a residential maternity home is not in compliance with the rules in Subchapters 70F and 70K of this Chapter unless the residential maternity home within 10 working days from the date the maternity home initially received the deficiency report from the licensing authority, submits a plan of correction that is approved by the licensing authority. The plan of correction shall specify the following:

(A) the measures that will be put in place to correct the deficiency;

(B) the systems that will be put in place to prevent a re-occurrence of the deficiency;

(C) the individual or individuals who will monitor the corrective action; and

(D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.

(2) The licensing authority shall notify a residential maternity home in writing of the decision to deny, suspend or revoke a license.

(3) Appeal procedures specified in 10A NCAC 70L .0301 shall be applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.

(e) Licensure restriction.

(1) Licensure shall be denied when it is determined that an applicant meets any of the following conditions:

- (A) owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
- (B) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license;
- (C) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
- (D) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws; or
- (E) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256.
- (F) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.
- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained at the following website: <http://www.ncleg.net/Statutes/.html>.
- (3) The facility or agency shall inform the licensing authority of any current licenses or licenses held in the past five years for residential maternity homes, residential child-care facilities or child-placing agencies in other states. The agency shall provide written notification from the licensing authority in other states regarding violations, penalties or probationary status imposed in that state. The licensing authority shall take this information into consideration when granting a North Carolina license.

Authority G.S. 131D-1; 143B-153.

SECTION .0200 - MINIMUM LICENSURE STANDARDS

10A NCAC 70K .0201 PERSONNEL

(a) Staff Qualifications and Functions.

- (1) ~~Administrator.~~ Executive Director. There shall be an ~~administrator-executive director~~ employed for the general management and supervision of the maternity home. The ~~Administrator-executive director~~ employed after the effective date of the rules of this Subchapter must shall have a bachelor's degree from a college or university ~~accredited by the Association of Colleges and Schools listed in the most current edition of the Higher Education Directory and no less than~~ at least four years work experience in a human services program ~~including of which a minimum of two years has been in supervision, administration, and administration or management.~~ There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more residents. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 residents. The ~~Administrator-executive director~~ shall have the following responsibilities:
 - (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
 - (B) recruit, employ, supervise and discharge staff;
 - (C) assure a training program for staff;
 - (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
 - (E) establish and maintain good working relationships with other ~~social-human~~ service agencies and represent the agency in the community; and
 - (F) delegate authority to a ~~qualified~~ staff member meeting the qualifications described in SubParagraph (a)(1) of this Rule, during his-his or her absence.
- (2) Professional Services Staff. The maternity home ~~must shall~~ have available professional services personnel to assure appropriate services for each resident of the home. Professional personnel must include a doctor, dentist, nurse, social worker, psychologist, psychiatrist, member of the clergy, nutritionist, health educator, and teacher. Whether services are purchased through a contractual agreement or provided by members of the maternity home staff or obtained through public or private agencies or on a voluntary basis, professional services ~~must shall~~ be provided

by ~~qualified~~ practitioners who are recognized and accepted by applicable professional organizations and appropriate state licensing boards.

- (3) Social Work Supervisor. If the maternity home employs staff to provide social work services, they shall employ a person who shall be responsible for supervising, evaluating, and monitoring the work and progress of the social services staff. The social work supervisor ~~employed after the effective date of the rules of this Subchapter must~~ shall have at a minimum a master's degree in social work or related area of study from ~~an accredited school, college or university listed in the most current edition of the Higher Education Directory,~~ and at least two years of social work experience; or a bachelor's degree in social work or a related field and four years of experience in social work or related field.
- (4) Social ~~Services~~ Worker. If the maternity home employs social workers to be responsible for intake services, providing casework services to the residents and their families, coordinating the services and resources affecting the client and their families, the social worker ~~must~~ shall have either a master's degree in social work or related field of study from ~~an accredited school, college or university listed in the most current edition of the Higher Education Directory,~~ or a bachelor's degree in social work or a related field from a college or university listed in the most current edition of the Higher Education Directory and two years experience in social work or related field, ~~working directly in human services.~~ If the

social work staff are not supervised by a person meeting the qualifications of (a)(3) of this Rule, all social work staff shall meet these qualifications of (a)(3) of this Rule.

- (5) Direct Care Staff. After the effective date of the rules of this Subchapter, all direct care staff hired shall be at least 21 years of age and shall have a high-school diploma or GED and experience to meet the responsibilities of the job.
- (6) Direct Care Supervisory Staff. After the effective date of the rules of this Subchapter, all direct care supervisory staff shall be at least 21 years of age and shall have a high-school diploma or GED and experience to meet the responsibilities of the job.
- (7) Staff members of the maternity home may maintain dual employment or serve as volunteers with adoption agencies or crisis pregnancy centers as long as the maternity home does not provide services to the clients of the adoption agency or crisis pregnancy center. Staff members of the maternity home may serve on the board of directors of adoption agencies or crisis pregnancy centers as long as the adoption agency or crisis pregnancy center does not provide services to the clients of the maternity home.

(b) Staffing Requirements. ~~When an agency employs five or more social worker staff, the agency shall employ a social work supervisor.~~ For maternity homes that employ staff as social workers and social work supervisors, there shall be at least one social worker assigned for every 15 residents. Supervision of social workers shall be assigned as follows:

<u>Supervisors Required</u>	<u>Social Workers Employed</u>
<u>0</u>	<u>0-4 (executive director serves as social work supervisor)</u>
<u>1</u>	<u>5</u>
<u>2</u>	<u>6-10</u>
<u>3</u>	<u>11-15</u>
<u>There shall be one additional supervisor for every one to five additional social workers.</u>	

(c) ~~Resident~~ Direct Care Staff. Full-time direct care staff shall be employed for direct care of maternity home residents (residents include mothers and infants). Effective July 1, 2009 there shall be at least one full-time direct care staff member assigned for every eight residents during waking hours and one full-time direct care staff member for every twelve residents during sleeping hours. Supervisory or management personnel may be utilized as direct care staff. Additional direct care staff

or other personnel shall be available to assist with emergency situations or special needs of the residents.

- (1) ~~Full time resident house parents or counselors must direct care staff shall be employed for direct care of maternity home residents~~
- (2) ~~All resident care staff hired after the effective date of the rules of this Subchapter shall be at least 18 years of age.~~

(d) Direct Care Supervisory Staff. Effective July 1, 2009 there shall be at least one direct care supervisor for every 15 direct care staff members.

~~(d)(e)~~ Volunteer—Volunteers Workers—and Interns. If the maternity home uses volunteers or interns to work directly with residents, the requirements of 10A NCAC 70F .0207 apply. ~~10A NCAC 70F .0207, apply.~~

~~(e)(f)~~ Additional Personnel Requirements. In addition to those requirements specified in 10A NCAC 70F .0207, the following rules are applicable to maternity home programs:

- (1) Health Examinations. All ~~resident direct care staff and staff,~~ food service staff and anyone serving in the capacity of direct care staff and food service staff shall have a physical medical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least ~~six—12~~ months before beginning ~~work—employment~~ and biennially thereafter. ~~A TB skin test is required prior to assuming the position and annually thereafter, except when the licensed medical provider advises against it.~~ The agency shall maintain documentation that all direct care staff and food service staff or anyone serving in the capacity of direct care staff and food service staff have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. A medical history form shall be completed by all direct care staff and food service staff. Examinations must include tests necessary to determine that the staff member is able to carry out assigned duties and does not have any communicable disease or condition which poses ~~significant~~ risk of transmission in the facility. A report of each examination ~~must~~ shall be made a part of the employee's personnel file. A medical examination report shall be completed on any adopted children or relative children of direct care staff residing in the maternity home within 12 months prior to the license date. The birth children of direct care staff who reside in the maternity home shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the maternity home have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical examination and TB test, if required, shall be completed on any children or relative children of direct care staff who subsequently begin residing in the maternity home. Examinations shall include tests necessary to determine that the children or relative children of staff members who reside in the maternity home do not have any communicable diseases or

conditions which poses risk of transmission in the facility. A medical history form shall be completed on any children or relative children of direct care staff who reside in the living unit. Medical examination reports and medical history forms of children of the residents residing the maternity home shall be maintained in the personnel file of their parent or relative.

~~(2) —Leave for Resident Care Staff.~~ ~~Resident care staff shall have a minimum of eight 24 hour days off duty each month.~~

~~(2)(3)~~ Staff Development. The maternity home staff shall have a written staff development plan which provides staff training in the following areas: medical, physical, and psychological aspects of pregnancy; prenatal and postnatal care; developmental needs of adolescents and young adults; developmental needs of infants and children; parenting preparation classes; stages of growth in infants; day-to-day care of infants; discipline; education planning; job seeking skills; housing; money management; food management; child care; health education; stress management; life skills; decision making; substance abuse; pregnancy prevention; counseling skills; emergency medical care; and nutrition and food preparation. Social workers, social work supervisors, direct care staff and direct care staff supervisors shall receive 24 hours of continuing education annually.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0202 SERVICES

(a) The maternity home shall have a written statement of purpose and objectives, services offered, eligibility requirements, application procedures, and procedures for implementing all services. This information ~~must—shall~~ be available to persons or agencies making inquiries.

~~(1)(b)~~ Social Services. The maternity home shall provide admission, residential, and discharge services to applicants, residents in care, and their families or legal custodians, as follows: custodians:

~~(a)(1)~~ Admission services ~~must—shall~~ include an assessment of the need for maternity home care, for specific services for the applicant's individual needs, and ~~must—shall~~ include information to determine if the maternity home's program of care and services can meet these needs.

~~(b)(2)~~ When an applicant who lives out of state is being considered for admission and the applicant is under the age of eighteen years, the provisions of the North Carolina interstate placement laws (G.S. 7B-3800 et. seq.) shall be met. (G.S. 110-50 through 110-57.1) must be met.

- (e)(3) Staff responsibility ~~must~~ shall be clearly established for decisions on admissions.
- (f)(4) Applicants or legal custodians shall complete a written application before or upon admission. Written agreements ~~must~~ shall be made concerning release of information, medical care, and fees for care and services.
- (e)(5) An applicant accepted for care ~~must~~ shall be referred to and have a working agreement with a licensed ~~child placing~~ child-placing agency or county department of social services of the applicant's choice for planning and decision making in relation to her baby. No maternity home staff member shall directly or indirectly assume responsibility for placement of children for adoption.
- (f)(6) Residential services throughout the period of care shall include counseling for each resident and ~~for their families her family. and significant others as indicated.~~
- (g)(7) Each resident ~~must~~ shall have the opportunity to talk privately with staff, family members, friends families, significant others and social workers from ~~child placing~~ child-placing agencies or county departments of social services and to express grievance.
- (h)(8) Each resident ~~must~~ shall have assistance as requested in making the best use of her time in the maternity home, adjusting to the living situation, accessing all services needed, resolving personal and family problems, and planning for discharge.
- (i)(9) Discharge services for residents ~~must~~ shall include planning for living arrangements, employment or education, and for those residents planning to keep their babies, preparation for parenthood and support services for single parents.

(2)(c) Psychological and Psychiatric Services. ~~When indicated, arrangements must~~ Arrangements shall be made for a resident to have the services of a psychologist or a psychiatrist, if necessary, as well as psychiatrist and for consultation for the staff providing care and services to the resident.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0203 CASE RECORD

A confidential case record ~~must~~ shall be maintained for each resident which includes:

- (1) a completed application for admission and services with identifying information about the resident;
- (2) a summary of the referral source, background information about the resident, and an assessment of the services needed;
- (3) a complete medical and obstetrical history and examination before or within one week after admission to the home;
- (4) record of medical and dental services received;

- (3)(5) authorization for medical care for minors; ~~care;~~
- (4)(6) authorization for receiving or sending information concerning the resident;
- (5)(7) copy of financial agreements;
- (6)(8) a copy of the agreement with the licensed child placing agency or county department of social services providing services to the resident;
- (9) case plan or out-of-home family services agreement;
- (10) visitation and contact plan including type, duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement; the facility shall maintain documentation of all family time;
- (7)(11) date of admission to the maternity home and documentation of services provided including hospital care and delivery dates;
- (8)(12) ~~date~~ date, time and circumstances of discharge from the maternity home and the resident's plans for herself and baby; and in the case of minors the name, relationship and signature of the individual the resident was released to;
- (9)(13) correspondence and contacts with other persons or agencies concerning the ~~resident.~~ resident; and
- (14) signed acknowledgement of client rights.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0204 PROGRAM OF CARE

- (a) The program of care ~~must~~ shall be suited to the needs of adolescent and adult women experiencing an unplanned ~~a problem~~ pregnancy. There ~~must~~ shall be opportunity provided for private time, for family contacts, and for group fellowship.
- (b) The residents ~~must~~ shall be free from duress to make their own decisions about releasing or keeping their babies.
- (c) The residents ~~must~~ shall be provided confidentiality concerning their situations and protection from harm insofar as possible.
- (d) ~~No resident shall be directly involved in the solicitation of funds. Written permission must be obtained from the resident, or the legal custodian if the resident is a minor, before pictures or other means of identifying residents are used in publicity or public relations for the maternity home.~~
- (e)(d) Educational opportunities ~~must~~ shall be provided or arranged by the residential maternity home in accordance with the needs of individual residents and resources available in the community. For those residents who are required to attend school under the compulsory school attendance laws of North Carolina, the maternity home shall arrange for attendance in a public or a nonpublic school which is operated in accordance with the laws of North Carolina. If a school or educational program is maintained and operated by the maternity home which residents attend in lieu of attending public schools, the maternity home shall comply with the North Carolina General Statutes governing nonpublic schools. Opportunity ~~must~~ shall

be offered to residents who wish to participate in educational courses available in the community.

~~(f)(e)~~ Health education to ~~include~~ including information about pregnancy, delivery, and family planning services must shall be provided residents. Information about the care of infants shall be made available to the residents who want this information.

~~(g)(f)~~ Recreational activities must shall be provided which meet the needs of residents. Suitable space must shall be provided at the maternity home for both indoor and outdoor activities. Participation in community activities must shall be provided ~~when appropriate~~.

~~(h)(g)~~ Work assignments in the maternity home must shall be geared to the physical health and emotional well-being of the residents in care. Residents shall be given the opportunity to voluntarily seek paid employment when employment is in accordance with the recommendation of their ~~physician~~ licensed medical provider and other professional staff of the maternity home. No resident must shall be required to work for the purpose of paying the maternity home for her care.

~~(i)(h)~~ The maternity home shall define in writing and make available to applicants and residents those rules and regulations which the residents ~~are~~ shall be expected to follow. These rules and regulations must shall respect the personal freedom of the residents. These rules and regulations must shall not infringe on the residents' rights to send and receive uncensored mail and for planned visits with their families and ~~significant~~ others. Visitors must shall not be allowed to visit minors without prior consent of the parents or guardian, or legal custodian.

~~(j)(i)~~ Nutritious, foods must shall be provided in the variety and amounts necessary to meet the National Research Council's Recommended Daily Dietary Allowances (USDA Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200N, Washington, DC 20036). ~~Allowances~~. Special diets must shall be planned to meet the modified needs of individual residents as prescribed by a licensed medical provider ~~physician~~. Menus must shall be planned and written by, or in consultation with, a registered dietitian or nutritionist. Menus must shall be planned and written at least one week in advance. Snacks ~~are to~~ shall be recorded on the regular menu.

~~(k)~~ The maternity home shall have an agreement with ~~one or more licensed physicians to provide maternal health care and general health care for each resident. The maternity home shall have an agreement with a registered nurse who shall have responsibility for the organization and operation of nursing services within the home. A registered nurse or a licensed practical nurse must be available to provide direct nursing care for residents.~~

~~(l)(j)~~ Each resident shall be provided prenatal care and general health care by a licensed medical provider which includes:

- (1) a complete medical and obstetrical history and examination before or within one week after admission to the home;
- (2) periodic examinations during pregnancy as outlined by the licensed medical provider; ~~physician~~;
- (3) dental services as needed; ~~services as indicated~~; and
- (4) ~~specialized~~ medical services as needed.

~~(m)(k)~~ Each resident ~~must shall~~ be provided delivery care in a licensed hospital or any facility licensed as a place for delivery of babies. ~~There must be an agreement with a licensed hospital to accept residents. The agreements must include measures to provide for the resident who requests confidentiality.~~

(l) The agency shall have written policies and procedures regarding staff administering medications to residents that shall be discussed with each resident and their parents or guardian, or legal custodians (if resident is a minor) prior to or upon placement. These policies and procedures shall address medication administration; medication dispensing, packaging, labeling, storage and disposal; review; education and training; and documentation, including medication orders, Medication Administration Record (MAR); orders and copies of lab tests; and, if applicable, administration errors and adverse drug reactions. The residential maternity home shall maintain a MAR for each resident that documents all medications administered. Upon discharge of a resident, the residential maternity home shall return prescription medications to the resident or person or agency legally authorized to remove the minor from residential maternity care. The residential maternity home shall provide oral or written education to the resident or person or agency legally authorized to remove the minor from residential maternity care regarding the medications. The residential maternity home shall dispose of unwanted, out-dated, improperly labeled, damaged, adulterated or discontinued prescription medications in accordance with the North Carolina Pharmacy Practice Act and 21 NCAC 46 .3001. See <http://www.ncbop.org/LawsRules/RulesApril2006.pdf> and <http://www.ncbop.org/Forms%20and%20Applications%20-%20Pharmacists/DrugDisposalForm.pdf>

~~(n)(m)~~ When residents return to the maternity home, post delivery care must shall be available to the residents in accordance with the recommendations of the resident's ~~physician~~ licensed medical provider and the professional staff of the maternity home. A resident must shall not be required to remain in the maternity home after medical discharge. Referral to a ~~physician~~ licensed medical provider or medical clinic or community family planning resource must shall be made if requested by the resident.

(n) A resident and her infant may be considered for aftercare if the resident was in residential care prior to delivery.

(o) The period of aftercare for the resident and her child shall not exceed 12 consecutive months, during which time a plan for independent living shall be developed with the resident and assistance provided in achieving the goal of the plan within the designated timeframe.

(p) Services provided for the plan of independent living shall include parenting preparation classes, stages of growth in infants, day-to-day care of infant, discipline, education planning, job seeking skills, housing, money management, food management, child-care, health education, stress management, life skills, decision making, substance abuse, pregnancy prevention, as well as other services based on the individual needs of the resident.

~~(q)~~ A case record must shall be maintained at the maternity home for each resident which includes ~~information given by the provider~~ documents concerning all social work, counseling,

medical, psychological, and dental ~~services~~ services, as well as any other services provided to each resident.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0205 PHYSICAL FACILITIES

(a) ~~Location.~~ The maternity home location shall be accessible to community resources including medical and hospital services, transportation, schools, churches, shopping, and recreation. There shall be yard space to provide privacy for outdoor activities.

(b) ~~General Construction Requirements.~~ Any building to be used as a maternity home must meet the requirements of Section 411 Residential Occupancy (R) and related parts of the North Carolina State Building Code, Volume I, General Construction; Volume II, State Plumbing Code; Volume III, State Heating, Air Conditioning, Refrigeration, and Ventilation Code and Volume IV, State Electrical National Code NFPA #70. The maternity home shall care for no greater number of residents at any time than is specified by the license.

(1) ~~New Construction.~~ All local building codes and zoning regulations shall be complied with in the construction of a new maternity home, in the conversion of an existing building for use as a maternity home, and in the remodeling of an existing maternity home. Schematic drawings, design development drawings, and final construction documents for the construction of new facilities and the remodeling and modification of existing facilities must be submitted for approval to the Department of Health and Human Services, Division of Facility Services, Construction Section prior to beginning construction.

(2) ~~Existing Buildings.~~ Any maternity home in existence at the effective date of the rules of this Subchapter must meet the requirements of the edition of the North Carolina State Building Code in existence at the time the building was constructed.

(c) ~~Fire Safety.~~ The maternity home must be approved by the local building inspector or fire marshal before the home opens and annually thereafter. Compliance with recommendations to correct any hazards is required. In order to be eligible for a license, the maternity home must receive a satisfactory rating on inspection by the local building inspector or fire marshal before the home opens, and annually thereafter. Emergency evacuation plans must be posted. All residents and staff residing in the maternity home shall regularly participate in fire drills and all new residents shall immediately be instructed in evacuating the building in the event of fire. If smoking is allowed, there shall be designated smoking areas.

(d) ~~Living Spaces.~~ There must be an activities room for the use of the residents. There must be a separate room for residents to talk privately with staff and to receive visitors. There must be private, comfortable living areas for staff who live in the maternity home. Staff shall have a separate bedroom and bathroom from residents in care. A maternity home developed after the effective date of the rules of this Subchapter must

~~provide in each bedroom a minimum of 80 square feet of floor space for each occupant except that a bedroom for one occupant must provide a minimum of 100 square feet. Each resident shall have a bed of her own, provided with springs, a comfortable mattress, and adequate bed covering. No day bed, convertible sofa or other bedding of a temporary nature shall be used. Bedrooms must be equipped with closet and drawer spaces for storage of clothing and other personal belongings.~~

(e) ~~Bath and Toilet Facilities.~~ There must be no less than one lavatory with hot and cold water, one toilet and one tub or shower with hot and cold water for every five residents.

(f) ~~General Environmental Health Requirements.~~ The maternity home shall meet the requirements set forth in 15A NCAC 18A .1600. A copy of the annual inspection report must be submitted to the licensing authority.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0206 CASE PLAN OR OUT-OF-HOME FAMILY SERVICES AGREEMENT

(a) A residential maternity home shall develop a written case plan or out of home family services agreement within 30 days of a resident's admission to the maternity home. The case plan or out of home family services agreement shall be developed in cooperation with the resident, her parents or guardian or the legal custodian. The case plan or out-of-home family services agreement shall be based upon an assessment of the needs of the resident. The case plan or out-of-home family services agreement shall include:

(1) goals stated in specific, realistic, and measurable terms; and

(2) plans that are action oriented, including specific responsibilities of the resident, the residential maternity home, the parents or guardians, other family members, legal custodians and other agencies that are providing services to the resident.

(b) The case plan or out-of-home family services agreement shall be reviewed within 60 days of placement, the second case plan or out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months. The resident, parents or guardians or legal custodians as well as any individual or agency designated as providing services shall participate in the reviews to determine the resident's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the case plan or out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the residential maternity home, the department of social services, parents or guardian, and resident should develop a single out-of-home family services agreement. The residential maternity home should attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) can serve as the out-of-home family services agreement for the maternity home if the documents reflect input and participation by the maternity home. Maternity

homes shall follow the same timeframes for completing these documents as described in Paragraph (b) of this Rule.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0207 CLIENT RIGHTS

(a) A residential maternity home shall develop and implement policies and procedures to protect the individual rights and dignity of residents and family members who are provided services by the agency.

(b) A residential maternity home shall have a client's rights policy, which includes that each resident has the right to:

- (1) be treated with dignity and respect;
- (2) be free from coercion and influence in deciding to parent her baby or release for adoption;
- (3) privacy;
- (4) be provided adequate food, clothing and shelter;
- (5) have access to family time and have telephone conversations with family members and other individuals, when not contraindicated in the visitation and contact plan;
- (6) have personal property and a space for storage;
- (7) express opinions on issues concerning the resident's care or treatment;
- (8) receive care in a manner that recognizes variations in cultural values and traditions;
- (9) be free from coercion by agency staff with regard to religious or cultural decisions. The agency shall have a process to assure that, whenever practical, the wishes of the resident and the parents of minors with regard to religious and cultural participation are ascertained and followed;
- (10) not be identified in connection with publicity for the agency which shall bring the resident, or resident's family embarrassment;
- (11) give written permission before pictures or other means of identifying residents are used in publicity or public relations for the maternity home (if the resident is a minor, written permission shall be obtained from the parents, guardian or the legal custodian); and
- (12) not be forced to acknowledge dependency on or gratitude to the agency.

(c) A residential maternity home shall have a policy that prohibits direct involvement by a resident in funds solicitation for the agency.

(d) A residential maternity home shall have a policy, which prohibits the resident's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the resident and, if applicable, the resident's parents, guardian or legal custodian.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0208 GRIEVANCE PROCEDURES

(a) The agency shall provide to each resident, parents, guardians or legal custodians of minors, upon placement:

- (1) a written description of policies and procedures that the resident her parents, guardian or legal custodian follows to register complaints;
- (2) information about resident's and family's rights;
- (3) the process for appealing a decision or action of the agency; and
- (4) the process of resolution of a complaint.

(b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the resident's case record.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0209 SEARCHES

(a) The agency shall have written policies and procedures regarding staff conducting searches of resident's rooms and possessions that shall be discussed with each resident and, if applicable, their parents, guardians or legal custodians prior to or upon placement.

(b) The search policies and procedures shall include:

- (1) circumstances under which searches are conducted;
- (2) persons who are allowed to conduct searches;
- (3) provision for removing and disposing of items seized as a result of searches; and
- (4) provision for documenting searches.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0210 CRITICAL INCIDENTS AND CRITICAL INCIDENT REPORTS

(a) The maternity home shall have written policies and procedures for handling and reporting critical incidents.

(b) The maternity home shall have and follow policies and procedures for handling any suspected incidents of abuse or neglect of a resident involving staff, subcontractors, volunteers or interns in a facility supervised by the maternity home. The policies and procedures shall include:

- (1) a provision for reporting any suspicions of abuse or neglect to the appropriate county department of social services for investigation;
- (2) a provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body;
- (3) a provision for immediately notifying the parents, guardian, or legal custodian, if applicable;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;

- (6) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (7) a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(c) Critical incident reports shall be submitted to the licensing authority by the executive director or his/her designee on a form developed by the licensing authority within 72 hours of the critical incident. Critical incidents include the following of a resident in placement:

- (1) a death of a resident;
- (2) reports of abuse and neglect;
- (3) admission to a hospital as a result of injury or serious medical condition;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours; and
- (6) arrest for violations of state, municipal, county or federal laws.

(d) Documentation of the critical incident shall include:

- (1) name of resident or residents involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) name of resident's parents, guardian or legal custodian, if applicable, notified and date and time of notification; and
- (8) approval of supervisory or administrative staff reviewing the report.

(e) When there is a death of a resident in placement the executive director or his/her designee shall notify the parents, guardian, or legal custodian, if applicable, and the licensing authority with 72 hours.

(f) Critical incident reports shall be maintained in a manner consistent with the agency's risk management policies that include clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to residents, staff and visitors and reduce the risk of loss to the agency and shall be made available to the licensing authority upon request.

Authority G.S. 131D-1; 143B-153.

SECTION .0300 – PHYSICAL PLANT

10A NCAC 70K .0301 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

(a) New construction and existing buildings proposed for use as a residential maternity home shall comply with the requirements of this Section.

(b) Except when otherwise specified, existing licensed homes or portions of existing licensed homes shall meet licensure and code requirements in effect at the time of construction, initial

licensure, change in service, change in resident capacity or evacuation capability of the residents, addition, renovation or alteration.

(c) New additions, alterations, modifications and repairs made to the building shall meet the requirements of this Section.

(d) A residential maternity home shall not have two different types of occupancies in the same building.

(e) Rules contained in this Section are the Physical Plant requirements and do not prohibit buildings, systems or operational conditions that exceed these requirements.

(f) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant requirements shall be approved by the Division of Health Service Regulation when the facility can demonstrate to the Division of Health Service Regulation's satisfaction, that the intent of the physical plant requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

(g) The facility must comply with all applicable local, state and federal regulations.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0302 DESIGN AND CONSTRUCTION

(a) Any building licensed for the first time as a residential maternity home shall meet the applicable requirements of the North Carolina State Building Code. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for One- and Two-Family Dwellings and Licensed Residential Care Facilities or other classifications as determined by the Division of Health Service Regulation, Construction Section based on the number and age of the mothers, the number of infants and any other dependents of either the expecting mothers or the live-in staff. Information regarding the purchase of all applicable volumes of The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments can be accessed by reviewing the following web site:

(http://www.ncdoi.com/OSFM/Engineering/CodeServices/engineering_codeservices_sales.asp) or calling 919-681-6550.

(b) Mobile homes, whether mobile or permanently situated, shall not be used for residential maternity home facilities.

(c) Each residential maternity home shall be planned, constructed, equipped and maintained to provide the services offered in the home.

(d) Any existing building converted from another use to a residential maternity home shall meet all the requirements of a new facility.

(e) Any existing licensed residential maternity home when the license is terminated for more than 60 days shall meet all requirements of a new home prior to being relicensed.

(f) Any existing licensed residential maternity home that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(g) Any existing licensed residential maternity home that plans to have new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his appointed representative to the Division of Health Service Regulation for review and approval prior to commencement of the work.

(h) The applicant for a residential maternity home shall consult the local code enforcement official for information on required permits and building code requirements before starting any construction or renovations.

(i) If the building is two stories in height, it shall meet the following requirements:

- (1) Infants or children less than six years old shall not be housed on any floor other than the level of exit discharge.
- (2) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection.

(j) The basement and the attic shall not to be used for storage or sleeping.

(k) The ceiling shall be at least seven and one-half feet from the floor.

(l) All windows shall be maintained operable.

(m) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the North Carolina Division of Environmental Health, which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care Homes and Other Institutions", 15A NCAC 18A .1300 and the "Rules Governing Sanitation of Residential Care Facilities" 15A NCAC 18A .1600 are available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632 at no cost.

(n) The residential maternity home shall request and obtain current inspections from the local sanitarian and the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority with the licensure renewal application.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0303 LOCATION

(a) A residential maternity home shall be in a location approved by local zoning boards.

(b) The home shall be located so that hazards to the residents are minimized.

(c) The site of the home shall:

- (1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;
- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
- (4) meet all local ordinances; and

(5) be free from exposure to pollutants known to the applicant or licensee.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0304 LIVING ARRANGEMENT

A residential maternity home shall provide living arrangements to meet the individual needs of the residents, the live-in staff and their children or relative children. There shall be a designated room for residents to talk privately with staff and to receive visitors.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0305 LIVING ROOM

(a) Residential maternity homes shall have a living room area of a minimum of 200 square feet for a capacity of six or less residents and 15 square feet per additional resident.

(b) All living rooms shall have operable windows that meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0306 DINING ROOM

(a) Residential maternity homes shall have a dining room or area of a minimum of 120 square feet for a capacity of six or less residents and 10 square feet per additional resident. The dining room may be used for other activities during the day.

(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas and shall not be included in the required square footage.

(c) The dining room shall have operable windows and be lighted to provide 30 foot candles of light at the floor level.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0307 KITCHEN

(a) The kitchen in a residential maternity home shall be large enough to provide for the preparation and preservation of food and the washing of dishes.

(b) The kitchen floor shall have a non-slippery, water-resistant covering.

(c) The kitchen shall be approved by the local sanitarian for the total number of residents (mothers, infants and any other children), as well as any direct care staff and their dependents.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0308 BEDROOMS

(a) There shall be bedrooms sufficient in number and size to meet the individual needs of the maternity home residents (residents include mothers and their children), the live-in staff and their children or relative children residing in the home. Residents shall not share bedrooms with staff or the staff's children or relative children.

(b) Only rooms authorized by the Division of Health Service Regulation, Construction Section by plan review or field inspection, shall be used for bedrooms.

(c) A room where access is through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.

(d) There shall be a minimum area of 100 square feet, excluding vestibule, closet or wardrobe space, in rooms occupied by one mother and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two mothers. There shall be additional square footage of 40 square feet for each infant and toddler, 60 square feet for each pre-school aged child and 80 square feet for each school aged child.

(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation, Construction Section, by plan review or field inspection, for that particular bedroom.

(f) A bedroom shall not be occupied by more than two mothers along with any children or infants of those mothers if the space requirements specified in Paragraph (d) of this Rule are met.

(g) Each resident bedroom shall have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height. Each bedroom shall be provided with a window that meets the North Carolina State Building Code for emergency egress. These windows shall be openable without the use of keys or tools.

(h) Bedroom closets or wardrobes shall be large enough to provide each mother with a minimum of 48 cubic feet of separate clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar. Additional closet or wardrobe space shall be provided for the children of mothers at the rate of 10 cubic feet per child.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0309 BATHROOMS

(a) Residential maternity homes shall have one full bathroom for each five or fewer mothers and children, not including infants. Live-in staff shall have a separate bathroom from residents in care.

(b) The bathrooms shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have privacy partitions for each water closet. Each tub or shower shall have privacy partitions or curtains.

(c) Entrance to the bathroom shall not be through a kitchen, another person's bedroom or another bathroom.

(d) The required bathrooms of residents shall be located so there is no more than 40 feet from any resident's bedroom door.

(e) Hand grips shall be installed at all commodes, tubs and showers used by the residents.

(f) Non-skid surfacing or strips shall be installed in showers and bath areas.

(g) The bathrooms shall be lighted to provide 30 foot candles of light at floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.

(h) The bathroom floor shall have a non-slippery, water-resistant covering.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0310 CORRIDORS

(a) Corridors shall be a minimum clear width of three feet.

(b) Corridors shall be lighted with night lights providing one foot candle of light at the floor.

(c) Corridors shall be free of all equipment and other obstructions.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0311 OUTSIDE ENTRANCES AND EXITS

(a) In residential maternity homes, all floor levels shall have at least two exits. If there are only two, the exit or exit access doors shall be so located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.

(b) At least one entrance and exit door shall be a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) If the home has any resident who requires physical assistance with evacuation, the home shall have at least one principal outside entrance and exit for the resident's use which shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this rule, a principal outside entrance or exit is one that is most often used by residents for vehicular access.

(d) All exit door locks and latches shall be easily operable from the inside at all times without keys.

(e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.

(g) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0312 LAUNDRY ROOM

Laundry facilities shall be provided. The laundry equipment shall be located out of the living, dining and bedroom areas.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0313 FLOORS

(a) All floors shall be of smooth, non-skid material and constructed to be easily cleanable.

(b) All floors shall be kept in good repair.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0314 HOUSEKEEPING AND FURNISHINGS

(a) Each residential maternity home shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
- (2) have no chronic unpleasant odors;
- (3) have furniture clean and in good repair;
- (4) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
- (5) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets and additional coverings adequate for resident use on hand at all times;
- (6) have television and radio, each in good working order;
- (7) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;
- (8) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and

(9) have at least one telephone that does not depend on electricity or cellular service to operate. Emergency telephone numbers shall be posted at the telephone.

(b) Each bedroom shall have the following furnishings in good repair and clean for each mother:

- (1) a bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. No day-bed, convertible sofa or other bedding of temporary nature shall be used. A water bed is allowed if requested by a resident and permitted by the home. Each bed is to have the following:
 - (A) at least one pillow with clean pillow case;
 - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
 - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside type table and lamp;
- (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
- (4) a wall or dresser mirror that can be used by each resident;
- (5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident);
- (6) additional chairs available, as needed, for use by visitors;
- (7) a light overhead of each bed or a lamp. The light shall provide a minimum of 30 foot-candle power of illumination for reading; and
- (8) cribs for each infant; children's beds for other children of the mothers.

(c) The living room shall have functional living room furnishings for the comfort of maternity home residents, with coverings that are easily cleanable.

(d) The dining room shall have the following furnishings:

- (1) tables and chairs to seat all residents eating in the dining room; and
- (2) high chairs and booster seats for all infants and children in the home.

(e) This Rule shall apply to new and existing homes.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0315 FIRE SAFETY AND DISASTER PLAN

(a) Fire extinguishers shall be provided which meet these requirements in a residential maternity home:

- (1) one five-pound or larger (net charge) "A-B-C" type centrally located;
- (2) one five-pound or larger "A-B-C" or "CO/2" type located in the kitchen; and
- (3) any other location as determined by the code enforcement official.

(b) The building shall be provided with smoke detectors as required by the North Carolina State Building Code and heat detectors located in the attic and connected to a dedicated sounding device.

(c) Any fire safety requirements required by city ordinances or county building inspectors shall be met.

(d) A written fire evacuation plan (including a diagrammed drawing) which has the approval of the local code enforcement official shall be prepared with a minimum of 1/8 inch high letters and posted in a central location on each floor. The plan shall be reviewed with each resident on admission and shall be a part of the orientation for all new staff.

(e) There shall be at least four rehearsals of the fire evacuation plan each year. A residential maternity home shall maintain records of rehearsals and copies furnished to the licensing authority upon request. The records shall include the date and time of the rehearsals, staff members present and a short description of what the rehearsal involved.

(f) Smoking shall not be permitted in the residential maternity home.

(g) A written disaster plan which has the written approval of, or has been documented as submitted to, the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the home. This written disaster plan requirement shall apply to new and existing homes.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0316 BUILDING SERVICE EQUIPMENT

(a) The building and all fire safety, electrical, mechanical and plumbing equipment in a residential maternity home shall be maintained in a safe and operating condition.

(b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected to avoid hazards to residents (mothers and children) and room

furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.

(c) Air conditioning or at least one fan per resident bedroom, living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).

(d) The hot water tank shall be of such size to provide hot water to the kitchen, bathrooms and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:

- (1) 30 foot candle of light for reading;
- (2) 10 foot candle of light for general lighting; and
- (3) one foot candle of light at the floor for corridors at night.

(f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed to avoid a burn hazard to residents (mothers and children). Solid fuel burning fireplace inserts and wood stoves shall be labeled and approved by a third party testing agency accredited by the North Carolina Building Code Council for solid fuel heating equipment.

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.

(h) This Rule shall apply to new and existing residential maternity homes.

Authority G.S. 131D-1; 143B-153.

10A NCAC 70K .0317 OUTSIDE PREMISES

(a) The outside grounds of new and existing residential maternity homes shall be maintained in a clean and safe condition.

(b) Fences shall be kept in good repair and shall not prevent residents or adult staff from exiting or entering freely or be hazardous.

(c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

Authority G.S. 131D-1; 143B-153.

SUBCHAPTER 70L – WAIVER PROCEDURES, DENIAL, SUSPENSION, REVOCATION AND APPEAL PROCEDURES

SECTION .0100 - WAIVER PROCEDURES, DENIAL, SUSPENSION, REVOCATION AND APPEAL PROCEDURES

10A NCAC 70L .0101 USE OF VOLUNTEERS IN CHILDREN'S SERVICES CASE REVIEWS

~~(a) Where volunteers are utilized by the court to improve the administration of the foster care program and to aid the court in its review of orders removing custody of juveniles from parents and placing them with a county department of social services,~~

~~such volunteers shall have access to the juvenile's service case record maintained by the county department of social services, provided that:~~

- ~~(1) access to service case records is first ordered by the judge;~~
- ~~(2) such volunteers have taken an oath of confidentiality in conformity with the provisions of G.S. 108A-80 and other applicable state and federal laws and regulations;~~
- ~~(3) the number and qualifications of the volunteers are determined by the judge;~~
- ~~(4) the county department of social services provides such volunteers with written or oral instructions on the standard of confidentiality applicable to staff of the county department of social services.~~

~~(b) Where county departments of social services utilize volunteers to assist in their case review process, volunteers thus utilized for purposes directly connected with the administration of the services program are permitted access to a juvenile's service case record, provided that:~~

- ~~(1) such volunteers are members of a service case review team established by the county director of social services and subject to the same penalties as agency staff for violation of the standard of confidentiality;~~
- ~~(2) such volunteers are provided written or oral instruction on the standard of confidentiality applicable to staff of the county department of social services;~~
- ~~(3) such volunteers shall not have access to N.C. Child Abuse and Neglect Report, Report to Central Registry/CPS Application, and any information which discloses the identity of individuals who have reported suspected neglect or abuse to the county department of social services.~~

Authority G.S. 7A-657; 7A-675; 108A-80; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70L .0102 WAIVER OF LICENSING RULES

~~(a) The North Carolina Department of Health and Human Services Services, Division of Social Services is the licensing authority and shall may allow a waiver to a licensing rule or rules to persons subject to licensure pursuant to G.S. 131D, Article 1A in accordance with the following criteria:~~

- ~~(1) persons seeking a waiver must shall submit a written request on a form developed by the Department licensing authority, to the Department licensing authority showing that another way of meeting a rule maintains the health, safety, and well-being of individuals being served at or above the level required by the rule;~~
- ~~(2) no waiver shall be allowed by the Department licensing authority to any rule based on a~~

standard adopted by the Building Code Council and subject to the general supervision and enforcement of the Commissioner of Insurance;

- (3) no waiver shall be allowed by the ~~Department~~ licensing authority to any rule governing fire safety;
- (4) no waiver shall be allowed by the ~~Department~~ licensing authority to any rule based upon a standard adopted by the Health Services Commission;
- (5) the waiver when allowed remains in effect for the term of the license and may be renewed if the ~~Department~~ licensing authority determines that the health, safety and well-being of individuals being served are not threatened; and
- (6) upon receipt of the waiver request form, a decision to grant or deny the waiver ~~will~~ shall be made by the ~~Department~~ licensing authority within 10 business days of its receipt.

~~(b) The Department of Health and Human Services may deny, suspend or revoke a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well being of individuals in the facility.~~

- ~~(1) Denial, suspension, or revocation of licensure by the Department of Health and Human Services shall be effected by mailing to the applicant or license holder, by certified mail, a notice setting forth the particular reasons for such action. A suspension or revocation shall become effective 60 days after the mailing of the notice absent a petition as specified in Subparagraph (2) of the Rule. In the event of a petition for a contested case hearing, a suspension or revocation shall not become effective until a final decision is made in the contested case hearing.~~
- ~~(2) Within 60 days of the decision to deny, suspend or revoke a license the applicant or license holder may petition for a determination of his legal rights, privileges, or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the Department of Health and Human Services.~~
- ~~(3) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 3 .0103. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered agent for service of process for the Department of Health and Human Services. A list of registered agents may be obtained from the Office of Legal Affairs.~~
- ~~(4) Procedures for the processing of an appeal of an adverse licensing action and for the final~~

~~decision are specified in G.S. 150B, Article 3 and 10A NCAC 01.~~

Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 143B-154; 143B-155; 143B-156; 150B-22; 150B-23.

SECTION .0200 – DENIAL: AMENDMENT: SUSPENSION: REVOCATION

10A NCAC 70L .0201 DENIAL, AMENDMENT, SUSPENSION AND REVOCATION

(a) Denial: The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority and shall deny a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well being of individuals in the facility or served by the agency. In addition, the licensing authority may deny an application based on a determination that:

- (1) The applicant is not in compliance with rules promulgated under G.S. 131D for the facility or agency which the applicant is seeking licensure;
- (2) the licensing authority has initiated revocation or summary suspension proceedings against any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which was previously held by the applicant and the applicant voluntarily relinquished the license;
- (3) there is a pending appeal of a denial, revocation or summary suspension of any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which is owned by the applicant;
- (4) the applicant has an individual as part of their governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A and G.S. 110, Article 7 and the rules adopted under these laws; or
- (5) The applicant is an individual who has a finding or pending investigation by the Health Care Professional Registry in accordance with G.S. 131E-256.

(b) Notice: When an application for license of a new facility or agency is denied the following applies:

- (1) Pursuant to G.S. 150B-22, the applicant shall be given an informal opportunity to provide reasons why the license should be issued;
- (2) the licensing authority shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and

- (3) The facility or agency shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: The licensing authority may amend a license to indicate a provisional status whenever the licensing authority determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:

- (1) Provisional status shall be approved for not less than 30 days and not more than six months;
- (2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises;
- (3) The facility shall inform each client residing or receiving services from the facility or their legally responsible person concerning the facility's provisional status;
- (4) A regular license shall be issued when a facility is determined by the licensing authority to be in compliance with applicable rules;
- (5) if a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status; and
- (6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless the licensing authority determines that the violations have been corrected.
- (7) A decision to issue a provisional status shall be stayed during the period of an appeal as specified in 10A NCAC 70L .0301 and the licensee may continue to display its license during the appeal.

(d) Summary Suspension: The following applies to summary suspension:

- (1) The licensing authority shall issue an order of summary suspension and include the findings in its order if it finds that the public health, safety or welfare considerations require emergency action;
- (2) The licensing authority shall suspend only those services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later;
- (3) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B and .10A NCAC 70L .0301. The order for summary suspension shall be in full

force and effect during any contested case hearing; and

- (4) The order may set a date by which the licensee shall remove the cause for emergency action. If the licensee fails to meet that deadline, the licensing authority may revoke or amend the facility's license.

(e) Revocation: The licensing authority shall revoke a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well being of individuals in the facility or served by the agency. Revocation of licensure by the licensing authority shall be affected by mailing to the applicant or license holder, by certified mail, a notice setting forth the particular reasons for such action. A revocation shall become effective 60 days after the mailing of the notice absent a petition as specified in 10A NCAC 70L .0301. In the event of a petition for a contested case hearing a revocation shall not become effective until a final decision is made in the contested case hearing.

Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 143B-154; 143B-155; 143B-156; 150B-22; 150B-23.

SECTION .0300 – APPEAL PROCEDURES

10A NCAC 70L .0301 APPEAL PROCEDURES

(a) Within 60 days of the decision to deny, suspend or revoke a license the applicant or license holder may petition for a determination of his/her legal rights, privileges or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the licensing authority.

(b) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the licensing authority. A list of registered agents may be obtained from the Office of Legal Affairs.

(c) Procedures for the processing of an appeal of an adverse licensing action and for the final decision are specified in G.S. 150B, Article 3 and 10A NCAC 1A.

Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 143B-154; 143B-155; 143B-156; 150B-22; 150B-23.

SUBCHAPTER 70M - ADOPTION STANDARDS

SECTION .0100 - GENERAL

10A NCAC 70M .0101 SCOPE

Rules in this Subchapter contain adoption standards for county departments of social services, which are the public agencies in North Carolina mandated by law to provide adoption services. Included are requirements which ~~must~~ shall be met by county departments of social services in carrying out their responsibilities under Chapter 48 of the General Statutes and in the administration of the Adoption Assistance Program under

G.S. 108A-49 and 108A-50, a funding program to facilitate the adoption of certain children with special needs.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0200 - ORGANIZATION AND ADMINISTRATION

10A NCAC 70M .0201 PUBLIC AGENCIES

(a) ~~Personnel and Staff.~~ (1) Rules in ~~10A NCAC 70F .0210~~ 10A NCAC 70H .0401 shall govern the policies for public agencies providing adoption services in determining the qualifications for personnel and in the recruitment, retention, and effective performance of qualified personnel.

(2)(b) Rules in ~~10A NCAC 70M .0211~~ 10A NCAC 70F .0207 shall govern the policies for public agencies in the hiring of staff, use of clerical staff, and use of volunteers.

(b)(c) ~~Caseload.~~ The caseload size of social workers providing adoption services shall be in compliance with requirements set forth in 10A NCAC 70H .0401. ~~.0402.~~

Authority G.S. 48-1-101; 48-1-109 et seq.; 143B-153.

10A NCAC 70M .0302 SERVICES TO ADOPTIVE APPLICANTS

(a) Rules in 10A NCAC 70H .0106, .0107, .0108, .0109, .0110, .0112 and .0113 .0404, .0405, .0406, .0407, .0408 and .0409 shall govern the policies for public agencies providing adoption services in determining the procedures for ~~recruitment of adoptive families, the application process, adoptive study~~ preplacement assessment, notification to adoptive applicants of acceptance or denial of application, services to adoptive applicants and families, legal process and record retention, ~~process, record retention, and fees for preplacement assessments.~~

(b) A county department of social services shall prepare or contract for the preparation of a preplacement assessment for an adoptive applicant who has identified a prospective adoptive child and has been unable to obtain a preplacement assessment. An applicant is deemed unable to obtain a preplacement assessment if the applicant is unable to obtain an assessment at the fee the county department of social services is permitted to charge under 10A NCAC 70M .0303. Except as provided in this Subchapter, no county department of social services is required to conduct a preplacement assessment unless it agrees to do so.

Authority G.S. 48-1-100; 48-1-101; 48-1-102; 48-1-103; 48-1-106; 48-1-109; 48-2-205; 48-2-301; 48-2-302; 48-2-304; 48-2-305; 48-2-501; 48-2-502; 48-2-503; 48-2-504; 48-2-601; 48-2-602; 48-2-603; 48-2-604; 48-2-605; 48-2-606; 48-2-607; 48-3-100; 48-3-201; 48-3-202; 48-3-203; 48-3-204; 48-3-205; 48-3-301; 48-3-302; 48-3-303; 48-3-304; 48-3-305; 48-3-306; 48-3-307; 48-3-308; 48-3-30; 48-3-501; 48-4-100; 48-4-101; 48-4-102; 48-4-103; 48-5-100; 48-5-101; 48-6-100; 48-6-102; 48-9-101; 48-9-102; 48-10-104; 48-10-105; 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70M .0303 FEES

(a) County departments of social services may charge reasonable fees for the preparation of a preplacement assessment or report to the court in accordance with G.S. 48-3-304(a) and G.S. 48-2-504(a). No fee shall be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation of a preplacement assessment. The fee agreement shall not be based on the outcome of the report or the adoption proceeding.

(b) Maximum fees for the preparation of the reports shall not exceed:

(1) one thousand five hundred dollars (\$1,500) for the preplacement assessment and report to the court; and

(2) two hundred dollars (\$200.00) for report to the court only.

(c) No fee shall be charged when one or more of the following circumstances exists:

(1) the head of household for the prospective adoptive family is an AFDC or SSI recipient;

(2) the family unit's income is below the State's Established Income or 150 percent of the 1992 Federal Poverty Level; and

(3) the adoptive applicant has identified an adoptee who is in the custody and placement responsibility of a county department of social services, and the adoptive applicant continues to pursue the adoption of the identified child.

(d) Fees for the above reports may be reduced or waived if it can be documented in the case record that the prospective adoptive family cannot pay the required fee. Unless reduced or waived, the entire fee shall be paid in accordance with local policy.

Authority G.S. 48-2-404; 48-3-304; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70M .0304 ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division of Social Services, Adoption Unit, to ensure compliance with the Act. If the plan is found to be out of compliance, it shall be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.

Authority G.S. 48-3-204; 131D-10.5; 143B-153.

10A NCAC 70M .0502 GENERAL ELIGIBILITY REQUIREMENTS

(a) The county department of social services having legal placement responsibility for a child shall submit an application for payment of service fees to the Division of Social Services, ~~Children's Services Branch.~~

(b) The application shall provide documentation of the following:

- (1) that the agency making application has legal placement and consenting authority for the child;
- (2) that the child is legally cleared for adoption;
- (3) that the child is one who is considered hard to place due to such factors as:
 - (A) age;
 - (B) race;
 - (C) physical, mental, or emotional handicap; and
 - (D) being a member of a sibling group;
- (4) that the child is registered on the North Carolina Adoption Resource Exchange.

(c) To the extent funds are available, the Division of Social Services will approve the payment of an adoption service fee and will notify the county in writing of this approval.

(d) The county department of social services will send the Division of Social Services a copy of the purchase of service agreement negotiated with the out-of-state provider and will notify the Division of the dates payments are due.

(e) The Division will retroactively approve payment of purchase of service fees due out-of-state agencies for service agreements a county department may have entered into between July 1, 1980, when funding for this program was appropriated, and March 23, 1981, the date of authorization of these Rules by the Social Services Commission.

Authority G.S. 48-1; 143B-153.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0901, .0906, .0908.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: May 30, 2008

Time: 1:00 p.m.

Location: PPSB Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action:

12 NCAC 07D .0901 – *The Board recognizes that law enforcement firearms certification is equivalent to and will be accepted in lieu of the firearms trainer certification course given by the Board.*

12 NCAC 07D .0906 – *The Board is requiring certified firearms instructors to maintain post delivery reports with copies of the B-27 targets in their files.*

12 NCAC 07D .0908 – *The proposed rule will require the Firearms Trainer to certify that a student has completed the classroom portion of the firearms training.*

Procedure by which a person can object to the agency on a proposed rule: *Comments may be submitted in writing prior to the end of the public comment period by mailing a written statement to Terry Wright, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, North Carolina 27609.*

Comments may be submitted to: *Terry Wright, Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Comment period ends: *July 14, 2008*

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 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0900 – TRAINER CERTIFICATE

12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney

General which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;

- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and
- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.
- (7) In lieu of completing the training course set forth in SubParagraph (4) of this Paragraph, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission.

(b) A Firearms Trainer Certificate shall expire two years after the date of issuance.

Authority G.S. 74C-5; 74C-13.

12 NCAC 07D .0906 RECORDS RETENTION

A Certified Firearms Trainer shall retain the following in the individual's armed certification file:

- (1) a copy of the ~~summary sheet post delivery report~~ listing the name(s) of individual(s) qualifying who qualified or attempted to qualify for armed security guard registration, and hour(s) of training, weapon qualification scores and any other information thereon; and
- (2) a copy of the individual's Firearm Training Certificate; and
- (3) the individual's B-27 target ~~or~~ and the Certified Firearms Trainer's Documentation Record.
- (4) The individual's B-27 qualification attempt target shall be retained for a minimum of 18 calendar months from the date of each qualification attempt. Each B-27 target must contain the full name of the individual that fired the qualification course of fire, the date that qualification attempt took place, the printed name and signature of the PPS certified firearms trainer who scored the target and the score. The qualification target shall also show letter "N" or "D" to indicate if the qualification attempt was a day time ("D") or night time ("N") qualification attempt. The previously listed information shall be placed on the B-27 target in ink or permanent marker.

Authority G.S. 74C-5; 74C-13.

12 NCAC 07D .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES

Firearms Trainers shall submit to the Board a post-delivery report for all firearms training courses required by 12 NCAC

07D .0807 within 20 days after completion of the firearms training. The report shall be submitted on a Board form and shall contain the following information:

- (1) Certified Firearms Trainer's name;
- (2) Date, time, and location of classroom training;
- (3) Date, time, and location of range qualification;
- (4) Full name of the students who completed the firearms training course;
- (5) ~~Classroom exam score for each student completing the firearms training course;~~ Certification by the Firearms Trainer that the applicant has successfully completed the firearms classroom training;
- (6) Range score for each student completing the firearms training course; and
- (7) Certified Firearms Trainer's signature.

Authority G.S. 74C-5; 74C-13.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14A .0101; 14G .0107; 14H .0105, .0107, .0111-.0113, .0117-.0118, .0120; 14I .0105, .0107, .0109, .0301, .0303, .0401; 14J .0302; 14K .0101, .0103, .0105, .0107; 14L .0106, .0208, .0210; 14N .0102-.0103; 14O .0101-.0102, .0105; 14P .0105-.0108, .0112-.0113, .0115; 14R .0101-.0103 and repeal the rules cited as 21 NCAC 14F .0114; 14G .0102; 14H .0116; 14I .0402; 14L .0214; 14O .0107.

Proposed Effective Date: *September 1, 2008*

Public Hearing:

Date: *May 30, 2008*

Time: *8:00 a.m.*

Location: *1201 Front Street, Suite 110, Raleigh, NC 27609*

Reason for Proposed Action:

21 NCAC 14A .0101 - *To eliminate duplication of definitions provided in G.S. 88B.*

21 NCAC 14F .0114 - *To remove duplication of fees established in G.S. 88B.*

21 NCAC 14G .0102 – *To eliminate the requirement for obtaining the Board's forms in writing. We allow phone calls, emails and printing off our website and so no longer require written requests for Board forms.*

21 NCAC 14G .0107 – *To update the rules to reflect chapters added to the rules since the rule was last amended.*

21 NCAC 14H .0105 – *This rule amendment would provide for a third sanitation grade with the letter C. The Board has graded this way in the past and feels it would help inspectors when giving grades that are currently "below B." Line E allows for the inspector to use a grade card more than one year, and*

allows the inspector to determine when to replace the grade card.

21 NCAC 14H .0107 – This rule amendment eliminates the requirement of dual approval for a salon water supply from the local health department which may or may not be feasible for a salon owner.

21 NCAC 14H .0111 – This rule amendment requires that students and licensees follow the same personal sanitation procedures while practicing cosmetic art.

21 NCAC 14H .0112 – This rule amendment explains the proper storage for clean items used in a cosmetic art salon or school.

21 NCAC 14H .0113 – This rule amendment outlines the sanitation and disinfection procedures for used metal implements and allows for spray disinfections to be used.

21 NCAC 14H .0116 – This rule repeal eliminates reference to a rule that no longer exists.

21 NCAC 14H .0117 – This rule amendment allows trained guide animals in cosmetic art salons.

21 NCAC 14H .0118 – This rule amendment allows for uniform grading of all cosmetic art salons.

21 NCAC 14H .0120 – This rule amendment allows for a disinfection procedure alternative to a bleach solution.

21 NCAC 14I .0105 – This rule amendment allows licensees to apply previously earned credits toward similar but longer programs of study.

21 NCAC 14I .0107 – This rule amendment updates the rule to reflect all licensure types that must follow the regulation.

21 NCAC 14I .0109 – This rule amendment renames the documentation required upon graduation from school.

21 NCAC 14I .0301 – This rule change allows schools to modernize their equipment and use any type of dry erase board.

21 NCAC 14I .0303 – This rule amendment corrects grammar within the rule.

21 NCAC 14I .0401 – This rule amendment allows students to apply for Board review at any time during enrollment, it denied they could cease taking classes.

21 NCAC 14I .0402 – This rule repeal is requested because 21 NCAC 14I .0401 has been updated to include the preapplication of felony applicants.

21 NCAC 14J .0302 – This rule amendment defines the required type of disinfectant as well as updates the terminology of disinfected.

21 NCAC 14K .0101 – This rule amendment updates the language found in other parts of 21 NCAC 14.

21 NCAC 14K .0103 – This rule amendment updates the terminology of required equipment.

21 NCAC 14K .0105 – This rule amendment updates terminology through out Chapter 14.

21 NCAC 14K .0107 – This rule amendment coordinates the language in the exam Chapter of 21 NCAC 14N.

21 NCAC 14L .0106 – This rule amendment eliminates a reference to a rule that has previously been replaced.

21 NCAC 14L .0208 – This rule amendment updates the rule's language to include the appropriate license types and eliminates an incorrect rule reference.

21 NCAC 14L .0210 – This rule amendment updates the rule to include all appropriate license types.

21 NCAC 14L .0214 – This rule repeal deletes a rule that has already been placed in G.S. 88B.

21 NCAC 14N .0102 – This rule change eliminates the need for the Board's exam application, as also changed in other subchapters of 21 NCAC 14.

21 NCAC 14N .0103 – This rule amendment eliminates reference to the Board's previous exam provider.

21 NCAC 14O .0101 – This rule amendment coordinates uniform requirements for all cosmetic art students.

21 NCAC 14O .0102 – This rule amendment updates the sanitation standard with decontamination.

21 NCAC 14O .0105 – This rule amendment coordinates nametag requirements for esthetics students to those of other cosmetic art students.

21 NCAC 14O .0107 – This rule repeal eliminates sanitation regulations that already exist in the sanitation subchapter 21 NCAC 14H.

21 NCAC 14P .0105 – This rule amended eliminates the warning for practice with an expired license.

21 NCAC 14P .0106 – This rule amendment increases the civil penalty fees.

21 NCAC 14P .0107 – This rule amendment eliminates the warning for failure to display a current cosmetic art license.

21 NCAC 14P .0108 – This rule amendment eliminates the warning for allowing individuals to practice cosmetic arts with an expired license, and it creates a penalty for failure to maintain foot spa sanitation records as required by 21 NCAC 14H.

21 NCAC 14P .0112 – This rule amendment eliminates the warning for failure to post inspection grade cards and coordinated language with other proposed rule charges.

21 NCAC 14P .0113 – This amendment is a technical change.

21 NCAC 14P .0115 – This rule amendment eliminates the warning for failure to post a sanitation inspection grade card.

21 NCAC 14R .0101 – This rule amendment allows instructors to receive credit for courses taught and allows credit to be earned via internet and correspondence courses.

21 NCAC 14R .0102 – This rule amendment eliminates a previously effective renewal cycle for CE courses and submission deadlines.

21 NCAC 14R .0103 – This rule amendment changes the minimum hour requirement from one to two hours and allows for CE providers no matter their location to be considered for approval.

Procedure by which a person can object to the agency on a proposed rule: Letter to 1201 Front Street, Suite 110 Raleigh, NC 27609

Comments may be submitted to: Stefanie Kuzdrall, Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, NC 27609, phone (919)715-0018.

Comment period ends: July 14, 2008

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 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) ~~"Esthetics" refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing; applying eyelashes to any person (this is to include brow and lash color); beautifying the face, neck, arms or upper part of the human body by use of cosmetic preparations, antiseptics, tonic, lotions or creams; surface massaging (skin care only) with cosmetic preparation;~~

~~antiseptics, tonics, lotion, or cream; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet by means of the hands, devices, apparatus, or appliances.~~

~~(40)(9)~~ "Natural hair braiding" is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is not subject to regulation pursuant to G.S. 88B, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

~~(44)(10)~~ "Natural hair styling" is the provision of natural hair braiding services together with any of the other services or procedures included within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.

~~(42)(11)~~ "Licensing cycle" for cosmetologists is the three-year period beginning on the first day of October 2004 and ending on the 30th day of September 2007, and continuing thereafter in three year intervals. For estheticians and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.

~~(13) "Provider" is a nonprofit professional cosmetic art association, community college, high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, or any individual or entity that owns and operates five or more licensed salons or that employs at least 50 licensees.~~

Authority G.S. 88B-2; 88B-4.

**SUBCHAPTER 14F – RULES AND REGULATIONS
GOVERNING THE LICENSING OF BEAUTY SHOPS**

**SECTION .0100 – RULES AND REGULATIONS
GOVERNING THE LICENSING OF BEAUTY SHOPS**

21 NCAC 14F .0114 SALON RENEWAL

(a) From January 1st to February 1st, the fee to renew the salon license will be three dollars (\$3.00) per active chair.

~~(b) From February 2nd to March 1st, the fee to renew the salon license will be three dollars (\$3.00) per active chair plus a ten dollar (\$10.00) penalty fee.~~

~~(c) On and after March 2nd, the fee to renew the salon license will be three dollars (\$3.00) per active chair plus a ten dollar (\$10.00) penalty fee and a twenty five dollar (\$25.00) reissuance fee of an expired license.~~

~~(d) If a salon license is expired more than one renewal period, the fee to renew the salon license shall include one reissuance fee and all renewal fees for the years of operation without a valid license.~~

Authority G.S. 88-21(8),(9),(10); 88-25.

SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS

SECTION .0100 - PERMANENT FILES

21 NCAC 14G .0102 FORMS

~~Application forms may be obtained by writing the North Carolina State Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, North Carolina 27609.~~

Authority G.S. 88-23.

21 NCAC 14G .0107 EQUIPMENT AND TEACHERS

(a) A cosmetic art school shall have the necessary classrooms and equipment for teaching as required by Subchapters ~~14I and 14J~~, 14I, 14J, 14K and 14O and shall provide a staff of cosmetic art teachers licensed by the Board.

(b) The Board shall not accept an application for a letter of approval until all furniture, supplies and equipment as prescribed by the Rules in this Chapter have been installed and the entire school is complete.

(c) All courses in a cosmetic art school must be taught by a licensed cosmetology teacher, except that manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.

(d) Notwithstanding Paragraph (c) of this Rule, a licensed cosmetologist not licensed to teach cosmetic art may substitute for a cosmetology, esthetician, or manicurist teacher and a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher, and an esthetic teacher and a registered esthetician not licensed as an esthetic teacher may substitute for an esthetician teacher. In no event may such a substitution last for more than 15 working days per year per teacher.

Authority G.S. 88B-11; 88B-16; 88B-23.

SUBCHAPTER 14H - SANITATION

SECTION .0100 - SANITATION

21 NCAC 14H .0105 SANITARY RATINGS AND

POSTING OF RATINGS

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments will be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade ~~B~~; B₁;
- (3) all establishments receiving a rating of at least 70 percent or more, and less than 80 shall be awarded grade C.

(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art salon shall be graded once a year.

(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at all times.

~~(d) No beauty establishment shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.~~ Beauty establishments shall only be permitted to operate 30 days or less upon obtaining a sanitary rating card with a grade of less than 70 percent.

~~(e) Cosmetic art inspectors shall give each beauty establishment a new sanitary rating card each year.~~

(f) Violation of any rule in this Chapter or the operation of a beauty establishment which fails to receive a sanitary rating of at least ~~80~~ 70 percent (grade ~~B~~) C) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

(h) A pedi-spa unit sanitation record must be kept for inspection on a form provided by the Board.

Authority G.S. 88-23; 88-30.

21 NCAC 14H .0107 WATER SUPPLY

A beauty establishment shall have a supply of running hot and cold water in the clinic ~~area, approved by the local health department.~~ area.

Authority G.S. 88B-4.

21 NCAC 14H .0111 CLEANLINESS OF OPERATORS

(a) All operators and students shall be personally clean and neat.

(b) Every person employed in a beauty establishment shall wear clean, washable outer garments with sleeves while serving patrons.

(c) Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

Authority G.S. 88B-4.

21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA: SUPPLIES AND IMPLEMENTS: COMBS AND

BRUSHES

- (a) The clinic area shall be kept clean.
- (b) Waste material shall be kept in covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.
- (c) Sanitation rules which apply to towels and cloths are as follows:

- (1) Separate and clean protective drapes, linens and towels shall be used for each patron.
- (2) After a protective drape, linen or towel has been used once, it shall be discarded and placed in a clean, closed container until laundered.
- (3) There shall be ~~a~~ an adequate supply of clean protective drapes, linens and towels at all times.
- (4) All capes used on patrons ~~shall be kept clean~~ and shall not be allowed to come in direct contact with the patron's neck.
- (5) Clean drapes, linens and towels shall be stored in a clean closed container when not in use.

(d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.

(e) All combs, brushes, ~~esthetics and manicurist instruments and~~ implements shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be soaked in a cleaning solution that shall not leave a residue and, if necessary, scrubbed.
- (2) They shall be disinfected in accordance with the following:
 - (A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions; or
 - (B) household bleach in a 10 percent solution for 10 minutes.

The disinfectant shall not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant manufacturer.

- (3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet or container until they are needed.

(f) Disposable and porous implements must be discarded immediately after use.

Authority G.S. 88B-4.

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments ~~used while shaping hair~~ must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened or spraying with a disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
- (2) If it is immersible, it shall be disinfected by ~~immersion, at least once a day~~ immersion and whenever it comes in contact with blood, with:
 - (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions; or
 - (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

(c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

Authority G.S. 88B-4.

21 NCAC 14H .0116 HEALTH OF OPERATORS

~~Owners and managers of beauty establishments must assist the local health director in obtaining compliance by employees of the establishment with communicable disease control measures when requested to do so under 10 NCAC 7A .0209 or 7A .0211.~~

Authority G.S. 88-23; 88-26(3).

21 NCAC 14H .0117 ANIMALS

Animals and birds shall not be kept in a beauty establishment. Trained animals accompanying sightless or hearing impaired persons are exempt.

Authority G.S. 88-23.

21 NCAC 14H .0118 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

~~(a)~~ The system of grading the sanitary rating of ~~manicurist~~ cosmetic art schools and shops based on the rules set out in 21 NCAC 14H .0106 to .0117 shall be as follows, setting out areas

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to be inspected and considered, and the maximum points given for compliance:

- (1) clean and well-repaired entrance and reception room 2;
- (2) general condition of the entire establishment 8;
- (3) water system; hot and cold running water 2;
- (4) walls, ceiling and floors:
 - ~~(A)~~(a) construction and coverings 4;
 - ~~(B)~~(b) clean 4;
 - ~~(C)~~(c) good repair 3;
- (5) lighting and fresh continuous ventilation (windows included); their adequacy and cleanliness 3;
- (6) public toilet:
 - ~~(A)~~(a) clean and well ventilated 5;
 - ~~(B)~~(b) liquid soap and individual towels furnished 5;
 - ~~(C)~~(c) hot and cold running water 2;
- (7) appearance of operators and students 4;
- (8) linens:
 - ~~(A)~~(a) supply of clean drapes, linens and towels stored in clean closed containers 2;
 - ~~(B)~~(b) soiled drapes, linens and towels properly stored in closed containers 2; 3;
- (9) waste in closed containers and clean area 4;
- (10) equipment cleanliness:
 - ~~(A)~~(a) disinfectants selected from those approved by the Federal Environmental Protection Agency.. 6;
 - ~~(B)~~(b) disinfectants used properly 5;
 - ~~(C)~~(c) all implements cleaned, disinfected, and properly stored 12;
 - ~~(D)~~(d) furniture, fixtures, and equipment booths clean and in good repair 8; 7;
- (11) working area:
 - (a) workstation clean 4;
 - ~~(A)~~(b) lavatories clean 4;
 - ~~(B)~~(c) jars and containers closed, clean and disinfected 2;
 - ~~(C)~~(d) no unnecessary articles in work area 2;
- (12) antiseptics and first aid supplies on hand 1;
- (13) cosmetics:
 - ~~(A)~~(a) clean and sanitary conditions 2;
 - ~~(B)~~(b) storage area for supplies clean and in order 3;
- (14) no animals or birds kept in establishment Trained animals accompanying sightless or hearing impaired persons are exempt. 1;

(b) The system of grading the sanitary rating of all other beauty establishments, based on the rules set out in 21 NCAC 14H .0106 to .0117 shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- ~~(1) clean and well-repaired entrance and reception room 2;~~
- ~~(2) general condition of the entire establishment 8;~~
- ~~(3) water system; hot and cold running water 2;~~
- ~~(4) walls, ceiling and floors:

 - ~~(A) construction and covering 4;~~
 - ~~(B) clean 4;~~
 - ~~(C) good repair 3;~~~~
- ~~(5) lighting and ventilation (windows included); their adequacy and cleanliness 3;~~
- ~~(6) public toilet:

 - ~~(A) clean and well ventilated 5;~~
 - ~~(B) soap and individual towels furnished 5;~~
 - ~~(C) hot and cold running water 2;~~~~
- ~~(7) appearance of operators or student 4;~~
- ~~(8) linens:

 - ~~(A) supply of clean towels 2;~~
 - ~~(B) soiled towels properly stored in closed containers 3;~~
 - ~~(C) clean capes 1;~~~~
- ~~(9) waste in closed containers and clean area 4;~~
- ~~(10) equipment cleanliness:

 - ~~(A) disinfectants selected from those approved by the Federal Environmental Protection Agency 6;~~
 - ~~(B) disinfectants used properly 5;~~
 - ~~(C) all implements cleaned, disinfected, and properly stored 11;~~~~
- ~~(11) working area:

 - ~~(A) booths clean 4;~~
 - ~~(B) lavatories clean 4;~~
 - ~~(C) jars and containers clean and disinfected 2;~~
 - ~~(D) no unnecessary articles in work area 2;~~~~
- ~~(12) dryers clean and in repair 3;~~
- ~~(13) styling and shampooing chairs clean and sanitary 4;~~
- ~~(14) antiseptics and first aid supplies on hand 1;~~
- ~~(15) cosmetics:

 - ~~(A) clean and sanitary condition 2;~~
 - ~~(B) storage area for supplies clean and in order 3;~~~~
- ~~(16) no domestic animals or birds in establishment 1;~~

(e) The system of grading the sanitary rating of all esthetician schools and shops, based on the rules set out in 21 NCAC 14H .0106 to .0117 shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean and well-repaired entrance and reception room 3;
- (2) general condition of the entire establishment 8;
- (3) water system: hot and cold running water 3;

- (4) ~~walls, ceiling and floors:~~
 - (A) ~~construction and covering~~ 4;
 - (B) ~~clean~~ 4;
 - (C) ~~good repair~~ 3;
- (5) ~~lighting and ventilation (windows included);~~
~~their adequacy and cleanliness~~ 3;
- (6) ~~public toilet:~~
 - (A) ~~clean and well ventilated~~ 5;
 - (B) ~~soap and individual towels furnished~~ 5;
 - (C) ~~hot and cold running water~~ 3;
- (7) ~~appearance of operators or student~~ 4;
- (8) ~~linens:~~
 - (A) ~~supply of clean towels~~ 3;
 - (B) ~~soiled towels properly stored in closed container~~ 3;
- (9) ~~waste in closed containers and clean area~~ 4;
- (10) ~~equipment cleanliness:~~
 - (A) ~~disinfectants selected from those approved by the Federal Environmental Protection Agency~~ 6;
 - (B) ~~disinfectants used properly~~ 6;
 - (C) ~~all implements cleaned, disinfected, and properly stored~~ 11;
- (11) ~~working area:~~
 - (A) ~~booths clean~~ 4;
 - (B) ~~lavatories clean~~ 4;
 - (C) ~~jars and containers clean and disinfected~~ 3;
 - (D) ~~no unnecessary articles in work area~~ 3;
- (12) ~~antiseptics and first aid supplies on hand~~ 4;
- (13) ~~cosmetics:~~
 - (A) ~~clean and sanitary condition~~ 3;
 - (B) ~~storage area for supplies clean and in order~~ 3;
- (14) ~~no domestic animals or birds kept in establishment~~ 1.

- (2) At the end of the day a manicurist or cosmetologist shall:
 - (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
 - (b) before replacing the screen wash the screen with a chlorine bleach solution of one part bleach to 10 parts water, or totally immerse the screen in an EPA registered disinfectant;
 - (c) fill the footspa tub with five gallons of water and four cups of five per cent bleach solution; or
 - (d) disinfect with an EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal disinfectant, used according to the manufacturer's instructions.
 - ~~(d)(e)~~ circulate the solution through the footspa system for no less than 10 minutes;
 - ~~(e)(f)~~ let the solution sit overnight (at least six hours);
 - ~~(f)(g)~~ drain and flush the system the following morning; and
 - ~~(g)(h)~~ make a record of the date/time of this cleaning and disinfecting, on a form provided by the Board. The record for the last 90 days shall be readily accessible upon client or Board inspector request.

Authority G.S. 88B-2; 88B-4.

21 NCAC 14H .0120 FOOTSPA SANITATION

Manicurists and Cosmetologists shall use the following disinfection procedures to ensure proper cleaning and maintenance of the footspa equipment and to prevent bacterial infection:

- (1) Between each customer a manicurist or cosmetologist shall:
 - (a) drain all water and remove all debris from the footspa;
 - (b) clean and scrub the surfaces and walls of the footspas with a scrub-brush and soap or detergent and rinse with clean, clear water; and
 - (c) ~~disinfect with an EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity~~

Authority G.S. 88B-4.

SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

SECTION .0100 - RECORD KEEPING

21 NCAC 14I .0105 TRANSFER OF CREDIT

- (a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.
- (b) A cosmetology student must complete at least 500 hours in the cosmetic art school certifying his or her application for the state board examination.
- (c) Upon written petition by the student, the Board shall make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing 500 hours at the school that certifies his or her application.

(d) A student who transfers from a cosmetology curriculum to a manicuring or an esthetics curriculum shall not receive credit for hours received in the cosmetology curriculum.

(e) A student who transfers from a manicurist or an esthetic curriculum to a cosmetology curriculum shall not receive credit for hours received in the manicurist or an esthetic curriculum.

(f) If a student is transferring from another state, the student shall submit certification of hours and performances to the cosmetic art school in which they are enrolled.

(g) Licensed manicurists or estheticians may apply up to 50 percent of required hours earned toward another cosmetic art curriculum.

(h) Up to 50 percent of all credit earned in an approved esthetician or manicurist teacher training program may be transferred to a cosmetology teacher training program. A maximum of 160 hours earned in either an esthetician or manicurist teacher training program may be transferred between programs.

Authority G.S. 88B-4.

21 NCAC 14I .0107 REPORT OF ENROLLMENT

(a) A cosmetic art school shall report cosmetology enrollments to the Board not later than 30 working days after a student enrolls in school. A cosmetic art school shall report manicurist and esthetician enrollments to the Board not later than 15 working days after a student enrolls in school. If a student's enrollment is not reported within 30 working days for cosmetology and 15 working days for esthetician and manicurist, the cosmetic art school shall file a copy of the student's daily time records when it reports the student's enrollment.

(b) The school must report the enrollment of students prior to the student applying for the cosmetologist, manicurist, or esthetician examination and before any hours can be credited.

Authority G.S. 88B-4; 88B-9.

21 NCAC 14I .0109 SUMMARY OF COSMETIC ART EDUCATION

(a) The manager of each cosmetic art school must compile, from the school's records, a summary of hours, live model/mannequin performance completions, date of enrollment, and last date of attendance. Upon graduation or within 30 days after the student's graduation date, the cosmetic art school must present to the student his or her ~~examination application~~ licensure registration documentation.

(b) This ~~examination application~~ licensure registration documentation must be signed by the owner/director, a teacher, and the student and must have the seal of the school affixed.

(c) The ~~examination application~~ licensure registration documentation must be prepared on a form furnished by the Board. The cosmetic art school shall mail a copy with the school seal affixed of the ~~examination application~~ licensure registration documentation to the Board at the Board's address.

Authority G.S. 88B-4; 88B-16.

SECTION .0300 - CLASSROOMS

21 NCAC 14I .0301 RECITATION ROOM

(a) Each cosmetic art school shall have a recitation room, large enough to accommodate 20 students, which shall be equipped with desks or chairs suitable for classroom work, chair(s) suitable for demonstrating cosmetology practices, ~~a blackboard~~ a dry erase board, and charts, except that the demonstration chair(s) in a manicurist school need be suitable only for demonstrating manicuring and pedicuring practices.

(b) Charts in the recitation room shall include those with illustrations of the skin, bones, muscles, and nerves of the head, neck, feet, and hands, except that the set of charts in a manicurist school need not include those illustrating the head and neck.

Authority G.S. 88-23; 88-30.

21 NCAC 14I .0303 CLASSROOM BULLETIN BOARD

(a) Each classroom must have a bulletin board on the wall.

(b) Any memorandum, letter, or bulletin issued by the Board, which states that it is to be posted in a cosmetic art school for the information of the students, must be posted on this bulletin board.

(c) A copy of the ~~sanitary~~ sanitation rules must be posted on this bulletin board, also.

Authority G.S. 88-23; 88-30.

SECTION .0400 - LICENSURE OF INDIVIDUALS WHO HAVE BEEN CONVICTED OF A FELONY

21 NCAC 14I .0401 APPLICATION/LICENSURE/INDIVIDUALS WHO HAVE BEEN CONVICTED OF FELONY

~~(a) In addition to other requirements, any applicant who has been convicted of a felony shall supply the following:~~

Any applicant convicted of a felony may apply for Board approval upon enrollment in a cosmetic art school. All documentation submitted shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license; is not binding on the Board with respect to any future application from the individual reviewed; and is not a final agency decision.

The applicant shall supply the following:

(1) A statement of facts of the crime accompanied by a certified copy of the indictment (or, in the absence of an indictment, a copy of the "information" that initiated the formal judicial process), the judgment and the commitment order for each felony for which there has been a conviction.

~~(2) A listing of each place of residence for the applicant since the date of conviction. The applicant shall give the specific address by city or town, county, and state, and the specific dates for each residency.~~

- ~~(3)(2)~~ A copy of the applicant's restoration of rights certificate, if applicable.
- ~~(4)(3)~~ At least three letters attesting to the applicant's character from individuals unrelated by blood or marriage. If available, one of these letters must be from someone familiar with the applicant's cosmetology training and experience, one from the applicant's probation or parole officer, and one from the applicant's vocational rehabilitation officer. If letters from persons in these positions are unavailable, the applicant shall submit an explanatory statement as to why they are unavailable.
- ~~(5)~~ ~~The names and addresses of at least three other unrelated persons who have known the applicant for three or more years.~~
- ~~(6)(4)~~ The name and address of the applicant's current or last employer.
- ~~(7)(5)~~ A brief summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service.
- ~~(8)(6)~~ Records of any cosmetology or manicurist school disciplinary actions.
- ~~(9)(7)~~ A description of any pending criminal charges with a copy of the indictment or, if there is not yet an indictment, the arrest warrant for each pending charge.
- ~~(10)(8)~~ ~~The applicant may supply Any any other information which in the opinion of the applicant would be useful or pertinent to the consideration by the Board of the applicant's request.~~

(b) If a conviction was for an offense involving habitual drug or alcohol abuse, the applicant shall also provide verifiable evidence showing that he or she is drug/alcohol free. Examples of evidence which will be considered are:

- (1) enrollment in an on-going licensed treatment program;
- (2) drug analysis test results; and
- (3) certification of completion of a licensed treatment program.

Authority G.S. 88B-4; 88B-24(1).

21 NCAC 14I .0402 REQUESTS FOR PREAPPLICATION REVIEW OF FELONY CONVICTIONS

~~(a) An individual who intends to begin a course of study at a cosmetic art school or is currently attending cosmetic art school may apply to the Board at any time for a preapplication review of the individual's felony conviction or convictions. The Board will allow only one such request per individual per type of license.~~

~~(b) To obtain a preapplication review, the individual seeking review shall write a letter to the Board specifically asking for a preapplication review and explaining the individual's reason~~

~~for the request, including the name of the school the individual attends or intends to attend and the license the individual intends to seek. The individual shall also provide the information required by 21 NCAC 14I .0401. In reviewing the material submitted, the Board shall determine whether, as of the date of the request, the felony conviction or convictions are or are not sufficient to cause the Board to deny an application for a license and shall notify the individual in writing of its determination.~~

~~(c) A determination that as of the date of the request, the felony conviction or convictions are sufficient to cause the Board to deny an application for a license:~~

- ~~(1) shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license;~~
- ~~(2) is not binding on the Board with respect to any future application from the individual reviewed; and~~
- ~~(3) is not a final agency decision.~~

~~(d) A copy of the information submitted by the individual shall be sent by the Board to the school the individual attends or intends to attend.~~

~~(e) An individual who has obtained a determination that the individual's felony conviction or convictions would not be held sufficient to cause the Board to deny an application for a license shall update the information required by 21 NCAC 14I .0401 in any subsequent application for a license. If such an individual applies for the license specified in the preapplication review request within two years of the request and the information submitted with the application shows no change since the preapplication review, the application will not need additional review by the Board at a Board meeting.~~

Authority G.S. 88-23; 88-26(1).

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0300 - COMBINED STUDIES

21 NCAC 14J .0302 EQUIPMENT

Each cosmetology school shall provide training in the decontamination methods used to prevent the growth of germs and bacteria. Each cosmetology school shall provide the following equipment or supplies for use in the training and teaching of all students:

- (1) containers of sufficient size for the purpose of disinfecting implements by the immersion of implements in an EPA recommended, hospital grade disinfectant solution;
- (2) covered containers for storage of sanitized disinfected implements until they are needed to prevent contamination.

Authority G.S. 88B-4.

SUBCHAPTER 14K - MANICURIST CURRICULUM

SECTION .0100 - MANICURIST CURRICULUM

21 NCAC 14K .0101 UNIFORMS

All students must wear a clean washable uniform or professional attire and nametag pin, or something similar, identifying academic status.

Authority G.S. 88-8; 88-23.

21 NCAC 14K .0103 EQUIPMENT AND INSTRUMENTS

(a) A manicurist school shall be equipped with the following minimum equipment:

- (1) two handwashing sinks, separate from restrooms, located in or adjacent to the clinic area;
- (2) adequate chairs for patrons in the clinic area;
- (3) ten work tables with adequate light in the clinic area for every 20 students;
- (4) pedicure chair and basin;
- (5) one wet and ~~one dry sterilizer~~ covered disinfectant container for each work table;
- (6) a covered waste container located in the clinic area; and
- (7) a covered container for soiled or disposable towels located in the clinic area.

(b) Each student shall be supplied with:

- (1) a manicurist bowl;
- (2) nail brushes;
- (3) a tray for manicuring supplies;
- (4) one mannequin hand;
- (5) a manicuring kit containing proper implements for manicuring and pedicuring; and
- (6) implements for artificial nails, nail wraps and tipping.

(c) The minimum requirement for a school of manicuring with a department of esthetics in its training program shall be one of each item specified in 21 NCAC 14O .0103(a).

Authority G.S. 88B-4.

21 NCAC 14K .0105 IDENTIFICATION PINS

Each student enrolled for a manicurist course only shall wear a pin or something similar, stating "Manicurist Only." The lettering on the pin must be easily read and in large print.

Authority G.S. 88-8; 88-23.

21 NCAC 14K .0107 LIVE MODEL PERFORMANCES

(a) In completing the 40 hours of live model performances required by 21 NCAC 14K .0102(b), all manicurist students shall complete the following minimum number of live model performances during the manicurist course under the supervision of a licensed cosmetic art teacher before taking the manicurist ~~examination-examination~~ and submission of the license registration documentation:

- (1) 15 manicures, including trimming, filing, and shaping; decorating; and arm and hand massage;

- (2) 100 applications or repair of sculptured or other artificial nails; and
- (3) 4 pedicures.

(b) No manicurist student may perform any live model performances until he or she has completed 16 hours of classroom work.

(c) Live model performances are the rendering of the required service on a live person other than himself or herself. They do not include performing the service on a mannequin.

Authority G.S. 88B-4; 88B-10.

SUBCHAPTER 14L – COSMETIC ART TEACHERS

SECTION .0100 – TEACHER QUALIFICATIONS AND EXAMINATIONS

21 NCAC 14L .0106 APPLICATION TO TAKE EXAMINATION

(a) To apply to be a cosmetic art teacher, an applicant must apply to the Board on a form provided by the Board. ~~The form requires the applicant to provide proof of the qualifications listed in either Rules .0101 or .0102 of this Section.~~

(b) The Board will not consider an application until the applicant submits all the information required by the application form.

(c) An applicant cannot take the cosmetic art teacher examination until the Board approves the applicant's application.

Authority G.S. 88-23.

SECTION .0200 - TEACHER PROGRAM AND CURRICULUM

21 NCAC 14L .0208 SUPERVISION OF COSMETIC ART TEACHER TRAINEE

(a) A cosmetic art teacher trainee shall be supervised by a cosmetic art teacher at all times when the trainee is at a cosmetic art school.

(b) Notwithstanding Paragraph (a) of this Rule, a manicurist or esthetician teacher may not supervise a cosmetologist teacher trainee with regard to any cosmetic art other than ~~manicuring as defined in Rule 14A .0101(8)-manicuring or esthetics, as appropriate.~~

(c) Violation of this Rule is just cause to revoke the Board's approval of the cosmetic art school's teacher trainee program for a period of one year.

Authority G.S. 88-23.

21 NCAC 14L .0210 EFFECT ON STUDENT-TEACHER RATIO

(a) A student who is either a ~~cosmetology~~ cosmetology, esthetics or manicurist teacher trainee need not be counted as a student in computing the allowable student-teacher ratio set by 21 NCAC 14G .0113. However, a cosmetic art school must have at least:

- (1) One cosmetology teacher for every five cosmetology teacher trainees, or

cosmetologist, manicurist, and esthetician trainees combined; or

- (2) For manicurist teacher trainees only, one cosmetology or manicurist teacher for every five manicurist teacher trainees.

(b) A cosmetic art school may not count a teacher trainee as a cosmetic art teacher in computing the allowable student-teacher ratio set by 21 NCAC 14G .0113. Teachers included in the ratio determined under 21 NCAC 14G .0113 may be included in computing the ratio required by this Rule.

Authority G.S. 88B-4.

21 NCAC 14L .0214 FEE

~~An applicant for a cosmetic art teacher's license shall pay the fees as set by G.S. 88B-20(a) and (b) and (c) if applicable. The Board shall not issue a license until these fees are paid.~~

Authority G.S. 88B-4; 88B-20.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 14N .0102 INITIAL APPLICATIONS AND FEES

~~(a) All applications for examination must be on a form provided by the Board.~~

~~(b) Cosmetologist candidates having completed a minimum of 1000 hours in a cosmetology curriculum from an approved cosmetic art school are authorized to receive the written examination. All cosmetic art licensee candidates must have successfully completed the appropriate cosmetic art curriculum in an approved cosmetic art school before receiving the practical examination.~~

Authority G.S. 88B-4; 88B-7(1); 88B-8(1); 88B-18; 88B-20(a).

21 NCAC 14N .0103 GENERAL EXAMINATION INSTRUCTIONS

(a) All candidates scheduled for an examination, conducted by ~~Promissor, Inc., the Board's approved exam provider~~ must bring:

- (1) two forms of signature identification, one of which must be photo bearing;
- (2) ~~your Promissor confirmation number; and exam approval documentation;~~
- (3) practical exam only: tools and supplies (as required by ~~Promissor~~), the Board's approved exam provider, and a ~~mannequin or live model (esthetics exam only); mannequin.~~

(b) No briefcases, bags, books, papers, or study materials are allowed in the examination room. ~~Promissor~~ The exam facility is not responsible for lost or misplaced items.

(c) No cell phones, calculators or other electronic devices are permitted during the examination.

(d) No eating, drinking, smoking or gum-chewing is permitted during the examination.

(e) No visitors ~~(with the exception of models)~~, children, pets or guests are allowed at the test center.

(f) No extra time for the examination will be permitted.

(g) No leaving the test center is permitted during the examination. Candidates may visit the restroom without the proctor's permission, but will not receive any additional time for the examination.

(h) No giving or receiving assistance during the examination. If a candidate gives or receives assistance during the examination, the test center manager will stop the examination and the candidate will be dismissed from the test center. ~~Promissor~~ The Board's approved exam provider will not score the examination and will report the candidate to the Board, which will make any decisions regarding discipline.

(i) Candidates must maintain silence during the examination, and shall not mention the name of the school attended or the names of instructors. Candidates shall not wear or carry any school identification on uniforms or equipment.

Authority G.S. 88B-4; 88B-7; 88B-9; 88B-10; 88B-11; 88B-18.

SUBCHAPTER 14O – ESTHETICIAN CURRICULUM

SECTION .0100 – ESTHETICIAN CURRICULUM

21 NCAC 14O .0101 UNIFORMS

All students in training as an esthetician shall wear a ~~clean, white, clothing, clean washable uniform~~ nametag pin or something similar identifying academic status, ~~and clean, solid white shoes.~~ status.

Authority G.S. 88B-4.

21 NCAC 14O .0102 COURSE OF STUDY

The following course outline is required by the Board before taking the esthetician examination:

- (1) orientation,
- (2) anatomy/physiology,
- (3) hygiene/~~sterilization~~ decontamination /first aid,
- (4) chemistry,
- (5) client consultation,
- (6) facial/body treatment (cleansing, massage, masks),
- (7) hair removal,
- (8) basic dermatology,
- (9) machines, electricity, apparatus,
- (10) aromatherapy,
- (11) nutrition,
- (12) business management,
- (13) make-up/color theory,
- (14) professional ethics.

Authority G.S. 88B- 4.

21 NCAC 14O .0105 IDENTIFICATION PINS

Each student enrolled for an esthetics course only shall wear a nametag pin or something silimar stating "Esthetics ". The lettering on a pin must be easily read and in large print.

Authority G.S. 88B-4.

21 NCAC 140 .0107 SANITATION

- ~~(a) All creams, lotions, and other cosmetics used on patrons must be kept in clean and closed containers.~~
~~(b) All powder used on patrons must be kept in a clean shaker or may be applied by means of cotton or other sanitized application.~~
~~(c) Creams and other semi solid substances must be removed from the container with a sanitized spatula or other article. The use of fingers for removing creams, is prohibited.~~
~~(d) Lotions or fluids shall be poured into a sanitized glass or other containers and shall be applied to the patron by means of cotton or sanitized applicator. Any excess remaining after application shall neither be returned to the original container nor applied to another patron, but shall be discarded immediately.~~
~~(e) Creams, lotions, powder and other cosmetics shall be removed by means of cotton, gauze, pledgets, soft absorbent paper, or other sanitized material.~~
~~(f) Eyebrow pencils must be sharpened after being used on a patron.~~
~~(g) The use of cake mascara is prohibited.~~

Authority G.S. 88B-4.

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

(1)	1st offense	warning(\$100) \$100.00
(2)	2nd offense	\$250.00
(3)	3rd offense	\$500.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

(1)	1st offense	warning(\$100) \$100.00
(2)	2nd offense	\$250.00
(3)	3rd offense	\$500.00

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$300.00
(3)	3rd offense	\$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$300.00
(3)	3rd offense	\$500.00

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

(1)	1st offense	warning (\$50.00)
(2)	2nd offense	\$100.00
(3)	3rd offense	\$200.00

(f) The presumptive civil penalty for teaching with an expired license is:

(1)	1st offense	warning(\$100) \$100.00
(2)	2nd offense	\$250.00
(3)	3rd offense	\$500.00

Authority G.S. 88B-4; 88B-11; 88B-21; 88B-22; 88B- 23(a); 88B-24; 88B-29.

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

(1)	1st offense	warning(\$100) \$100.00
(2)	2nd offense	\$250.00
(3)	3rd offense	\$500.00

(b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:

(1)	1 st offense	\$100.00
(2)	2 nd offense	\$250.00
(3)	3 rd offense	\$500.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0107 LICENSES TO BE POSTED

(a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:

(1)	1 st offense	warning (\$50.00) \$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

(b) The presumptive civil penalty for failure to display a current individual license is:

(1)	1 st offense	warning (\$50.00) \$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

(c) The presumptive civil penalty for a school/shop for allowing an employee to practice cosmetic art without displaying a current license is:

(1)	1 st offense	warning (\$50.00) \$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

(d) The presumptive civil penalty for displaying a copied license is:

(1)	1 st offense	warning (\$50.00) \$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

(1)	1st offense	\$250.00
-----	-------------	----------

- (2) 2nd offense \$500.00
(3) 3rd offense \$1000.00
- (b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:
- (1) 1st offense \$300.00
(2) 2nd offense \$500.00
(3) 3rd offense \$1,000.00
- (c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:
- (1) 1st offense \$300.00
(2) 2nd offense \$400.00
(3) 3rd offense \$500.00
- (d) The presumptive civil penalty for submitting false or fraudulent documents is:
- (1) 1st offense \$500.00
(2) 2nd offense \$800.00
(3) 3rd offense \$1,000.00
- (e) The presumptive civil penalty for refusing to present photographic identification is:
- (1) 1st offense \$100.00
(2) 2nd offense \$250.00
(3) 3rd offense \$500.00
- (f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:
- (1) 1st offense warning (\$300.00)
(2) 2nd offense \$400.00
(3) 3rd offense \$500.00
- (g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:
- (1) 1st offense ~~warning (\$300.00)~~
\$300.00
(2) 2nd offense \$400.00
(3) 3rd offense \$500.00
- (h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:
- (1) 1st offense \$500.00
(2) 2nd offense \$800.00
(3) 3rd offense \$1000.00
- (i) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:
- (1) 1st offense \$300.00
(2) 2nd offense \$500.00
(3) 3rd offense \$1000.00
- (j) The presumptive civil penalty for failure to maintain footspa sanitation records is:
- (1) 1st offense \$100.00
(2) 2nd offense \$200.00
(3) 3rd offense \$300.00

Authority G.S. 88B-4; 88B-24; 88B-29.

21 NCAC 14P .0112 SANITARY RATINGS AND POSTING OF RATINGS - APPLICABLE TO ESTABLISHMENTS WITH A SANITATION GRADE OF LESS THAN 80%

- (a) The presumptive civil penalty for failure to display an inspection grade card is:

- (1) 1st offense ~~warning (\$50.00)~~
\$50.00
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (b) The presumptive civil penalty for non-working toilet facilities is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (c) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:
- (1) 1st offense warning (\$25.00)
(2) 2nd offense \$50.00
(3) 3rd offense \$100.00
- (d) The presumptive civil penalty for failure to provide hot and cold running water is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (e) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)
- (1) 1st offense warning (\$25.00)
(2) 2nd offense \$50.00
(3) 3rd offense \$100.00
- (f) The presumptive civil penalty for failure to have students wear clean washable uniform is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (g) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (h) The presumptive civil penalty for failure to store used or clean protective drapes, linens or towels, or failure to launder used protective drapes, linens or towels is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (i) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (j) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:
- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00
- (k) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:
- (1) 1st offense warning (\$25.00)
(2) 2nd offense \$50.00
(3) 3rd offense \$100.00
- (l) The presumptive civil penalty for failure to have necessary first aid equipment on hand is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$25.00) |
| (2) | 2nd offense | \$50.00 |
| (3) | 3rd offense | \$100.00 |
- (m) The presumptive civil penalty for failure to provide necessary lighting or ~~ventilation, unsanitary conditions~~ ventilation is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |
- (n) The presumptive civil penalty for windows and doors not effectively screened is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |
- (o) The presumptive civil penalty for trash containers not covered is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$25.00) |
| (2) | 2nd offense | \$50.00 |
| (3) | 3rd offense | \$100.00 |
- (p) The presumptive civil penalty for failure to use EPA approved disinfectant is:
- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$50.00 |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |
- (q) The presumptive civil penalty for failure to maintain a sanitary establishment (80% rating or better) is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$25.00) |
| (2) | 2nd offense | \$50.00 |
| (3) | 3rd offense | \$100.00 |

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

- (a) The presumptive civil penalty for failure to record student's hours of daily attendance is:
- | | | |
|-----|-------------------------|--------------------|
| (1) | 1 st offense | warning (\$100.00) |
| (2) | 2 nd offense | \$200.00 |
| (3) | 3 rd offense | \$300.00 |
- (b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |
- (c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist and esthetician enrollments within 15 working days is:
- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |
- (d) The presumptive civil penalty for failure to display a copy of the ~~sanitary~~ sanitation rules is:
- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |
- (e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:
- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
|-----|-------------------------|-------------------|

- | | | |
|-----|-------------------------|----------|
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |
- (f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:
- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$200.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$600.00 |
- (g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all ~~time~~ times is:
- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$200.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$600.00 |

Authority G.S. 88B-4; 88B-16; 88B-29.

21 NCAC 14P .0115 SANITARY RATINGS

The presumptive civil penalty for failure to display a current inspection grade card is:

- | | | |
|-----|-------------------------|---|
| (1) | 1 st offense | warning (\$50.00) <u>\$50.00</u> |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |

Authority G.S. 88B-4; 88B-29.

SUBCHAPTER 14R – CONTINUING EDUCATION

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- (a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle.
- (b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.
- (c) Estheticians and manicurists must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.
- (d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.
- (e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.
- (f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.
- (g) Licensees shall be exempt from 8 hours of continuing education requirements until the license period commencing after their initial licensure.

(h) CE Course instructors shall receive credit for any approved CE class taught once during the renewal period.

(i) Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, 4 hours per renewal period for manicurists and estheticians and 8 hours per renewal period for teachers.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

- (1) A provider as defined in 21 NCAC 14A .0101;
- (2) Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering.
- (3) Proposing a course offering that must include at least 50% of subject matter in the cosmetic arts or cosmetic art teacher training techniques;
- (4) Providing a ~~short~~ detailed resume of for all course instructors.

(b) The following offerings shall not be approved by the Board for continuing education credit:

- (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments;
- (2) Any application that fails to meet the standards of this Rule.

(c) A continuing education number shall be assigned to each approved course.

~~(d) Applications for course approval must be in the Board's office at least 10 days prior to a Board meeting to allow time for review and Board approval.~~

~~(e)(d)~~ Approved courses may be conducted as often as desired during the calendar year.

~~(f) Approved courses not conducted for three consecutive years must be re-approved before they may again be offered.~~

Authority G.S. 88-B 4; 88B-21(e).

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

(a) Programs shall not be approved by the Board in segments of less than ~~one hour~~ two hours.

(b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.

(c) No provider shall certify the attendance of a person who was not physically present during at least ninety per cent of the course time.

(d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee ~~within 30 days after~~ upon completion of the course.

~~(e) Courses by individuals or entities whose principal residence or place of business is not located in North Carolina shall be approved if they comply with the requirements in this Rule.~~

~~(f)(e)~~ Course attendance may be restricted to licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.

~~(g) Passage of an examination by a licensee shall not be a requirement for successful completion of a continuing education course. Correspondence and Internet continuing education courses are not authorized.~~

~~(h)(f)~~ Minimum attendance of a course for credit purposes is four attendees.

~~(i)(g)~~ Each provider shall notify the Board; at least one day in advance, of any additional course dates, or any changes including locations, times, and changes of course instructors.

~~(j)(h)~~ Each provider shall submit to the Board, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number;
- (7) Continuing education hours earned.

~~(k)(i)~~ The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(l) Random audits of CE course providers will be conducted and complete records must be provided to the Board upon request.

Authority G.S. 88B-4; 88B-21(e).

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Massage and Bodywork Therapy intends to amend the rule cited as 21 NCAC 30 .0626.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: June 19, 2008

Time: 11:00 a.m.

Location: Wachovia Capitol Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC 27601

Reason for Proposed Action: This amendment is being submitted due to changes in the school approval process.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to this proposed amendment by submitting a written statement to Charles P. Wilkins at PO Box 2539, Raleigh, NC 27602, postmarked on or before August 4, 2008.

Comments may be submitted to: Charles P. Wilkins, PO Box 2539, Raleigh, NC 27602, phone (919) 833-2752, fax (919) 833-1059, email cwilkins@bws-law.com

Comment period ends: August 4, 2008

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 .0600 - MASSAGE AND BODYWORK
THERAPY SCHOOLS**

**21 NCAC 30 .0626 STUDENT COMPENSATION
PROHIBITED**

A student ~~enrolled in a Board-approved school~~ shall not receive a fee, tip or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

Authority G.S. 90-626(9); 90-631.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0318.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: July 25, 2008

Time: 1:00 p.m.

Location: NC Board of Nursing office, 3724 National Drive, Ste. 201, Raleigh, NC 27612

Reason for Proposed Action: To amend this rule to require all nursing faculty initially employed after December 31, 2015 to also meet the standards for faculty preparation as set by a national nursing accreditation body recognized by the United States Department of Education [21 NCAC 36 .0120(29)].

Procedure by which a person can object to the agency on a proposed rule: Person may submit objections to this rule by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, NC 27602, fax (919) 781-9461, or email: jeans@ncbon.com.

Comments may be submitted to: Jean H. Stanley, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211 ext. 252, fax (919) 781-9461, email jeans@ncbon.com

Comment period ends: July 25, 2008

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: A copy of the fiscal note can be obtained from the agency.

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

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0318 FACULTY

(a) Full-time and part-time faculty members ~~shall be~~ are considered nursing program faculty. When part-time faculty are utilized, they shall participate in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.

(c) Nurse faculty members shall be academically qualified and sufficient in number to accomplish program outcomes.

(d) Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall document current licensure to practice as a registered nurse in North Carolina.

(e) Nursing faculty who teach in a program leading to initial licensure as a nurse shall:

- (1) hold either a baccalaureate in nursing or a master's degree in nursing from an accredited institution;
- (2) if employed after December 31, 1983, have two calendar years or the equivalent of full time clinical experience as a registered nurse;
- (3) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of education course work;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met

and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

(4) by December 31, 2010, all ~~current~~ faculty shall meet the requirements in Subparagraph (e)(3) of this Rule;

(5) maintain competence in the areas of assigned responsibility; ~~and~~

(6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse; and

(7) if initially employed after December 31, 2015, meet standards established by a nursing accreditation body as defined in 21 NCAC 36 .0120(29).

(f) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

(g) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

(h) Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(i) Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.

(j) There shall be written evaluation of each nurse faculty member by the program director or a designee; and a written evaluation of the program director according to the institutional policy.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

This Section contains information for the meeting of the Rules Review Commission on Thursday April 17, 2008, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. 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
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

May 15, 2008 June 19, 2008
July 17, 2008 August 21, 2008

**RULES REVIEW COMMISSION
April 17, 2008
MINUTES**

The Rules Review Commission met on Thursday, April 17, 2008, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jeff Gray, Keith Gregory, Jennie Hayman, Clarence Horton, John Lewis and Dan McLawhorn.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel, and Angela Person, Administrative Assistant.

The following people were among those attending the meeting:

Nancy Pate	Department of Environment and Natural Resources
Jim Hayes	DENR/Environmental Health
Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Dana Vojtko	Office of Administrative Hearings
Daniel Garner	Office of the Commissioner of Banks
Mary Bethel	AARP of the Carolinas
Doug Barrick	Department of Health and Human Services
Erin Gould	Department of Labor
Gretchen Aycock	Department of Administration
Andrea Borden	DHHS/DMH/DD/SAS
Teresa Smith	DHHS/Division of Medical Assistance
Kris Horton	DHHS/Division of Medical Assistance
Barry Gupton	Department of Insurance/Building Code Council
Ron Chilton	Department of Insurance
Rose Williams	Department of Insurance
Joan Troy	Wildlife Resources Commission
Bob Fitzgerald	DHHS/Division of Health Service Regulation
Kate Pipkin	Wildlife Resources Commission
Ian Palmquist	Equality NC
Jan Withers	DHHS/Division of Services for the Deaf and Hard of Hearing
Sandra Johnson	Department of State Treasurer
Will Crumbley	Office of State Budget and Management
Kent Nelson	Wildlife Resources Commission
David Cobb	Wildlife Resources Commission

Dedra Alston	DHHS/Division of Child Development
Peggy Oliver	Office of State Personnel
Lisa Johnson	DHHS/Social Services Commission
Mike Abraczinskas	DENR/Division of Air Quality
Robert Privott	North Carolina Health Board Administration
Barbara Ryan	DHHS/Division of Health Service Regulation

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the March 20, meeting. There were none and the minutes were approved as distributed.

A public hearing was held on the revisions to the RRC rules that were published in the March 17 Register. There were no speakers. Written comments will be accepted until May 16, 2008.

FOLLOW-UP MATTERS

01 NCAC 44A .0301 – Department of Administration. The Commission approved the rewritten rule submitted by the agency.

04 NCAC 03M .0401 – Office of the Commissioner of Banks. The Commission approved the rewritten rule submitted by the agency. The Commission has received requests from more than 10 persons clearly requesting legislative review of this rule and it is therefore subject to a delayed effective date.

10A NCAC 13B .3302 – Medical Care Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 13F .1604 – Medical Care Commission. The Commission approved the rewritten rule submitted by the agency. The Commission has received requests from more than 10 persons clearly requesting legislative review of this rule and it is therefore subject to a delayed effective date.

10A NCAC 13G .1604 – Medical Care Commission. The Commission approved the rewritten rule submitted by the agency. The Commission has received requests from more than 10 persons clearly requesting legislative review of this rule and it is therefore subject to a delayed effective date.

15A NCAC 06E .0107 – Soil & Water Conservation Commission. No rewritten rule has been submitted and no action was taken.

15A NCAC 06I .0107 – Soil & Water Conservation Commission. No rewritten rule has been submitted and no action was taken.

15A NCAC 18A .3802 – Commission for Public Health. The Commission approved the rewritten rule submitted by the agency.

25 NCAC 01L .0102 – State Personnel Commission. No rewritten rule has been submitted and no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules.

Commissioner Gray recused himself and did not participate in any vote concerning rules from the Board of Barber Examiners because he is the attorney for the Agency.

All rules were approved unanimously with the following exceptions:

10A NCAC 27G .0212: Commission for Mental Health - The Commission objected to this rule based on ambiguity. In (e) line 20 it is unclear what constitutes “indirect” control of a provider agency.

10A NCAC 67A .0107: Social Services Commission – The Commission extended the period of review on this rule. The Commission took this action in order to give the agency an opportunity to explain the necessity for the rule and to explain how the costs would be allocated if the clients are not actually identified but have multiple clients assigned to a single case manager.

12 NCAC 11 .0210: Alarm Systems Licensing Board – At the Agency’s request there was no action taken on this rule and it will be considered at the next RRC meeting.

15A NCAC 10C .0107: Wildlife Resources Commission – The Commission objected to this rule based on lack of authority. There is no authority for submitting a rule that is purportedly a rule made jointly with the Marine Fisheries Commission and covering jurisdictional joint waters enforced by both agencies without an indication that the Marine Fisheries Commission has adopted a companion rule.

15A NCAC 10I .0104: Wildlife Resources Commission – On a motion made by Commissioner McLawhorn, the Commission extended the period of review on this rule. The Commission took this action in order to obtain additional information concerning the addition of the two species identified in (b)(3)(A) and (B). The Commission wishes the agency set out the steps the agency took to comply with G.S. 113-334 and specify what factors listed in (c)(1) – (6) were considered. The Commission would especially like to know what factors the agency considered that made these two species eligible for listing. Although the Commission may take up to 70 days before taking further action, it would likely take this matter up at its May 15 meeting if the agency provides this explanation either in writing by May 13 or in person at the meeting. It is also possible, given the Commission’s concerns about only these particular amendments, that the Commission would approve the rule if those species were removed from the listing.

21 NCAC 06A .0103: Board of Barber Examiners – The Commission objected to this Rule based on ambiguity. It is not clear what is meant by recognized State holidays. There are at least two lists of holidays to which the rule could be referring. G.S. 103-4 lists the legal public holidays in North Carolina. 25 NCAC 1E .0901 lists the holidays applicable to State employees subject to the State Personnel Act. It is not clear which, if either, of the lists applies to this Branch’s office and is “recognized”.

21 NCAC 06J .0109: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority. The agency has cited no authority for it to adopt a rule requiring the maintaining of photo identification in the possession of an apprentice barber or student barber.

21 NCAC 06K .0110: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the Board to adopt a rule requiring the maintaining of photo identification in the possession of a registered barber.

21 NCAC 06L .0106: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority and necessity. Subparagraph (b)(1) of this Rule is not consistent with G.S. 86A-15 (a)(1)b. The rule requires a partition or wall between a barber shop and cosmetology shop. The statute allows barber services and cosmetology services to be rendered in the same area with a partition or wall separating other areas. There is no authority cited for the Board to require that the two areas be separated. The statute was amended to allow the combination of services in 1996 following the adoption of the rule requiring separation effective in 1995. The remainder of Paragraph (b) appears to be unnecessary since it repeats the provisions of Rule .0102. The last sentence in (c) also appears to be beyond the agency’s cited authority. The basement ceiling would seem to constitute a substantial partition. The rulemaking authority in G.S. 86A-15(b) is limited to the proper administration and enforcement of that section. Similarly, the first sentence in (e) does not appear to be related to the proper administration and enforcement of any part of G.S. 86A-15 and thus there is no authority cited for it. This objection applies to existing language in the rule.

21 NCAC 06L .0115: Board of Barber Examiners – The Commission objected to this Rule based on ambiguity. It is not clear what standards the Executive Director and inspector will use in assigning numerical and letter sanitary grades

21 NCAC 06O .0112: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority. Because there was no authority cited to require a barber, apprentice, or holder of permission to work to maintain and produce identification, there is no authority for penalizing him for failing to do so in (b).

21 NCAC 06O .0114: Board of Barber Examiners – The Commission approved this Rule contingent on receiving a technical change. The technical change was subsequently received.

21 NCAC 06O .0115: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority. The maximum penalty the board is allowed to charge pursuant to G.S 36A-27 is \$500. There is therefore no authority cited for the board to charge a fee of \$750.00 as is possible in (b).

21 NCAC 06P .0103: Board of Barber Examiners – The Commission objected to this Rule based on ambiguity. There are terms that may need defining to resolve objections to the rules.

21 NCAC 06Q .0101: Board of Barber Examiners – The Commission objected to this Rule based on lack of statutory authority and necessity. Item (1) repeats the substance of G.S. 86A-1 and is therefore unnecessary. Item (2) repeats the substance of G.S. 86A-13 and is therefore unnecessary. In Item (3), there is no authority cited to prohibit teaching without a license. The Agency may be able to penalize a school that uses an unlicensed instructor. There is no authority cited for Item (4). There is no authority cited for Item (5). Item (6) repeats the substance of G.S. 86A-13 and is therefore unnecessary. Item (7) repeats the substance of Item (3) and is therefore unnecessary. There is also no authority cited for it. Item (8) repeats the substance of G.S. 86A-15 and is therefore unnecessary. Item (9) repeats the substance of G.S. 86A-20 and is therefore unnecessary. Item (10) repeats the substance of G.S. 86A-20 and is therefore unnecessary. In Item (11), the parts of this item for which there is authority repeat the contents of G.S. 86A-15 and therefore are unnecessary. There is no authority cited for Item (12) and it repeats a rule and is therefore unnecessary. There is no authority cited for Item (13) and it repeats a rule and is therefore unnecessary. Item (14) repeats the contents of G.S. 86A-20 and is therefore unnecessary.

NC Electrical Code – Building Code Council. The Commission has received requests from more than 10 persons clearly requesting legislative review of 210.12, 338.10(B)(4)(a), and 406.11 and they are therefore subject to a delayed effective date.

Commissioner Crisp voted against the motion to approve all of the rules presented by the Building Code Council.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 12:05 p.m.

The next scheduled meeting of the Commission is Thursday, May 15 at 10:00 a.m.

Respectfully Submitted,
Angela J. Person
Administrative Assistant

LIST OF APPROVED PERMANENT RULES **April 17, 2008 Meeting**

ADMINISTRATION, DEPARTMENT OF

Required Documentation 01 NCAC 44A .0301

BANKS, OFFICE OF THE COMMISSIONER

Annual Reporting Requirements 04 NCAC 03M .0401

MEDICAL CARE COMMISSION

Minimum Provisions of Patient's Bill of Rights 10A NCAC 13B .3302

Rating Calculation 10A NCAC 13F .1604

Rating Calculation 10A NCAC 13G .1604

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

Application Information and Procedures 10A NCAC 17D .0205

Eligibility 10A NCAC 17D .0206

Financial Eligibility 10A NCAC 17D .0210

Rights/Consumer Appeals 10A NCAC 17D .0220

HHS - MENTAL HEALTH

Standardized Forms and Processes 10A NCAC 26C .0402

MENTAL HEALTH, COMMISSION FOR

<u>Scope</u>	10A NCAC 26C .0601
<u>Definitions</u>	10A NCAC 26C .0602
<u>Notice of Deficient Performance</u>	10A NCAC 26C .0603
<u>Plan of Correction Requirements</u>	10A NCAC 26C .0604
<u>Focused Technical Assistance</u>	10A NCAC 26C .0605
<u>Removal of LME Function</u>	10A NCAC 26C .0606

HHS - MENTAL HEALTH

<u>Scope</u>	10A NCAC 27A .0301
<u>Definitions</u>	10A NCAC 27A .0302
<u>Clean Claim Format Requirements</u>	10A NCAC 27A .0303
<u>Claims Review Procedures</u>	10A NCAC 27A .0304
<u>Area Board Annual Evaluation of an Area Director</u>	10A NCAC 27G .0507
<u>Carolina Alternatives</u>	10A NCAC 29D .0101

MENTAL HEALTH, COMMISSION FOR

<u>Scope</u>	10A NCAC 29D .0401
<u>Staff</u>	10A NCAC 29D .0402
<u>Operations</u>	10A NCAC 29D .0403
<u>Purpose and Scope</u>	10A NCAC 29D .0601
<u>Definitions</u>	10A NCAC 29D .0602
<u>Written Notice of Intent</u>	10A NCAC 29D .0603
<u>DWI Substance Abuse Assessment Elements</u>	10A NCAC 29D .0604
<u>Qualifications of Individuals Performing Assessments</u>	10A NCAC 29D .0605
<u>Responsibilities of Assessing Agency</u>	10A NCAC 29D .0606
<u>Responsibilities of Treatment or ADETS Providers</u>	10A NCAC 29D .0607
<u>Reporting Requirements</u>	10A NCAC 29D .0608
<u>Pre-Trial Assessments</u>	10A NCAC 29D .0609
<u>Placement Criteria For Assessed DWI Clients</u>	10A NCAC 29D .0610
<u>Documentation Requirements</u>	10A NCAC 29D .0611

INSURANCE, DEPARTMENT OF

<u>Prehearing Conference</u>	11 NCAC 01 .0419
<u>Evidence</u>	11 NCAC 01 .0429
<u>Building Code Publications: General Information</u>	11 NCAC 08 .0203
<u>Application</u>	11 NCAC 20 .0404

LABOR, DEPARTMENT OF

<u>Personal Protective Equipment</u>	13 NCAC 07F .0104
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Prevention of Significant Deterioration</u>	15A NCAC 02D .0530
<u>Sources In Nonattainment Areas</u>	15A NCAC 02D .0531
<u>Purpose and Applicability</u>	15A NCAC 02D .2401
<u>Definitions</u>	15A NCAC 02D .2402
<u>Nitrogen Oxide Emissions</u>	15A NCAC 02D .2403

<u>Sulfur Dioxide</u>	15A NCAC 02D .2404
<u>Nitrogen Oxide Emissions During Ozone</u>	15A NCAC 02D .2405
<u>Monitoring, Reporting, and Recordkeeping</u>	15A NCAC 02D .2407
<u>Designated Representative</u>	15A NCAC 02D .2409
<u>New Unit Growth</u>	15A NCAC 02D .2412

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Taken for Depredations or Accidentally</u>	15A NCAC 10B .0106
<u>Wildlife Collectors</u>	15A NCAC 10B .0119
<u>Bear</u>	15A NCAC 10B .0202
<u>Deer (White Tailed)</u>	15A NCAC 10B .0203
<u>Raccoon and Opossum</u>	15A NCAC 10B .0205
<u>Squirrels</u>	15A NCAC 10B .0206
<u>Rabbits</u>	15A NCAC 10B .0207
<u>Falconry</u>	15A NCAC 10B .0216
<u>Open Seasons</u>	15A NCAC 10B .0302
<u>Bag Limits</u>	15A NCAC 10B .0303
<u>Trappers and Hunters</u>	15A NCAC 10B .0404
<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205
<u>Trotlines and Set-Hooks</u>	15A NCAC 10C .0206
<u>Open Seasons: Creel and Size Limits</u>	15A NCAC 10C .0305
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A NCAC 10C .0401
<u>Taking Non-game Fishes for Bait or Personal Consumption</u>	15A NCAC 10C .0402
<u>Special Device Fishing</u>	15A NCAC 10C .0404
<u>Descriptive Boundaries</u>	15A NCAC 10C .0503
<u>Scope and Purpose</u>	15A NCAC 10C .0601
<u>Anadromous Fish Spawning</u>	15A NCAC 10C .0602
<u>Descriptive Boundaries</u>	15A NCAC 10C .0603
<u>General Regulations Regarding Use</u>	15A NCAC 10D .0102
<u>Hunting On Game Lands</u>	15A NCAC 10D .0103
<u>License to Operate</u>	15A NCAC 10H .0101
<u>General Requirements</u>	15A NCAC 10H .0301
<u>Disposition of Birds or Eggs</u>	15A NCAC 10H .0904
<u>Endangered Species</u>	15A NCAC 10I .0103
<u>Special Concern Species</u>	15A NCAC 10I .0105

PUBLIC HEALTH, COMMISSION FOR

<u>Sample Collection</u>	15A NCAC 18A .3802
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SECRETARY OF STATE, DEPARTMENT OF

<u>Other Violations</u>	18 NCAC 07B .0905
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BARBER EXAMINERS, BOARD OF

<u>Physical Address</u>	21 NCAC 06A .0102
<u>Mailing Address</u>	21 NCAC 06A .0104
<u>Locations of Hearings</u>	21 NCAC 06B .0301

<u>Power to Issue</u>	21	NCAC 06B .0401
<u>Length of Effectiveness</u>	21	NCAC 06B .0402
<u>Request for Declaratory Ruling</u>	21	NCAC 06B .0501
<u>Request After Informal Efforts</u>	21	NCAC 06C .0203
<u>Acknowledgement</u>	21	NCAC 06C .0205
<u>Bias of Board Member</u>	21	NCAC 06C .0903
<u>Physical Structure</u>	21	NCAC 06F .0101
<u>Filing</u>	21	NCAC 06F .0103
<u>Instructors</u>	21	NCAC 06F .0104
<u>Roster and Student Records</u>	21	NCAC 06F .0110
<u>Copies of Barber School Records</u>	21	NCAC 06F .0111
<u>Student Permit</u>	21	NCAC 06F .0113
<u>Barber School Curricula</u>	21	NCAC 06F .0120
<u>Penal Institutions</u>	21	NCAC 06F .0121
<u>Duties and Responsibilities</u>	21	NCAC 06H .0101
<u>Apprentice Barber</u>	21	NCAC 06I .0105
<u>Registered Apprentice</u>	21	NCAC 06J .0101
<u>Registered Barber</u>	21	NCAC 06K .0101
<u>Measurements of Barber Shop</u>	21	NCAC 06L .0102
<u>Equipment</u>	21	NCAC 06L .0103
<u>Lavatory</u>	21	NCAC 06L .0107
<u>Where Barber Services May Be Performed</u>	21	NCAC 06L .0111
<u>Rented Booth Space</u>	21	NCAC 06L .0112
<u>Diseases</u>	21	NCAC 06L .0113
<u>Policy Prohibiting Pets</u>	21	NCAC 06L .0114
<u>Other Duties of Barber Shop Owners and Managers</u>	21	NCAC 06L .0116
<u>General Sanitation</u>	21	NCAC 06L .0117
<u>Duties and Responsibilities</u>	21	NCAC 06M .0102
<u>Fees</u>	21	NCAC 06N .0101
<u>Barber Shops in Residences and Mobile Homes</u>	21	NCAC 06O .0113
<u>Animals in Barber Shops</u>	21	NCAC 06O .0114
<u>Barbering</u>	21	NCAC 06P .0101
<u>Barbering Exemptions</u>	21	NCAC 06P .0102
<u>Effect of Child Support Default on License or Certificate</u>	21	NCAC 06Q .0102
<u>Registered Sex Offender</u>	21	NCAC 06Q .0103
<u>Display of Sign or Barber Pole</u>	21	NCAC 06R .0101

COMMUNITY COLLEGES, BOARD OF

<u>Local College Personnel Policies</u>	23	NCAC 02C .0210
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STATE PERSONNEL COMMISSION

<u>Confidential Information in Personnel Files</u>	25	NCAC 01C .0304
<u>Posting and Announcement of Vacancies</u>	25	NCAC 01H .0631
<u>Compensation of Area Mental Health Directors</u>	25	NCAC 01I .2108

BUILDING CODE COUNCIL

<u>2008 Electrical Code - Administrative Section</u>	Article 10
<u>2008 Electrical Code - Scope, Not Covered</u>	90.2(B)(5)(b)
<u>2008 Electrical Code - Outdoors</u>	210.8(A)(3)
<u>2008 Electrical Code - Arc-Fault Circuit-Interrupter Prot...</u>	210.12
<u>2008 Electrical Code - Grounding Electrode System</u>	250.50
<u>2008 Electrical Code - In Unfinished Basements</u>	334.15(C)
<u>2008 Electrical Code - Receptacles in Dump or Wet Locations</u>	406.8

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

Beecher R. Gray Selina Brooks Melissa Owens Lassiter Don Overby	Randall May A. B. Elkins II Joe Webster Shannon Joseph
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. Agustin Zeferino Hernandez, T/A El Pujido	06 ABC 2275	Chess	10/09/07	
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
ABC Commission v. 703 Jonestown, Inc., T/A Red Rooster	07 ABC 0305	Webster	10/04/07	
ABC Commission v. Donna Darlene Johnston, T/A Wagon Wheel	07 ABC 0738	Webster	09/20/07	
ABC Commission v. Jamal Kamel Hajeh, T/A Pleasant Grove Grocery	07 ABC 0883	Morrison	09/11/07	
ABC Commission v. Jayshreeben Jagishchand Shah, T/A Jay's Grocery #3	07 ABC 1180	Overby	01/11/08	
ABC Commission v. Agustin Zeferino Hernandez	07 ABC 1366	Overby	11/30/07	
ABC Commission v. Francisco Jubier Fuentes T/A Monte del Rey	07 ABC 1644	Gray	03/28/08	
ABC Commission v. Jenny S. Chanthalacksa, T/A JB Food Mart	07 ABC 1941	Brooks	04/30/08	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>BOARD FOR LICENSING OF GEOLOGISTS</u>				
Gary Cox, License #1099 v. Licensing of Geologists, Board for	07 BOG 1065	Gray	02/8/08	
<u>BOARD OF NURSING</u>				
Kenneth C. Johnson v. Board of Nursing	07 BON 1679	Overby	12/13/07	
<u>CRIME VICTIMS COMPENSATION</u>				
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
Michael Shaw v. Crime Victims Compensation Commission	07 CPS 0485	Webster	01/29/08	
Robert White, Jr., v. Crime Victims Compensation Commission	07 CPS 0497	Webster	09/12/07	
Mercer L. Tyson v. Victim and Justice Services	07 CPS 0919	Gray	03/04/08	
Angelina Cooper v. Crime Victims Compensation Commission	07 CPS 1271	Lassiter	04/22/08	
Renee L. Hunter	07 CPS 1408	Joseph	10/24/07	
Martha M. McMillan v. Victim and Justice Services	07 CPS 1560	Overby	12/18/07	
Eric Triplett v. Victim and Justice Services	07 CPS 1561	Lassiter	12/14/07	
Maria S. Riah v. Victims and Justice Services	08 CPS 0248	Gray	04/28/08	
Nelson A. Park IV v. Victim and Justice Services	08 CPS 0312	Overby	03/19/08	
<u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u>				
DAG, Food and Drug Protection Division, Pesticide Section v. Jeffrey A. Oxley	06 DAG 0636	Webster	10/04/07	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care	03 DHR 0945	Overby	04/16/07	

CONTESTED CASE DECISIONS

Licensure Section

Drake Groves and Progressive Child Care, Inc., v. DHHS, Div. Child Development	05 DHR 0656	Elkins	03/07/08	
Sherri Groves and Play Penz Child Care, Inc., v. DHHS, Div. Child Development	05 DHR 0656	Elkins	03/07/08	
Claude Hayes v. DHHS, DFS, Health Care Personnel Registry	05 DHR 1672	Elkins	02/14/08	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 1508	Gray	01/03/08	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 1771	Gray	01/03/08	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 2324	Gray	01/03/08	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	05 DHR 0305	Gray	01/03/08	
Regina Hampton v. Health Care Personnel Registry	06 DHR 0247	Webster	12/31/07	
Paul Avery Morton II v. DHHS	06 DHR 0345	Chess	01/11/08	
Mary Elizabeth Matthews v. DHHS, Division of Medical Assistance	06 DHR 0485	Mann	10/01/07	
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2-19-2008 12:57:00 PM

STATE OF NORTH CAROLINA

COUNTY OF AVERY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
07 DHR 0252

Grandfather Home for Children, Inc.

Petitioner

vs.

N.C. Department of Health and Human
Services; N.C. Department of Health and
Human Services, Division of Facility Services;
N.C. Department of Health and Human
Services, Division of Mental Health,
Developmental Disabilities and Substance
Abuse Services
Respondent

DECISION

This contested case was heard before Administrative Law Judge Donald W. Overby in Morganton, North Carolina on October 22 and 23, 2007.

APPEARANCES

For Petitioner: Christopher W. Jones
Sarah L. Buthe
Womble Carlyle Sandridge & Rice, PLLC
Post Office Box 831
Raleigh, NC 27602

For Respondents: Lisa Granberry Corbett
Joseph E. Elder
Assistant Attorneys General
N. C. Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

ISSUES

Whether, in denying Grandfather Home for Children, Inc.'s ("Grandfather Home") request for a waiver of 10A N.C.A.C. 27G.1704(c) ("Waiver Request"), the Division of Facility Services ("DFS") and Division of Mental Health, Developmental Disabilities and Substance Abuse Services ("DMH") acted erroneously, arbitrarily and capriciously, failed to act as required by law, or failed to use proper procedure; and whether the denial of Grandfather Home's Waiver Request constituted an abuse of discretion.

APPLICABLE STATUTES AND RULES

N. C. Gen. Stat. §§ 150B-1 and 150B-2
N. C. Gen. Stat. §§ 150B-22 through 150B-37
N. C. Gen. Stat. §§ 122C-21 through 122C-50
10A N.C.A.C. 27G.1704
10A N.C.A.C. 27G .0813

EXHIBITS

For Petitioner: Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

For Respondent: Exhibits 1, 2, 3

Both Petitioner's and Respondent's Exhibits are contained in a notebook labeled "Joint Stipulations and Exhibits" and tab-numbered 1 – 5, 7 – 8, 11 – 13, 15 – 17, 19 – 20, 23 – 25, and 29. Petitioner's exhibit 13 is contained in a separate, labeled notebook.

FINDINGS OF FACT

In making these Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness and any interests, bias, or prejudice the witness may have. Further, the undersigned carefully has considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

After careful consideration of the sworn testimony presented at the hearing, the deposition excerpts and exhibits stipulated and/or admitted into evidence, and the entire record in this proceeding, the undersigned makes the following

FINDINGS OF FACT:

Overview

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein. All parties properly received timely notice of hearing.
2. Respondent, North Carolina Department of Health and Human Services, Division of Facility Services ("DFS") is an administrative agency of the North Carolina State Government operating under the laws of North Carolina.
3. Respondent, North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services ("DMH") is an administrative agency of the North Carolina State Government operating under the laws of North Carolina.

4. DFS licenses nearly four thousand mental health, substance abuse and developmental disability facilities in North Carolina. DFS conducts oversight of these facilities to ensure compliance with the laws and rules applicable to these facilities and to impose penalties and licensure action for noncompliance with such laws and rules.
5. Grandfather Home is a non-profit organization that operates a residential mental health treatment facility in Banner Elk, North Carolina for children who have been sexually abused and/or who are sexually reactive. Grandfather Home has been in existence since 1914 and was originally established as an orphanage.
6. Grandfather Home is a unique, or “niche”, treatment provider for a special population of children who have been severely abused and have gone through, on average, nine prior placements, including foster and group home arrangements that have not been successful in meeting their complex needs. The home is a provider of services to children from all across North Carolina.
7. Grandfather Home maintains a 24-hour campus that houses between 35 and 40 children in six multi-level cottages, which have single- and multi-child bedrooms, staff quarters, and various common areas including kitchens and living rooms. The cottages are typically multi-level buildings of approximately three thousand to four thousand square feet. One of the cottages was under renovation at the time of the hearing.
8. Grandfather Home is funded by a mix of public tax-based funds and private funds. The home is a direct Medicare provider.
9. Since 1999, Grandfather Home has used a sophisticated, state-of-the-art camera system, with security guards and direct care staff, to ensure the safety and security of its residents and to ensure real-time detection of, and swift response to, any night-time incidents involving its residents. Grandfather Home has spent hundreds of thousands of dollars to institute, improve and up-grade its camera system. The children being housed and treated at Grandfather Home have named the camera system the “safety” camera system. The children feel safer with the camera system in place.
10. Grandfather Home instituted its camera system taking into account its long experience and observed challenges/problems with awake night staff, including the difficulty of supervising night staff, the less talented applicants interested in serving as awake night staff, the difficulties of finding awake night staff in a rural community, and awake night staff’s inability to observe events in rooms other than those in which they are physically situated in multi-level, multi-room cottages like Grandfather Home’s.
11. Awake night staff generally has no interaction with residents during the day and have no relationship with the children, and, therefore, intervention by this staff can be traumatic for the children and can cause problems in their treatment. Having the same day staff with whom the children have a working relationship in the cottages at night is an integral part of the therapeutic model of Grandfather Home, and provides less trauma to the children in the instances when intervention becomes necessary.

12. The safety camera system links each cottage to a central monitoring room. The monitoring room contains television monitors linked to the six cottages and each monitor contains cubes, each displaying the image picked up by a particular surveillance camera. The monitoring room contains a security camera that also observes and records the security guards who are to monitor the televisions.

13. Surveillance cameras are located in the cottage bedrooms and hallways and are activated during sleeping hours beginning approximately at 9PM after direct care staff supervision has stopped for the night. Grandfather Home has been very mindful of privacy in the installation of the system, and there are no cameras in the bathrooms.

14. With Grandfather Home's camera system, direct care staff members are present in each of Grandfather Home's family-style cottages during sleep hours and sleep only after all clients are confirmed to be asleep. There is no direct care staff awake in the cottages during sleep hours unless alerted by the security guards that an intervention is required. These are the same direct care staff members who work with the children during the day and therefore have developed close relationships with the children. The staff must be awake by 6AM.

15. Two security guards conduct monitoring of Grandfather Home's six cottages. After 11:00 p.m., the security guards take turns patrolling Grandfather Home's campus, including sweeps through each cottage. They do so with an electric wand that records the guards' presence and allows Grandfather Home to confirm that the guards are fulfilling their duties. One security guard monitors the television bank and the other security guard conducts rounds of the facility grounds and buildings. It takes approximately fifty (50) minutes to conduct such a round. The security guards alternate who conducts rounds and who remains in the monitoring room.

16. At all times during regular sleep hours, there is constant observation of the camera monitors by at least one security guard. Each evening, the residents are informed that the system is being powered on during regular sleep hours and motion-sensitive video cameras and microphones send audio and video feeds from within the cottages to the security guard's desk. If any motion is detected, a red light goes on and draws attention to the monitor on which motion was detected, alerting the guard and allowing the guard to take appropriate action.

17. The security guards are themselves videotaped, and the recorded videos of the guards are reviewed on a weekly basis to ensure that the security guards are diligently fulfilling their duties.

18. The security guards who monitor the television bank are not trained as direct care staff. They are screened and hired by an independent security company. They are well trained and specifically receive training on the security camera system from Grandfather Home.

19. The security guards who conduct the monitoring of the camera system are trained to make decisions based on predetermined criteria provided to them. They must be able to distinguish between whether the behavior exhibited by a child should be logged for informational purposes only and whether the exhibited behavior requires intervention and should be reported to direct care staff for appropriate action. The security guards do not provide treatment intervention.

20. Information that the guards log becomes part of the children's files and provides Grandfather Home's staff with valuable treatment information.
21. In the event a resident engages in behavior requiring intervention, the security guards immediately call a direct care staffer in the affected cottage, and the direct care staffer, who has a close relationship with the child, intervenes to appropriately redirect the child or otherwise resolve the incident.
22. Since the camera system has been in use, all night time incidents with residents have been appropriately the subject of interventions or other appropriate response.
23. Both prior to and since installation, the camera system's efficacy has been the subject of detailed design, monitoring, and study by Grandfather Home.
24. Robert L. Houck, PhD previously worked as chief operations officer of Grandfather Home with duties including overseeing technology systems and human resources. Dr. Houck was offered and accepted as an expert witness on behalf of Petitioner with respect to residential treatment facilities and treatment of abused youth and adolescents.
25. Dr. Houck prepared two studies of the safety camera system in use at Grandfather Home. Dr. Houck's June 2005 study reviewed observations and recorded behaviors made by the security guards for all six cottages at Grandfather Home for the months February, March and April of 2005. Dr. Houck prepared a report of his results which included the following: the total number of observations in each cottage, the number of required interventions, the number of observations and interventions by cottage, the number of staff notifications by hour, and staff response times when an intervention was required.
26. Dr. Houck's June 2005 study did not include comparative data between the response times of direct care staff when using the safety camera system and response times of awake direct care staff during client sleep hours. There was no awake direct care staff at the home during the monitored time period with which to compare, and no such comparative data exists.
27. Dr. Houck's analysis of the data on the electronic video monitoring system found, among other things, that only 11% of incidents that occurred in the cottages occurred during normal sleep periods. The vast majority of incidents tended to occur when the clients had just retired for the night or were awaking for the day—when direct care staff members in the cottages are awake. In the relatively rare event of an incident after the direct care staff was asleep, the safety camera system and attendant procedures produced a direct care staff intervention response time of less than 2 minutes in 85% of cases, and less than 3 minutes in 95% of cases.
28. A random review of the video of the security guards revealed that they left the monitor bank unattended only three times, each time for less than 7 seconds.
29. Grandfather Home's safety camera system was upgraded in April 2006 by replacing all cameras on the Banner Elk campus with new infra-red cameras and replacing the analog recorders with digital recorders.

30. Dr. Houck conducted a study in July 2006, reviewing and comparing the upgraded digital safety camera system against the old analogue safety camera system. The study included a review of January, February, March, April, May and June 2006. For the months of January, February and March, the old camera system was in use and for the months April, May and June the upgraded digital system was in use. As with Dr. Houck's previous study of the safety camera system, this study did not include comparative data between the response times of direct care staff using the safety camera system and response times of awake direct care staff during client sleep hours. No such data existed for this campus or elsewhere during this time frame.

31. In his July 5, 2006 report Dr. Houck stated that by replacing the electronic video monitoring system with the new infra-red cameras and digital recorders permitted "improved night vision," "a refinement of the motion alert system[.]" and "a rapid and concise search capability of the archived recordings when questions arise regarding any specific point in time."

32. Dr. Houck analyzed data on the upgraded electronic video monitoring system and found, among other things, that the response time in the event of a night-time incident requiring direct care staff intervention was found to be under 3 minutes in 98% of cases and under 2 minutes in 95.3% of cases.

33. Only 7% of observations requiring notification of direct care staff in the cottages occurred during normal sleep periods, with the vast majority of incidents occurring when the clients have just retired for the night or are awaking for the day—that is, when direct care staff members in the cottages are awake. Dr. Houck found no occasions where the guards left the monitor bank unattended and concluded that:

34. [T]he basic response time and accuracy [of the electronic video monitoring system] remain at a consistently high level. Both staff and children continue to voice confidence in the importance of the system in maintaining a safe and therapeutically sound living and treatment environment. For the staff the system provides a level of night supervision of the children far above what could be achieved by an awake staff and provides protection from false allegations by the children of staff behavior. For the children it provides tangible and testable evidence of the safety and security of their environment.

35. Dr. Houck concluded that the safety camera system was "operating as it was designed to operate" and "is really good at not only detecting behavior, but getting immediate, coordinated response to that behavior by qualified staff who are trained to address the needs of the child, and who are familiar with the child...."

36. Grandfather Home has also sought the substantiation of the efficacy of the safety camera system by independent third parties.

37. Grandfather Home is accredited by both the Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission") and the Council on Accreditation ("COA"). Both the COA and the Joint Commission have rigorous staffing requirements, including the same or similar awake direct staff as required by the rule here in question, 10A N.C.A.C. 27G.1704(c). Both the COA and the Joint Commission accredited Grandfather Home after having visited the

facilities and having studied the safety camera system. Both accrediting organizations accepted the safety camera system as meeting their rigorous standards in lieu of awake direct staff.

38. After investigating the safety camera system, the COA found that Grandfather Home “is providing closer supervision and more appropriate care than would be provided by an awake night staff member without the monitoring system used” and that “the technology installed exceeds the coverage provided by the awake night staff member.” In a May 2006 letter informing Grandfather Home of its re-accreditation, the COA “once again welcome[d]” Grandfather Home “to the Community of Excellence, that unique group of providers that meets the highest standards of professional performance.”

39. Grandfather Home sought further validation of the safety camera system and requested an independent outside review by Steven M. Bengis, Ed.D., L.C.S.W., Executive Director of the New England Adolescent Research Institute, Inc. and a nationally and internationally renowned expert in child psychology, residential treatment facilities, and evaluating treatment programs for abuse victims. He was admitted as an expert witness in those fields.

40. Dr. Bengis was initially very reluctant and attempted to dissuade Grandfather Homes from utilizing his services because he was very skeptical about the efficacy of camera systems. Grandfather Home persisted in its request at least in part because of his reluctance and as well as a sense that Dr. Bengis’ skepticism would ensure an honest appraisal of its camera system.

41. Pursuant to Grandfather Home’s request, Dr. Bengis conducted an evaluation of Grandfather Home’s safety camera system in the spring of 2000. Additionally, as a retained expert for Petitioner, Dr. Bengis reviewed Grandfather Home’s waiver request and the reports of Dr. Houck.

42. Dr. Bengis testified that he studied and evaluated Grandfather Home’s Safety Camera System in 2000. Dr. Bengis toured the Grandfather Home facility and observed the safety camera system in operation including observing the system during client sleep hours, testing the response time of direct care staffers, interviewing staff and clients, and learning about the system’s technical information. He observed the system in operation for approximately one hour, between midnight and 1AM. Dr. Bengis also had the security guards conduct an informal test of the time it took sleeping direct care staff to respond when called by the security guards.

43. Dr. Bengis concluded that the safety camera system was a better form of detection than awake direct care staff and that more constant observation was possible with the use of the camera system. Dr. Bengis was not aware of any established baseline data for how quickly night staff responds, whether staff is asleep, and what is detected. Dr. Bengis was not aware of any other facilities that use a safety camera system in lieu of awake direct care staff during sleep hours and did not compare response times using the safety camera system against response times of awake direct care staff during sleep hours since, to his knowledge, none exists.

44. It is only common sense that awake direct staff can only respond to any situation requiring intervention when it becomes aware of the situation. Detection by staff or report by clients would be the primary if not the only means by which staff could be made aware of the

necessity of intervention. Awake direct staff cannot observe the clients to the degree the camera system provides.

45. Dr. Bengis testified that, among other things, the Safety Camera System provides data comparable to an awake night staffer directly observing (i.e., physically in the same room) an incident and superior to a staffer responsible for monitoring more than one room simultaneously, that staff response times with the Safety Camera System are comparable or superior to those of awake night staff, that Grandfather Home's family teaching model, with consistent, live-in staff, is superior to a "shifts" model common in many residential facilities and essentially mandated by that which the State seeks to impose upon Grandfather Home.

46. Dr. Bengis testified that while he was initially skeptical of a system using cameras instead of people, he found Grandfather Home's Safety Camera System to be superior to awake night staff. Indeed, Dr. Bengis testified that Grandfather Home's "model is a gold standard" that he has recommended to others.

47. In a settlement agreement signed in December 2005 concerning another facility operated by Petitioner at a different location, the Department of Health and Human Services ("DHHS") recognized that Grandfather Home's use of safety cameras is allowed and meets statutory objectives by concluding that the Safety Camera System "if operated as described ... compl[ied] with the laws and rules governing licensure of a residential mental health treatment facility...."

48. In 2000, Grandfather Home filed in the Office of Administrative Hearings a contested case against Respondent herein because of a reduction in its reimbursement rate with the Safety Camera System primarily at issue. Through a settlement agreement between the parties, Grandfather Home's reimbursement rating was restored; however, the settlement agreement was without specificity concerning the camera system.

Grandfather Home's Waiver Request

49. Based on its use of the safety camera system, Grandfather Home's submitted a rule waiver request to DFS on November 22, 2006 ("Waiver Request"). Grandfather Home's requested that it be allowed to use its safety camera system in lieu of the staffing requirements set forth in 10A N.C.A.C. 27G.1704(c) requiring awake direct care staff during sleep hours.

50. From the testimony of Respondent's witnesses, a piecemeal "procedure" or "process" may be adduced for review of waiver requests submitted to DFS; however, Respondent's witnesses consistently confirmed that no procedure, and especially written procedure, nor guidelines exist in DFS or DMH for review of waiver requests. The process adduced and followed in Grandfather Home's Waiver Request is as follows:

- (a) When a waiver request is submitted to DFS for consideration, the DFS Director's administrative assistant distributes the waiver request to those who will review the request depending on the nature of the request. If a waiver request deals with services, clients, staffing and related issues it will be sent to the Mental Health Licensure and Certification Section of DFS. A copy of the waiver request is sent to the Director of

DMH. The Director of DFS does not see the request and the distribution is apparently completely within the discretion of the administrative assistant,

(b) DMH becomes involved in the review of a waiver request when it receives the copy of the request from the office of the Director of DFS. DMH staff review the waiver request and make a recommendation to the Director of DMH who reviews the recommendation and either accepts or rejects the recommendation. Ultimately, the Director of DMH sends a recommendation to the Director of DFS for consideration. Who participates in the review supposedly depends on the nature and complexity of the issues involved. There is no evidence as to who determines the complexity of the issues, who assigns the staff, who reviews the request nor the expertise or qualifications of the reviewers. It is, again, apparently completely discretionary within DMH staff with no written policy or procedure.

(c) The office of the Director of DFS receives the letter of recommendation from the Director of DMH as to whether DMH recommends granting the waiver request. Separate recommendations may be submitted by DMH and the Mental Health Licensure and Certification Section when they do not agree whether to grant or deny a waiver request. Once the DFS Director's administrative assistant receives the recommendations, she prepares a letter either granting or denying the request based on the recommendations received and brings the letter and the waiver materials to the Director. The assistant has effectively rendered the decision and presented it to the Director for signature.

(d) When DMH and the Mental Health Licensure and Certification Section agree on the recommendation, the Director of DFS issues a decision consistent with the recommendation.

(e) When denial is recommended, the Director of DFS makes at best a cursory review to determine if the denial is in the best interest of the clients. When the Director does review the reasons stated, the review would occur after receiving the recommendations and the draft letter from the administrative assistant.

51. Grandfather Home was cited in September 2006 as being noncompliant with the dictates of 10A N.C.A.C. 27G.1704(c).

52. 10A N.C.A.C. 27G.1704(c) proscribes a certain number of staff be present and how many of that staff must be awake during sleep hours for the clients, depending upon the number of children being served. Nothing in 10A N.C.A.C. 27G.1704(c) requires that the awake staff mandated therein be in particular locations or undertake particular duties in the residential treatment facilities they staff.

53. Under 10A N.C.A.C. 27G.0813, the Director of DFS may waive the requirements of 10A N.C.A.C. 27G.1704(c).

54. 10A N.C.A.C. 27G.0813 provides that,

(a) The Director of DFS may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on, but not limited to, the following: (Emphasis added)

(1) the nature and extent of the request;

(2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;

(3) the determination that the waiver will not affect the health, safety, or welfare of clients;

(4) The existence of good cause; and

(5) Documentation of area board approval when requests are from area programs and contract agencies of area programs, or documentation of governing body approval when requests are from private facilities not contracting with area programs.

55. Subsection (5) is no longer applicable.

56. The Director of DFS as well as the Director of DMH admittedly considered none of those factors. The DFS and DMH employees who actually concluded to deny Grandfather Home's Waiver Request likewise did not read Grandfather Home's request in its entirety or consider the mandatory factors of 10A N.C.A.C. 27G.0813.

57. By its requested waiver of 10A N.C.A.C. 27G.1704(c), Grandfather Home sought to be permitted to have the required number of direct care staff present but asleep in its cottages and to utilize its Safety Camera System to ensure the health, safety, and welfare of its clients and swift response by direct care staff to incidents involving clients during sleep hours.

58. By letter from the Director of DFS, Robert Fitzgerald, dated December 21, 2006, Grandfather Home's Waiver Request was denied.

DFS's and DMH's Denial of the Waiver Request

59. Robert J. Fitzgerald is the director of DFS (now DHS) and has served in that position for six and one-half years. As Director, he is responsible for the overall management and administration of DFS. DFS has eight sections each with specific responsibilities relating to various types of facilities. DFS function is to regulate health services throughout the State of North Carolina.

60. Mr. Fitzgerald does not personally review the waive requests and relies on others with expertise to review the applications. He did not review personally the Petitioner's waiver request. He did not personally write the denial letter. He does not know the five items required

to be considered in 10A N.C.A.C. 27G.0813, but acknowledges that the statute makes mandatory their consideration.

61. Mr. Fitzgerald acknowledges that there is no procedure in DFS for others to whom he may delegate authority to follow in reviewing applications for waivers.

62. Per Mr. Fitzgerald's testimony, the "existence of safeguards" as required to be considered in 10A N.C.A.C. 27G.0813 has nothing to do with this facility, but that it is the rule requiring direct awake staff that is paramount. His reliance on rule 10A N.C.A.C. 27G.1704(c) completely obviates the dictates of 10A N.C.A.C. 27G.0813.

63. Mr. Fitzgerald was aware of the settlement agreement in 2005 and, in fact, he signed the agreement on behalf of Respondent. He testified that it was unlikely the cameras were in use when the agreement was signed; however, the cameras were in deed in use and the tenor of the agreement implies such.

64. Mr. Mike Moseley was the Director of DMH at all times relevant to this contested case. In his position as Director, he oversees multiple residential treatment facilities including psychiatric hospitals, mental retardation or developmental centers, alcohol and drug abuse treatment facilities, residential schools and neuron-medical treatment facilities. As part of his duties as Director of DMH, he makes recommendations to DFS whether to grant rule waivers. He relies on DMH staff to research waiver requests and make appropriate recommendations on those requests. He did not review personally Petitioner's waiver request.

65. Mr. Moseley as the Director of DMH signed his name to a letter recommending the denial of Grandfather Home's Waiver Request without evaluating, or even reading, Grandfather Home's Waiver Request, and indeed without even knowing who drafted the letter stating the bases for denial that he signed, much less the merits of the stated bases.

66. In his letter to Mr. Fitzgerald recommending denial of Petitioner's requested waiver, Mr. Moseley sites three reasons, two of which relate to the enactment of "1700 rules" and the third relates to the reimbursement rate. He was not aware that Petitioner and Respondent had a prior settlement agreement concerning the reimbursement rate as it applied to the use of a camera system.

67. Mr. Moseley was aware of the licensure rule requirement that a facility have awake direct care staff during sleep hours at the time of Grandfather Home's waiver request. Two of the three "bullets" in his letter to Mr. Fitzgerald refer to the development and adoption of the rules.

68. Mr. Moseley does not know the five items required to be considered in a waiver request in 10A N.C.A.C. 27G.0813, and did not look at them or consider them in any regard prior to issuing his letter to Mr. Fitzgerald. He did not personally write the letter to Mr. Fitzgerald.

69. There are no written procedures for anyone in DMH to use to review or evaluate waiver requests.

70. When asked specifically if he would have changed his mind if presented with evidence that there was a system superior to direct awake staff, Mr. Moseley responded by saying that this

request came so quickly on the heels of the rule changes and the adoption of the “1700 rules” that he would not have entertained such.

71. Dr. Michael Lancaster is the chief of clinical policy for DMH and is involved in discussions and decisions about clinical oversight of State facilities. Grandfather Home’s waiver request was primarily being conducted by Rhoda Miller and Cindy Kornegay of DMH and Stephanie Alexander of DFS. Ms. Miller and Ms. Kornegay did not testify herein. Dr. Lancaster participated in the discussions and was kept abreast of the review, but he did not personally review the entire request.

72. Dr. Lancaster testified that Grandfather Home is a good facility to which he himself has referred patients.

73. Dr. Lancaster acknowledges that no written policy exists for evaluating waiver requests. He does not look at the five items required to be considered under .0813 rule. Dr. Lancaster stated that he would not change his mind even if there was evidence that the camera system was superior to the direct awake staff. He is of the opinion that 1704 rule is paramount.

74. Stephanie Alexander is the Chief of the Mental Health Licensure and Certification Section, a section within DFS. The Section oversees the licensure and regulation of mental health, developmental disability and substance abuse services that are licensable in North Carolina.

75. As section chief, Ms. Alexander is occasionally asked to participate in waiver request reviews and generally collaborates with DMH if a waiver request presents an issue that requires discussion. Sometimes she actually reads the waiver requests and sometimes she just passes over them. Ms. Alexander generally will participate in discussions with the Director of DFS when necessary and will provide a separate recommendation if she disagrees with DMH.

76. As part of her review, Ms. Alexander generally examines whether the request is reasonable, whether it will compromise the health, safety or welfare of any individuals in the facility that would be impacted by the waiver. There is no evidence that she in any manner made an actual and informed decision as to the efficacy of the safety camera system and whether or not it would compromise or enhance the health, safety or welfare of the individuals in this facility.

77. Ms. Alexander was the only person who testified at trial that actually read any of the Petitioner’s waiver request, but she did not read any of the safety camera data. She felt she did not have all of the information she needed but did not make any inquiry about further information.

78. Ms. Alexander participates in the rule-making process for licensure rules related to mental health facilities. She participates in discussions, provides opinions and presents to the Commission when necessary.

79. Ms. Alexander participated in the rule making process for the 1700 series rules which included 1704(c). She participated in numerous meetings with a variety of people, including other divisions, to discuss citizen and employee recommendations about the rules. Additionally,

she participated in Commission meetings about the rules, reviewed public comment and tracked the rule-development process.

80. Mr. Moseley was also involved in the rule-making process for the 1700 series rules including rule 1704(c). DMH staff drafted the rule for presentation to and consideration by the North Carolina Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services ("the Commission"). Mr. Moseley participated in the public hearings and meetings concerning these rules.

81. The rule-making process for the 1700 series rules took approximately one to one and one-half years and involved a lot of public comment about the 1700 rules. Public comment could be made on the internet or through a call-in number or email the rule-coordinator directly. Those involved in the rule-making process would review the public comments in order to make recommendations about what the rules should include. There was a public comment meeting that the Commission held, where approximately one hundred people showed up to give public comment. Rule 1704 was part of the public comment and numerous comments about the rule related to concerns of having staff at the facility at all times. There is no evidence that use of a safety camera system as an alternative was discussed.

82. In recommending to deny Grandfather Home's waiver request, DMH and DFS relied almost entirely on the Commission's enactment of the staffing requirements in 10A N.C.A.C. 27G.1704(c). It is abundantly and overwhelmingly clear that no one involved in the process for the Petitioner's waiver request would have granted the waiver under any circumstance because of the time, energy, and resources expended in the very long and difficult process of adopting the 1704(c) rule, especially since it was newly adopted, even if verifiable evidence was provided that a superior system existed which ensured enhanced health, safety and welfare of the clients served. In fact, such a system was not even considered. (Emphasis added)

83. DMH and DFS rely on the circular argument that 1704(c) is the rule which assures safety, that safety is a concern, that if applying the safety concern of the 813 rule, one must apply the 1704(c) rule. Thus, the strictures of 1704(c) are the only method which assures safety. This argument and the position of Respondent equates to making 1704(c) an absolute and completely negates the mandatory provisions of the waiver rule; in other words, there is no waiver of 1704(c).

84. Neither DMH nor DFS opposes the use of Grandfather Home's safety camera system as long as it is used in conjunction with the required number of awake direct care staff during sleep hours. Use of awake direct staff in conjunction with the camera system is not cost effective, and is not an effective utilization of resources. It adds little or nothing to the effectiveness of monitoring the clients and may even be detrimental to response time by adding an additional layer of staff. Most importantly it ignores the extremely important and effective therapeutic model of Grandfather Home which utilizes day staff with whom the children have a relationship for intervention at nighttime incidents as opposed to night staff with whom they have no relationship.

85. Ultimately the health, safety and welfare of the clients in the residential facilities are of paramount importance and over-riding consideration. "Anticipation, awareness and response"

are three critical and important considerations for over night staff, especially when considering the fact that children have been abused in treatment centers while using awake direct staff.

86. Under directive of the Governor of North Carolina, DMH was to develop rules that strengthened the staffing requirements and clinical oversight in facilities licensed to provide mental health, developmentally disabled and substance abuse services. The staffing requirements are in keeping with safeguarding the health, safety and welfare of the clients. It is not inconsistent with the Governor's directive to consider alternative programs that ensure as good if not better programs than the awake direct staff which ensure enhanced health, safety and welfare of the clients and provide greater monitoring for "anticipation, awareness and response." Giving consideration to any such alternative program is entirely consistent with the Governor's directive and with the 813 rule for waivers.

87. Neither DFS nor DMH has set procedure nor guidelines to follow for evaluating waiver requests generally, and no set procedure nor guidelines were used to evaluate Grandfather Home's Waiver Request in particular.

88. No one at either DFS or DMH ensures that the mandatory factors that the Director of DFS shall consider under 10A N.C.A.C. 27G.0813, including the nature and extent of the waiver request, the existence of safeguards to ensure that the health, safety or welfare of the clients will not be threatened, a determination that the requested waiver will not affect the health, safety or welfare of the clients, and the existence of good cause, are considered. Those factors were, in fact, not considered in Grandfather Home's waiver request.

89. There was no meaningful review in the case of Grandfather Home's Waiver Request. No one who handled the waiver request read Grandfather Home's Waiver Request in its entirety. Data concerning the safety camera was not read, evaluated or considered at all. The primary and singular focus was on Rule 1704(c).

90. No one at either DFS or DMH who played any role regarding Grandfather Home's Waiver Request had prior work experience with surveillance systems like Grandfather Home's.

91. No one at either DFS or DMH who played any role regarding Grandfather Home's Waiver Request visited Grandfather Home's Banner Elk campus and personally observed the Safety Camera System.

92. No research or other writings regarding safety camera systems or the efficacy of safety camera systems as opposed to awake direct staff were reviewed by any one at DFS or DMH in evaluating Grandfather Home's Waiver Request.

93. DFS and DMH could have contacted Grandfather Home for additional information regarding the Safety Camera System, a system that the State knew had been operating, but they did not.

94. Grandfather Home provided DFS and DMH with evidence on incident detection and response for its Safety Camera System, and the State did nothing to confirm or refute that data and in fact did not even read that data.

95. No one at DFS or DMH meaningfully investigated the Waiver Request's safeguards regarding, or effect on, clients' health, safety or welfare.

96. DFS and DMH employees who handled Grandfather Home's Waiver Request believed that 10A N.C.A.C. 27G.1704(c)'s "newness" favored, if not mandated, denying the Waiver Request. According to DFS Director Fitzgerald, a rule's newness is not a proper basis for denying a waiver request.

97. While provision of awake night staff was discussed in connection with the State's adoption of 10A N.C.A.C. 27G.1704(c), no research was conducted or produced as to the efficacy of awake night staff as opposed to safety camera systems with staff present but asleep such as Grandfather Home's in adopting 10A N.C.A.C. 27G.1704(c) or in deciding to deny Grandfather Home's Waiver Request. Grandfather Home provided research results specific to its Banner Elk campus in conjunction with its waiver request, even though it was not read or considered.

98. The only evidence about the efficacy of safety camera systems and the ineffectiveness of awake night staff in detecting and effectuating rapid responses to night-time incidents with residents has been adduced by Grandfather Home. All of that evidence shows that Grandfather Home's Safety Camera System is more effective at detecting and evincing a swift, high-quality response to residents' night-time incidents and, thereby improving the safety, health, welfare and treatment of its residents, the very purpose of 10A N.C.A.C. 27G.1704(c).

99. Even after Grandfather Home contested the denial of its Waiver Request, DMH and DFS continued to refuse to do an investigation, or even consider data, into the Safety Camera System or the efficacy of that system versus the efficacy of awake night staff.

100. As late as the October 2007 hearing in this matter, the Director of DFS, the ultimate decision maker regarding waiver requests, testified that, in essence, the rule at issue in this matter, 10A N.C.A.C. 27G.1704(c), could not be waived even though the waiver rule applies to "any" licensure rule.

BASED UPON the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 122C and 150B of the North Carolina General Statutes. There is no question as to misjoinder or nonjoinder.

2. Grandfather Home is an aggrieved person under Chapter 150B and is entitled to commence this proceeding. Grandfather Home has satisfied all conditions precedent and all timeliness requirements for initiating this contested case.

3. Grandfather Home, the petitioner in this matter, bears the burden of proof, and must prove its case by a preponderance of the evidence. N.C. Gen. Stat. §§ 150B-23(a), 150B-29(a).

4. The North Carolina Commission on Mental Health, Developmental Disabilities and Substance Abuse has authority, pursuant to N.C. Gen. Stat. § 122C-23(f), -26(4), -27(9) and § 143B-147 to adopt, and has adopted, rules relating to mental health, developmentally disabled and substance abuse facilities, including rules relating to staffing requirements and rules providing for the waiver of licensure rules otherwise applicable to a licensed facility.

5. As a licensed mental health facility, Petitioner Grandfather Home for Children, Inc., is subject to the provisions of Chapter 122C of the North Carolina General Statutes and rules adopted pursuant thereto.

6. An administrative agency's rules are binding upon the agency, and, to be valid, actions of the agency must conform to those rules. *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). The Administrative Procedures Act invalidates agency actions where the agency exceeded its authority, acted arbitrarily, capriciously, or erroneously, failed to use proper procedure, or failed to act as required by law or rule. N.C. Gen. Stat. § 150B-23(a).

7. Respondent has the authority, pursuant to N.C. Gen. Stat. § 122C-23(f), -26(4), -27(9) and 10A N.C.A.C. 27G.0813 to waive any rules related to licensure requirements for mental health, developmentally disabled and substance abuse facilities. (Emphasis added)

8. N.C. Gen. Stat. § 122C-23(f) provides that the Secretary may waive for good cause any of the rules implementing this Article, "provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility."

9. The waiver rule, 10A N.C.A.C. 27G.0813, gives licensed treatment facilities the right to request a waiver of "any" rule related to its licensure requirements, and the waiver rule also gives the waiver requester the right to appeal the decision regarding its waiver request through a contested case.

10. Petitioner Grandfather Home complied with and met all requirements of 10A N.C.A.C. 27G.0813 in submitting its written waiver request.

11. Further, 10A N.C.A.C. 27G.0813 requires that the Director of DFS "shall" base his decision as to whether or not to waive a licensure rule on factors including the nature and extent of the waiver request, a determination that the requested waiver will not adversely affect the health, safety or welfare of the clients, and good cause. By using the word "shall," the waiver rule is mandatory.

12. The requirements of N.C. Gen. Stat. § 122C-23(f) and 10A N.C.A.C. 27G.0813 are consistent in that they ensure that the health, safety and welfare of the clients is of paramount importance.

13. The Director of DFS is the ultimate decision maker as to whether to approve or deny waiver requests under the waiver rule. Before making a decision, the Director of DFS shall consult with the Director of DMH. The DFS Director's decision shall be issued in writing and shall state the reasons why the request was granted or denied.

14. The Respondent by and through the Director of DFS acted arbitrarily, capriciously, and erroneously, failed to use proper procedure, and failed to act as required by law and rule by failing to consider any of the mandatory factors to be considered by the waiver rule, 10A N.C.A.C. 27G.0813.

15. The Respondent by and through the Director of DFS, in his official capacity and including as well anyone involved in the review of Grandfather Home's waiver request, acted arbitrarily, capriciously, and erroneously, failed to use proper procedure, and failed to act as required by law and rule by failing to read in its entirety and failing to meaningfully consider or analyze the Waiver Request submitted by Grandfather Home in this matter, thereby effectively denying Grandfather Home its right to a waiver of a licensure rule under 10A N.C.A.C. 27G.0813.

16. The Respondent by and through the Director of DFS exceeded authority, acted arbitrarily, capriciously, and erroneously, failed to use proper procedure, and failed to act as required by law and rule by deciding without support that 10A N.C.A.C. 27G.1704(c) could not be waved at all. The Director of DFS as well as the Director of DMH admittedly considered none of the factors required to be considered under 10A N.C.A.C. 27G.0813, relying solely on rule 1704 (c).

17. DMH and DFS rely on the circular argument that Rule 1704(c) is the rule which assures safety of clients through staffing, that safety is a concern, that in applying the safety concern of the 813 rule, one must apply the 1704(c) rule. Pursuant to this argument, the strictures of 1704(c) are the only method which assures safety. This argument and the position of Respondent equates to making 1704(c) an absolute and completely negates the mandatory provisions of the waiver rule; in other words, there is no waiver of 1704(c). No other alternative to 1704(c) will even be considered.

18. Ultimately the health, safety and welfare of the clients in the residential facilities are of paramount importance and over-riding consideration.

19. Under directive of the Governor of North Carolina, DMH was to develop rules that strengthened the staffing requirements and clinical oversight in facilities licensed to provide mental health, developmentally disabled and substance abuse services to ensure safeguarding the health, safety and welfare of the clients. It is not inconsistent with the Governor's directive to consider alternative programs that ensure as good if not better programs than the awake direct staff which ensure enhanced health, safety and welfare of the clients and provide greater monitoring for "anticipation, awareness and response" to problems arising in the facilities.

20. The Respondent by and through the Director of DFS acted arbitrarily, capriciously, and erroneously, failed to use proper procedure, and failed to act as required by law

and rule by not following proper procedure because none exists. Neither DFS nor DMH has set procedure or guidelines to follow for evaluating waiver requests generally, as admitted by the Directors of DFS and DMH. Although Grandfather Home's waiver request was reviewed in a cursory manner, no set procedure or guidelines were used or followed to evaluate Grandfather Home's waiver request in particular in that none exists.

21. No one at either DFS or DMH ensures that the mandatory factors that the Director of DFS shall consider under 10A N.C.A.C. 27G.0813, including the nature and extent of the waiver request, the existence of safeguards to ensure that the health, safety or welfare of the clients will not be threatened, a determination that the requested waiver will not affect the health, safety or welfare of the clients, and the existence of good cause, are considered. Those factors were, in fact, specifically not considered in Grandfather Home's waiver request.

22. There was no meaningful review in the case of Grandfather Home's Waiver Request. No one who handled the waiver request read Grandfather Home's Waiver Request in its entirety. Data concerning the safety camera was not read, evaluated or considered at all. The primary and singular focus was on Rule 1704(c).

23. It is abundantly clear that no one involved in this process for Grandfather Home would have granted a waiver of Rule 1704(c) under any circumstance because of the amount of time energy and resources in passing the rule, and the fact that the rule was newly adopted, even if presented with verifiable evidence that a superior system exists which ensures greater health safety and welfare of the clients.

24. The only evidence about the efficacy of safety camera systems and the ineffectiveness of awake night staff in detecting and effectuating rapid responses to night-time incidents with residents has been adduced by Grandfather Home. All of that evidence shows that Grandfather Home's Safety Camera System is more effective at detecting and evincing a swift, high-quality response to residents' night-time incidents and, thereby improving the safety, health, welfare and treatment of its residents, the very purpose of 10A N.C.A.C. 27G.1704(c).

25. The evidence of record shows that Grandfather Home's Safety Camera System is superior to the awake night staff as set forth in 10A N.C.A.C. 27G.1704(c) in ensuring the health, safety and welfare of the residents of that facility.

DECISION

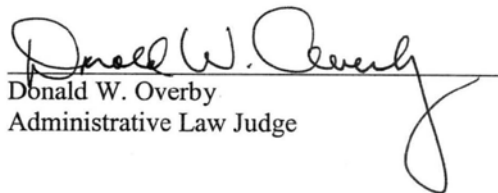
Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Respondents' denial of Grandfather Home's Waiver Request should be **REVERSED**. It is further **ORDERED** that Grandfather Home's Waiver Request should be **GRANTED** and that Grandfather Home be allowed to use its Safety Camera System to fulfill, and in lieu of, the awake night staff requirements of 10A N.C.A.C. 27G.1704(c).

NOTICE AND ORDER

The agency making the final decision in this contested case is required to give each party an opportunity to file exception to this Decision and to present written arguments to those in the agency that will consider this Decision. N.C. Gen. Stat. § 150B-36(a). Each party has the right to file exceptions to this Decision with the agency making the final decision and has the right to present written arguments on the decision to the agency making the final decision. 26 N.C.A.C. 03.0127(c)(9). The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

It is hereby ORDERED that the agency serve a copy of the final decision on each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

This the 19th day of February, 2008.


Donald W. Overby
Administrative Law Judge

For Intervenor-Respondent:

Kenneth A. Shanklin, Esq. and
Matthew A. Nichols, Esq.
Shanklin & Nichols, LLP
PO Box 1347
Wilmington, NC 28402-1347

ISSUE

Whether the Division of Coastal Management substantially prejudiced Petitioners' rights by acting erroneously, acting arbitrarily or capriciously, or failing to act as required by law or rule in granting CAMA (Coastal Area Management Act) Major Development Permit No. 2-07 to Intervenor-Respondent.

TESTIFYING WITNESSES

Timothy Ward, Member-Manager of Intervenor-Respondent
David Ward, Petitioner and son of Violet Ward
Violet Ward, Petitioner and owner of property adjacent to site
Lucian Nerwinski, Surveyor testifying as an expert in Surveying for Petitioners
Randall Simon, Boat Captain testifying for Petitioners
James H. Gregson, DCM Director and formerly DCM Wilmington District Manager
Ann Hines, New Hanover County Chief Code Enforcement Officer
Doug Huggett, DCM Major Permits Coordinator
Fritz Rohde, DMF Biologist Supervisor
Robb Mairs, DCM Field Representative
James Fentress, P.E., Stroud Engineering, consultant for Intervenor-Respondent testifying for Intervenor-Respondent
Laura Stasavich, Land Management Group, consultant for Intervenor-Respondent testifying for Intervenor-Respondent
E.W. ("Gene") Merritt, Jr., GAA Real Estate Appraiser testifying as an expert for Intervenor-Respondent

EXHIBITS RECEIVED INTO EVIDENCE

For Petitioner:

1. CAMA Major Permit Application for Carolina Marina, LLC (a/k/a Carolina Marina and Yacht Club, LLC) dated 8/24/06.
2. CAMA Major Development Permit 2-07.
3. Survey maps and profiles by the Clark Group (7/5/07).

4. US Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, tidal benchmark designations, titled Datums Definitions and 2006 Tide Predictions.
5. Photographs of the project site.
6. Aerial photographs of project site.
7. Photographs of boats in dry storage.
8. Boat manufacturer's brochures.
9. Answers to Petitioners' First Set of Interrogatories to Respondent.
10. Deed from Dill to Cecil D. Ward and Violet Pope Ward recorded in Book 1816, Page 587 of the New Hanover County Registry.
11. Site plan for New Hanover County Special Use Permit number 13 issued to Homer Ward.
12. Site plan, Carolina Marina, with signatures of Dexter Hayes, Planning Director, and Ann Hines, Code Enforcement Officer for New Hanover County.
13. Site plan for Carolina Marina and Yacht Club submitted to New Hanover County Planning Board dated 5/7/07.
14. Printout of home page of Carolina Marina and Yacht Club website.
15. Excerpts from Wilmington-New Hanover County Joint Coastal Area Management Plan, 2006 Updated.
16. Memo from Mike Street, DMF, to Ted Tyndall, DCM, dated March 9, 2006, Subject: Dock Depths.
17. Memo from Ted Tyndall, Assistant Director to DCM Regulatory Staff dated December 11, 2006, concerning Permit Processing Protocol for Piers Located in Shallow Water Areas.
18. Memo from Fritz Rohde through Mike Street to Doug Huggett dated February 24, 2006 concerning Carolina Marina.
19. Department of Army Permit from Wilmington District Corps of Engineers to Homer H. Ward dated March 10, 1969 for construction activities at the Homer Ward property in Myrtle Grove Sound adjacent to the Intracoastal Waterway

For Respondent:

- A Copy of CAMA Permit No.02-07 File, pp. 1 - 335, Bound separately in 3-ring binder
- B 1-4 Copy of Jim Gregson's Field Notes
- C2 1984 Aerial Photograph of the site
- C3 1989 Aerial Photograph of the site
- C5 2000 Aerial Photograph of the site
- C6 2006 Aerial Photograph of the site

For Intervenor-Respondent:

1. Special Use Permit No. 13 issued to Homer Ward on June 7, 1971.
2. Copy of original Site Plan for 1971.
3. Copy of Current Site Plan approved by Dexter Hayes and Ann Hines on September 29, 2005.

4. Copy of Certified Deeds (3) to Carolina Marina and Yacht Club, LLC.
5. Copy of Department of the Army Dredging Permit to Homer H. Ward dated March 10, 1989.
6. Minutes of New Hanover Planning Commission dated June 2, 1971 and Minutes of New Hanover County Commissioners dated June 7, 1971 granting SUP No. 13.
7. Portion of Article VII, Section 71: Special Use Permits Issued by the Board of County Commissioners.
8. New Hanover County Zoning Ordinances dated since October 1969.
9. Current New Hanover County Zoning Ordinance.
10. 2006 CAMA Plan for New Hanover County.
11. Photograph of sign "Ward's Marina" (Gas Oil Diesel Beverages Bait).
12. Cecil Ward CAMA File regarding CAMA Permit No. 13201-D issued December 2, 1994 for 201 foot pier extension.
13. Violet P. Ward (widow of Cecil Ward) CAMA File regarding CAMA Violation No. 06-85D.
14. Photographs (2) of backhoe on Violet P. Ward property.
15. Voter Profile from New Hanover County Board of Elections for David Neal Ward.
16. Voter Profile from New Hanover County Board of Elections for Violet Pope Ward.
17. Affidavit of Timothy H. Ward with copy of file he obtained from State Archives in Raleigh with respect to his father, Homer H. Ward's dredging permit.
18. New Hanover County Aerial Photograph showing pier and 779.5' line (1/4 rule).
19. DCM Aerial Photograph dated 10-21-00 with a scale of 1' = 800'.
20. DCM Aerial Photograph with a scale of 1' = 400'.
21. Copy of letters from W. A. Raney, Jr. to Cindy Popkin dated February 8 and 10, 1988.
22. Order Affirming Decision of Chief Zoning Enforcement Official (Case Number ZBA-756) dated August 23, 2005.
23. Order Denying Appeal Affirming Decision of Chief Zoning Enforcement Official (Case Number ZBA - 774) dated August 22, 2006.
24. Order Affirming Decision of Chief Zoning Enforcement Official (Case Number ZBA-790) dated September 26, 2006.
25. Order Denying Request to Deem Special Use Permit S-13 Void issued by New Hanover County Commissioners on January 8, 2007.
26. Order Reversing Decision of Chief Zoning Enforcement Official (Case Number ZBA - 793) dated January 23, 2007.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is

reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses and all other evidence, the Undersigned makes the following Findings of Fact.

FINDINGS OF FACT

1. Petitioner Violet Ward is the owner of a lot and residence at 1508 Burnette Road in New Hanover County, North Carolina. She and her husband, Cecil Ward, purchased the property in 1994 and lived there part-time until 2003 when it became her full-time residence. (P Ex. 10) Petitioner David Ward is the son of Violet Ward.
2. Petitioners first filed a Petition for a Third Party Hearing with the Chairman of the Coastal Resources Commission pursuant to N.C.G.S. § 113A-121.1(b). The Chairman granted their Petition on most of the issues raised in their request. Petitioners filed a timely Petition for a Contested Case Hearing raising several issues to the Chairman, which had also been raised to DCM staff in a letter to DCM dated October 2, 2006.
3. Respondent is the North Carolina Department of Environment and Natural Resources, (Agency or DENR), Division of Coastal Management (DCM). Respondent is the state agency that issued CAMA (Coastal Area Management Act) Major Development Permit 02-07 to Carolina Marina and Yacht Club, L.L.C. (Petition for Contested Case Hearing) (R Ex. A)
4. Intervener-Respondent (sometimes referred to as the Applicant) is Carolina Marina and Yacht Club, LLC (Carolina Marina or CMYC). Carolina Marina is a North Carolina limited liability company of which Tim Ward is the only principal member. Intervenor-Respondent was allowed to intervene in this matter through an order dated May 15, 2007. This Motion to Intervene was unopposed.
5. The property at the center of this dispute is owned by Carolina Marina and consists of Lots 1, 2, 3, and 4 of Block 3 of the Tucker Burnett Subdivision with a street address of 1512 Burnett Road, Wilmington, North Carolina. Petitioner Violet Ward is the owner of Lot 5 in Block 3 of the Tucker Burnett Subdivision with a street address of 1509 Burnett Road, Wilmington, North Carolina.
6. The Carolina Marina property is bordered on the east by the Atlantic Intracoastal Waterway (AIWW). The waters of the AIWW at this location are open to the harvest of shellfish. The waters of the AIWW at this location are classified as "SA" waters by the Environmental Management Commission. (R's Ex. A) Much of the property is subject to the Coastal Area Management Act (CAMA) (N.C.G.S. § 113A-100 *et seq.*) Development on the site within designated Areas of Environmental Concern (AEC) is subject to the Coastal Area Management Act (N.C.G.S. § 113A-100 *et seq.*) Portions of the site are within or adjacent to the Coastal Shorelines, Public Trust Area, and Estuarine Waters Areas of Environmental Concern. (R's Ex. A)

7. Intervenor-Respondent acquired its property located at 1512 Burnett Road, Wilmington, New Hanover County, North Carolina, by certain general warranty deeds dated and recorded on May 13, 2005, in Book 4805 at Page 535, and Book 4805 at Page 539 of the New Hanover County Registry. (IR Ex. 4)
8. Intervenor-Respondent acquired the Marina Property from Intervenor-Respondent principal Timothy H. Ward and his brother, Donnie H. Ward, sons of Homer H. Ward and Frances Elizabeth Ward, who acquired the Marina Property in 1966. Homer H. Ward was the owner of the Marina Property until his death in 2000. Homer H. Ward moved his family to the Marina Property around 1968.
9. Between 1968 and 1971, Homer H. Ward started a family-owned marina and obtained permits from the Corps of Engineers (IR Ex. 5) and started the process of meeting with local authorities for the operation of a commercial marina. Homer Ward secured a permit from the US Army Corps of Engineers in 1969 that authorized construction of a pier, boat ramp and bulkhead. (P Ex. 19) (R Ex. A)
10. On or about June 7, 1971, Homer H. Ward, was granted Special Use Permit No. 13 to operate a commercial marina on the Marina Property by the New Hanover County Board of Commissioners. (IR Ex. 1, 2, 6 and 7) Special Use Permit No. 13 runs with the land and inures to the benefit of Intervenor-Respondent. (IR Ex. 1, 2, 6, 7, 24)
11. Special Use Permit No. 13 allowed commercial activities. (IR Ex. 1) Special Use Permit No. 13 required signage at the marina regarding the fueling operation at the marina to state: "No Smoking signs to be posted at each gasoline point." (IR Ex. 1) Special Use Permit Number 13 authorized operation of a facility with 20 boat slips, a fueling facility on an existing dock, a boat ramp, a paved parking area with 21 parking spaces, a proposed clubhouse, a proposed boat shed and a proposed bulkhead and filling on the south side of the property. (IR Ex. 1, 2) (P Ex. 11)
12. Homer H. Ward conducted the marina operations for several years in the 1970s and some in the 1980s, selling concessions, gasoline and diesel fuel, and mooring boats. (IR Ex. 11, 24) During the 1970's, Timothy Ward lived on the Marina Property with his parents and assisted his father, Homer, with the operations of the marina. Timothy performed fueling of vessels, selling of drinks and snacks, launching boats and repairing vessels on the Marina Property. This activity began in 1971. (IR Ex.1, 24) Homer H. Ward's wife had cancer, which impacted the operation of the marina.
13. The clubhouse, boat shed and paved parking were never constructed. An improved boat ramp was constructed sometime between 1984 and 1989. (P Ex. 9)
14. Based on a search of DCM historical permit files, DCM staff was not able to find a permit for the boat ramp. DCM staff acknowledged that recordkeeping was much less efficient in the 1980's, and that permits were on thin paper that may fall apart over time. DCM cannot state conclusively whether a CAMA permit was ever issued for the boat ramp or not.

15. From 1994, when Violet Ward and her husband purchased their property, until Homer Ward's death in 2000, Violet Ward noticed no marina activities on the Marina Property.
16. In October 2002, Tim Ward obtained a ruling from the New Hanover County Zoning Code Enforcement Officer that the 1971 Special Use Permit issued to Homer Ward was still valid. The decision of the Code Enforcement Official was upheld in an appeal by David Ward to the New Hanover County Board of Adjustment on the basis that Homer Ward had secured common law vested rights by engaging in certain marina activities at his property. (IR Ex. 22)
17. Intervenor-Respondent obtained administrative modifications to the site plan for Special Use Permit No. 13, which modifications were approved by the New Hanover County Planning Director and the New Hanover County Chief Zoning Enforcement Officer on September 29, 2005. (IR Ex. 3) Further, on November 28, 2006, the New Hanover County Board of Adjustment held that Intervenor-Respondent could operate a forklift on the Marina Property in connection with its commercial marina business pursuant to Special Use Permit No. 13. (IR Ex. 26)
18. Petitioners have filed administrative appeals and objections with the New Hanover County Board of Commissioners, the New Hanover County Planning Board and the New Hanover County Board of Adjustment, where Petitioners have challenged Intervenor-Respondent's right to operate a commercial marina on the Marina Property pursuant to Special Use Permit No. 13, including NHC Board of Adjustment Case No. ZBA-756 (appeal of NHC Chief Zoning Enforcement Officer's letter) (IR Ex. 22); NHC Case No. S-13, 06/71 (challenge to validity of NHC Special Use Permit No. 13) before New Hanover County Planning Board and Board of County Commissioners (IR Ex. 25); NHC Board of Adjustment Case No. ZBA-774 (appeal of NHC administrative modification to Special Use Permit No. 13) (IR Ex. 23); and NHC Board of Adjustment Case No. ZBA-790 (appeal of NHC administrative modification to Special Use Permit No. 13) (IR Ex. 24)
19. Petitioners challenged the validity of Special Use Permit No. 13 upon the basis that Homer H. Ward perpetrated a fraud upon the New Hanover County Commissioners in obtaining Special Use Permit No. 13 in 1971, which assertion has been rejected by the New Hanover County Board of Adjustment and the New Hanover County Board of Commissioners (IR Ex. 24, 25, 27, 28) Petitioners' most recent appeal in this regard resulted in a unanimous determination by the New Hanover County Board of Commissioners on January 8, 2007, upholding the issuance of said Special Use Permit in 1971. (IR Ex. 28)
20. Exhibit 1 for Intervenor-Respondent is the original site plan attached to Special Use Permit No. 13. Exhibit 3 for Intervenor-Respondent is the latest site plan for the Carolina Marina approved September 29, 2005 by Dexter Hayes and Ann Hines for New Hanover County. New Hanover County has authorized Intervenor-Respondent to construct the improvements shown on the September 29, 2005 Site Plan. (IR Ex. 3) The September

29, 2005 Site Plan incorporates additional buffers, setbacks, landscaping, changes to the Clubhouse, construction of a new floating fuel dock depicted off the end of the existing pier, and there was an additional floating dock allowed to keep the number of wet boat slips to 10 or less. (IR Ex. 1, 3)

21. The September 2005 approval from New Hanover County for a Special Use Permit amendment also allowed enlargement of the boat parking area, added parking for a clubhouse, and relocated the boat ramp. (I-R Ex. 3) (P Ex. 12) The Intervenor-Respondent has never constructed parking improvements on the Marina Property to facilitate the use of the boat ramp.
22. In January 2006, the Intervenor-Respondent filed a CAMA Major Development Permit application seeking a permit to construct upland developments, to construct and install new piers and docks, and to dredge a boat basin and channel extending to the Intracoastal Waterway. The upland development proposed in the permit application was similar to that administratively approved by the county as an amendment to County Special Use Permit No. 13, but the portion of the plan for the development activities in the water adjacent to the property showed a different location for dockage, the removal of the existing pier, and the construction of a new pier and floating docks not identified on the amended Special Use Permit Plan. (R Ex. A)
23. After receiving comments and objections from several agencies and after consultation with officials at DCM and other agencies, the Applicant elected to redesign the proposed project to address concerns of the reviewing agencies and to submit a new application. (R Ex. A)
24. The new application proposed the same upland development as the prior application with the exception of leaving the existing boat ramp in its current location, but the new application eliminated proposed dredging, eliminated the new pier and dock construction and proposed the addition of a new floating fuel dock to the existing pier along with modifications to the end of the existing pier. (R Ex. A) The new application was circulated by DCM to certain state agencies for review, and, after receiving comments from the agencies, DCM issued CAMA Major Development Permit No. 02-07 to the Applicant.
25. The proposed development which was ultimately permitted by CAMA Major Permit No. 02-07 is a modification to the existing docking facility, including a new 70' by 10' floating dock, the addition of a covered fuel attendant platform, a reconfiguration of the existing boathouse into a dock office building, and high-ground improvements including the addition of a clubhouse, parking and a storm water system. The existing boat ramp would remain. (R's Ex A) Furthermore the proposed development includes the storage of boats on the facility with nine wet slips, which facility is not classified as a "marina" under CRC rules and regulations.
26. With respect to the new 70' by 10' floating dock, the proposed development provides for the removal of the "existing fixed platform that is currently located at the waterward end

of the pier and essentially replaces that with a floating ten-foot-wide-by-seventy-foot-wide fuel dock which would be accessed by a ramp connected to the existing fixed pier.” (T. p. 555). The design for the new 70’ by 10’ floating dock was necessary to accommodate the commercial use of the sale of fuel where the dock would be used for hose reels for the fuel with the fuel tanks on the high ground. The hose reels will be used on the floating fuel dock. This activity requires sufficient area for the hoses and for movement around the hose reels. Furthermore, the floating dock requires a boat box that is a storages box of essential equipment and supplies for safety, including gloves, boat hooks, ropes, oil-absorbent pads for the fuel nozzle and other safety equipment.

27. The earlier designs included such features as dredging, a breakwater, an extensive docking system, parking lots, a yacht club, and a bulkhead. If Carolina Marina continued to request a permit for dredging for the entire riparian area, DCM concluded that at least a portion of this area would be new dredging of a channel, and would be subject to the requirements of the State Environmental Policy Act. Carolina Marina scaled down its proposed development application, removed any proposed dredging, and DCM staff determined that the final project was not subject to the requirements of the State Environmental Policy Act.
28. While called a marina the design finally permitted is not a “marina” as the CRC’s rules define it. County zoning, the county’s Land Use Plan, the CRC’s rules, all define “marina” somewhat differently. In this case, the development permitted would be a docking facility.
29. Carolina Marina first submitted a CAMA Major Permit application in January 2006 for the initial project design. (R’s Ex A) The permit application review was primarily handled by DCM Major Permits Director Doug Huggett. Mr. Huggett has worked for DCM as the Major Permits Coordinator since May of 1999. Before that he was the Assistant Major Permits Coordinator for four years. His current position entails reviewing and/or supervising the review of all major permit applications. Mr. Huggett has a BS in Biology from Florida Tech in 1983 and an MS in Biological Oceanography from Va. Institute of Marine Science, part of the College of William and Mary in 1987.
30. Robb Mairs was the DCM Field Representative who was assigned to this permit review. Mr. Mairs has held this position since March of 2004. Mr. Mairs did most of the fieldwork that is required for the permit review, and prepared a field investigation report. Mr. Mairs has an Associates Degree in Marine Technology from Cape Fear Community College and a BS in Marine Biology from the University of North Carolina in Wilmington. In February of 2005, Mr. Mairs did a site visit of the Carolina Marina site and completed his field report for the proposed project. At the time of the hearing, Mr. Mairs had visited the site approximately 10 times. (R’s Ex. A)
31. DCM Director Jim Gregson was appointed to that position in June 2007. Before that, he was the Wilmington District Manager at the time this permit was being reviewed. Mr. Gregson has a BS in Biology from the College of William and Mary, and has been working with DCM since 1997. Before that, he worked for DWQ as a regional wetlands

specialist from 1992 until 1997. In Mr. Gregson's position as Wilmington District Manager, he reviewed Mr. Mairs' field investigation report, assisted Mr. Mairs in this permit review, had meetings with the Petitioners and the Permit Applicant, and reviewed the SEPA issue with Mr. Huggett.

32. As a part of the CAMA Major Express permitting process, DCM publishes notice of the proposed development in the newspaper which notified the public of when and to whom comments can be submitted and considered. The CRC's rules also require that adjacent riparian neighbors are given notice and details about the project too. When DCM receives comments on a project, they are all reviewed to see if any issues raised are those which relate to CAMA or the CRC's rules. Most of the comments received in this case were from the Petitioners, on both the original application design related to the dredging component of the project, and on the final design.
33. Petitioner's counsel sent DCM staff a list of objections and concerns which Petitioners had for the Carolina Marina's revised project design. DCM staff considered all of these comments and issues raised by Petitioners' counsel before issuing the permit. (R's Ex A) Others comments received and considered included inquiries from local, state, and federal politicians, and comments from other neighbors in the area.
34. DCM's Major Permit process requires that DCM solicit comments from other resource agencies charged with the protection of the particular resource that may be impacted, and are given the opportunity to comment back about a project to DCM. As a part of the CAMA Major Express permitting process, Mr. Mairs sent copies of the permit application and his field report for the project to other resource agencies for comment on the initial project submitted, which had requested dredging.
35. For the first proposal which included dredging, the agencies who provided negative comment or objected to the project were the Division of Marine Fisheries, the Wildlife Resources Commission, Division of Environmental Health-Shellfish Sanitation Section, and the Army Corps of Engineers. All these agencies had concerns about the dredging in a primary nursery area and its impacts to the resources. (R's Ex A)
36. After DCM indicated to Carolina Marina's consultants that due to the unfavorable agency comments, this project would likely be denied, Carolina Marina chose to keep the application processing on hold so they could redesign the project. DCM received the application materials for the redesigned project which eliminated dredging, on or about August 30, 2006. (R's Ex A)
37. After the project was redesigned, Mr. Maris prepared a new memo which served as an addendum to his earlier field report, and noting the changes of the impacts from this new design which had removed the dredging. This was forwarded to those commenting agencies who had concerns with the first project, or whose resource area would be affected by the redesign. (R's Ex A) The agency comments on the new design were generally favorable. (R's Ex A)

38. The Division of Marine Fisheries did not object to the project. (R's Ex A) DMF's comments were submitted by Fritz Rohde, the biologist supervisor for the southern district of the Division of Marine Fisheries. Mr. Rohde had held this position for twenty years. In this position, he spends a considerable amount of time reviewing CAMA major permit applications for DMF. Mr. Rohde has a BS in fisheries and wildlife biology from Iowa State University and a MS in zoology from UNC-Chapel Hill.
39. Mr. Rohde's involvement with this permit application consisted of an on-site pre-application meeting with the applicant and his consultants, a shellfish survey he performed with shellfish biologist, Stephen Taylor, another site visit and many contacts with the applicant and his consultants. Mr. Rohde conducted an in-water survey. He determined that the site, if dredged in the past, had reverted to natural conditions. He determined that there was sufficient depth where the proposed dock slips were going to be and that they would not cause adverse impacts to the fisheries and shellfish resources.
40. The Wildlife Resources Commission commented that they would concur with DMF's comments on the project. As DMF had no objections, neither did WRC. Mr. Rohde testified that he and Dr. Everhardt of WRC discussed this project in detail before submitting their comments to DCM. (R's Ex. A)
41. The Shellfish Sanitation Section of the Division of Environmental Health did not object to the project and noted that the proposed 5-slip dockage would not require the closing of shellfish waters. (R's Ex A)
42. The Division of Water Quality did not object to the project and noted that they had issued the 401 water quality certification on January 4, 2005. (R's Ex A)
43. The redesigned plan was reviewed by DCM District Planner Mike Christenbury, and was found to be consistent with the New Hanover CAMA Land Use Plan. (R's Ex A)
44. DCM Field Representative Robb Mairs offered his comments to Major Permits Director, Doug Huggett. Mr. Mairs indicated that he had no objections to the new project. (R's Ex A)
45. These new agency comments were forwarded to DCM's Morehead City Headquarters for a final review by Doug Huggett the Major Permits Director, by Ted Tyndall the Assistant Director, and by Charles Jones, the Director of DCM.
46. On January 22, 2007, DCM staff issued CAMA Major Permit No. 02-07 to Carolina Marina and Yacht Club, LLC. This permit authorized the redesigned project which did not include any dredging. The permit included several conditions shown on the face of the document. DCM staff also sent letters to persons who had provided comment on the project to DCM, including the Petitioner, giving them notice of the permit issuance.
47. On February 9, 2007, DCM received a Third Party Petition from the Petitioners in this case seeking to challenge the issuance of CAMA Major Permit #02-07. The permit is

stayed by operation of law once the Third Party Petition is filed, and in this case, has been stayed since this time. On February 26, 2007, the Chairman of the CRC granted Petitioner's Third Party Petition, allowing them to file a Petition for a contested case with the Office of Administrative Hearings pursuant to N.C.G.S. § 113A-121.1(b) on most of the issues raised by Petitioner, and specified in his Order.

48. Petitioners indicated they believed the permit issued failed to meet the "1/4 width rule" found at 15A NCAC 7H.0208(b)(6)(j)(I) where they allege that the permitted pier "extends beyond the established pier length along the same shoreline for similar use" as prohibited by the rule. (Petition) The purpose behind this rule is to protect navigation and safe use of the waterbody. It is meant to prevent one pier from sticking way out into the water where every other pier on the waterbody is closer to the shoreline. DCM staff does not interpret this rule to compare how far off the shoreline a pier is, but instead, look at how far from the channel of the waterbody the existing piers are, and permit the proposed pier to be of a similar distance. The purpose of this interpretation is to allow all owners to have access to the same point of deep water, and not to penalize those located in a cove or on a point along the shoreline.
49. DCM staff relies on aerial photographs when looking at the established pier length along the same shoreline, as well as on-the-ground observations. DCM staff also looks at whether the proposed pier measures up when compared to piers of similar use, i.e.: whether they are used for residential or commercial use. In this case, DCM staff looked at their collection of aerial photographs for this site when looking at the established pier length issue. (R's Ex C2, C3, C5, C6)
50. The additional length being added to the existing pier is the 10' wide by 70' long floating platform, and so the extra distance the new proposed pier will extend further into the waterbody is between 8' and 10' once the pier configuration is modified. DCM staff determined that in this case, the proposed addition of approximately 8' to 10' in total length is consistent with some other docks in the area and would not cause navigational problems, and so it was consistent with the rule. Staff also noted that the proposed pier is a significant distance off of the AIWW channel. (R's Ex. C2, C3, C5, C6)
51. DCM also determined that the proposed pier did not extend more than one-quarter the width of the waterbody. DCM staff determined that the width of the waterbody was approximately 775' in width. The proposed pier would be 193.75 feet in total length, resulting in a pier which is right at one-quarter of the distance. (R's Ex A)
52. The combined square footage of "Ts", finger piers, platforms and decks proposed by the Intervenor-Respondent exceeds a total area of 4 square feet per linear foot of shoreline of the CMYC property. Mr. Huggett and Mr. Mairs estimated that the permitted pier was approximately 68 square feet in excess of the "4 square foot rule."
53. The officials of DCM who considered whether to allow the square footage of the floating docks and the fuel attendant structure to exceed 4 square feet per linear foot of shoreline made their decision based on the fact that the Applicant wanted to be able to fuel two

boats on the outside of the dock. The DCM officials who approved the facilities that exceeded the 4 square foot per linear foot rule made their decision on the basis that they believed the size of the facility was not unreasonable or excessive.

54. Rule 15A NCAC 7H.0208(b)(6)(d) states the total area of “T’s” finger piers, platforms, and decks must not exceed a combined total area of four square feet per linear foot of shoreline. Projects requiring dimensions greater than those stated in this rule shall be permitted only if the greater dimensions are necessary for safe use or to support a water-dependant use that cannot otherwise occur.” The CRC created this rule to have a tie between how much platform area over public trust waters was allowed and how much riparian shoreline an owner had. This rule was also aimed to prevent impacts to navigation and to limit shading of the habitat.

55. DCM staff discussed this issue before permitting and memorialized their conclusion in a file note. The file note from Mr. Huggett is dated January 8, 2007, and states, “Before Christmas, discussed 4sf rule w/ Robb Mairs, and we both agreed that while the platform size exceed the 4sf per linear foot allowance, the “greater dimensions” portion of 0208(b)(6)(D) would give some flexibility. Therefore, because the permit would authorize a commercial fueling facility, and given the clear need to operate the fueling system in a safe manner, both Robb and myself felt that the platform size was appropriate (not excessive) and allowable under the above rule.” (T p.324-25, R’s Ex A)

56. The DCM officials acknowledged at the hearing that the proposed fuel dock would not be unsafe if it were shortened to comply with the square footage rule but that based on what the applicant submitted, they felt it was not excessive.

57. DCM staff felt that instead of requiring Carolina Marina to shorten their platform area and finger piers to meet the “4 square foot rule,” they acknowledged that the 70 foot long T head was reasonable in order to be able to dock two vessels at the fuel dock. This judgment call by DCM staff was made in line with other calls for commercial facilities in the past, and the fact 68 square feet is a small amount in excess, given that this is a fuel dock.

58. An issue presented by Petitioners centered on water depth. The Applicant's application materials show water depths based on a survey by Stroud Engineering in 2002. The application materials indicate that the depth of the water at the location of the proposed floating fuel dock is about 2.0 feet at mean low water (MLW) with depths at times of 1.6 feet MLW at the north end of the proposed dock. (P Ex. 1) (R Ex. A) The same application materials show MLW depth from the end of the existing ramp to the southern end of the proposed floating fuel dock ranging from 1.0 feet beyond the end of the ramp to about 2.5 feet at the end of the proposed fuel dock with one depth about mid-way between the ramp and the proposed fuel dock at 0.5 feet. (P Ex. 1) (R Ex. A)

59. Photographs offered by the Petitioner show water depth that is ankle deep in the vicinity of the boat lifts at the existing pier and show an exposed shoal extending from the Violet Ward pier towards the CMYC existing pier. (P Ex. 5) Other photographs offered by the

Petitioner show an exposed shoal extending from the Violet Ward pier all the way to the CMYC existing pier in the vicinity of the boat lifts. (P Ex. 5) The water depth from the end of the boat ramp to the end of the proposed floating dock initially gets deeper, then becomes shallower before getting deeper again in the vicinity of the proposed fuel dock. This change in depth is reflected on the surveys, the photographs and in profile line B which is page 4 of Petitioner's Exhibit 3. (P Ex. 3,5) (R Ex.A)

60. Doug Huggett testified that he initially had concerns about the depth at this site, and "that's the reason we looked at it as hard as we did, to get assurances from all the appropriate resource agencies that it appeared that this project could function for a large portion of its time without not having- without causing a significant adverse impact." (T p. 385)
61. DCM Director Gregson testified that based on his experience, DCM and the commenting agencies are looking at whether a docking and ramp facility can be used through a majority of the tidal range, but that a facility doesn't have to be usable for the entire tidal cycle. He noted that in the southern part of the state, there is a large tidal range compared to the northern part of the state, and that in the southern areas, many facilities are unusable for portions of the tidal cycle.
62. When DCM reviews water depths during the permit review process, several things are factors, including the depth surveys provided by the applicant with tidal amplitudes factored in and site observations or studied made by DCM staff or other resource agency staff. DCM Director Gregson testified that the tidal amplitude at this location is approximately 4 feet.
63. The permit applicant's depth survey showing depths relative to "mean low water" for the riparian area of the Carolina Marina site are part of the record, and were examined and confirmed with DCM staff. (R's Ex A)
64. Lucian A. Nerwinski, Professional Land Surveyor, testified as an expert witness for the Petitioners. Mr. Nerwinski is a surveyor licensed to practice in North Carolina. He received his undergraduate degree from Duke University in 1981. He started surveying in North Carolina in 1985, and was licensed in North Carolina as a surveyor in 1992. He works for Clark Group Surveying Division in Castle Hayne.
65. Mr. Nerwinski's firm was hired by Petitioners to do a riparian boundary survey and a water depth survey. The field work for this survey was done in March-June of 2007, and the depth survey was delivered to the Petitioners the same week as the hearing (week of July 9). (P's Ex 4) Mr. Nerwinski, himself, referring to the Carolina Marina Property stated, "Oh, I was never on the site." (T p. 122)
66. The survey supervised by Mr. Nerwinski, for the Clark Group, dated July 5, 2007 showed mean lower low water (MLLW) depths at the end of the pier to be comparable to the Applicant's application materials. (P Ex. 1, 3) (R Ex. A)

67. The Clark Group survey showed several soundings between the end of the boat ramp and the south end of the proposed floating fuel dock with depths less than 1.0 feet MLLW. (P Ex. 3) The depth survey map showed the "mean lower low" water levels in red. These depths are based on the North America Vertical Datum of 1988 as their reference point.
68. Tide prediction charts published by the National Oceanic and Atmosphere Administration, National Ocean Services (NOAA, NOS), for the vicinity of the proposed project disclose that 29% of the time the tides are predicted to be 0.5 feet or more below MLLW. (P Ex. 4) Published data from NOAA indicates that mean higher high water (MHHW) is about 4.1 feet higher than MLLW in the vicinity of the proposed project meaning that the depth of the water at high tide, on average, will be 4.1 feet deeper than the depth of the water at low tide during any given tidal cycle.
69. The CAMA permit was issued on January 22, 2007, and so Mr. Nerwinski's June 2007 survey was not completed or produced to DCM staff at the time DCM staff made their permitting decision.
70. Fritz Rohde of the North Carolina Division of Marine Fisheries made a site visit and waded to the proposed location of the fuel dock at what he determined to be about low tide. He determined the water depth to be about 3 feet in the same vicinity that the two surveys showed the water depth to be about 2 feet. Mr. Rohde did not know whether the low tide during which he waded on the site was higher or lower than normal low tide.
71. Doug Huggett said that DMF has objected to several projects when they believed that water depths are too shallow to support a proposed docking facility, marina or boat ramp/ specifically stating, "They have objected strenuously to numerous projects based off of water depths." Mr. Huggett went on to say that the fact DMF was "okay with this one spoke volumes to us in terms of their lack of concern for the proposed modified project." (T p. 319)
72. Petitioners raised the issue that the permit was issued contrary to the Dredge and Fill Law, N.C.G.S. § 113-229(e) in their October 2, 2006 letter, but presented no evidence of adverse impacts specifically from the permitted fill on the site, at the hearing. (R's Ex A)
73. DCM staff states that because there was no dredging permitted in this case, and because the only fill permitted was a small amount of backfill behind the existing bulkhead, and the impact Petitioners were raising about their enjoyment were not related to the small amount of bulkhead backfill, that the State Dredge and Fill Law only applies when dredging or filling is permitted. (R's Ex A)
74. Petitioners contend that the permit was also issued contrary to the New Hanover County CAMA Land Use Plan, which does not allow new dredging in a primary nursery area. As such, this issue depends on the decision about whether this permit authorized dredging at this site. As there is no dredging permitted by CAMA Major Permit No. 02-07, the permit is consistent with the New Hanover County CAMA Land Use Plan.

75. Petitioners contend that users of the boat ramp will encounter shallow water at the base of the ramp and midway between the ramp and the deeper water of the Intracoastal Waterway; and that boaters who load their boats onto trailers often drive their boats onto the trailer by revving the engine when there is insufficient water depth at the trailer to float the boat onto the trailer, thereby creating a greater prop wash and greater prop dredging when the prop is close to the bottom..
76. There has been no paving of the CMYC property to accommodate parking or access to the boat ramp since the Special Use Permit was issued in 1971. The boat ramp has been little used since it was constructed between 1984 and 1989. The improvements to the upland property will encourage greater use of the boat ramp and compound the possibility of prop dredging.
77. Petitioners also contend that boats of the size and draft expected to use the fuel dock will run aground and will excavate or dredge the bottom with their propellers if they attempt to access the fuel dock during periods of the tidal cycle when the tide is low. (P Ex. 3, 5) They assert water depth on the inside (landward) slips at the fuel dock will encounter shallow water due to the natural water depth and the need to maneuver around the ends of the floating dock to approach the inside portion of the dock, thereby causing excavation of the bottom by propellers during a portion of the tidal cycle. (P Ex. 3)
78. The fuel dock is designed for use by boats as large as 70', but the greatest use is expected to be by boats in the 25' to 30' range. (R Ex. A) Tim Ward testified that he intends the proposed docking facility and gas dock to be used by boats approximately 30 feet in length, with a maximum length of 40 feet.
79. Randall Simon, the boat captain who testified for Petitioners, stated that the typical boats in the marinas (referring to the Federal Point Yacht Club) around Carolina Beach is in the 30 to 40 foot range. Boats typical of the area in the 20' to 30' range typically draw 2.2 feet to 3.2 feet. Boats typical of the area in the 30' to 40' range typically draw 2.8 feet to 3.5 feet. (P Ex. 7, 8) DCM Director Jim Gregson testified that he used to use a 25 foot boat for work, and that it drew about 2.5 feet.
80. DCM Director Jim Gregson testified that he did not think you could directly relate the draft of a vessel to the length, and that it depends on the configuration of the hull and the wake of the boat and motors and the passengers. Jim Gregson read the depth survey to show that the depth of the water at the end of the fuel dock at low tide would range from "a little over two feet to slightly less than three feet." (T p. 194) He explained that based on the depth surveys, the depth of the water to the bottom at mean high water would range between 6 and 7 feet in depth.
81. Tim Ward testified that he plans to install a depth gauge or other type of communication to let boaters know the depth of the water at his fuel dock facility, so that boaters will know whether their boat can be accommodated at the facility.

82. Fritz Rohde testified that the area in which the fuel dock and the boat ramp are proposed is a primary nursery area as designated by the Division of Marine Fisheries, is open to shell fishing, and has a natural shellfish resource present.
83. Mr. Rohde went to the site in February at low tide. He went to the end of the existing pier to probe the bottom and it was slightly less than waist-deep, which was about three feet. He tried to go just beyond the existing pier but could not because it was deeper, the water was cold and the water would have gone over the top of his chest waders. Mr. Rohde testified that there was sufficient water depth where the proposed dock slips are proposed and that it would not cause adverse impacts to the fisheries and shellfisheries resources. Mr. Rohde also testified that due to lower speeds of boats near the fuel dock, propellers would not dredge the bottom, based on the depths of the water at the slips.
84. CAMA Major Permit No. 02-07's condition number 26 makes it clear that dredging, including prop dredging or kicking is not authorized under this permit. (R's Ex A)
85. The property owned by Violet Ward lies immediately south of the CMYC property. (IR Ex. 19) Violet Ward has four children, five grandchildren and two great-grandchildren, all of whom live in the Wilmington area and all of whom visit her at her Burnette Road residence on a regular basis. Her children, grandchildren and great-grandchildren use the waterfront area of her property to and beyond the end of her pier for recreation in the water.
86. Petitioners contend that the existence of the fuel dock and an active boat ramp would have a significant adverse effect on the value and enjoyment of Violet Ward's property due to the increased activity close to her residence. Petitioners further contend that the boat traffic at the fuel dock and the boat ramp would have an adverse effect on Mrs. Ward's children's, grandchildren's and great-grandchildren's recreational use of the water.
87. E.W. Merritt, Jr., GAA Real Estate Appraiser, is President of GMC Real Estate, Incorporated, and is engaged in appraisal, consulting, and developing of real estate. He has been in the real estate business for about thirty years. He has a degree in English from the University of North Carolina at Chapel Hill and is a graduate of the Young Executives Institute. He is a certified commercial investment member of the 16 National Association of Realtors, Commercial 17 Division. He is a North Carolina state-certified appraiser and is a licensed real estate agent.
88. Mr. Merritt has appraised marinas in the southeastern United States, primarily in North Carolina. He has investigated Carolina Marina and the adjoining properties, including the Petitioner Violet Ward's property.
89. In response to a question of whether the filled area highlighted in orange on Page 109 of Exhibit A for the Respondent would have any significant adverse effect on the value and the enjoyment of the property owned by Violet Ward, his expert opinion was that "it would not have a significant adverse effect." (T p. 571)

90. Further, Mr. Merritt opined that the existence of the proposed fuel dock would not have an adverse effect on the value of the property owned by Petitioner Violet Ward. Mr. Merritt also opined that the proposed improvements to Carolina Marina would not have an adverse effect on the value of the property owned by Petitioner Violet Ward.
91. Mr. Merritt testified that the Petitioner Violet Ward's property was very marketable even with a marina adjacent to it and the value of waterfront properties adjacent to marinas keep rising.

MOTION TO DISMISS PETITIONER DAVID WARD

In its Response to Petitioners' Third Party Hearing Request dated and served on February 22, 2007, Intervenor-Respondent has challenged the standing, which is jurisdictional, of Petitioner David Ward. Intervenor-Respondent has furthermore codified its objection to David Ward's standing in this proceeding with a Motion to Dismiss pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

Petitioner Violet Ward owns the adjoining property to Intervenor-Respondent. (P Ex. 10) The street address for this property is 1508 Burnett Road. David Ward does not have any ownership interest in this property. He does assert that he lives with his mother, Violet Ward, at this address. Official county and state records for David Ward demonstrate that he does not list 1508 Burnett Road as his personal residence. The address on Mr. Ward's driver's license is 123 Hinton Avenue, Wilmington, N.C., not 1508 Burnett Road. David Ward's Voter Profile for New Hanover County dated July 10, 2007 indicates that his residence is at 341 Willow Woods Drive. The Voter Profile from New Hanover County Board of Elections for David Neal Ward reveals that he has repeatedly voted in the voting district under the address of 341 Willow Woods Drive. (IR Ex. 17) David Ward's Voter Profile has never listed 1508 Burnett Road as his residence.

Petitioner David Ward's standing to complain of issuance of CAMA Permit No. 2-07 is jurisdictional to this proceeding. "Standing is another prerequisite to jurisdiction. If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *Property Rights Advocacy Group v. Town of Long Beach*, 173 N.C. App. 180, 182-83, 617 S.E.2d 715, 717-18 (2005), *aff'd*, 360 N.C. 474, 628 S.E.2d 768 (2006). "Standing refers to whether a party has a sufficient stake in an otherwise justiciable controversy such that he or she may properly seek adjudication of the matter." *Id.*

In *Beachcomber Props., L.L.C. v. Station One, Inc.*, 169 N.C. App. 820, 611 S.E.2d 191 (2005), the Court of Appeals held:

Standing refers to whether a party has a sufficient stake in an otherwise justiciable controversy such that he or she may properly seek adjudication of the matter. A party seeking standing has the burden of proving three necessary elements:

(1) ‘injury in fact’ – an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Beachcomber Props., L.L.C. v. Station One, Inc., 169 N.C. App. 820, 823-24, 611 S.E.2d 191, 193-94 (2005) (internal citations and quotations omitted). *See also, Peninsula Prop. Owners Ass’n v. Crescent Res., LLC*, 171 N.C. App. 89, 92-93, 614 S.E.2d 351, 353-54 (2005) (internal citations and quotations omitted), *disc. rev. denied*, 360 N.C. 177, 626 S.E.2d 648 (2005)

Aggrieved parties include owners of property upon which restrictions are imposed and “those who have sustained pecuniary damage to real property in which they have an interest.” 3 Edward H. Ziegler, Jr., Rathkopf’s *The Law of Zoning and Planning* §§ 43.02[1], 43.03[1] (1993) [hereinafter Rathkopf’s]; *see Jackson v. Guilford County Bd. of Adjustment*, 275 N.C. 155, 161, 166 S.E.2d 78, 82 (1969) (“adjoining or nearby” property owner has standing if he “will sustain ... from the proposed use ... a reduction in the value of his own property”).

Not only is it Petitioner David Ward’s burden to prove that he will sustain a pecuniary loss, but he must also allege the facts on which the claim is based. *See Heery v. Town of Highlands Zoning Bd. of Adjustment*, 61 N.C. App. 612, 614, 300 S.E.2d 869, 870 (1983); *see also, Kentallen, Inc. v. Hillsborough*, 110 N.C. App. 767, 770, 431 S.E.2d 231, 232 (1993). The record is devoid of any evidence to demonstrate how Petitioner David Ward would personally suffer any damages or pecuniary injury to himself because of the issuance of CAMA Permit No. 2-07 apart from his mother, Violet Ward. Further, none of Violet Ward’s other children are listed as a Petitioner.

By reason of the above, Intervenor-Respondent’s Motion to Dismiss under the provisions of Rule 12(b)(1) for lack of subject matter jurisdiction with regard to David Ward’s Petition is granted and David Ward is dismissed as a Petitioner in this cause.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (OAH) has jurisdiction to hear this case pursuant to N.C.G.S. § 113A-121.1 and N.C.G.S. § 150B-23. It is stipulated that all parties are properly before the OAH and that the OAH has jurisdiction of the parties and the subject matter. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

2. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.
3. The relevant Statute in this case is N.C.G.S. § 113A, Article 7. Also applicable are the associated administrative rules for coastal management, found at 15A N.C.A.C. 07 *et seq.*
4. Pursuant to N.C.G.S. § 113A, the Coastal Resources Commission (CRC) has designated Areas of Environmental Concern (AEC) and has adopted use standards or State guidelines for development within them, located at 15A N.C.A.C. 07H.0100 *et seq.* Under the Coastal Area Management Act (CAMA), development in an Area of Environmental Concern requires a permit. Division of Coastal Management (DCM) staff is charged by the CRC to regulate development within the CRC's designated areas of AEC's within the 20 coastal counties. N.C.G.S. § 113A DCM's role is to review and permit development in accordance with CAMA and the administrative rules for coastal development enacted by the CRC.
5. Petitioner Violet Ward has standing to bring this case and is properly before the Office of Administrative Hearings. Petitioner David Ward does not have standing to bring this case and should be and has been dismissed accordingly.
6. Petitioners bear the burden of proof on the issues. Specifically, Petitioners must prove by a preponderance of the evidence that the Respondent substantially prejudiced Petitioners' rights and that the agency acted erroneously or failed to act as required by law or rule as alleged in Petitioner's Petition.
7. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.
8. The administrative law judge determines the issues in the case based on a hearing involving the evidence that is presented or available to the agency during the review period. *Britthaven, Inc. v. Dep't of Human Resources*, 118 N.C. App. 379, 382, 455 S.E.2d 455, 459, *rev. denied*, 341 N.C. 418, 461 S.E.2d 745 (1995). This limits the scope of review to that information available to the agency up until the time the Third Party Petition was granted on May 3, 2005 by the Chairman of the Coastal Resources Commission. As such, the water depth survey paid for by the Petitioners, performed by their surveyor in March-June of 2007, and not presented to DCM staff until well after the January 2007 permit decision, should carry minimal weight.
9. N.C.G.S. § 113A-120 requires that a CAMA permit "shall be granted" unless the DCM make the finding that the proposed development will adversely impact specified resources or for other reasons as listed in that statute. In other words, DCM Staff must

issue a permit for proposed development unless the development does not meet one of the bases for denial found at N.C.G.S. § 113A-120.

10. In accord with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it is presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law." The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence.
11. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm'r of Insurance v. Fire Insurance Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982). In weighing evidence which detracts from the agency decision, "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand" *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983)(citations omitted).
12. Because of DCM staff's extensive experience in reviewing CAMA major permit applications, and Carolina Marina's consultants who have extensive experience in preparing CAMA major permit applications, and because of their firsthand familiarity with the property and their observations of the property, their testimony about the potential impact of the development permitted under the subject CAMA major permit is given greater weight than the testimony of Petitioner's expert, Lucian Norwinski, who lacked firsthand knowledge of the Carolina Marina property and did not visit the site, and Randall Simon (boat captain) whose testimony was helpful but was general in nature.
13. Further, N.C.G.S. § 150B-34(a) provides that "[t]he administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." As such, due regard should be and has been afforded to the DCM, DMF, and other resource agency staff who have specialized knowledge in their respective resource areas.
14. If the agency's conclusions regarding the regulations are not plainly erroneous or inconsistent with the regulations, the agency's conclusions should be upheld. *Simonel v. N.C. School of the Arts*, 119 N.C. App. 772, 775, 460 S.E.2d 194, 196 (1995).
15. The Petitioner has failed to overcome the presumption set forth by law that the Respondent's decision granting CAMA Major Development Permit No. 2-07 to Intervenor-Respondent was lawful and correct. As such, that presumption remains, and therefore by issuing the permit, Respondent did not act outside its authority, act erroneously, act arbitrarily or capriciously, use improper procedure, or fail to act as required by law or rule.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on those conclusions and the facts in this case the Respondent, North Carolina Department of Environment and Natural Resources, Division of Coastal Management, did not exceed its authority, act erroneously, fail to use proper procedure, or fail to act lawfully when it granted CAMA Major Permit No. 02-07.

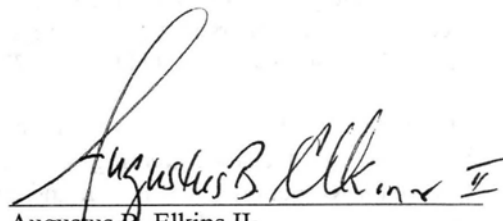
NOTICE

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. The agency shall adopt the Decision of the Administrative Law Judge unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record.

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a). The agency making the final decision in this contested case is the North Carolina Coastal Resources Commission.

IT IS SO ORDERED.

This the 30th day of November, 2007.


Augustus B. Elkins II
Administrative Law Judge

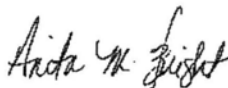
A copy of the foregoing was mailed to:

W. A. Raney Jr.
Wessell & Raney LLP
Attorneys at Law
PO Box 1049
Wilmington, NC 28402
ATTORNEY FOR PETITIONER

Christine A. Goebel
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

Kenneth A. Shanklin
Shanklin & Nichols LLP
Attorneys at Law
PO Box 1347
214 Market St
Wilmington, NC 28402-1347
ATTORNEY FOR RESPONDENT INTERVENOR

This the 3rd day of December, 2007.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407

Filed

STATE OF NORTH CAROLINA 2008 FEB 19 AM 11:48 IN THE OFFICE OF
COUNTY OF WAKE ADMINISTRATIVE HEARINGS
06 OSP 1511

Wayne Bradley Johnson Petitioner vs. N. C. State University Information Technology Division Respondent	Office of Administrative Hearings)))))))	DECISION
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The above-captioned case was heard before Beecher R. Gray, Administrative Law Judge, on 26 November 2007 and 27 November 2007, in Raleigh, North Carolina. Respondent filed a proposed decision on January 28, 2008.

APPEARANCES

FOR PETITIONER: Alan McSurely
McSurely & Osment
P.O. Box 1290
Chapel Hill, N.C. 27514

FOR RESPONDENT: Katherine A. Murphy
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

PROCEDURAL BACKGROUND

Respondent filed a written motion for summary judgment on November 16, 2008 and filed a memorandum in support on November 19, 2008. Petitioner filed a written response at the beginning of the contested case hearing. After oral arguments, the following rulings were entered regarding Respondent's motion: the motion was ALLOWED for Respondent on the issue of legitimate nondiscriminatory reasons for the denial of promotion of Petitioner and ALLOWED for Petitioner on the issue of prima facie case, except for the national origin basis which was ALLOWED for Respondent.

EXHIBITS**Admitted for Petitioner:**

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
1		Organizational Chart
2	06/28/06	Email from Tony Lawrence to James Clair Beatty, et al.
3	06/28/06	Email from Dennis Norris to Tony Lawrence
4	06/28/06	Email from Richard to Tony Lawrence
5	07/02/06	Email from James Clair Beatty to Tony Lawrence
6	07/03/06	Emails from jdi to Tony
7		View Posting – Operations and Systems Analyst
9	08/10/06	Letter from Anthony Lawrence to Wayne Johnson
11		Search Summary with EEO Information
12		Interview Notes
13	10/02/06	Transcript of Petitioner's Step 2 Grievance Hearing
13A		Personnel Action List
14		Application for Scott Moore
15		Application for Wayne Johnson
16		Application for Todd Huddleston
18		Petitioner's Work Plan and Appraisal Forms

Admitted for Respondent: None**WITNESSES****Called by Petitioner:**

Anthony Lawrence
Dennis Victor Norris
James Beatty
John Deane Irving
Wayne Bradley Johnson

Called by Respondent:

None

ISSUE

Following ruling on Respondent's Motion for Summary Judgment, **T. Vol. I, pp. 33-36**, the only issue for hearing was as follows: Whether Petitioner has proven that Respondent's articulated, legitimate, non-discriminatory reasons for not selecting Petitioner for promotion was a pretext for discrimination against Petitioner on the basis of his race or age.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case under Chapters 126 and 150B of the North Carolina General Statutes.
2. Petitioner Wayne Bradley Johnson has been in continuous State employment subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act) for more than 24 months and is a resident of Wake County, North Carolina.
3. Respondent North Carolina State University (NCSU) is subject to Chapter 126 and is Petitioner's employer.
4. Petitioner, an African-American male who is in his sixties, has been employed at NCSU since 1975, when he began working as a Print Dispatcher in the Division of Information Technology (the Division). **T. Vol. I, pp. 44-45; Pet. Ex. 15**
5. Petitioner has a diploma in Computer Operations from Wake Technical Community College. **Pet. Ex. 15** In addition, Petitioner has a bachelor's degree in sociology and social welfare with a concentration in Psychology, a master's degree in divinity, and several degrees in early childhood education. **T. Vol. II, pp. 280-82; Pet. Ex. 15**
6. While working at NCSU, Petitioner held several part-time jobs teaching young children, and, prior to working at NCSU, Petitioner held several jobs in which he supervised others. **T. Vol. II, pp. 284-85; Pet. Ex. 15**
7. On March 1, 1998, Anthony Lawrence (Lawrence) became Manager of Operations in the NCSU Technology Division. **T. Vol. I, p. 48; Pet. Ex. 13A** Lawrence is a fifty-one year old white male. **T. Vol. I, p. 45; Pet. Ex. 13A**

8. Dennis Norris (Norris), a white male, was the Director of Operations during the relevant time period, a position he held since 2001. **T. Vol. I, p. 83; T. Vol. II, p. 180**
9. Dana Strickland (Strickland), a white male, was the Assistant Manager of Operations during the relevant time period, a position he held since 1998. **Pet. Ex. 13A**
10. On November 2, 1998, Lawrence promoted both Petitioner and Todd Huddleston to Computer Operator III. **T. Vol. I, p. 143; Pet. Ex. 13A**
11. A systems analyst position (formerly known as a shift supervisor position) became vacant in the Division in June 2006. **T. Vol. I, pp. 39-42; Pet. Ex. 1**
12. Petitioner applied for the shift supervisor position. **T. Vol. I, p. 43; Pet. Ex. 15**
13. Lawrence interviewed four candidates for the position, including Petitioner. All four candidates worked for Lawrence at the time they applied for the Shift Supervisor position. **T. Vol. I, pp. 56-66; Pet. Ex. 12**
14. Following the interviews, Lawrence narrowed the field of candidates to three: Scott Moore, Todd Huddleston, and Petitioner. **T. Vol. I, p. 76**
15. Lawrence sought input on the three top candidates from Norris and the three then-current shift supervisors (Jim Beatty, Deane Irving, and Richard Howard). **Pet. Ex. 2** Lawrence also sought input from Strickland. **T. Vol. I, pp. 120-21**
16. Because of the nature of the shift rotation, the shift supervisors had all worked closely with each of the candidates. Thus, the shift supervisors were familiar with the abilities and work habits of the candidates. **T. Vol. I, p. 117**
17. As the Assistant Manager of Operations, Strickland's primary duties involved scheduling the operators and maintaining time sheets. Strickland was thus in the best position to evaluate the candidates' reliability. **T. Vol. I, pp. 118-21**
18. Norris recommended Scott Moore for the shift supervisor position. **T. Vol. I, p. 82; Pet. Ex. 3**
19. Jim Beatty, a white male, initially recommended Scott Moore, but then changed his recommendation to Todd Huddleston. **T. Vol. I, pp. 84, 89-90; Pet. Ex. 5**
20. Deane Irving recommended Petitioner. **T. Vol. I, p. 90; Pet. Ex. 6**
21. Richard Howard, a white male, recommended Todd Huddleston. **T. Vol. I, p. 83; Pet. Ex. 4**
22. Strickland recommended Todd Huddleston. **T. Vol. I, p. 146**

23. The criteria Lawrence used to select the candidate for promotion were threefold: (1) attendance; (2) job performance; and (3) ability to get along with others. **T. Vol. I, p. 66**
24. Reliable attendance was an important consideration because if someone was late reporting to his shift, then the person who was to be relieved could not leave. **T. Vol. I, pp. 69-70**
25. Other factors of importance to Lawrence were “how well [the candidate had] performed [his/her] job, how competently [the candidate had] performed [his/her] job, how frequently [the candidate] can perform tasks of a repetitive nature without difficulty, how well [the candidate] get[s] along with coworkers, how well [the candidate] relate[s] to [his/her] coworkers, both in a personal manner and in a professional manner.” **T. Vol. I, p. 78**
26. Petitioner and Huddleston had equivalent relevant educational backgrounds. **Pet. Ex. 15; Pet. Ex. 16** Both held the same position in the Division at the time Lawrence made his decision regarding whom to select for the shift supervisor position. **Pet. Ex. 13A**
27. Deane Irving (Irving), the one shift supervisor who recommended Petitioner for the promotion, testified that Petitioner “will argue his points loud and long, not taking turns,” and that “some of these interactions have been very strange.” **T. Vol. II, p. 261**
28. Irving also testified that he had seen Petitioner make mistakes on the job. **T. Vol. II, p. 269**
29. The consensus Lawrence received from those from whom he sought input was that Huddleston was the best candidate for the shift supervisor position. **T. Vol. I, p. 147**
30. Lawrence selected Todd Huddleston (Huddleston), a 35-year old white male, for the shift supervisor position. **T. Vol. I, p. 46; Pet. Ex. 13A** Lawrence was the sole decision-maker regarding who would be promoted to the shift supervisor position. **T. Vol. I, p. 133**
31. The reasons for Lawrence’s determination that Huddleston was more qualified than Petitioner for the shift supervisor position were as follows: (1) Huddleston received “very high marks” for his attendance and punctuality, while Lawrence had received comments that Petitioner often showed up late for work and sometimes left the computer room for a noticeable period of time for unknown reasons, **T. Vol. I, p. 135**; (2) Petitioner made mistakes in performing standard tasks, **T. Vol. I, pp. 141-42**; and (3) Lawrence had received reports of Petitioner being argumentative with others in the computer room and resisting orders of the supervisor on duty, **T. Vol. I, pp. 128-29, 159-61**.
32. In particular, in May of 2006, Petitioner reported for his shift six hours late, after having been given permission to be only two hours late. **T. Vol. I, pp. 137-39** Shortly thereafter, Petitioner missed his shift entirely, because, even though the shift schedule

had not changed in years, Petitioner had forgotten that he was supposed to work that shift. **T. Vol. I, pp. 139-40**

33. Despite the problems cited above, Petitioner was given a "satisfactory" on attendance on his annual performance appraisal for 2005-2006. **Pet. Ex. 18**
34. Lawrence testified that, due to the lack of money for merit pay, the annual performance appraisal "became less of an actual accurate assessment of the employee, as it was a routine that we needed to go through to satisfy HR, Human Resources' requirements." **T. Vol. I p. 165**
35. Norris testified that he signed Petitioner's 2005-2006 performance appraisal without reading it. **T. Vol. II, p. 208**
36. Lawrence did not consider race or age in his decision to promote Huddleston. **T. Vol. I, p. 147**
37. After making his decision, Lawrence filled out an electronic form, as required by Human Resources, indicating his first, second, and third choices for the position (Huddleston, Moore, and Petitioner, respectively). **T. Vol. I, pp. 95-96; Pet. Ex. 11** Lawrence also indicated on this electronic form that the remaining candidates were not selected because "Other(s) had more relevant training/experience." **Pet. Ex. 11** Other than filling out the electronic form, Lawrence did not write down his reasons for promoting Huddleston until Petitioner appealed the decision. **T. Vol. I, p. 152**
38. Once Lawrence received approval from Human Resources, Lawrence informed Petitioner that he had not been selected for the promotion by letter dated August 10, 2006. **T. Vol. I, p. 97; Pet. Ex. 9** Lawrence informed the other unsuccessful candidates in the same manner, with letters that were identical in substance. **T. Vol. I, p. 130**
39. Petitioner never heard Lawrence say anything racially discriminatory. **T. Vol. II, p. 304** In fact, Petitioner testified that the atmosphere in the division improved after Lawrence became Manager of Operations. **T. Vol. II, p. 305**
40. Petitioner offered no evidence of age discrimination by Lawrence.
41. In the time that Lawrence held the position of Manager of Operations, he hired and promoted several African-Americans and people over forty years old. **T. Vol. I, pp. 131-33; Pet. Ex. 13A**

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the issue in this contested case under Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. Petitioner was a career State employee under the provisions of the State Personnel Act, G.S. Chapter 126, at all times relevant to this contested case.
3. On the sole issue to be heard, Petitioner failed to meet his burden to show that Respondent's articulated legitimate reasons for selecting Todd Huddleston over Petitioner for the position of shift supervisor were a pretext for discrimination on the basis of race and age.
4. The North Carolina Supreme Court has adopted the burden-shifting scheme of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), for discrimination cases. *North Carolina Dep't of Corr. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).
5. Under the *McDonnell Douglas* burden-shifting scheme, a petitioner must first establish a prima facie case of discrimination. For a non-promotion case, Petitioner must establish that (1) he is a member of a protected class; (2) he was qualified for the promotion; (3) he was not selected for the promotion; and (4) the person receiving the promotion was not a member of the protected class. *Enoch v. Alamance County Dep't of Soc. Servs.*, 164 N.C. App. 233, 242, 595 S.E.2d 744, 751-52 (2004).
6. Here, Petitioner made out a prima facie case of discrimination: Petitioner is African-American and is over the age of forty; Petitioner was qualified for the position of shift supervisor; Todd Huddleston was selected for the position; and Todd Huddleston is white and under forty.
7. Under *McDonnell Douglas*, once a petitioner establishes his prima facie case, the burden then shifts to Respondent to articulate a legitimate, non-discriminatory reason for its decision.
8. Respondent here articulated a legitimate, non-discriminatory reason: Lawrence, the sole decision-maker, based his selection of Todd Huddleston over Petitioner on his determination that Huddleston was more reliable in attendance, had better technical skills, and had better interpersonal skills.
9. Under *McDonnell Douglas*, once Respondent has articulated a legitimate, non-discriminatory reason for the promotional decision, the burden then shifts back to Petitioner to prove that the articulated reason was a pretext for discrimination.
10. Petitioner in this case did not put forward sufficient evidence to rebut Lawrence's asserted reasons for promoting Huddleston over Petitioner.
11. Lawrence was a credible witness.
12. Petitioner did not offer evidence sufficient to contradict Lawrence's testimony that he made his decision based on the factors enumerated above, and not on Petitioner's race or age.

13. The testimony of Petitioner's own witness, Deane Irving, was consistent with Lawrence's determination that Huddleston had better interpersonal skills than Petitioner.

On the basis of the above Conclusions of Law, the undersigned issues the following:

DECISION

It hereby is ordered that Petitioner's claim of discrimination on the basis of race and age is **DISMISSED**.

ORDER

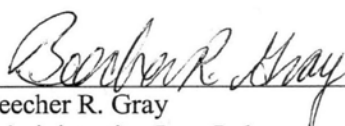
It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Services Center, Raleigh, N.C. 27699-6714, in accordance with N.C.G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to Decision and to present written arguments to those in the agency who will consider this Decision. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 19 day of February, 2008.


Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Alan McSurely
McSurely & Osment
PO Box 1290
Chapel Hill, NC 27514
ATTORNEY FOR PETITIONER

Katherine A Murphy
Education Section
N.C. Department of Justice
P O Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 19th day of February, 2008.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407

STATE OF NORTH CAROLINA

WAKE COUNTY

BRENDA STANLEY,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION,
Respondent.

Filed
2007 JAN -7 PM 3:37

Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 OSP 2387

DECISION

This matter was heard before Administrative Law Judge Joe L. Webster in Raleigh, North Carolina on July 24th through July 27th, 2007, and August 28th through August 29th, 2007. Charles E. Monteith, Jr. and Shelli Henderson Rice appeared on behalf of Petitioner. Allison A. Angell, Tina A. Krasner, and Scott Conklin, Assistant Attorneys General, appeared on behalf of Respondent.

PROCEDURAL BACKGROUND

On December 21, 2006, Petitioner filed a petition for contested case hearing in the Office of Administrative Hearings contending that Respondent did not have just cause to dismiss her; that Respondent wrongfully discharged her because of her race and/or handicapping condition; and further forced termination upon her in retaliation for her opposition to racial discrimination. Respondent filed a prehearing statement on January 26, 2007. Petitioner filed a prehearing statement on January 26, 2007.

ISSUES

1. Did Respondent have just cause to dismiss Petitioner from her employment with the Department of Transportation for unacceptable personal conduct?
2. Did Respondent wrongfully dismiss Petitioner based on her race?
3. Did Respondent wrongfully dismiss Petitioner based on her alleged handicapping condition?
4. Did Respondent fail to provide Petitioner with reasonable accommodations and otherwise discriminate against Petitioner in violation of the North Carolina Persons with Disabilities Protection Act or the Federal Americans with Disabilities Act?
5. Did Respondent wrongfully dismiss Petitioner in retaliation for her opposition to racial discrimination?

WITNESSES

Respondent presented testimony from the following witnesses: Sonya Beatty, Bonnie Tripp Simmons, Doug Allison, Patricia Broadhurst, Terry Niles, Jean Muse, John Williamson,

Andrew Questell, Annelly Casiano, Charles T. Childrey, Marcellina Alexander, Lee Johnson, and Linda Dixon.

Petitioner presented testimony from the following witnesses: Brenda Stanley, Dr. Wilson Sidney Comer, Rodney Ellen, and Marilyn Collier.

EXHIBITS

**** Transcript Volumes 1 through 6 and Page Numbers are designated as (V, Pages) ****

Respondent's Exhibits 1-23, 25-35, and 37-54 were admitted into evidence.

Petitioner's Exhibits 1-7 were admitted into evidence.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision, which is tendered to the North Carolina Department of Transportation for a final decision.

FINDINGS OF FACT

1. On May 27, 2000, Brenda Stanley ("Petitioner") began her employment as a Processing Assistant III ("PA III") with the North Carolina Department of Transportation ("DOT"). She was hired to work in the appraisal section which is one of three units within the Right of Way branch ("ROW"). The appraisal section has field offices across the state. Petitioner worked at the appraisal office located at 3509 Barrett Drive, Raleigh, North Carolina. She is a white female.

2. As a new employee, Petitioner was required to attend orientation. Various policies and benefits are reviewed at this time and employees are requested to sign and date acknowledgment forms for some of the policies. On May 30, 2000, Petitioner signed a DOT Violence in the Workplace Policy Statement. She remembers receiving the statement and signing it during orientation. Petitioner signed the policy statement again on August 12, 2003.

3. The second paragraph of the DOT Violence in the Workplace Policy Statement reads:

The North Carolina Department of Transportation will not tolerate violent behavior or the threat of violent behavior directed at clients, customers, co-workers, staff, supervisors, manager or any other person at the worksite or in any state-owned/rented vehicle. Neither will such

behavior be tolerated against the worksite or any state-owned/rented property. Such behavior will result in corrective and/or disciplinary action and potentially, criminal charges.

4. The third paragraph of the statement reads:

Violent behavior is defined as the infliction or threat of any bodily injury, harmful psychological contact or the destruction or abuse of property. This includes but is not limited to intimidating, threatening or hostile behaviors, offensive comments which are veiled, conditional, direct, written or verbal, physical abuse, vandalism, arson, sabotage and/or the use or carrying of weapons of any kind.

5. Petitioner initially reported to Lindsay Gould, Area Appraiser. In the fall of 2001, Gould received a promotion and Charles Thomas Childrey became the Acting Area Appraiser. Childrey became Plaintiff's supervisor; he is a white male.

6. On November 7, 2001, Charles Thomas Childrey, Petitioner's supervisor, received a letter from Andrew Thomas Questell ("Questell"), another employee that Childrey supervised. The letter expressed Questell's concern about Petitioner's repeated outbursts and disruptive office behavior; the most recent episode occurred on November 6, 2001. Questell personally spoke with Childrey to reinforce his written concerns. Questell observed Petitioner lose her temper on several occasions, slam doors, yell and argue with coworkers. Questell described the office atmosphere [during the time she worked there] "as having to walk on eggshells because you never knew" what type of mood she was in that day. He "tried to stay under the radar" and "away from her" because he did not know "if she was going to explode."

7. Petitioner does not remember what happened at the appraisal office in November of 2001. She denies there was ever a time when she slammed doors and had disruptive behavior. (5, 941-942)

8. In response to the letter, Childrey consulted with his supervisors and Employee Relations Representative, Charlie Watson. Childrey was also concerned about his safety and the safety of his employees due to Plaintiff's behavior.

9. Petitioner received a documented counseling for this incident. The basis of this documented counseling was unsatisfactory job performance. Approximately two months later, Petitioner was issued a written warning for unsatisfactory job performance, specifically unacceptable office behavior and an inability to operate fundamental computer applications required to perform her job duties.

10. On May 10, 2002, Petitioner notified the Family Medical Leave Act Coordinator, Kathi Johnson, of her need to take family medical leave due to a serious health condition that made her unable to perform the essential functions of her job. Petitioner notified Johnson that she needed the leave beginning on May 10, 2002, and expected leave to continue for twelve weeks. In response to her request, Johnson called Petitioner on May 21, 2002 and orally notified Petitioner that she was approved for family medical leave.

11. Petitioner was on family medical leave for twelve weeks effective May 10, 2002, through July of 2002. Her medical condition made her unable to perform the essential functions of her job, due to a serious health condition. While she was on family medical leave she applied for short term disability benefits. On July 17, 2002, she was notified in writing by Lynette Dees (now "Parish") at DOT that she was approved for short term disability effective July 8, 2002, through July 7, 2003. At the conclusion of family medical leave, she immediately went on short term disability.

12. Although the family medical leave forms completed by Petitioner that she had a serious health condition that made her unable to perform the essential functions of her job, she initially testified that she requested leave because her husband was very ill. However, on her request to leave form, the box pertaining to the employee's spouse [having a serious health condition] was not checked by Petitioner. The box that is checked indicates that she has a serious health condition.

13. The assistant to the ROW Manager, John Williamson was Jean Muse. The extent of Muse's role in regards to an employee's short term disability was to enter the start date and reinstatement date on the computer. Muse is never aware of the employee's medical condition or reasons related to the short term disability. . Petitioner did not tell Muse that she was depressed.

14. Prior to Petitioner's return to work, Muse received a phone call from Dr. Wilson Comer ("Dr. Comer"). On or about May 21, 2003, Dr. Comer contacted Muse to advise that Petitioner could return to work on a part time basis. He requested specific work limitations for her return. At that point, Muse advised Dr. Comer that he would need to provide the information in writing to the DOT.

15. In a letter dated May 21, 2003, to Muse from Dr. Comer, he confirmed their phone conversation earlier that day concerning Petitioner's return to work. He stated that Petitioner had made good progress in recovering from her disabling medical condition and would be ready to return to work on June 21, 2003 with the following restrictions: (1) Ms. Stanley should not be supervised by nor required to work for or with Mr. Tom Childrey, her former supervisor, and (2) Ms. Stanley's contact with Mr. Childrey should be limited as much as possible so that she should not return to work in the same building with Mr. Childrey. At the time the letter was drafted, Childrey still worked in the appraisal office.

16. Dr. Comer only requested two restrictions for Petitioner's return to work. He did not provide any details to Muse about Petitioner's "disabling medical condition." Upon receipt of the letter, Muse showed it to Williamson and they discussed where Petitioner could be placed upon her return.

17. John Williamson, ROW Manager, who retired on January 1, 2007, was involved with the DOT personnel in preparing for Petitioner's return to work on June 23, 2003. He does not remember seeing the May 21, 2003, letter to Muse from Dr. Comer. Yet, he does recall Muse telling him about the conditions related to Petitioner's return to work.

18. Petitioner was placed in a Processing Assistant III ("PA III") position at the Highway Building which is located at 1 South Wilmington Street in Raleigh, North Carolina. Childrey was still working at the appraisal office so Petitioner would not be supervised by him nor have contact with him. As a PA III, Petitioner operated the switchboard. She initially came back to work on a part time basis for twenty hours per week. After several weeks, she resumed a full time schedule. Based on Muse's limited observations, Petitioner did an outstanding job as the switchboard operator. Petitioner was still in the position when Muse retired in May of 2005.

19. For a short period of time Petitioner was supervised by Bonnie Tripp-Simmons. Around February of 2004, Sonya Beatty was promoted to an Accountant II position in ROW. Beatty became Petitioner's immediate supervisor and Beatty directly reported to Simmons, State Administrator.

20. As an Accountant II, Beatty's job duties and responsibilities included the management of all financial payments to individuals and/or entities for the nineteen ROW offices throughout the state. She is also responsible for compiling statistical information related to ROW transactions. Beatty directly supervises approximately five employees. She does not have the authority to dismiss employees.

21. Petitioner was a PA III when Beatty became her supervisor. Petitioner's job duties and responsibilities included operating the switchboard, which consisted of answering the telephone and properly routing calls. The switchboard had multiple lines and calls came in for employees in ROW and the ROW Utility Section. The activity on the switchboard varied on a daily basis. For example, some days there could be thirty to forty calls. On other days, there could be sixty-five calls. There were periods of time when the switchboard was not active. During the inactive periods, Petitioner was allowed complete her school work. She was taking several classes at Wake Tech Community College.

22. Petitioner was also allowed to use the Internet on the computer at her desk. She used the Internet to search for other job opportunities and sometimes printed out the job applications at the office.

23. Petitioner occupied a cubicle in an office area shared with other employees. The cubicle was not closed in, but had a left and right partition that extended a few feet to allow for privacy. When you entered the room, Petitioner's cubicle was on the right side where the switchboard is located. There was also a desk on the left side. Petitioner's cubicle included a desk and a computer. At the back of the room were two other desks with computers, one desk on the left side of the room and one on the right side. Each desk was behind a partition that extended several feet out from the wall. There was room for four employees in the office space. All of ROW's claims were processed in this room, so employees entered often for claim information.

24. In November of 2005, a Processing Assistant IV ("PA IV") position was posted on the DOT's website. The job duties and responsibilities consisted of providing secretarial and

administrative support to the ROW Unit Supervisor (R/W Administrative Agent); the ability to process right of way claims and invoices through SAP software systems, prepare documentation and correspondence, and enter statistical data on various spreadsheets. The position also involved considerable typing, filing, answering the phone, assisting with incoming mail and compiling reports. The selected candidate would report to Beatty.

25. Beatty confirmed that the job posting contained an accurate description of the job duties and essential knowledge, skills and abilities for the position. The ability to maintain effective working relationships with coworkers, public and other branches of transportation is important because the employee processes information to request a check for property owners. Therefore, the employee must be able to communicate with others in the branch. Accuracy and attention to detail are essential job requirements for the position because some of the issued checks are over two million dollars. If mistakes are made the checks must be cancelled and new ones reissued, all of which costs the state more money. The ability to organize and prioritize work is an essential job requirement because there are changes on a monthly basis. In fact, sometimes there are rushes on the processing and issuance of checks based on directives from judges or the Secretary of Transportation. When this happens, everyone has to stop his/her current task and focus on completing the rush checks.

26. The processing of a claim consists of reviewing the claim for accuracy based on the field's information. The claims are then forwarded for approval by the State Administrator (Simmons) and ROW Assistant Manager (Doug Allison). Once the claims are approved, they are sent for processing and the vendor numbers are reviewed and entered into the SAP. DOT uses the SAP system for all of its financial information. The claims are also entered into an excel spreadsheet for approval and for issuance of a check.

27. Petitioner voluntarily applied for the PA IV position because she wanted the higher salary and felt she was capable of doing more than answering the phone. At the time she applied for the position, Petitioner understood that the selected applicant would be working in her same office. Petitioner admitted that she understood the essential functions of the PA IV job.

28. When Petitioner completed her application for the position, in the section listing a series of conditions or impairments, she checked off a box indicating "None/prefer not to report."

29. Beatty was the hiring supervisor for the PA IV position so she conducted the interviews. Simmons also participated in the interviews. Beatty asked questions while Simmons transcribed the responses. Petitioner applied for the position and received an interview.

30. After conducting the interviews, Beatty recommended Petitioner for the position. She perceived Petitioner was capable of doing the job. Beatty forwarded the interview packet and her recommended candidate to her supervisor, Simmons. Simmons approved Petitioner as the selected candidate for the position.

31. The PA IV position was offered to Petitioner and she accepted. The position was a promotion for her with a higher pay grade than her former position. As the PA IV, Petitioner's

office was still located in the same room. However, she would now be placed at a desk in the back left corner of the room by a window. The desk was behind a partition. The office area was still occupied by Annelly Casiano.

32. Petitioner began the PA IV position around January 15, 2006. She was trained by Beatty, Terry Niles and Casiano. They showed her how to process payments, create checks and how to use the different screens in SAP. Petitioner's former position [PA III] was subsequently filled with a black female, Marcellina Alexander.

33. After a few months in the new position, Beatty observed a decline in Petitioner's conduct as it related to working with others. She also observed Petitioner display a very argumentative demeanor towards supervisory personnel and fellow coworkers.

34. On Thursday, May 11, 2006, Simmons and Beatty had a meeting with Petitioner to address current workplace conflicts and problems with her work. The meeting was held in Simmons' office. Petitioner complained about problems that she was having with several of her coworkers. Beatty and Simmons have a management style where they prefer to resolve problems together as a group. Thus, Beatty and Simmons proposed bringing all of the coworkers into the meeting and Petitioner agreed. Casiano, Alexander, Niles, and Larry James were asked to come join Petitioner, Beatty and Simmons. When everyone was present, Petitioner talked about the problems she had with other employees.

35. Casiano remembers the meeting on May 11, 2006. She recalls that Bonnie asked if anyone had anything to say about Petitioner's complaints [about each of them]. At first no one responded because they did not want to bring attention to Petitioner's failure to accept constructive criticism. However, Casiano finally spoke up to mention that she observed that Petitioner had mood swings at the office. After hearing the statement, Petitioner became very mad. She stood up from a chair she was sitting in and approached Casiano. At this point, everyone in the room stood up. Petitioner got in Casiano's face and yelled at her, "Whose side are you on?" As she yelled she banged on her notepad and told Bonnie that she quit. She accused all of her coworkers of creating the problems and ran out of the meeting.

36. Casiano testified that Petitioner went into a rage at the meeting. Although Petitioner got in Casiano's face and yelled at her, Casiano requested that Simmons not allow Petitioner to quit because she needed a job.

37. Petitioner returned to her office and began to draft a resignation letter. Beatty entered the office and requested that she stop drafting the resignation letter. Petitioner agreed and left her office. She went to meet with Dan DeVane, Chief Deputy Secretary. He encouraged her to return to her office and stay until five o'clock.

38. On Friday, May 12, 2006, Beatty was told that Petitioner wanted to return to her former job duties as a PA III. Petitioner would return to operating the switchboard and would no longer perform the job duties of a PA IV. However, Petitioner would maintain her current pay grade and salary. Beatty was directed to let Petitioner know the change was in effect and for her

to move back to the desk where the switchboard was located. Beatty and Allison met with Petitioner and requested that she move her work items and personal belongings by the end of the day [Friday]. Petitioner said that she did not have to move back to her former work station. She claimed that it was agreed that she could remain at her current work station by the window, and the switchboard would have to be moved to her present work station. Beatty told Petitioner that the switchboard could not be moved. The switchboard is currently plugged into an outlet specifically designed to accommodate the multiple phone lines. Relocating the switchboard to a different work station would have imposed an undue hardship on the DOT. Petitioner said that she did not want to discuss the issue any more and that she would think about it over the weekend.

39. On Monday, May 15, 2006, Petitioner told Simmons that she was going to remain at her work station and stay in her current position as a PA IV.

40. On May 22, 2006, Petitioner received a Documented Counseling (“counseling”) for Unacceptable Personal Conduct. The counseling was issued by Beatty and the specific conduct issues that represented the basis for the counseling were: 1) Disruptive behavior detrimental to workplace harmony and productivity, and 2) Insubordination. Beatty and Simmons presented the counseling to Petitioner and she was given an opportunity to read it. As Petitioner read the counseling, she got very upset because she felt as though the issues were created by other employees, not her. She refused to acknowledge receipt of the counseling. Petitioner wrote her feelings and other statements below the signature line on the document. The counseling lasted for approximately one hour.

41. Petitioner testified that Beatty’s statements “are not totally correct.” When asked what was not correct she referred to her handwritten response and “they” were being ugly and rude to her. “They” referred to Simmons, Beatty, Alexander, Casiano and Niles. She does not know how she was insubordinate. She testified that she did not engage in disruptive behavior.

42. Petitioner testified that the counseling placed her on notice of the DOT’s expectations.

43. On April 13, 2006, Petitioner received a “very good” performance rating from Beatty. The appraisal period was from April 1, 2005, through March 31, 2006. Petitioner was a switchboard operator, PA III, until March of 2006, when she received a promotion to a PA IV. Petitioner admitted that the majority of the work plan was based on her job performance as a switchboard operator in the PA III position.

44. On June 9, 2006, Beatty received an e-mail from Petitioner explaining the problems she was having with the way Niles trained her. Petitioner was aware that Beatty had an open door policy for all of her employees. Her e-mail requested that Beatty ask Niles to be more thorough when explaining things to her. In response to the e-mail, Beatty spoke with Niles about his training techniques. She asked him to better explain himself when training other employees because individuals are on different learning curves. She further encouraged him to be more detailed when training others. Beatty assured Petitioner that she had spoken with Niles.

45. On July 31, 2006, Beatty requested that Casiano and Petitioner review several processed claims. While Beatty was in the office, Petitioner asked her some questions about the files she was holding. Beatty told her that she asked the same questions the previous week. Nonetheless, she answered the questions. Petitioner appeared aggravated that Beatty reminded her that she asked the same questions last week.

46. Later in the day, Beatty overheard Casiano and Petitioner arguing. She walked into their office and asked what was going on. Petitioner told her that Niles said that she had some errors on her spreadsheet, and she should get Casiano to help her. While Casiano made a phone call, Petitioner reviewed the spreadsheet and could not find any errors. Petitioner then called Niles and told him that she did not make any errors. She told Beatty that Niles was rude to her. Beatty requested that Niles come into the office.

47. Niles came over and Beatty asked him about the way he spoke to Petitioner. He said he was very nice to her, but she yelled at him. As soon as he finished speaking, Petitioner began yelling at Niles that she was not rude to him and that he is always talking badly to her. Niles responded that he talks to her and treats her better than she deserved. He further stated that he tries to go out of his way to be nice to her and that they all treat her like she is a baby. Petitioner immediately jumped out of her chair and moved towards Niles while pointing her finger at him and yelling at him. She was very close to him so Beatty quickly stepped between Niles and Petitioner. As she stepped in the middle of them, Beatty pushed Niles back with her body. She asked Petitioner to calm down and back up. Petitioner refused to comply with Beatty's request and continued to yell and point her finger at Niles over Beatty's shoulder. Beatty directed her a second time to leave the room and take a walk to calm down. At this point, Petitioner left the room.

48. Petitioner denies physically approaching Niles and pointing her finger at him. She further denies that Beatty physically placed herself between Petitioner and Niles. Petitioner testified that Niles, Alexander and Beatty are not telling the truth.

49. Following the incident, Beatty contacted Allison because Williamson was out of town on business. Allison recommended that Beatty contact Patricia Broadhurst, Manager of Employee Relations. Beatty called Broadhurst and told her what happened. Broadhurst advised her to place Petitioner on investigatory placement with pay. Broadhurst also requested a written statement from each witness to the incident.

50. Later in the day on July 31, 2006, Petitioner received a memorandum from Beatty and Allison advising her that she was being placed on investigatory placement with pay in order for the DOT to investigate allegations of unacceptable personal conduct. Specifically, prohibitive behavior under the DOT Workplace Violence policy.

51. Beatty also requested Petitioner's identification badge pursuant to Broadhurst's advice. Beatty requested her badge at least two times, but Petitioner refused to give it to her. In addition, Petitioner also refused to sign the investigatory placement memorandum. She threw

some papers down on the floor. Beatty and Allison stood up once the items hit the floor. Beatty was scared because she did not know what else Petitioner was going to do. Petitioner was very upset and said that she needed to get back into the building the next day for a job interview. Beatty told her that she would make sure she could enter the building for the interview.

52. Capitol Police arrived at Beatty's office in order to escort Petitioner out of the building. Beatty requested an officer because she had witnessed Petitioner get upset and go into a rage earlier in the day, and Beatty knew she would be upset by the contents of the memorandum.

53. Once Petitioner left with Capitol Police, Beatty spoke with the DOT security to make sure Petitioner could attend her interview the next day. Petitioner testified that she was able to go to the interview.

54. On August 7, 2006, Williamson issued Petitioner a Pre-disciplinary Conference Notification for Unacceptable Personal Conduct due to the episode that occurred on July 31, 2006.

55. The specific conduct issues that represented the basis for the recommendation to dismiss Petitioner were: 1) Disruptive behavior detrimental to workplace harmony and productivity, 2) Willful violation of known or written work rules, and 3) Conduct unbecoming a State employee detrimental to State service. The conference was originally scheduled for August 10, 2006, at 8:00 a.m. Due to a mail delay Petitioner did not timely receive notification. Therefore, Petitioner requested that the conference be held later the same day. Her request was granted and the conference was rescheduled to 2:30 p.m.

56. The pre-disciplinary conference took place on August 10, 2006, in Williamson's office. He reviewed the allegations with her and gave her the opportunity to respond. He did advise her that the conduct issues were of a serious nature and that her coworkers were concerned with her behavior. She said very little in response to the allegations. She was emotional during the conference and claimed that she did not remember much. She did claim that everyone was against her. In response, Williamson told her that he met with the other employees and did not agree with her claim. At the end of the conference, Williamson advised her that he would review her comments and the facts and would make a decision regarding disciplinary action. She would be contacted in the near future with his decision. Petitioner did not make any statements about a disability and/or medical condition at the conference.

57. According to policy, there were a variety of disciplinary actions that Williamson could take with respect to Petitioner. For example, Williamson was aware that he could dismiss Petitioner for one act of unacceptable personal conduct.

58. Williamson recommended that Petitioner be suspended without pay for ten consecutive work days. Although he was very concerned about safety in the workplace, he issued the suspension in an attempt to get Petitioner's attention as to the serious nature of the

situation. He has dismissed other employees on a first occurrence of unacceptable personal conduct. However, he decided to give Petitioner a second chance.

59. On August 11, 2006, a letter was mailed to Petitioner notifying her of the suspension. Petitioner was aware that she could have been dismissed. She agreed that she was placed on notice about her conduct, the DOT's expectation that she should immediately improve the conduct deficiencies, and a failure to do so shall result in her dismissal.

60. On October 19, 2006, DOT held a mandatory Violence in the Workplace/Unlawful Workplace Harassment Training Workshop for employees. Petitioner, Casiano and Alexander attended the class.

61. On November 7, 2006, Petitioner did not come to work. When an employee is out of the office Beatty and Simmons have a routine procedure which consists of one of them reviewing the work on the absent employee's desk. The purpose of the review is to find any unprocessed claims that may be considered a rush. On this date Simmons reviewed the work on Petitioner's desk because Beatty was coming in later in the day. Simmons found several unprocessed claims on Petitioner's desk. Some of the claims were a week old, even though claims are typically processed within 24 - 48 hours. Simmons instructed four employees to process the claims immediately. Beatty was one of the employees and said it took about two hours to process the claims.

62. After the claims were processed, Simmons instructed Beatty to place Petitioner on an Employee Development and Performance Plan ("Plan"). The Plan put Petitioner on notice as to her performance level with respect to her job responsibilities and work expectations.

63. Petitioner testified that she was sick on November 7, 2006, and went to see Dr. Comer.

64. On November 8, 2006, Beatty completed a Plan on Petitioner which covers an evaluation period beginning November 6, 2006, through January 19, 2007. Beatty and Simmons presented the Plan to Petitioner and she became upset. She asked "Why are you doing this to me?" and said that Beatty hated her. She also said that she could not concentrate on her work because of the televisions and radios in her office. Petitioner refused to sign the Plan. Instead, she wrote her feelings on several pages of the Plan as she cried. Petitioner then went to lunch.

65. Petitioner, Casiano and Alexander all had televisions/radios on their desks. Following the meeting and pursuant to Simmons directive, Beatty e-mailed all of them to no longer use the televisions/radios.

66. Petitioner returned from lunch and got into an argument with Casiano. She went to Simmons' office but Simmons directed her to speak with Beatty. Petitioner went to Beatty's office and sat down in the left chair facing Beatty's desk. Beatty was sitting at her desk across from Petitioner. She told Beatty that Casiano was being rude to her.

67. 80. Beatty called Casiano into her office. Casiano stood in the office beside a bookcase located along the left wall. Petitioner again told Beatty that Casiano was rude to her. Casiano spoke up and said she was not rude. Casiano and Petitioner began to argue about what happened when Petitioner returned from lunch. Petitioner then stood up and threw a file she was holding onto the floor. Petitioner yelled, "I'm tired of all of this" and moved towards Casiano. Beatty immediately stood up because she did not know what Petitioner was going to do. Beatty walked to the end of her desk towards Casiano. Petitioner kept yelling, "I don't know why you all keep doing this to me. I'm tired of this." Casiano was in shock and just stood there. Next, Petitioner turned around and left the office.

68. Simmons and Lee Johnson came into the hallway to see what was happening. As Petitioner walked towards her office, Simmons requested her to come back to Beatty's office. Petitioner came back into the office and stood behind the chair she sat in earlier. Simmons sat on the chair to the right and asked what was happening. Petitioner started to tell Simmons that Casiano talked rudely to her. Casiano responded that she was not rude. The next thing Beatty remembered is that Petitioner placed both of her hands on top of the chair, lifted it up off the floor, and repeatedly moved it up and down in the air. At the same time, Petitioner yelled, "I don't know why you keep doing this to me. I'm tired of this. I'm tired. I'm tired." As Beatty witnessed Petitioner move the chair up and down in the air she thought Petitioner was going to throw the chair. She did not know where to go to avoid contact with the chair. Beatty did not want to move towards the door because she would have to pass Casiano to get to the door. Casiano was in a corner between the bookcase and the wall. Beatty was concerned that if she attempted to move towards the door and pass Casiano that Petitioner could throw the chair at her and hit Casiano. Beatty thought "She's getting ready to throw this chair at me, and I have no where to go."

69. Casiano still had not moved. She remained standing by the bookcase in shock. All of a sudden, Petitioner slammed the chair down on the floor, stormed out of the office and proceeded down the hall. As she went towards her office, Williamson called her name. He said, "Come back" and she said, "I've got to go. I have to leave but I'm not quitting." Petitioner left the building and management called security. Casiano still remained standing against the wall and appeared to be in shock. Beatty had to tell her she could move and sit down.

70. Beatty contacted Broadhurst and told her what happened. Broadhurst requested statements from each witness based on his/her observations. On November 9, 2006, Beatty typed a statement detailing her account of what happened. The statement was e-mailed to Broadhurst. Beatty stated she felt threatened by Petitioner's actions and had concerns about Petitioner's state of mind. Beatty felt trapped and fearful because Petitioner was blocking the door. The only available exit was a window, but Beatty's office is on the second floor of the building. Beatty feared for her own safety and the safety of her employees.

71. Another employee, Lee Johnson, also observed what happened. Johnson is employed with DOT in the Information Services branch within ROW and reports to Grady Morris. He is a white male.

72. Johnson knows Petitioner because he would distribute files to the office she shared with Casiano. The extent of his interaction with Petitioner was minimal.

73. On November 8, 2006, at approximately 1:40 p.m. Johnson was in his office scanning files when he heard shouting coming from Beatty's office. His office [Room 207] is directly across the hall from Beatty's office [Room 206]. Johnson stopped working and entered the hallway. He observed Petitioner yelling at Casiano and Beatty about being tired of being blamed for the office problems.

74. A few minutes later, Johnson stood in the hallway facing directly into Beatty's office. He observed Simmons inside the office to the right side near a chair. Simmons asked Casiano to explain her side of what happened. Casiano tried to explain but Petitioner repeatedly interrupted her. Petitioner began yelling as she walked behind a chair and picked it up from the top with both hands. She raised the chair approximately eight inches or more off the floor. As Petitioner raised the chair into the air, she yelled that she was sick and tired of people bothering her day after day. Then Petitioner slammed the chair down onto the floor.

75. At that moment, there was total silence in Beatty's office. Petitioner then turned around and stormed out. As she passed Johnson she glared at him and shouted, "Sorry if I disturbed you, sir." Johnson did not consider her statement an apology. He described it as a belligerent yell in a very high octave. Johnson looked at her and told her she needed to calm down. Simmons instructed Beatty to call security.

76. Due to the commotion, Williamson came down the hall. Simmons talked with him for several minutes. Williamson said he was going to speak with Petitioner.

77. After witnessing the episode with Petitioner, Johnson was concerned about her being able to pick up something else [other than a chair] or wielding a weapon. Johnson was concerned she was going to throw the chair at someone. In fact, he observed Beatty step back and away from her desk when Petitioner had the chair in her hands.

78. In his seven years of employment in ROW, Johnson has never witnessed an event with the magnitude that he observed during the outburst with Petitioner on November 8, 2006.

79. On November 9, 2006, Williamson issued Petitioner a second Pre-disciplinary Conference Notification for Unacceptable Personal Conduct. The specific conduct issues that represented the basis for the recommendation to dismiss were: 1) Disruptive behavior detrimental to workplace harmony and productivity, 2) Willful violation of known or written work rules, and 3) Conduct unbecoming a State employee detrimental to State service and conduct for which no reasonable person should expect to receive warning prior to dismissal. The conference was originally scheduled for November 15, 2006 at 9:00 a.m.

80. Williamson did not witness the outburst in Beatty's office. He was holding a meeting in his office. When the meeting finished, employees opened his office door to exit. He heard a loud noise approximately one hundred feet down the hall. He proceeded to walk out of

his office down the hall when he observed Petitioner leaving Beatty's office and walking toward the back exit. He asked Petitioner what happened. She responded that she had to get out of the building and left through an exit door. Security searched the building and notified Williamson that Petitioner was not in the building.

81. Petitioner's coworkers expressed safety concerns to Williamson. They were disturbed by Petitioner's repeated outbursts and the uncertainty as to the magnitude of any future outbursts. They were concerned about physical harm.

82. Upon receipt of the November 8, 2006 notification, Petitioner requested a delay in the scheduled conference date. Her request was granted.

83. On or around November 7, 2006, Petitioner completed an application for short term disability. She was not at work this day.

84. On November 9, 2006, Petitioner authorized the release of medical information to her employer as part of her application for short term disability. In section two, "Certification by Attending Physician," Dr. Comer certified that he has been treating Petitioner since April of 2002 and that she became disabled on November 8, 2007, with a diagnosis of recurrent major depressive disorder and that she was continuously disabled to the extent that she could not perform her regular job from that date through the present. He indicated that the total length of her disability will be approximately three months.

85. The conference took place on November 20, 2006, in Williamson's office. Petitioner, Williamson and Simmons were present. Prior to the conference Williamson and Simmons discussed seating arrangements. They were concerned about the volatile nature of Petitioner's outbursts and wanted to prepare an escape plan.

86. At the beginning of the conference, Williamson instructed Petitioner to sit in a specific chair. He reviewed the allegations [as stated in the letter] with her, the witness accounts and gave her an opportunity to respond. She said that she did not remember exactly what happened. She was very emotional during the conference. Williamson conducted the conference while Simmons listened and took handwritten notes.

87. Petitioner requested to keep her job for financial reasons. She did not tell Williamson about a disability and did not request an accommodation. He does not remember seeing any documents, nor Petitioner presenting any documents at the conference. He remembers she made comments about what her doctor had said, but he does not remember the specific comments. Williamson was not aware that she was going to a psychiatrist. Williamson did not have any communications with Dr. Comer.

88. Petitioner did not remember becoming angry and loud on November 8, 2006, but she may have raised her voice. She has never been aggressive to anyone. She denied moving towards Casiano, yelling and throwing a stack of work onto the floor. Further, she denied

grabbing the chair, picking it up, moving it up and down in the air and then slamming the chair down to the floor.

89. On November 22, 2006, via certified mail, Williamson mailed a letter to Petitioner notifying her that she was being dismissed for unacceptable personal conduct. He felt removing her from the workplace was the only available option.

90. Williamson was not aware that Petitioner began the application process for short term disability around November 7, 2006. Petitioner gave her application for short term disability to Donna Denning. Petitioner was dismissed by Respondent for unacceptable personal conduct, however, she was also approved for short term disability because at the time she became disabled [November 8, 2006] she was a DOT employee. At the time of the hearing, Petitioner was receiving monthly disability benefits.

91. Petitioner testified that she provided DOT management with two letters from Dr. Comer. The May 21, 2003 letter and the November 17, 2006 letter.

92. Petitioner testified that her episodes of depression are sporadic.

93. Petitioner testified that one of her stresses has been her husband's health. He is self-employed and when he is sick he cannot work. Because his income varies, that puts a strain on Petitioner. His health condition has also caused them to incur financial problems.

94. Petitioner testified that at the time of Dr. Comer's letter dated November 17, 2006, she was unable to perform her job duties.

95. Wilson Sidney Comer, Jr., is a psychiatrist with an office in Raleigh, NC. Dr. Comer has treated Petitioner since June of 2002.

96. Dr. Comer is board certified in psychiatry and neurology. He has been in private practice for most of his career.

97. Dr. Comer diagnosed Petitioner with recurrent major depression with psychosis and posttraumatic stress disorder ("PTSD"), chronic. The word "recurrent" means that she has experienced more than one episode of depression. The causes of her condition are unknown but genetics, family background, and past and present stresses can all contribute. During the course of treatment, Petitioner has demonstrated sleep disturbances, energy disturbances, feelings of hopelessness, helplessness, suicidal thoughts, severe anxiety, crying spells, insomnia, delusions and paranoia.

98. When Petitioner is suffering from major depression her mood, anxiety level, sleep pattern, appetite, energy level, ability to concentrate, memory, motivation and relationships can be affected. When she becomes psychotic her perception of reality and her ability to accurately perceive reality can be affected. An individual with Petitioner's disorder would sometimes have trouble interacting with others. Her disorder can reoccur according to its own innate rhythm.

The disorder is affected by physical problems, certain medications, certain illnesses and life stresses and strains. When she is not suffering from major depression and does not have any residual effects, the disorder would not affect her daily life. As she gets older in age she will likely have more frequent episodes of depression.

99. When Dr. Comer first met with Petitioner she was having difficulty with Tom Childrey, her supervisor at the time.

100. On May 21, 2003, Dr. Comer called Muse about Petitioner's return to work. Petitioner was present in Dr. Comer's office during the phone call. According to his progress notes he was told that she would be given a receptionist position at the main building downtown. Petitioner found the position and location acceptable. She would not lose her position as a PA III or pay grade. Petitioner and Dr. Comer agreed to a return to work date of June 21, 2003, with restrictions related to Childrey.

101. According to Dr. Comer's May 21, 2003, progress notes Petitioner and Dr. Comer agreed that she is not disabled but cannot work for Tom Childrey.

102. At the time Dr. Comer wrote the letter [May 21, 2003] Petitioner had recovered from an episode of major depression with psychosis. He did not think she could work for Childrey again due to her history of severe psychotic depression and posttraumatic stress disorder. He has made similar recommendations for other patients. From his understanding Petitioner did return to work at DOT for a supervisor other than Childrey.

103. After the episode in which Dr. Comer treated Petitioner, she got much better but her recovery did not persist. She relapsed. Her relapses can happen quickly or slowly. Since she has PTSD her ability to recognize the warning signs of depression is likely diminished.

104. Dr. Comer further testified that he did not know what triggered her more recent episode of depression in 2006. Once she started to feel depressed, persecuted, anxious and rejected, her response [to the feelings] would have been based on internal experiences of what was happening. The experiences may not have been consistent with what actually happened. Most likely her experiences would have been distorted.

105. Given Petitioner's condition she would feel like coworkers were trying to isolate her whether they were or not. Once that happened, her response would be of such a nature that it would probably increase their tendency to isolate her.

106. On November 17, 2006, Dr. Comer wrote a letter to DOT regarding Petitioner. According to the letter she had been in partial remission from major depressive disorder for more than a year, until July 2006 when her condition began to get worse. He listed her symptoms as crying spells, memory impairment, feelings of helplessness and hopelessness, emotional lability and interpersonal problems. Stresses such as her husband's illness, financial problems, recently moving and conflicts at work are all factors that would increase the likelihood of a relapse. Her

depression has made it impossible for her to do her job due to cognitive as well as emotional impairments.

107. The letter is based on his understanding [from Petitioner] that things were going poorly at work, and he did not think she would be able to do her work.

108. Based on his interactions with Petitioner, Dr. Comer does not think she could be violent. However, in his opinion he can understand how Petitioner's intense reactions could frighten people who do not know her very well.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings and received proper notice of the hearing in this matter. This office has jurisdiction to hear the matter and to issue a proposed decision to the State Personnel Commission which shall render a final agency decision.

2. At the time of her separation, Petitioner was a career state employee entitled to the protections of the North Carolina State Personnel Act; specifically, the just cause provision of N.C. Gen. Stat. § 126-35.

3. The State Personnel Act permits disciplinary action against career state employees for "just cause." N.C. Gen. Stat. § 126-35. Although "just cause" is not defined in the statute, the words are to be accorded their ordinary meaning. *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668, 443 S.E.2d 114 (1994)(defining "just cause" as, among other things, good or adequate reason).

4. Respondent has the burden of proof in this contested case hearing to show that it had just cause to dismiss Petitioner in accordance with N.C. Gen. Stat. § 126-35. *Teague v. N.C. DOT*, 177 N.C. App. 215, 628 S.E.2d 395, *disc. rev. denied*, 360 N.C. 581 (2006).

5. Administrative regulations provide two grounds for discipline or dismissal based on just cause, unsatisfactory job performance and unacceptable personal conduct. N.C. Admin. Code tit. 25 r. 1J.0604(b).

6. Petitioner was dismissed from her employment with the DOT for unacceptable personal conduct which includes: (4) the willful violation of known or written work rules (specifically Department's Workplace Violence Policy); and (5) conduct unbecoming a State employee detrimental to State service. N.C. Admin. Code tit. 25 r. 1J.0614(I); see also *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. 594, 620 S.E.2d 14 (2005).

7. One act of unacceptable personal conduct presents just cause for any discipline, up to and including dismissal. *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. at 597, 620 S.E.2d 17 (2005).

8. Case law indicates that unacceptable personal conduct is misconduct of a serious nature. *N.C. Dep't of Env't & Natural Resources v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004).

9. The North Carolina Department of Transportation's Violence in the Workplace Policy Statement, signed by Petitioner on May 30, 2000, is specific in defining what constitutes workplace violence.

"Violent behavior is defined as the infliction or threat of any bodily injury, harmful psychological contact or the destruction or abuse of property. This includes but is not limited to intimidating, threatening or hostile behaviors, offensive comments which are veiled, conditional, direct, written or verbal, physical abuse, vandalism, arson, sabotage and/or the use or carrying of weapons of any kind. Employees who feel they have been subjected to any behavior prohibited by this policy, or have observed or have knowledge of a violation of this policy, should immediately report it to their supervisor...."

10. Respondent has met its burden to show that it had just cause to dismiss the Petitioner in accordance with N.C. Gen. Stat. § 126-35 for unacceptable personal conduct.

11. The Office of Administrative Hearings looks to federal decisions and other law for guidance in establishing evidentiary standards and principles of legal authority to be applied in discrimination cases under state law. *N.C. Dep't of Correction v. Gibson*, 308 N.C. 131, 137, 301 S.E.2d 78, 82 (1983).

12. North Carolina follows a standard test to determine whether an employee's dismissal is wrongful due to racial discrimination. First, the employee must establish a prima facie case of discrimination. If the employee can establish a prima facie case, the burden shifts to the employer to prove a legitimate, nondiscriminatory reason for the dismissal. If the employer satisfies this burden, the plaintiff has the opportunity to demonstrate that the employer's proffered legitimate reason is a pretext for actual discrimination. *Abron v. North Carolina Dep't of Correction*, 90 N.C. App. 229, 233, 368 S.E.2d 203, 205 (1988).

13. A prima facie case of discrimination may be proven by showing that (1) a claimant is a member of a minority group, (2) she was qualified for the position, (3) she was discharged, and (4) the employer replaced her with a person who was not a member of a minority group. *N.C. Dep't of Correction v. Gibson*, 308 N.C. 131, 137, 301 S.E.2d 78, 82 (1983).

14. "[T]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

15. Petitioner failed to establish a prima facie case of discrimination. Even if Petitioner had presented a prima facie case, Respondent articulated a legitimate, non-discriminatory reason for her discharge. Williamson, a white male, testified that he made the decision to dismiss Petitioner for unacceptable personal conduct. As early as May 22, 2006, she was placed on notice that her conduct was unacceptable and required immediate improvement.

Despite repeated notice, Petitioner continued to engage in unacceptable conduct which ultimately led to her dismissal. Petitioner did not present evidence that other employees were involved in situations of similar seriousness and were retained. Petitioner also failed to demonstrate that Respondent's reason was a pretext. Therefore, Petitioner failed to meet her burden of proving race discrimination.

16. Chapter 126 of the North Carolina General Statutes provides the rights and remedies available to Petitioner. Specifically, a state employee has a remedy under state law and therefore a right to file a petition for a contested case hearing before the Office of Administrative Hearings ("OAH") where she could allege the following claim:

An alleged unlawful State employment practice constituting discrimination . . . including: [d]emotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or **handicapping condition** as defined by Chapter 168A of the General Statutes.

N.C. Gen. Stat. § 126-34.1(2)b (emphasis added).

17. Under the North Carolina Persons With Disabilities Protection Act a "'person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment." N.C. Gen. Stat. § 168A-3. The term "physical or mental impairment" in this subdivision, "excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment." N.C. Gen. Stat. § 168A-3.

18. The Supreme Court of North Carolina narrowly defined disability in the context of Chapter 168A as a "present, non-correctible loss of function which substantially impairs a person's ability to function normally." *Burgess v. Brewing Co.*, 298 N.C. 520, 259 S.E. 2d 248 (1979). Petitioner's occasional episodes of stress and depression are not disabilities because they are not present and non-correctable losses of function. *Pressman v. University of North Carolina*, 78 N.C. App. 296, 337 S.E.2d 644 (1985). Petitioner is not a handicapped person within the meaning of Chapter 168A.

19. Petitioner claims that the DOT discriminated against her by terminating her employment in violation of the Americans with Disabilities Act ("ADA"). Absent direct evidence of discrimination, a plaintiff must satisfy the three-step proof scheme established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to prevail on her ADA claim. First, Plaintiff must establish a *prima facie* case of discrimination by a preponderance of the evidence. Once established, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the alleged disparate treatment. If the defendant does so, the presumption created by the *prima facie* case is rebutted and drops from the case. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510 (1993). The plaintiff must then demonstrate that the employer's reason was a pretext for illegal discrimination. *Id.* at 510-11.

20. To establish a *prima facie* case of discriminatory discharge under the ADA, Plaintiff in this case must prove that (1) she has a disability; (2) she is otherwise qualified for the job in question; and (3) she was discharged solely because of her disability. See *Halperin v. Abacus Tech. Corp.*, 128 F.3d 191, 197 (4th Cir. 1997).

21. The ADA requires that in order to be disabled under the Act, a person must have “A) a physical or mental impairment that substantially limits one or more major life activities of such individual; B) a record of such impairment; or C) [been] regarded as having such an impairment.” 42 U.S.C. § 12102(2).

22. Major life activities for purposes of ADA claims include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning. A major life activity is substantially limited when the person is either unable to perform the activity or is significantly restricted as to the condition, manner or duration in which she can perform the activity compared to the average person in the general population. *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 122 S.Ct. 681 (2002).

23. Petitioner is not disabled under the ADA. She failed to present evidence that her condition substantially limited one or more major life activities. She did not present evidence of a record of impairment and no evidence suggests that Respondent regarded her as having an impairment.

24. Intermittent manifestations of an illness are insufficient to establish a substantial limitation on a major life activity. *EEOC v. Sara Lee Corp.*, 237 F.3d 349 (4th Cir. 2001).

25. “Under the ADA, an individual is ‘otherwise qualified’ if he, ‘with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” *Halperin*, 128 F.3d at 197 (citing 42 U.S.C.A. § 12111(8)).

26. To determine a job’s essential functions, it initially must be determined whether the employer actually requires employees holding the position to perform the particular function. 20 C.F.R. Pt. 1630, App., § 1630.2(n); EEOC Title I Technical Assistance Manual at II-13.

27. Evidence of whether a particular function is essential may include, but is not limited to, written job descriptions prepared before the job was filled; the amount of time spent by the employee on the particular function; and the terms of a collective bargaining agreement. 29 C.F.R. Pt. 1630, App. § 1630.2(n).

28. Plaintiff bears the burden of demonstrating that she is a “qualified individual with a disability.” See *Tyndall v. National Educ. Ctrs.*, 31 F.3d 209, 213 (4th Cir. 1994). In this case a preponderance of substantial evidence demonstrated that Petitioner is not a “qualified individual with a disability” and does not present a claim under the ADA.

30. The series of proofs and burdens outlined in McDonnell Douglas apply to retaliation claims. *Karpel v. Inova Health Sys. Servs.*, 134 F.3d 1222, 1228 (4th Cir. 1998); *Ennis v. National Ass'n of Business & Educ. Radio*, 53 F.3d 55, 58 (4th Cir. 1995).

31. Petitioner failed to meet her burden to show she was wrongfully discharged in retaliation for her opposition to unlawful discrimination.

DECISION

Based upon the foregoing Findings of Fact specifically referring to incidents occurring on May 11, 2006, May 12, 2006, July 31, 2006, November 8, 2006 and Conclusions of Law, the undersigned determines that the Respondent has met its burden that it had just cause to dismiss the Petitioner, and, therefore, the Respondent's decision to dismiss Petitioner from her position as a Processing Assistant IV at the DOT is AFFIRMED. In addition, Petitioner has failed to carry her burden of proof by a preponderance of the evidence that Respondent discriminated against her on the basis of race, a handicapping condition, and in retaliation for her opposition to unlawful discrimination. Petitioner also failed to carry her burden that Respondent discriminated against her in violation of the North Carolina Persons with Disabilities Act or Federal Americans with Disabilities Act.

ORDER


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

NOTICE

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

The agency that will make the final decision in this contested case is the North Carolina Department of Transportation.

This the 7th day of January, 2008.



Joe L. Webster
Administrative Law Judge

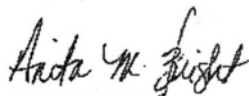
A copy of the foregoing was mailed to:

Charles E. Monteith, Jr.
Attorney at Law
102 Pickering Place, #3-D
Cary, NC 27513
ATTORNEY FOR PETITIONER

Shelli Henderson Rice
Attorney at Law
PO Box 10528
Raleigh, NC 27605
ATTORNEY FOR PETITIONER

Allison A. Angell
Assistant Attorney General
NC Department of Justice
1505 Mail Service Center
Raleigh, NC 27699-1505
ATTORNEY FOR RESPONDENT

This the 8th day of January, 2008.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407