

NORTH CAROLINA REGISTER

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December 16, 2013

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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

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Julie Brincefield, Editorial Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Tammara Chalmers, Editorial Assistant

tammara.chalmers@oah.nc.gov

(919) 431-3083

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel

joe.deluca@oah.nc.gov

(919) 431-3081

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2013 – December 2013

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
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

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.



State of North Carolina

PAT McCrORY
GOVERNOR

November 6, 2013

EXECUTIVE ORDER NO. 29

DESIGNATION OF CERTAIN GUBERNATORIAL APPOINTEES AS COVERED PUBLIC SERVANTS UNDER THE STATE GOVERNMENT ETHICS ACT

WHEREAS, the State Government Ethics Act (hereinafter the "Act"), codified in Chapter 138A of the North Carolina General Statutes, designates certain State employees and appointees as "public servants" who are covered by the provisions of the Act; and

WHEREAS, pursuant to N.C.G.S. § 138A-10(a)(3) the State Ethics Commission identifies and publishes a list of boards and individuals subject to Chapter 132 as covered persons; and

WHEREAS, the State Ethics Commission has not yet identified the Division of Employment Security Board of Review established pursuant to N.C.G.S. § 96-4(b) as a covered board; and

WHEREAS, Section 138A-3(30)g of the Act authorizes the Governor to designate appointees in the principal State departments as "public servants" under the Act.

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

Members of the Board of Review appointed pursuant to N.C.G.S. § 96-4(b) are hereby designated as public servants subject to the State Ethics Act. Initial appointees will need to complete and file a Statement of Economic Interest with the State Ethics Commission and abide by all applicable provisions for public servants under of the State Ethics Act.

This Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed by name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this sixth day of November in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

November 7, 2013

EXECUTIVE ORDER NO. 30

FIX AND MODERNIZE INFORMATION TECHNOLOGY GOVERNANCE IN CABINET AGENCIES BY COLLABORATING AS ONE IT

WHEREAS, state government purpose is to promote a stronger North Carolina that connects customers – citizens, business, education and government; and

WHEREAS, efficient and effective Information Technology (IT) will enhance customer service and streamline business operations; **and**

WHEREAS, the way the state has governed and managed IT historically is inefficient, based on too many silos, too much duplication, too many incompatible systems; and

WHEREAS, one mechanism for fixing and modernizing IT governance is to collaborate as ONE IT by further aligning the management and operations of the cabinet agency IT resources to improve efficiency.

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

Section 1. Cabinet Agencies.

This Executive Order shall apply to all state "Cabinet Agencies" and shall include all executive offices, boards, commissions, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, which are supervised by, administratively housed in or which report to the cabinet agencies.

Section 2. Cabinet Chief Information Officer.

By November 15, 2013, the Secretary/Director of each cabinet agency shall appoint a Cabinet Chief Information Officer ("CCIO"), or combine with another cabinet agency as agreed by the Secretary/Director, and State Chief Information Officer ("SCIO"). Each CCIO shall report to the Secretary/Director and/or the SCIO. Each CCIO will carry the title CIO (Agency)/Deputy State CIO and become members of the ONE IT Executive Leadership Team (ELT). All cabinet agency information technology personnel shall report to the CCIO or to his or her designee.

Section 3. ONE IT Executive Leadership Team.

By November 15, 2013, in the Office of Information Technology (OIT) the SCIO will establish ONE IT Executive Leadership Team (ELT). The ONE IT ELT will meet regularly to modernize IT operating model, enterprise architecture, innovation, shared services, project management,

security, and vendor management programs to enhance customer interactions and streamline business operations.

Section 4. Collaboration & Innovation Plan.

By February 1, 2014, each CCIO shall submit to the Secretary/Director and the SCIO for review and approval a Collaboration & Innovation plan ("plan") demonstrating how the cabinet agency will, no later than July 1, 2014, support the most efficient operating model for the delivery of IT.

The plan should consider any related activities to the NC GEAR efforts; define a percentage of cost savings towards future innovation or any necessary one-time or ongoing Information Technology investment needed to realize such business cost savings or efficiencies. All new projects, if deemed appropriate by the ONE IT ELT, shall be tested in the Innovation Center to make sure IT purchases work before purchased.

Each plan shall address: (a) IT operational and project priorities that are consistent with the cabinet agency's strategic business goals, (b) IT budgets, (c) major IT procurements planned, (d) strategies for enhancing the efficiency, effectiveness and security of IT services, (e) IT staffing plans, and (f) Innovation activities and usage of Innovation Center.

Section 5. Cabinet Unite IT Strategy.

By March 31, 2014, the SCIO, in conjunction with each CCIO, shall develop a Unite IT Strategy defining the of Information Technology and related Platforms Services for all cabinet agencies, except those services, if any, that cannot be united due to restrictions imposed by security, contracts, state or federal law. This Strategy will be presented to Cabinet Secretaries/Directors and the Governor by the SCIO.

Section 6. Compliance Reviews.

Annually, beginning in March 2014, the SCIO and CCIO's shall, for the purpose of protecting programs, data and information technology, conduct compliance reviews across the cabinet agencies to ensure full compliance with statutes, regulations, policies, standards and contractual obligations related to information security and information technology and report annually on the results of such reviews to Cabinet Secretaries/Directors and the Governor by the SCIO.

Section 7. Definitions.

As used in this Executive Order:

"Cabinet Agencies" include: Department of Transportation, Department of Health and Human Services, Department of Public Safety, Department of Environment and Natural Resource, Department of Revenue, Department of Commerce, Department of Administration, Department of Cultural Resources, Office of State Budget, Office of Human Resources, Office of Information Technology Services, and Governor's Office.

"Information Technology (IT)" means hardware, software, and telecommunications equipment, including but not limited to personal computers, mainframes, wide and local area networks (wired and wireless), broadband, servers, mobile or portable computers, peripheral equipment, telephones, wireless communications, handheld devices, public safety radio services, facsimile machines, technology facilities including but not limited to data centers, dedicated training facilities, switching facilities, and other relevant hardware and software items as well as personnel tasked with the planning, implementation, and support of technology including hosting or vendor managed as a service solutions;

"Platform Services" shall mean data and telecommunications networks, data center services, web site hosting and portal services, and shared enterprise services such as email, directory services, and authentications systems; and

"Innovation Center" is a shared facility provided by repurposing space in the Department of Environmental and Natural Resources. The activities within the center are supported through IT

operating cost and resources from the SCIO and CCIO initiatives. The Innovation Center aligns the voice of the customers – citizens, business, education, and government through collaboration; and

"Telecommunications" means any origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

Section 8. Applicable Law.

Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

Section 9. Effective Immediate.

This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of November, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101

(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 .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of May 29, 2013, 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 the following recent verbatim adoptions:

- Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks
(78 FR 32110 - 32116, May 29, 2013)

The *Federal Registers* (FR), as cited above, contain both technical and economic discussions that explain the basis for the changes.

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:

Erin T. Gould, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101

(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 .0101 and .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910 and 1926 promulgated as of November 6, 2013, 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 the following recent verbatim adoptions:

- Updating OSH Standards Based on National Consensus Standards; Signage (78 FR 35559 - 35567, June 13, 2013) and (78 FR 66642 - 66643, November 6, 2013)
- Incorporation by Reference; Accident Prevention Signs and Tags; Correction (78 FR 66641 - 66642, November 6, 2013)

The *Federal Registers* (FR), as cited above, contain both technical and economic discussions that explain the basis for the changes.

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:

Erin T. Gould, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Nicholas Noble
Orenco Systems, Inc.
814 Airway Ave
Sutherlin, OR 97479-9012

For: Innovative Approval of Orenco Systems, Inc. AdvanTex® wastewater system models AX20RT and AX25RT

DHHS Contact: Nancy Deal
1-919-707-5875
Fax: 919-845-3973
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/approvedproducts.htm>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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 amend the rules cited as 10A NCAC 13D .2111, .2402, .3101, .3104, .3201-.3202, .3401-.3404 and repeal the rules cited as 10A NCAC 13D .3301-.3302.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** August 22, 2013 and October 30, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: February 11, 2014

Time: 10:00 a.m.

Location: Wright Building, 1201 Umstead Drive, Room 131, Raleigh, NC 27603

Reason for Proposed Action: Rule 10A NCAC 13D .2111, Administrative Penalty Determination Process, has been modified to be consistent with changes to G.S. 131E-129, which was amended in 2011. Rule 10A NCAC 13D .2402, Preservation of Medical Records, has been updated and the length of time for record storage for discontinued facilities was reduced to lessen the burden upon licensed facilities. This change makes the licensure rule consistent with the federal record retention requirement for nursing homes that participate in Medicare and Medicaid.

Additionally, over the past 16 years, significant changes have been made in the design and construction of nursing home facilities. In particular, the nursing home industry is moving away from an institutional model of facility design to a household model. In the household model, 15 to 30 people live in one housing unit with patient rooms clustered around a small kitchen, dining room and living area, which are open to the corridor. Decentralized kitchens and small dining rooms help to create the feeling of a home. This "culture change" movement toward the household model of design is very strong in the United States today.

All of the proposed rule changes were made in collaboration with stakeholders such as the Construction and Nursing Home Licensure and Certification Sections of the NC Division of

Health Service Regulation, the NC Division of Aging and Adult Services, the State Long Term Care Ombudsman, the NC Health Care Facilities Association, the Society for the Advancement of Gerontological Environments (SAGE), the NC Coalition for Long Term Care Enhancement, architects and engineers, and nursing home providers. The proposed changes allow for innovations in nursing home facility design, update the rules for technical changes, clarify and modify rule language to align with current standards of practice, and align rule language with current administrative procedures.

Comments may be submitted to: Megan Lamphere, 2719 Mail Service Center, Raleigh, NC 27699-2719; fax (919) 733-3207; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .2100 – LICENSURE

10A NCAC 13D .2111 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) ~~The surveyor or complaints investigator shall identify and notify the facility of areas of noncompliance resulting from a survey or investigation which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The facility may submit additional written information which was not available at the time of the visit for evaluation by the surveyor.~~ surveyor, investigator, or branch head. The surveyor ~~surveyor, investigator or branch head~~ shall notify the facility if a decision is made, based on information received, not to recommend a penalty. If the decision is to recommend a penalty, the surveyor ~~or investigator~~ shall complete and submit a negative action an administrative penalty proposal, which includes the classification of the violation and penalty assessed in compliance with G.S. 131E-129, and recommend a penalty, by Type (A or B), to the branch head to the Nursing Home Licensure & Certification Section designee, who shall ~~The designee shall make a decision on determine the~~ type and amount of the penalty to be submitted for consideration. The ~~negative action~~ penalty proposal shall then be submitted to the Section administrative penalty monitor for processing.

(b) The ~~Department~~ Nursing Home Licensure & Certification Section shall notify the licensee by certified mail within 10 working days from the time the penalty proposal is received by the Section administrative penalty monitor that an administrative penalty is being considered.

(c) The licensee shall have 10 working days from receipt ~~of the notification of the penalty proposal notification~~ to provide the ~~Department~~ Section with any additional written information relating to the proposed administrative penalty. ~~Upon request by the licensee, the Department shall grant the licensee an extension of up to 30 days to submit additional written information relating to the proposed administrative penalty.~~

(d) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S. 131E-129, the licensee shall be notified of the type and amount of penalty and may accept the recommendation instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee must notify the administrative penalty monitor by certified mail within five working days following receipt of the recommendation. The licensee must include payment of the penalty with the notification. If payment is not received, the recommendation shall be forwarded to the Penalty Review Committee.

(e) The Penalty Review Committee must review a recommended penalty ~~proposal when: it is a Type A violation; is a Type B violation that has been previously cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or is a~~ when it is a: Type A1 violation; Type A2 violation that has not been corrected; Type B violation that has been cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or a Type B violation as provided in Paragraph (d) of this Rule which is not accepted by the licensee.

(f) ~~A subcommittee of the Penalty Review Committee consisting of four committee members assigned by the Penalty~~

~~Review Committee chair shall meet to initially review non-repeat Type B violations. The Penalty Review Committee chair shall appoint the subcommittee chair and shall be an ex officio member of the Penalty Review Committee subcommittee. The surveyor or investigator recommending the penalty or a branch representative shall attend the meeting when work schedules permit. Providers, complainants, affected parties and any member of the public may also attend the meeting. The administrative penalty monitor shall be responsible for informing parties of these public meetings.~~

(g) ~~Time shall be allowed during the Penalty Review Committee subcommittee meetings for individual presentations regarding proposed penalties. The total time allowed for presentations regarding each facility, the order in which presenters shall speak and length of presentations shall be determined by the Penalty Review Committee subcommittee chair.~~

(h) ~~The administrative penalty monitor shall have five working days from the meeting date to notify the facility and involved parties of penalty recommendations made by the Penalty Review Committee subcommittee. These recommendations including the vote of the Penalty Review Committee subcommittee shall be submitted for review by the full Penalty Review Committee at a meeting scheduled for the following month.~~

(i) ~~The full Penalty Review Committee shall consider Type A violations, repeat Type B violations and non-repeat Type B violations referred by the Penalty Review Committee subcommittee. Providers, complainants, affected parties and any member of the public may attend full Penalty Review Committee meetings. Upon written request of any affected party for reasons of illness or schedule conflict, the Department may grant a delay until the following month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.~~

(j) ~~The Penalty Review Committee and Penalty Review Committee subcommittee shall have for review the entire record relating to the penalty recommendation. The Penalty Review Committee and Penalty Review Committee subcommittee shall make recommendations after review of negative action proposals, any supporting evidence, and any additional information submitted by the licensee as described in Paragraph (c) of this Rule that may have a bearing on the proposal such as documentation not available during the investigation or survey, action taken to correct the violation and plans to prevent the violation from recurring.~~

(k) ~~There shall be no taking of sworn testimony nor cross examination of anyone during the course of the Penalty Review Committee subcommittee or full Penalty Review Committee meetings.~~

(f) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. Recommendations for nursing home penalties shall be submitted

to the Chief of the ~~Medical Facilities Licensure~~ Nursing Home Licensure & Certification Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation and notify the licensee of his or her final decision by certified mail.

~~(m)(g)~~ The licensee shall have 60 days from receipt of the notification of the Section Chief's final decision to pay the penalty as provided by G.S. 131E-129 or must file a petition for contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131E-2.

Authority G.S. 131D-34; 131E-104; 143B-165.

SECTION .2400 – MEDICAL RECORDS

10A NCAC 13D .2402 PRESERVATION OF MEDICAL RECORDS

(a) ~~The manager of medical records~~ A facility shall ensure that keep medical records records, whether original, computer media or microfilm, be kept on file for a minimum of five years following the discharge of an adult patient.

(b) ~~The manager of medical records shall ensure that if~~ If the patient is a minor when discharged from the nursing facility, then the records shall be kept on file until his or her 19th birthday and, then, for plus an additional five years.

(c) If a facility discontinues operation, the licensee shall ~~make known to~~ inform the Division of Health Service Regulation where its records are stored. Records ~~are to~~ shall be stored in a business offering retrieval services for at least ~~44~~ five years after the closure date.

(d) ~~The manager of medical records~~ A facility may authorize the microfilming copying of medical records. Microfilming Copying may be done on or off the premises. If done off the premises, the facility shall take precautions to ensure the confidentiality and safekeeping of the records. ~~The original of the microfilmed medical records shall not be destroyed until the manager of medical records has had an opportunity to review the processed film for content.~~

~~(e) Nothing in this Subchapter shall be construed to prohibit the use of automation of medical records, provided that all of the provisions in this Rule are met and the medical record is readily available for use in patient care.~~

~~(f)(e)~~ All medical records are confidential. ~~Only authorized personnel shall have access to the records. Signed authorization forms concerning approval or disapproval of release of medical information outside the facility shall be a part of each patient's medical record. The facility shall be compliant with the Health Insurance Portability and Accountability Act. Representatives of the Department shall be notified at the time of inspection of the name and record number of any patient who has denied medical record access to the Department. At the time of the inspection, the facility shall inform the surveyor of the name of any patient who has denied the Department access to their medical record.~~

~~(g)(f)~~ Medical records are the property of the facility, and they shall not be removed from the facility except through a court order. Copies shall be made available for authorized purposes

such as insurance ~~claims and claims,~~ physician ~~review,~~ review, and patient requests.

Authority G.S. 131E-104; 131E-105.

SECTION .3100 – DESIGN AND CONSTRUCTION

10A NCAC 13D .3101 GENERAL RULES

(a) Each facility shall be planned, constructed, equipped, and maintained to provide the services offered in the facility.

(b) A new facility or remodeling of an existing facility shall meet the requirements of the North Carolina State Building ~~Code~~ Codes all applicable volumes which is ~~are~~ incorporated by reference, including all subsequent amendments. Copies of ~~this code these codes~~ may be purchased from the ~~Department of Insurance Engineering and Codes Division~~ located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost of two hundred fifty dollars (\$250.00). International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of five hundred twenty-seven dollars (\$527.00) or accessed electronically free of charge at http://www.ecodes.biz/ecodes/support/FreeResources/2012NorthCarolina/12NorthCarolina_main.html. Existing licensed facilities shall meet the requirements of the North Carolina State Building ~~Code~~ Codes in effect at the time of construction or remodeling.

(c) Any existing building converted from another use to a nursing facility shall meet all requirements of a new facility.

(d) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the ~~Commission for Public Health, North Carolina Division of Public Health, Environmental Health Services Section,~~ 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 are available for inspection at the North Carolina Department of Health and Human Services, Division of Public Health, Environmental Health Services Section 5605 Six Forks Road, Raleigh, North Carolina 27509. Copies of these Rules may be obtained from the Department of Environment and Natural Resources, Division of Environmental Health, Environmental Health Services Section, 1630 1632 Mail Service Center, Raleigh, NC 27699-1630 27699-1632 at no cost.

(e) The adult care home portion of a combination facility shall meet the rules for a nursing facility contained in Sections .3100, .3200, .3300, and .3400 of this Subchapter, except when separated by two-hour fire resistive construction. When separated by two-hour fire-resistive construction, the adult care home portion of the facility shall meet the rules for ~~domiciliary homes~~ adult care homes in 10A NCAC 13F, Licensing of Adult Care Homes, which are incorporated by reference, including all subsequent amendments; and ~~domiciliary adult care home~~ resident areas must be located in the ~~domiciliary adult care home~~ section of the facility. Copies of 10A NCAC 13F can be obtained free of charge from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(f) An addition to an existing facility shall meet the same requirements as a new facility.

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3103 SITE

The site of ~~the~~ a proposed facility must be approved by the Department prior to construction ~~and shall be~~ as:

- (1) ~~be~~ accessible by public roads ~~and public transportation; roads;~~
- (2) ~~be~~ accessible to fire fighting services;
- (3) ~~have~~ having a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
- (4) ~~meet~~ meeting all local ordinances and zoning laws; and
- (5) ~~be~~ being free from exposure to hazards and pollutants.

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3104 PLANS AND SPECIFICATIONS

(a) When construction or remodeling of a facility is planned, one copy of final working drawings construction documents and specifications shall be submitted by the owner or his owner's appointed representative to the Department for review and approval. Schematic drawings and preliminary working drawings shall be submitted by the owner prior to the required submission of final working drawings. As a preliminary step to avoid last minute difficulty with construction documents approval, schematic design drawings and design development drawings may be submitted for approval prior to the required submission of construction documents. The Department will forward copies of each submittal to the Department of Insurance and the Division of Environmental Health for review and approval. Three copies of the plan shall be provided at each submittal.

(b) Approval of ~~final plans and specifications~~ construction documents and specifications ~~must~~ shall be obtained from the Department prior to licensure. Approval of ~~plans~~ construction documents and specifications shall expire after one year unless a building permit for the construction has been obtained prior to the expiration date of the approval of ~~final plans~~ construction documents and specifications.

(c) If an approval expires, renewed approval shall be issued by the Department, provided revised ~~plans~~ construction documents and specifications meeting ~~all current regulations, codes, and the standards established in Sections .3100, .3200, and .3400 of this Subchapter~~ are submitted by the owner or appointed representative and ~~reviewed~~ reviewed by the Department.

(d) Any changes made during construction shall require the approval of the Department in order to maintain compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter.

~~(d)(e)~~ (e) Completed construction or remodeling shall conform to the ~~minimum~~ standards established in Sections .3100, .3200, .3300, and .3400 of this Subchapter. ~~Prior to approval for licensure, one set of "as built working drawings" shall be furnished to the Department. Final working drawings construction documents and building construction including the operation of all building systems operation must shall be~~

approved in writing by the Department prior to licensure or patient and resident occupancy.

~~(e)(f)~~ The owner or ~~his designated agent~~ owner's appointed representative shall notify the Department when actual construction or remodeling starts ~~and at points when construction is 50 percent, 75 percent, and 90 percent complete and upon final completion is complete.~~ New construction or remodeling must be approved in writing by the Department prior to use.

Authority G.S. 131E-102; 131E-104.

SECTION .3200 – FUNCTIONAL REQUIREMENTS

10A NCAC 13D .3201 REQUIRED SPACES

(a) In a facility, The the net floor area of a single bedroom shall not be less than 100 square feet and the net floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and cannot be used as a multi-bedroom unless approved in advance by the Division to meet the requirements of G.S. 131E, Article 9.

(b) The total space set aside for dining, ~~recreation activity~~ and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the adult care home portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total.

(c) In nursing facilities, included in the total square footage required by ~~Rule .3201 (b) of this Section; Paragraph (b) of this Rule,~~ a separate dining area or areas at a minimum of 10 square feet per bed shall be provided and a separate activity area or areas at a minimum of 10 square feet per bed shall be provided. The remainder of the total ~~required space for dining and activities~~ square footage required by Paragraph (b) of this Rule may be in a separate area or combined with either of the ~~required~~ separate dining and activity areas required by this Paragraph. If a facility is designed with patient household units for 30 or less patients, the dining and activity areas in the household units are not required to be separate.

(d) In combination facilities, included in the total square footage required by ~~Rule .3201(b) of this Section; Paragraph (b) of this Rule,~~ a separate dining area or areas ~~at with at least~~ with at least 14 square feet per adult care home bed shall be provided. The adult care home dining area or areas may be combined with the nursing facility dining area or areas. A separate activity area or areas for ~~domiciliary adult care home~~ beds shall be provided ~~at with at least~~ with at least 16 square feet per ~~domiciliary adult care home~~ bed. The adult care home activity area ~~may shall~~ not be combined with the activity area or areas required for nursing beds;

(e) Dining, activity, and living space shall be designed and equipped to provide accessibility to both patients confined to wheelchairs and ambulatory patients. ~~Required dining; Dining,~~ activity, and living areas required by Paragraph (b) of this Rule shall have windows with views to the outside. ~~The glazing material for the windows~~ The gross window area shall not be

less than eight percent of the floor area required for each dining, activity, or living space.

(f) Closets and storage units for equipment and supplies shall not be included as part of the ~~required~~ dining, activity, and living floor space ~~area~~ area required by Paragraph (b) of this Rule.

(g) ~~Handicap accessible outdoor~~ Outdoor areas for individual and group activities shall be provided and shall be accessible to patients and residents with physical disabilities.

(h) For nursing beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 36 cubic feet of clothing storage space at least half of which is for hanging clothes.

(i) For adult care home beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each adult care home resident with a minimum of 48 cubic feet of clothing storage space at least half of which is for hanging clothes.

(j) Some means for patients and residents to lock personal articles within the facility shall be provided.

(k) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient room. One tub or shower shall be provided for each 15 beds not individually served. ~~There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof. For each 120 beds or fraction thereof the following shall be provided:~~

(1) at least one bathtub or a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of patients into the tub. All bathtubs must be accessible on three sides;

(2) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use.

(l) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

(1) a medication preparation area with a counter, a sink with four inch faucet trim handles, a medication refrigerator, eye level medication storage, cabinet storage and a double locked narcotic storage room area located adjacent to the nursing station or under the visual control of the nursing station; staff. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;

(2) a clean utility room with a counter, sink with four inch handles, wall and under counter sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and

one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;

(3) a soiled utility room with a counter, sink with four inch handles, wall and under counter storage, a flush rim clinical sink or water closet with a device for cleaning bedpans and a means for washing and sanitizing bedpans and other utensils, sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by Rule 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities.

(4) a nurses' toilet and locker space for coats, purses, and personal belongings;

~~(5) an audio visual nurse patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;~~

~~(6)~~(5) a soiled linen storage room; room. If the soiled linen storage room is combined with the soiled utility room, a separate soiled linen storage room is not required;

~~(7)~~(6) a clean linen storage room;

~~(8)~~(7) a nourishment station in an area enclosed with walls and doors which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven or hot plate; and plate. If a facility is designed with patient household units, a patient dietary area located within the patient household unit may substitute for the nourishment station. The patient dietary area shall include cooking equipment, a kitchen sink, refrigerated storage and storage areas and shall be for the use of staff, patients and families;

~~(9)~~(8) one nurses' station consisting of desk space for writing, storage space for office supplies, storage space for patients' records and space for nurses' call equipment. An audio-visual nurse-patient call system arranged to ensure that a patient's call in the facility readily notifies and directs staff to the location where the call was activated;

(9) a control point with an area for charting patient records, space for storage of emergency equipment and supplies, and nurse-patient call and alarm annunciation systems; and

(10) a janitor's closet.

(m) Clean linen storage shall be provided in a separate room from bulk supplies. Clean linen for nursing units may be stored

in closed carts, or cabinets in the clean utility room, or in a linen closet on the unit floor.

~~(n)~~ A soiled linen room shall be provided.

~~(o)(n)~~ Each nursing unit shall be provided with at least one janitor's closet. The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care and employee facilities shall be provided janitor's closets and may share one as a group.

~~(p)(o)~~ Stretcher and wheelchair storage shall be provided.

~~(q)(p)~~ Bulk storage shall be provided at the rate of five square feet of floor area per licensed bed. This storage space shall be either in the facility or within 500 feet of the facility on the same site. This storage space shall be in addition to the other storage space required by this Paragraph.

~~(r)(q)~~ Office space shall be provided for persons holding the following positions: administrator, director of nursing, social services director, activities director and physical therapist. There shall also be a business office. Office space shall also be provided for business transactions.

~~(s)(r)~~ Each combination facility shall provide a minimum of one residential washer and residential dryer located to be accessible by adult care home staff, residents, and family unless personal laundry service is provided by the facility. family.

Authority G.S. 131E-104.

10A NCAC 13D .3202 FURNISHINGS

(a) A facility shall provide Handgrips handgrips shall be provided for at all toilet and bath facilities used by patients. Handrails patients and handrails shall be provided on both sides of all corridors where corridors are defined by walls and used by patients.

(b) A facility shall provide Flame flame resistant privacy screens or curtains shall be provided in multi-bedded rooms.

Authority G.S. 131E-102; 131E-104.

SECTION .3300 - FIRE AND SAFETY REQUIREMENTS

10A NCAC 13D .3301 NEW FACILITY REQUIREMENTS

In addition to the requirements in Rule .3101(b) of this Subchapter, a new facility shall meet the following additional requirements:

- (1) Each floor used for patient sleeping rooms shall be divided into at least two sections by a smoke partition.
- (2) Nursing units shall be designed to provide separation from other departments or services with a smoke barrier.
- (3) Horizontal exits are not permitted in any new facility.

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3302 ADDITIONS

~~An addition to an existing facility shall meet the same requirements as a new facility except that in no case shall more than one horizontal exit be used to replace a required exit to the outside.~~

Authority G.S. 131E-102; 131E-104.

SECTION .3400 – MECHANICAL: ELECTRICAL: PLUMBING

10A NCAC 13D .3401 HEATING AND AIR CONDITIONING

~~Heating and cooling systems shall meet the American Society of Heating, Refrigerating, and Air Conditioning Engineers Inc. Guide [which is incorporated by reference, including all subsequent amendments; copies of this document may be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers Inc. at 1791 Tullie Circle NE, Atlanta, GA 30329 at a cost of one hundred nineteen dollars (\$119.00.); and the National Fire Protection Association Code 90A, [current addition with all subsequent amendments which is adopted by reference; copies of this code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269 9101 at a cost of nineteen dollars and fifty cents (\$19.50)] with the following modifications:~~

- (1) Drug rooms must have positive pressure with relationship to adjacent areas.
- (2) Environmental temperature control systems shall be capable of maintaining temperatures in the facility at 72 degrees F. minimum in the heating season and a maximum of 81 degrees F. during the non heating season.
- (3) Rooms designated for isolation shall have negative or positive pressure with relationship to adjacent areas depending upon the type of patient to be isolated. Exhaust for isolation rooms shall be ducted to the outdoors with exhaust fans located at the discharge end of the duct.

~~(a) A facility shall provide heating and cooling systems complying with the following:~~

- (1) The American National Standards Institute and American Society of Heating, Refrigerating, and Air Conditioning Engineers Standard 170: Ventilation of Health Care Facilities, which is incorporated by reference, including all subsequent amendments and editions, and may be purchased for a cost of fifty-four dollars (\$54.00) online at http://www.techstreet.com/ashrae/lists/ashrae_standards.tmpl. This incorporation does not apply to Section 7.1, Table 7-1 Design Temperature for Skilled Nursing Facility. The environmental temperature control systems shall be capable of maintaining temperatures in the facility at 71 degrees F. minimum in the heating season

- and a maximum of 81 degrees F. during the non-heating season; and
- (2) The National Fire Protection Association 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems, which is incorporated by reference, including all subsequent amendments and editions, and may be purchased at a cost of thirty-nine dollars (\$39.00) from the National Fire Protection Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=90A>.

(b) In a facility, the windows in dining, activity and living spaces and bedrooms shall be openable from the inside. To inhibit patient and resident elopement from any window, the facility may restrict the window opening to a six-inch opening.

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3402 EMERGENCY ELECTRICAL SERVICE

~~Emergency electrical service shall be provided~~ A facility shall provide an emergency electrical service for use in the event of failure of the normal electrical service. This emergency electrical service shall consist of the following:

- (1) In any existing facility, the following shall be provided:
 - (a) type 1 or 2 emergency lights as required by the North Carolina State Building Code, Codes: Electrical Code;
 - (b) additional emergency lights for all ~~nursing stations, control points~~ required by Rule .3201(l)(9) of this Subchapter, drug medication preparation areas required by Rule .3201(l)(1) of this Subchapter and storage areas, and for the telephone switchboard, if applicable;
 - (c) one or more portable battery-powered lamps at each ~~nursing station; control point~~ required by Rule .3201(l)(9) of this Subchapter; and
 - (d) a ~~suitable~~ source of emergency power for life-sustaining equipment, if the facility admits or cares for occupants needing such equipment, to ensure continuous operation with on-site fuel storage for a minimum of 72 hours.
- ~~(2) Any new addition to an existing facility shall meet the same requirements as new construction.~~
- ~~(3) Any conversion of an existing building (hotel, motel, abandoned hospital, abandoned school, or other building) shall meet the same requirements for emergency electrical services as required for new construction.~~

(4)(2) An emergency power generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the ~~emergency~~ essential electrical system. For the purposes of this Rule, the "essential electrical system" means a system comprised of alternate sources of power and all connected distribution systems and ancillary equipment, designed to ensure continuity of electrical power to designated areas and functions of a facility during disruption of normal power sources, and also to minimize disruption within the internal wiring system as defined by the North Carolina State Building Codes: Electrical Code.

(5)(3) Emergency electrical services shall be provided as required by Rule .3101(b) of this Subchapter with the following ~~modifications:~~ modification: Section 517.10(B)(2) of the North Carolina State Building Codes: Electrical Code shall not apply to new facilities.

~~(a) Section (B)(2) contained in Section 517.10 of the North Carolina State Building Code, Electrical Code shall not apply to new facilities.~~

~~(b) Egress lighting shall be connected to the essential electrical system at exterior of exits.~~

~~(c) Task illumination in the switchgear and boiler rooms shall be connected to the essential electrical system.~~

(6)(4) The following equipment, devices, and systems which are essential to life ~~safety,~~ safety and the protection of important equipment or vital materials shall be connected to the critical branch of the emergency essential electrical system as follows:

- (a) nurses' calling system;
- (b) fire ~~pump pump,~~ if installed;
- ~~(c) sewerage lift or sump pumps if installed;~~

~~(d)(c)~~ one elevator, where elevators are used for ~~vertical~~ the transportation of patients;

~~(e)(d)~~ equipment such as burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls, required for heating and sterilization, if installed;

~~(f)(e)~~ equipment necessary for maintaining telephone ~~service.~~ service; and

~~(f)~~ task illumination of boiler rooms, if applicable.

(7)(5) A ~~minimum of one~~ dedicated emergency critical branch circuit per bed for ventilator-dependent patients is ~~required~~ required, in addition to the normal system receptacle at

~~each bed location required by the North Carolina State Building Code, Electrical Code. This emergency critical branch circuit shall be provided with a minimum of two duplex receptacles identified for emergency use. Additional emergency branch circuits/receptacles shall be provided where When staff determines that the electrical life support needs of the patient exceed the minimum requirements stated in this Paragraph. Item, additional critical branch circuits and receptacles shall be provided. Each emergency circuit serving ventilator dependent patients shall be fed from the automatically transferred critical branch of the essential electrical system. For the purposes of this Rule, a "critical branch circuit" is a circuit of the critical branch subsystem of the essential electrical system which supplies energy to task lighting, selected receptacles and special power circuits serving patient care areas as defined by the North Carolina State Building Codes: Electrical Code. This Paragraph shall apply Item applies to both new and existing facilities.~~

(8)(6) Heating equipment provided for ventilator dependent patient bedrooms shall be connected to the critical branch of the essential electrical system and arranged for delayed automatic or manual connection to the emergency power source if the heating equipment depends upon electricity for proper operation. This Paragraph shall apply Item applies to both new and existing facilities.

(9)(7) Task lighting connected to the automatically transferred critical branch of the essential electrical system shall be provided for each ventilator dependent patient bedroom. For the purposes of this Item, task lighting is defined as lighting needed to carry out necessary tasks for the care of a ventilator dependent patient. This Paragraph shall apply Item applies to both new and existing facilities.

(10)(8) Where electricity is the only source of power normally used for space heating, the heating of space, the an emergency service essential electrical system shall provide for heating of patient rooms. Emergency heating of patient rooms will not be is not required in areas where the facility is supplied by at least two separate generating sources, sources or a network distribution system with the facility feeders so routed, connected, and protected that a fault any place between the generators generating sources and the facility will not likely cause an interruption. interruption of more than one of the facility service feeders.

(11)(9) The emergency An essential electrical system shall be so controlled that after interruption of

the normal electric power supply, the generator is brought to full voltage and frequency and connected with within 10 seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, and equipment necessary for maintaining telephone service. All other lighting and equipment required to be connected to the emergency essential electrical system shall either be connected through the 10 second primary automatic transfer switching or shall be subsequently connected through other delayed automatic or manual transfer switching. If manual transfer switching is provided, staff of the facility shall operate the manual transfer switch. Receptacles connected to the emergency system shall be distinctively marked for identification.

(12)(10) Sufficient fuel shall be stored for the operation of the emergency power generator for a period not less than 72 hours, on a 24-hour per day operational basis. basis with on-site fuel storage. The generator system shall be tested and maintained per National Fire Protection Association (NFPA) code 99, current addition with all subsequent amendments, Health Care Facilities Code, NFPA 99, which is adopted incorporated by reference. reference, including all subsequent amendments and editions. Copies of this code may be obtained from the National Fire Protection Association, 4 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269 9101 at a cost of thirty one dollars (\$31.00). online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=99>. Records of running time shall be maintained and kept available for reference. The facility shall maintain records of the generator system tests and shall make these records available to the Department for inspection upon request.

(13)(11) Existing facilities shall have electrical systems The electrical emergency service at existing facilities that shall comply with licensure standards the requirements established in Sections .3100, and .3400 of this Subchapter in effect at the time a license is first issued. Any remodeling of an existing facility that results in changes in to the emergency electrical service delivery shall comply with current licensure requirements. to support the delivery of those services. the requirements established in Sections .3100, and .3400 of this Subchapter in effect at the time of remodeling.

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3403 GENERAL ELECTRICAL

- (a) ~~In a facility, All~~ all main water supply shut off valves in the sprinkler system shall be electronically supervised so that if any valve is closed an alarm will sound at a continuously manned central station.
- (b) No two adjacent emergency lighting fixtures shall be on the same circuit.
- (c) Receptacles in bathrooms shall have ground fault protection.
- (d) Each patient bed location shall be provided with a minimum of four single or two duplex receptacles. Two single receptacles or one duplex receptacle shall be connected to the critical branch of the emergency power system at each bed location. Each patient bed location shall also be provided with a minimum of two single receptacles or one duplex receptacle connected to the normal electrical system.
- (e) Each patient bed location shall be supplied by at least two branch circuits.
- (f) The fire alarm system shall be installed to transmit an alarm automatically to the fire department that is legally committed to serve the area in which the facility is located, by the most direct and reliable method approved by local ordinances.
- (g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.
- ~~(h) All receptacles in patient use areas must be grounded by an insulated conductor sized in accordance with Table 250-95 of the North Carolina State Building Code, Electrical Code.~~

Authority G.S. 131E-102; 131E-104.

10A NCAC 13D .3404 OTHER

- (a) In general patient ~~areas~~, areas of a facility, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. ~~In~~ On multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems ~~which~~ that provide two-way voice communication shall be equipped with an indicating light at each calling station ~~which~~ that lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' and residents' use at each patient and resident toilet, bath, and shower.
- ~~(b) At least one telephone shall be available in each area to which patients are admitted and additional telephones or extensions as are necessary to ensure availability in case of need. A facility shall provide:~~
- ~~(1) at least one telephone located to be accessible by patients, residents and families for making local phone calls; and~~
 - ~~(2) cordless telephones or telephone jacks in patient and resident rooms to allow access to a telephone by patients and residents when needed.~~
- (c) ~~General outdoor~~ Outdoor lighting shall be provided ~~adequate~~ to illuminate walkways and ~~drive~~, drives.

- (d) A flow of hot water shall be within safety ranges specified as follows:
- (1) Patient Areas - 6 1/2 gallons per hour per bed and at a temperature of 100 to 116 degrees F; ~~and~~
 - (2) Dietary Services - 4 gallons per hour per bed and at a minimum temperature of 140 degrees F; and
 - (3) Laundry Area - 4 1/2 gallons per hour per bed and at a minimum temperature of 140 degrees F.
- ~~(e) Plumbing systems shall meet the requirements of the North Carolina State Building Code, Plumbing Code.~~
- ~~(f)(e)~~ If provided in a facility, Medical medical gas and vacuum systems shall be installed, tested, and maintained in accordance with the National Fire Protection Association Health Care Facilities Code, NFPA 99, Code 99 ~~current addition with all subsequent amendments, which is adopted by reference, which is incorporated by reference, including all subsequent amendments and editions.~~ Copies of this code may be ~~obtained~~ purchased for a cost of sixty-one dollars and fifty cents (\$61.50) from the National Fire Protection Association, Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=99.1> Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-7471 9101, at a cost of thirty one dollars (\$31.00).
- ~~(g) The Administrator shall assure that isolation facilities are available and used for any patient admitted or retained with a communicable disease.~~
- ~~(h)(f)~~ Each facility shall have a control system ~~or procedure~~ mechanism and staff procedures to aid staff in the supervision of for monitoring and managing patients who wander or are disoriented. The control mechanism shall include egress alarms and any of the following:
- (1) an electronic locking system;
 - (2) manual locks; and
 - (3) staff supervision.
- This requirement ~~shall apply~~ applies to new and existing facilities.
- (g) Sections of the National Fire Protection Association Life Safety Code, NFPA 101, 2012 edition listed in this Paragraph are adopted by reference. Copies of this code may be purchased for a cost of ninety-three dollars (\$93.00) from the National Fire Protection Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=101>.
- (1) 18.2.3.4 with requirements for projections into the means of egress corridor width of wheeled equipment and fixed furniture;
 - (2) 18.3.2.5 with requirements for the installation of cook tops, ovens and ranges in rooms and areas open to the corridors;
 - (3) 18.5.2.3(2), (3) and (4) with requirements for the installation of direct-vent gas and solid fuel-burning fireplaces in smoke compartments; and

- (4) 18.7.5.6 with requirements for the installation of combustible decorations on walls, doors and ceilings.

Smoke compartments where the requirements of these Sections are applied must be protected throughout by an approved automatic sprinkler system. For the purposes of this Rule, a "smoke compartments" are spaces within a building enclosed by smoke barriers on all sides, including the top and bottom as indicated in NFPA 101, 2012 edition. Where these Sections are less stringent than requirements of the North Carolina State Building Codes, the requirements of the North Carolina State Building Codes shall apply. Where these Sections are more stringent than the North Carolina State Building Codes, the requirements of these Sections shall apply.

(h) Ovens, ranges, cook tops and hot plates located in rooms or areas accessible by patients or residents shall not be used by patients or residents except under facility staff supervision. The degree of staff supervision shall be based on the facility's assessment of the capabilities of each patient and resident.

Authority G.S. 131E-102; 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to repeal the rules cited as 10A NCAC 39A .0201-.0211, .0801-.0810; 40A .0103-.0104, .0206-.0208, .0306-.0310, .0403-.0404; 41A .0502; 41G .0102; 43D .1201-.1207; 43E .0301-.0309; 43F .0101-.0102, .0201-.0207, .0301-.0305, .0401-.0410, .0501-.0514, .0601-.0607, .0701-.0704, .0801-.0802, .0804, .0901, .1001-.1012.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** December 5, 2012
☐ **RRC certified on:**
☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://cph.publichealth.nc.gov/>

Proposed Effective Date: April 1, 2014

Public Hearing:

Date: January 9, 2014

Time: 2:00 p.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action:

All proposed rules: In accordance with the Rules Modification and Improvement program (RMIP) of 2010, the NC Commission for Public Health and the Division of Public Health believe that these rules meet the criteria of EO 70 because the Commission has identified them as being unnecessary.

10A NCAC 39A .0201-.0211 – The Adult Home Health Services program no longer exists as an operational or funded program within the Division of Public Health.

10A NCAC 39A .0801-.0810 – The Home and Community-Based Hiv Health Services Program no longer exists as an

operational or funded program within the Division of Public Health.

10A NCAC 40A .0103-.0104, .0206-.0208, .0306-.0310, .0403-.0404 – The School Water Fluoridation Program no longer exists as an operational or funded program within the Division of Public Health.

10A NCAC 41A .0502 – Per Section 10.29A(c) of S.L. 2009-451, as enacted by Section 10.13(a) of S.L. 2010-31, State appropriations for vaccines supplied to providers were no longer available as of the 2010-2011 fiscal year; therefore, this rule is no longer required.

10A NCAC 41G .0102 – Fees for rabies tags, links, and rivets are no longer required.

10A NCAC 43D .1201-.1207 – The Maternal and Child Health Block Grant Nutrition Program is no longer a funded or an operational program.

10A NCAC 43E .0301-.0309 – The Pediatric Primary Care Program no longer exists as an operational or funded program within the Division of Public Health.

10A NCAC 43F .0101-.0102, .0201-.0207, .0301-.0305, .0401-.0410, .0501-.0514, .0601-.0607, .0701-.0704, .0801-.0802, .0804, .0901, .1001-.1012 – The Children's Special Health Services program is no longer administered by the Division of Public Health. The medical services previously reimbursed by CSHS funding are now covered under Medicaid and Health Choice coverage within the EPSTD program.

Comments may be submitted to: Chris Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)707-5179, fax (919)870-4829, email chris.hoke@dhhs.nc.gov

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
☐ **Analysis submitted to Board of Transportation**
☐ **Local funds affected**
☐ **Substantial economic impact (≥\$1,000,000)**
☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 39 - ADULT HEALTH

SUBCHAPTER 39A - CHRONIC DISEASE

SECTION .0200 - HOME HEALTH SERVICES

10A NCAC 39A .0201 GENERAL

The Home Health Services program is administered by the Health Care Section, Division of Adult Health, 1915 Mail Service Center, Raleigh, NC 27699-1915

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0202 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~"Home Health Services" means skilled nursing, home health aide, therapy, and medical social services and ancillary medical supplies and durable medical equipment provided to an essentially homebound patient at the patient's place of residence on physician's orders as a part of a written plan of care.~~
- (2) ~~"Home Health Agency" means a public, private non profit or private proprietary home health agency certified by Medicaid and Medicare.~~
- (3) ~~"Program" means the Home Health Services Program.~~
- (4) ~~"Skilled Nursing Services" means skilled nursing services as defined in Home Health Medicaid Manual (HHMM) Section 5202.1 which is adopted by reference in accordance with G.S. 150B-14(e). Copies of the HHMM may be inspected at or obtained from the Home Health Services Program Office.~~
- (5) ~~"Home Health Aide Services" means home health aide services as defined in HHMM Section 5202.2 which is adopted by reference in accordance with G.S. 150B-14(e).~~
- (6) ~~"Therapy Services" means therapy services as defined in HHMM Section 5202.3 which is adopted by reference in accordance with G.S. 150B-14(e).~~
- (7) ~~"Medical Social Services" means medical social services as defined in HCFA Pub. 11 Section 206.1 which is adopted by reference in accordance with G.S. 150B-14(e). Copies of the definition may be inspected at or obtained from the Home Health Services Program Office.~~
- (8) ~~"Durable Medical Equipment (DME)" means durable medical equipment as defined in HHMM Section 5202.5 which is adopted by reference in accordance with G.S. 150B-14(e). Copies may be inspected at or obtained from the Home Health Services Program Office.~~
- (9) ~~"Medical Supplies" means medical supplies as defined in HHMM 5202.4 which is adopted by reference in accordance with G.S. 150B-14(e).~~
- (10) ~~"Program Reimbursement Rate" means the:~~

(a) ~~Medicaid maximum for nursing services, home health aide services, therapy services, durable medical equipment, and ancillary medical supplies; and~~

(b) ~~Interim Medicare rate for medical social services.~~

(11) ~~"Third party payor" means any person or entity that is or may be indirectly liable for the cost of service furnished to a patient. Third party payors include, without limitation, Medicaid, Medicare, private insurance, Veterans Administration, Children's Special Health Services and Workers Compensation.~~

Authority G.S. 130A-223.

10A NCAC 39A .0203 REIMBURSEMENT FUNDS

(a) ~~The Home Health Services Program may provide reimbursement funds to home health agencies to pay for home health services they provide to eligible patients.~~

(b) ~~Application for reimbursement funds shall be made to the program and shall include the following information in a format specified by the HHSP:~~

- (1) ~~a written plan which includes agency background, counties agency serves, services provided, and referral sources;~~
- (2) ~~a list of the agency's charges, a copy of the most recently filed Medicare cost report;~~
- (3) ~~a statement concerning the agency's efforts to serve patients who are unable to pay for services.~~

(c) ~~The program will allocate reimbursement funds according to community needs and performance records of the respective home health agencies, and contracts will be signed with agencies approved by the program. The program will consult with the North Carolina Association for Home Care and other providers in developing an allocation formula. This allocation formula will establish a maximum amount that each home health agency may be reimbursed.~~

(d) ~~In order to maximize the utilization of the reimbursement funds, in the event the agency is being reimbursed at a rate which will, if continued, result in an underexpenditure of funds at the end of the contract period, the program may reduce the amount of funds budgeted by an amount consistent with the projected level of underexpenditure. Funds projected to be unexpended may be reallocated to home health agencies in accordance with community needs and performance records. The program shall notify the agency in writing prior to any reduction of funds.~~

(e) ~~Contracts for reimbursement funds are subject to annual renewal and are subject to the availability of funds.~~

Authority G.S. 130A-223.

10A NCAC 39A .0204 PATIENT FINANCIAL ELIGIBILITY

(a) ~~Home Health Services program reimbursement funds shall be used to pay for services provided to financially eligible~~

patients. Financial eligibility shall be determined by the home health agency by a signed declaration of gross income and family size by the patient or a person responsible for the patient. A patient whose gross family income is 125 percent or less of Federal Poverty Guidelines shall be financially eligible for full coverage under the program. A patient whose gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines shall be eligible for partial coverage as defined in Rule .0211(b) of this Section under the program. A patient whose gross family income is 200 percent or more of Federal Poverty Guidelines is not eligible for coverage under the program. The Federal Poverty Guidelines are adopted by reference in accordance with G.S. 150B-14(c). Copies of the Federal Poverty Guidelines may be inspected at or obtained from the Home Health Services Program.

(b) Once a patient is determined to be financially eligible, that eligibility shall continue for the duration of the physician's plan or care for the patient, up to a maximum of one year.

(c) The home health agency shall document each financial eligibility determination on a form provided by the program.

(d) The home health agency is authorized to require substantiating documentation when making financial eligibility determinations.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0205 COVERED SERVICES

Home Health Services program reimbursement funds shall be used to pay for the provision of home health services under a physician's plan of care to eligible patients.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0206 BILLING THE PROGRAM

(a) If a patient's gross family income is 125 percent or less of Federal Poverty Guidelines, the home health agency may bill the HHSP the Program Reimbursement Rate [Rule .0202(10)]. The agency shall not bill a patient in this income category.

(b) If a patient's gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines, the home health agency may bill the program as follows:

- (1) 85 percent of the Program Reimbursement Rate if the patient's gross family income is between or includes 126 percent and 140 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 15 percent of the Program Reimbursement Rate;
- (2) 70 percent of the Program Reimbursement Rate if the patient's gross family income is between or includes 141 percent and 155 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 30 percent of the Program Reimbursement Rate;
- (3) 55 percent of the Program Reimbursement Rate if the patient's gross family income is between or includes 156 percent and 170 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 45 percent of Program Reimbursement Rate;

(4) 40 percent of the Program Reimbursement Rate if the patient's gross family income is between or includes 171 percent and 185 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 60 percent of the Program Reimbursement Rate;

(5) 25 percent of the Program Reimbursement Rate if the patient's gross family income is between or includes 186 percent and 199 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 75 percent of the Program Reimbursement Rate; or

(6) in the case of agencies with nominal fee provider status, if a patient's gross family income is between 125 and 200 percent of Federal Poverty Guidelines, the home health agency may bill the program at the agency's usual and customary charge.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0207 RATES OF REIMBURSEMENT

(a) Home health agencies that contract for reimbursement funds shall be reimbursed for home health services provided to eligible patients in an amount and percentage based on the Program Reimbursement Rate in effect at the time service is rendered, as specified in Rule .0202(10) of this Section.

(b) In the case of agencies with nominal fee provider status, if the patient is otherwise eligible and has any third party coverage, the agency shall not charge any of the cost of their care to HHSP.

(c) Claims for reimbursement from the Home Health Services Program must be documented and reported on a quarterly basis on a form provided by the program. No claims for reimbursement will be accepted by the program more than 180 days after the date of delivery of services. If after charging the program, the agency receives payment from the patient or other third party that would result in the agency receiving more than the Program Reimbursement Rate, the agency shall reimburse the program the difference between the total amount reimbursed from all sources and the Program Reimbursement Rate.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0208 REIMBURSEMENT FUNDS: THIRD PARTY PAYORS

Home Health Services program reimbursement funds shall be used to pay for services not reimbursed by a third party payor. A home health agency must take reasonable measures to determine and subsequently collect the full legal liability of third party payors to pay for services reimbursed by the program before requesting payment from the HHSP.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0209 MONITORING

Each home health agency receiving reimbursement funds shall submit the following information in a form as prescribed by the program:

- (1) ~~Home Health Services Program Quarterly Report;~~
- (2) ~~Quarterly Expenditure Report; and~~
- (3) ~~Other information requested by the program necessary for the effective administration of the program.~~

Authority G.S. 130A-223;

10A NCAC 39A .0210 AUDITS

Agency financial and statistical records, patient records, and any other pertinent information may be audited by the state as part of the overall monitoring and evaluation effort.

Authority G.S. 130A-5(3); 130A-223.

10A NCAC 39A .0211 SPECIAL PROVISION

(a) ~~Notwithstanding Rules .0203 and .0205 of this Section, Home Health Services Program funds may be used to pay for the provision of in-home health care services, as defined in 10A NCAC 39A .0701, when such services are provided by a certified home health agency which participates in the Health Care Services in the Home Demonstration Program codified at 10A NCAC 39A .0700.~~

(b) ~~Home Health Services Program funds may be used by certified home health agencies which participate in the Health Care Services in the Home Demonstration Program to meet the matching fund requirements imposed by 10A NCAC 39A .0711(a).~~

Authority G.S. 130A-5(3); 130A-223.

SECTION .0800 - HOME AND COMMUNITY-BASED HIV HEALTH SERVICES PROGRAM

10A NCAC 39A .0801 GENERAL

The Home and Community-based HIV Health Services Program is administered by the Division of Public Health, 1915 Mail Service Center, Raleigh, NC 27699-1915

Authority G.S. 130A-223.

10A NCAC 39A .0802 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~"Home and Community-based HIV Health Services" means durable medical equipment, home health aide, services, personal care services, day treatment or other partial hospitalization, home intravenous (I.V.) therapy (including prescription drugs administered intravenously) and routine diagnostic services provided to an eligible patient in the patient's home according to a written plan of care established by a health care professional.~~

- (2) ~~"HIV Health Services Program" means the Home and Community-based HIV Health Services Program.~~
- (3) ~~"Durable Medical Equipment (DME)" means durable medical equipment as defined in HHMM Section 5202.5 which is adopted by reference in accordance with G.S. 150B-14(e). Copies of the HHMM may be inspected at or obtained from the HIV Health Services Program.~~
- (4) ~~"Home Health Aide Services" means home health aide services as defined in HHMM Section 5502.2 which is adopted by reference in accordance with G.S. 150B-14(e). Copies of the HHMM may be inspected at or obtained from the HIV Health Services Program.~~
- (5) ~~"Personal Care Services" means personal care services as defined in the Medicaid Provider Manual which is adopted by reference in accordance with G.S. 150B-14(e). Copies of the Medicaid Provider Manual may be inspected at or obtained from the HIV Health Services Program.~~
- (6) ~~"HIV Health Services Program Reimbursement Rate" is:~~
 - (a) ~~the local health department rate or the maximum Medicaid rate, whichever is lower, for home health aide services and personal care services;~~
 - (b) ~~interim Medicare rate for durable medical equipment; and~~
 - (c) ~~schedule of payments that shall be developed by the Division of Public Health for Home Intravenous (I.V.) therapy services, routine diagnostic services, day treatment or partial hospitalization and other services for which neither Medicaid nor Medicare has an established rate.~~
- (7) ~~"Third Party Payor" is any person or entity that is or may be indirectly liable for the cost of service furnished to a patient. Third party payors include, without limitation, Medicaid, Medicare, and private insurance, Veterans Administration, Children's Special Health Services and Workers' Compensation.~~
- (8) ~~"Medically dependent" means a patient has been certified by a physician as:~~
 - (a) ~~requiring the routine use of appropriate medical services (which may include home intravenous drug therapy) to prevent or compensate for the individual's serious deterioration of physical health or cognitive function, arising from infection with the etiologic agent for acquired immune deficiency syndrome; and~~
 - (b) ~~being able to avoid long term or repeated care as an inpatient or~~

resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.

- (9) "Chronically dependent" means a patient has been certified by a physician as:
- (a) being unable to perform, without substantial assistance from another individual, at least two activities of daily living because of physical or cognitive impairment arising from infection with the etiologic agent for acquired immune deficiency syndrome. Activities of daily living include bathing, dressing, toileting, moving from seat to bed or bed to seat, and eating; or
 - (b) having a level of disability due to cognitive impairment equivalent to the level of disability for impairments under Paragraph (9)(a) of this Rule.

Authority G.S. 130A-223.

10A NCAC 39A .0803 ELIGIBLE PROVIDERS

The HIV Health Services Program may contract with local health departments and other public and private organizations, institutions, and agencies in order to carry out the purposes of the Program. Only local health departments shall be eligible to contract for HIV Health Services Program reimbursement funds.

Authority G.S. 130A-223;

10A NCAC 39A .0804 FINANCIAL ELIGIBILITY

(a) HIV Health Services Program reimbursement funds shall be used to pay for home and community based HIV health services provided to financially eligible patients. Financial eligibility shall be determined by the local health department by a signed declaration of gross income and family size by the patient or a person responsible for the patient. A patient whose gross family income is 125 percent or less of Federal Poverty Guidelines shall be financially eligible for full coverage under the program. A patient whose gross family income is between 125 percent and 199 percent of Federal Poverty Guidelines shall be eligible for partial coverage as described in Rule .0806 of this Section under the program. A patient whose gross family income is 200 percent or more of Federal Poverty Guidelines is not eligible for coverage under the program. Copies of the Federal Poverty Guidelines may be inspected at or obtained from the HIV Health Services Program.

(b) Once a patient is determined to be financially eligible, that eligibility shall continue for the duration of the plan of care for the patient, up to a maximum of one year.

(c) The local health department shall document each financial eligibility determination on a form provided by the HIV Health Services Program.

(d) The local health department is authorized to require substantiating documentation when making financial eligibility determinations.

Authority G.S. 130A-223.

10A NCAC 39A .0805 MEDICAL ELIGIBILITY

A person who is certified by a physician to be HIV+ and medically or chronically dependent and who is in need of home and community based HIV health services is eligible for services under this program.

Authority G.S. 130A-223.

10A NCAC 39A .0806 BILLING THE HIV HEALTH SERVICES PROGRAM

(a) If a patient's gross family income is 125 percent or less of Federal Poverty Guidelines, the local health department may bill the HIV Health Services Program Reimbursement Rate (Rule .0802). The local health department may not bill a patient in this income category.

(b) If a patient's gross family income is between 126 percent and 199 percent of Federal Poverty Guidelines, the local health department may bill the program as follows:

- (1) 85 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 126 percent and 140 percent of Federal Poverty Guidelines;
- (2) 70 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 141 percent and 155 percent of Federal Poverty Guidelines;
- (3) 55 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 156 percent and 170 percent of Federal Poverty Guidelines;
- (4) 40 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 171 percent and 185 percent of Federal Poverty Guidelines; or
- (5) 25 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 186 percent and 199 percent of Federal Poverty Guidelines.

Authority G.S. 130A-223.

10A NCAC 39A .0807 RATES OF REIMBURSEMENT

(a) Local health departments that contract for reimbursement funds shall be reimbursed for home and community based HIV health services provided to eligible patients in an amount and percentage based on the HIV Health Services Program Reimbursement Rate in effect at the time service is rendered, as specified in Rule .0802 of this Section.

(b) Claims for reimbursement from HIV Health Services Program must be documented and reported on a quarterly basis on a form provided by the program. No claims for reimbursement will be accepted by the HIV Health Services

~~Program more than 180 days after the date of delivery of services. If after charging the program, the agency receives payment from the patient or other third party that would result in the local health department receiving more than the HIV Health Services Program Reimbursement Rate, the local health department shall reimburse the program the difference between the total amount reimbursed from all sources and the HIV Health Services Program Reimbursement Rate.~~

Authority G.S. 130A-223.

**10A NCAC 39A .0808 REIMBURSEMENT FUNDS:
THIRD PARTY PAYORS**

~~HIV Health Services Program reimbursement funds shall be used to pay for services not reimbursed by a third party payor. A contracting local health department must take reasonable measures to determine and subsequently collect the full legal liability of third party payors to pay for services reimbursed by the program before requesting payment from the HIV Health Services Program.~~

Authority G.S. 130A-223.

10A NCAC 39A .0809 MONITORING

~~Each local health department receiving reimbursement funds shall submit the following information in a form as prescribed by and in the time frames established in the contract:~~

- ~~(1) HIV Health Services Program quarterly report;~~
- ~~(2) HIV Health Services Program annual report;~~
- ~~(3) Quarterly expenditure report;~~
- ~~(4) Report the fairly evaluated cost of unreimbursed care provided to patients eligible for the HIV Health Services Program; and~~
- ~~(5) Other information necessary for the effective administration of the HIV Health Services Program.~~

Authority G.S. 130A-223.

10A NCAC 39A .0810 AUDITS

~~Local health department financial and statistical records, patient records, and any other pertinent information may be audited by the state as part of the overall monitoring and evaluation effort.~~

Authority G.S. 130A-223.

CHAPTER 40 - DENTAL HEALTH

**SUBCHAPTER 40A – SCHOOL WATER
FLUORIDATION**

SECTION .0100 - PURPOSE

**10A NCAC 40A .0104 SCHOOL FLUORIDATION
INFORMATION**

~~Information outlining the procedures for instituting a school fluoridation program is available from the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.~~

Authority G.S. 130A-366.

10A NCAC 40A .0105 DEFINITIONS

~~Throughout this Subchapter, "School" means an institution providing education for children in counties and towns in North Carolina.~~

Authority G.S. 130A-366.

SECTION .0200 - ELIGIBILITY

10A NCAC 40A .0206 WATER SUPPLY

~~(a) To be eligible for the school fluoridation program, the school shall have its own, separate water supply.~~

~~(b) To be eligible for the school fluoridation program, the school shall be the sole user of the fluoridated portion of the water supply. Users other than the school may use the school water system if they are not connected to the fluoridated portion of the system.~~

Authority G.S. 130A-366.

10A NCAC 40A .0207 INSPECTION

~~To be eligible for the school fluoridation program, the school's water system must be inspected by the Division of Public Health.~~

Authority G.S. 130A-366.

10A NCAC 40A .0208 APPLICATION AND APPROVAL

~~(a) To be eligible for the school fluoridation program, the local board of education must request permission from the Division of Public Health to fluoridate the water supplies of specific schools.~~

~~(b) The following information shall be included in the application submitted by the school and shall be used in evaluating the school for final approval to participate in the school fluoridation program:~~

- ~~(1) location of the school;~~
- ~~(2) proximity to existing service areas;~~
- ~~(3) number of children enrolled in the school;~~
- ~~(4) the percentage of children enrolled in the school whose primary residence has a fluoridated water source;~~
- ~~(5) the report of the Division of Public Health's inspection;~~
- ~~(6) formal approval of fluoridation of the schools by the local board of education; and~~
- ~~(7) formal approval of fluoridation of the schools by the local board of health.~~

~~(c) The Division of Public Health shall provide staff to assist local boards of education in completing applications for school water fluoridation.~~

~~(d) All approvals for school water fluoridation are subject to the availability of funds.~~

Authority G.S. 130A-366.

SECTION .0300 - ADMINISTRATION

10A NCAC 40A .0306 NOTIFICATION

- ~~(a) The local health director, with assistance from the regional dentist supervisor, shall notify local physicians, dentists, and pharmacists when individual schools institute fluoridation.~~
- ~~(b) The local health director shall inform new physicians, dentists and pharmacists of school water fluoridation programs in their practice community.~~
- ~~(c) The principals of affected schools, with assistance from the regional dental supervisor, shall notify the parents of all students enrolled in the participating schools of the presence of school water fluoridation.~~

Authority G.S. 130A-366.

10A NCAC 40A .0307 RENOVATION

- ~~(a) The local board of education shall modify the school water system under the supervision of the Division of Public Health to meet the standards necessary for installation and maintenance of the fluoridation equipment.~~
- ~~(b) The local board of education shall provide the necessary labor, materials, and equipment required for the proper installation of the fluoridation equipment.~~
- ~~(c) The fluoridation equipment shall not be disconnected or removed without prior approval of the Division of Public Health.~~
- ~~(d) The Division of Public Health shall be notified before any construction, modification or repair to any part of the school water system is undertaken.~~

Authority G.S. 130A-366.

10A NCAC 40A .0308 EQUIPMENT AND MAINTENANCE

- ~~(a) The Division shall furnish the fluoridation equipment, chemicals, and the laboratory equipment, and replacement fluoridation equipment and chemicals to the school system.~~
- ~~(b) The Division shall provide required maintenance services to the school fluoridation system.~~
- ~~(c) The local board of education shall provide required replacement parts and chemicals if there is willful neglect or destruction of the fluoridation equipment.~~

Authority G.S. 130A-366.

10A NCAC 40A .0309 TRAINING

~~The local school principal shall designate and the Division shall train two persons from each school to be responsible for performing surveillance in accordance with instructions set forth in Rule .0310 of this Section.~~

Authority G.S. 130A-366.

10A NCAC 40A .0310 SURVEILLANCE

- ~~(a) Water samples shall be collected by school personnel and analyzed for fluoride content daily before the students arrive and water consumption begins.~~
- ~~(b) A split water sample shall be collected on Monday and Thursday of each week. One half of the split sample shall be analyzed by school personnel in the manner prescribed by the Division. The other half of the split sample and the results of the~~

~~school analysis shall be mailed to the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915. If a school is closed on the preceding Monday or Thursday because of holidays, snow days, or other closures, a split water sample shall be collected on the next day that the school reopens.~~

~~(c) The Division shall be responsible for the cost of mailing the required water samples to the Division of Public Health.~~

~~(d) Irregularities of fluoride content in the water or of the fluoride feeding equipment shall be reported immediately by phone to the Division if the water sample reading is below 4.5 parts per million or above 6.5 parts per million.~~

Authority G.S. 130A-366.

SECTION .0400 - FORMS

10A NCAC 40A .0403 SCHOOL FLUORIDATION AGREEMENT

- ~~(a) The Division is authorized to maintain a school fluoridation agreement with the local county board of education for the purpose of maintaining a school water fluoridation system.~~
- ~~(b) Noncompliance with the requirements of the agreement may result in termination of the agreement and removal of the school fluoridation equipment.~~
- ~~(c) The agreement form is available from the Division.~~

Authority G.S. 130A-366.

10A NCAC 40A .0404 WATER ANALYSIS FORM

~~The schools submitting water samples for analysis to the State Laboratory of Public Health, 1918 Mail Service Center, Raleigh, NC 27699 1918, shall complete the required Water Analysis Form. Forms are available from the Division of Laboratory Services at the aforementioned address.~~

Authority G.S. 130A-366.

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0500 - PURCHASE AND DISTRIBUTION OF VACCINE

10A NCAC 41A .0502 VACCINE FOR PROVIDERS OTHER THAN LOCAL HEALTH DEPARTMENTS

~~(a) The Division of Public Health shall provide vaccines required by law free of charge to the following providers for administration to individuals who need vaccines to meet the requirement of G.S. 130A-152, 130-155.1 and 10A NCAC 41A .0401:~~

- ~~(1) Community, migrant, and rural health centers;~~
- ~~(2) Colleges and universities for students; and~~
- ~~(3) Physicians and other health care providers.~~

~~(b) Upon request of the Division, required vaccines may be distributed by local health departments operating as agents of the~~

~~State to providers listed in Subparagraphs (a)(1), (2) and (3) of this Rule.~~

~~(c) Providers authorized in Paragraph (a) of this Rule shall receive free vaccines from the Division only if they sign an agreement with the Division. This agreement shall be prepared by the Division of Public Health and shall require the provider to:~~

- ~~(1) Charge vaccine administration fees at no more than the rates established by the State's Medicaid program. The State's Medicaid rates may be inspected at the Division of Public Health. Copies may also be obtained from the Division of Public Health at no charge;~~
- ~~(2) Provide all vaccines needed during a visit unless a specific contraindication exists to one or more of the vaccine;~~
- ~~(3) Charge no office fee in addition to an administration fee for an immunization only visit;~~
- ~~(4) Agree not to charge an administration fee to an individual who states that he/she is unable to pay;~~
- ~~(5) Impose no condition as a prerequisite to receiving vaccine;~~
- ~~(6) Submit a monthly doses administered report by the tenth of each month electronically through the North Carolina Immunization Registry or on a form provided by the Immunization Section;~~
- ~~(7) Report adverse vaccine reactions through the Vaccine Adverse Event Reporting System (VAERS);~~
- ~~(8) Provide the latest edition of the applicable Important Information Statement (IIS), or Vaccine Information Statement (VIS) to the parent, guardian, or person standing in loco parentis for each dose of vaccine administered; document this action within the patient's permanent medical record; retain the documentation for a period of 10 years following the end of the calendar year in which the vaccine dose was administered, or for 10 years following the recipient's age of majority, whichever is longer; upon request, furnish copies of the documentation to the local health department or the Division; and keep a record of the vaccine manufacturer, lot number, and date of administration for each dose of vaccine administered;~~
- ~~(9) Allow periodic inspection of their vaccine supplies and records by the Division of Public Health; and~~
- ~~(10) Comply with the rules of this Section.~~

~~(d) A provider who fails to submit timely and accurate reports as required each month shall have vaccine shipments withheld until that month's report is received by the Immunization Section.~~

Authority G.S. 130A-433.

SUBCHAPTER 41G - VETERINARY PUBLIC HEALTH

SECTION .0100 - VETERINARY PUBLIC HEALTH PROGRAM

10A NCAC 41G .0102 FEES FOR RABIES TAGS, LINKS, AND RIVETS

~~(a) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of rabies tags, links, and rivets. This fee shall be determined on the basis of actual cost plus transportation, and an additional five cents (\$.05) per tag to be used to fund rabies education and prevention programs.~~

~~(b) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of I-Care rabies tags. This fee shall be determined on the basis of actual cost plus transportation, an additional five cents (\$.05) per tag to be used to fund rabies education and prevention programs plus an additional fifty cents (\$0.50) per tag. The fifty cents (\$0.50) fee per tag shall be credited to the Spay/Neuter fund established in G.S. 19A-62.~~

Authority G.S. 130A-190.

CHAPTER 43 - PERSONAL HEALTH

SUBCHAPTER 43D - WIC/NUTRITION

SECTION .1200 - MATERNAL AND CHILD HEALTH BLOCK GRANT NUTRITION PROGRAM

10A NCAC 43D .1201 GENERAL

~~The Maternal and Child Health Block Grant Nutrition Program is administered by the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.~~

Authority G.S. 130A-361.

10A NCAC 43D .1202 PROVIDER ELIGIBILITY

~~Local health departments are eligible to receive Maternal and Child Health Block Grant Nutrition Program funds from the Division. All providers that contract for the receipt of MCH Block Grant Nutrition Program funds are required to provide services in accordance with rules of this Section.~~

Authority G.S. 130A-361.

10A NCAC 43D .1203 ALLOCATION OF FUNDS

~~Maternal and Child Health Block Grant Nutrition Program funds for nutrition services are allocated to local health departments on an annual basis and are subject to periodic review and redistribution. Expansion of program services is based on availability of funding and requests from local health departments.~~

Authority G.S. 130A-361.

10A NCAC 43D .1204 CLIENT ELIGIBILITY

~~In order to be eligible for Maternal and Child Health Block Grant Nutrition Program services, a person must be in the maternal and child health population, ineligible for WIC Program services, and have one or more of the following medical/nutritional risk indicators: cardiovascular disease; anthropometric problem (overweight, underweight, growth failure); metabolic disorder; previous poor pregnancy outcome; immunological condition; or other significant nutritional stress as determined by the primary medical care provider. Categorical and medical/nutritional eligibility must be documented in the client's health record.~~

Authority G.S. 130A-361.

10A NCAC 43D .1205 SCOPE OF SERVICES

~~Maternal and Child Health Block Grant funds shall be used to reimburse for nutrition services provided to eligible individuals. Required services include:~~

- ~~(1) a complete nutritional assessment of appropriate anthropometric, biochemical, clinical, eco social, and dietary indicators; and~~
- ~~(2) a plan of care based on the individual's nutritional needs; and~~
- ~~(3) an individual counseling session.~~

Authority G.S. 130A-361.

10A NCAC 43D .1206 SERVICE PROVIDER QUALIFICATIONS

~~Maternal and Child Health Block Grant nutrition services must be provided by a Registered Dietitian, registered with the Commission on Dietetic Registration; or a Licensed Dietitian/Nutritionist, licensed by the North Carolina Board of Dietetic/Nutrition; or a Registry Eligible Dietitian (i.e., an individual who has a statement from the Commission on Dietetic Registration saying he is registry eligible; that is, eligible to sit for the examination to become a Registered Dietitian).~~

Authority G.S. 130A-361.

10A NCAC 43D .1207 PAYMENT FOR REIMBURSABLE SERVICES

- ~~(a) Payments shall not be made for services which are available from the WIC Program.~~
- ~~(b) Maternal and Child Health Block Grant funds for nutrition services are reimbursable at a rate of thirty five dollars (\$35.00) per hour.~~
- ~~(c) Billable time is limited to activities necessary to:~~
 - ~~(1) perform a nutritional assessment;~~
 - ~~(2) counsel a patient individually (not including telephone counseling);~~
 - ~~(3) teach a class (based on class time, not on number of participants);~~
 - ~~(4) travel to home, school, or day care to do an individual or class session;~~
 - ~~(5) document nutrition care provided in the health record;~~

- ~~(6) prepare for an individual counseling session or class; or~~
- ~~(7) make referrals, seek information from other health professionals, or write letters or make telephone calls to primary health care providers.~~

Authority G.S. 130A-361.

SUBCHAPTER 43E - CHILD HEALTH

SECTION .0300 - PEDIATRIC PRIMARY CARE PROGRAM

10A NCAC 43E .0301 GENERAL

~~The Pediatric Primary Care Program is administered by the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.~~

Authority G.S. 130A-124.

10A NCAC 43E .0302 DEFINITIONS

~~The definitions in 10A NCAC 43B .0103 shall apply throughout this Section.~~

Authority G.S. 130A-124.

10A NCAC 43E .0303 PROVIDER ELIGIBILITY

- ~~(a) Local health departments are eligible to receive pediatric primary care funds from the Division.~~
- ~~(b) Pediatric primary care funds may be awarded to any public or private nonprofit agency if the Division determines that a local health department is unwilling or unable to provide pediatric primary care services. All providers which contract for the receipt of pediatric primary care funds are required to provide services in accordance with the plan submitted under Rule .0305 of this Section and approved by the Division.~~

Authority G.S. 130A-124.

10A NCAC 43E .0304 CLIENT ELIGIBILITY

~~To be eligible for pediatric primary care services provided by pediatric primary care program funds, clients must meet the eligibility criteria established by the local provider. Financial eligibility requirements may not be more restrictive than the official poverty line issued annually by the United States Department of Health and Human Services.~~

Authority G.S. 130A-124.

10A NCAC 43E .0305 APPLICATION FOR FUNDS: PROGRAM PLAN: RENEWAL

- ~~(a) Grants for pediatric primary care funds shall be awarded through a request for proposal (RFP) process that includes notification of all local providers of the eligibility criteria and requirements for funding.~~
- ~~(b) Grant proposals for pediatric primary care project funds shall be sent to the Division of Public Health, 1915 Mail Service~~

Center, Raleigh, North Carolina 27699-1915. The grant proposal shall include the following:

- (1) A definition of the target population to be served, including a description of patient eligibility requirements.
- (2) A description of quantifiable program objectives, strategies for meeting these objectives, and methods for measuring their accomplishment.
- (3) A description of the medical services to be provided by the local provider including weekly clinic hours when pediatric primary care services will be made available. The plan shall specify, at a minimum, that pediatric primary care will be available at least four hours per day during regular workdays, and that all patients within the target population who present themselves during established clinic hours with symptoms or complaints requiring medical care will have a medical history taken, an appropriate examination, a written diagnosis of identified problem(s), treatment for a variety of medical conditions and referral as indicated.
- (4) A description of the laboratory services which will be provided, or contracted for, by the local provider. The plan shall specify at a minimum that the local provider will provide or contract for basic laboratory services essential to the immediate diagnosis and treatment of the patients as medically indicated.
- (5) A description of the backup services available for patients in need of care when the pediatric primary care clinic is not in operation.
- (6) A description of the staff to be utilized in the Pediatric Primary Care Program, including duties of the staff.
- (7) A description of how pediatric primary care services will be integrated with other services provided by the local provider for children in order to ensure a smooth blending of resources.
- (8) A description of the quality assurance program to be utilized. The quality assurance program must contain at a minimum medical reviews and an annual program evaluation. Physicians serving as medical supervisors shall participate in the medical review.

(e) Technical assistance in preparing an application for pediatric primary care funds shall be available from central and regional Division of Public Health staff.

(d) The Division shall approve or deny an application for funds or request additional information within 60 days after receipt of an application. If additional information is requested, the local provider shall have 45 days to submit the information. Failure by the local provider to submit the additional information requested within 45 days shall be grounds for denying the application. Upon receipt of the additional information, the Division shall approve or deny the application within 45 days.

(e) Contracts for pediatric primary care funds shall be subject to annual renewal based upon past performance and the continued need for pediatric primary care services as indicated by the Health Services Information System reports and program reviews performed by the Division to assess compliance with the requirements of this Section. Approved project proposal and plans must be reviewed annually and updated as needed by the local provider staff. Plans shall be made available upon request to State staff during annual program reviews.

(f) Within the service limitations of this Section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and type of service offered will be negotiated annually with each local provider, approved by the program, and detailed in the addendum to the contract.

(g) In order to maximize the utilization of pediatric primary care funds, in the event a local provider is expending funds at a rate which will, if continued, result in an underexpenditure of funds at the end of the contract period, the Division may after consulting with the local provider reduce the amount of funds budgeted by an amount consistent with the projected level of underexpenditure. Funds projected to be unexpended may be reallocated to other local providers in accordance with community needs and performance records. The Division shall notify the local provider in writing prior to any reduction of funds.

Authority G.S. 130A-124.

10A NCAC 43E .0306 BUDGETING OF GRANT FUNDS
Upon approval by the Division of an application for grant funds, a budget will be negotiated and a contract will be signed between the local provider and the Division.

Authority G.S. 130A-124.

10A NCAC 43E .0307 MEDICAL RECORDS
A local provider which receives pediatric primary care funds shall establish and implement written policies and procedures for medical record usage that address at least the following areas:

- (1) Documentation of all patient care provided (for example, Problem Oriented Health Record).
- (2) Method for transferring and retrieving pertinent patient information.
- (3) Assuring confidentiality of patient information.
- (4) Obtaining an informed consent and release of information.
- (5) Retaining and retrieving patient records according to the county records manual.

Authority G.S. 130A-124.

10A NCAC 43E .0308 CLIENT AND THIRD PARTY FEES
(a) If patient fees are charged by a local provider, such fees:
(1) Will be applied according to a public schedule of charges.

- ~~(2) Will not be imposed on low income individuals or their families.~~
- ~~(3) Will be adjusted to reflect the income, resources, and family size of the individual receiving the services.~~

~~(b) If the client fees are charged, providers must make reasonable efforts to collect from third party payors.~~

~~(c) Client and third party fees collected by the local provider for the provision of pediatric primary care services must be used, upon approval of the program, to enhance, expand or maintain child health services. No person shall be denied services because of an inability to pay.~~

Authority G.S. 130A-124; P.L. 95-818.

10A NCAC 43E .0309 MONITORING AND EVALUATION

~~(a) A local provider who has been granted pediatric primary care funds shall participate in the Health Services Information System.~~

~~(b) The Division shall conduct annual program reviews to assess compliance with the requirements of this Section and to provide technical assistance.~~

Authority G.S. 130A-124.

SUBCHAPTER 43F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .0100 - GENERAL PROVISIONS

10A NCAC 43F .0101 PURPOSE

~~The purpose of Children's Special Health Services is to provide non-custodial medical and surgical care for individuals below the age of 21 who have a chronic organic disease, defect or condition which may hinder the achievement of normal growth and development.~~

Authority G.S. 130A-124.

10A NCAC 43F .0102 DEFINITIONS

~~The following definitions shall apply throughout this Subchapter:~~

- ~~(1) "Appliances and equipment" means wheelchairs, braces, hearing aids, prostheses, respiratory aids, and similar items authorized for program patients.~~
- ~~(2) "Augmentative communication aids" are individually prescribed devices designed to facilitate communication for non-verbal individuals. These include, but are not limited to communication boards, scanning devices, strip printers, etc.~~
- ~~(3) "Authorization or authorized service" means a request for service which has been approved by Children's Special Health Services. Authorization is indicated by the signature of the program director or his designee on an application for cost service.~~

~~(4) "Cost service" means any service which requires submission of an application for approval and payment. These services include:~~

- ~~(a) medical or surgical care in a hospital or clinic;~~
- ~~(b) consultation;~~
- ~~(c) appliances and equipment;~~
- ~~(d) medication (see Rule .0408 of this Subchapter);~~
- ~~(e) physical therapy;~~
- ~~(f) occupational therapy;~~
- ~~(g) speech language pathology and audiology services;~~
- ~~(h) dental care limited to that specified in Rule .0406 of this Subchapter;~~
- ~~(i) physicians' fees;~~
- ~~(j) x rays and laboratory tests;~~
- ~~(k) psychological services.~~

~~(5) "Date of service" is the date that the approved authorization is to become effective.~~

~~(6) "Encumbrance or encumbered money" is the money obligated to pay for services authorized by the Children's Special Health Services.~~

~~(7) "Expendable supplies" designates those appliances and equipment that are not recyclable, such as disposable gauze sponges, bandages, detergents and similar items.~~

~~(8) "Extension of hospital stay" is an approved additional number of days of hospitalization beyond those initially authorized.~~

~~(9) "Extension of validity" is an approved change of the period of validity during which an authorization for hospitalization or outpatient surgery is in effect.~~

~~(10) "Inpatient" is a person who is admitted to the hospital as a bed patient on a hospital ward.~~

~~(11) "Low Income" means an individual or family with an income determined to be below the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with Section 624 of the Economic Opportunity Act of 1964.~~

~~(12) "Medical or surgical emergency" is a situation arising from any disease, defect or condition normally supported by Children's Special Health Services which may be life threatening, or in which delay of prompt remedial medical care would be detrimental to the future health and well-being of the child.~~

~~(13) "Non-sponsored clinic" is a clinic which serves individuals with Children's Special Health Services supported medical conditions but which is not recognized, supported and listed as an official Children's Special Health Services clinic.~~

~~(14) "Outpatient" is an individual who receives care without inpatient hospital admission. This includes care provided in emergency rooms,~~

- clinics, and physicians' offices, or in other hospital settings, including outpatient surgery.
- (15) ~~"Period of validity" is the 30 days following the date approved for admission during which hospitalization for inpatient care or outpatient surgery may begin.~~
- (16) ~~"Rostered orthodontist and prosthodontist" are specialists who meet the stipulations set forth in Section .0700 of this Subchapter and who have made application to and been approved by Children's Special Health Services to request authorizations and provide services for eligible children.~~
- (17) ~~"Rostered physician" is a medical specialist who meets the stipulations set forth in Section .0700 of this Subchapter and who has made application to and been approved by Children's Special Health Services to request authorizations and provide services for eligible children.~~
- (18) ~~"Rostered speech and language pathologist" is a specialist who meets the stipulations set forth in Section .0700 of this Subchapter and has made application to and been approved by Children's Special Health Services to request authorizations and provide services for eligible children.~~
- (19) ~~"Rostered audiologist" is a specialist who meets the stipulations set forth in Section .0700 of this Subchapter and has made application to and been approved by Children's Special Health Services to request authorizations and provide services for eligible children.~~
- (20) ~~"Sponsored clinic" is a clinic that is recognized, supported, and listed as an official Children's Special Health Services.~~

Authority G.S. 130A-124.

SECTION .0200 - GENERAL POLICIES

10A NCAC 43F .0201 REFERRAL AND FOLLOW-UP

(a) ~~Referrals to Children's Special Health Services will be accepted from individuals and the staff of various agencies, including, but not limited to, the following:~~

- ~~(1) local health departments,~~
- ~~(2) departments of social services,~~
- ~~(3) hospitals,~~
- ~~(4) local physicians,~~
- ~~(5) preschool and school health programs,~~
- ~~(6) developmental evaluation centers,~~
- ~~(7) volunteer agencies,~~
- ~~(8) the patient or his/her family.~~

(b) ~~Children shall be seen by the child health program of a local health department or by a private physician before referral to a sponsored clinic, when feasible, to ensure the provision of comprehensive care.~~

~~(c) Reports of findings and recommendations for each child seen in a clinic or discharged from a hospital shall be furnished to the physician or agency designated by the parent or guardian as the child's primary health care provider. In addition, the patient, parent or guardian shall be asked for permission for such reports to be submitted to other persons or organizations, including the referral source, which may have a continuing professional relationship regarding the patient's medical care and well being.~~

~~(d) When a child under care moves from one county to another within the state, the health department of the child's former county of residence shall advise the health department of current residence by letter with copies of pertinent records. Information will be furnished to out-of-state agencies or physicians upon request.~~

Authority G.S. 130A-124.

10A NCAC 43F .0202 RELEASE OF MEDICAL INFORMATION

(a) ~~Appropriate consent of the patient, parent, or guardian shall be obtained before any patient information may be transmitted.~~

(b) ~~Children's Special Health Services shall have the right to review all records of any patient receiving services through the program.~~

(c) ~~Consent for the disclosure of medical and financial information regarding patients served through the program shall be made on forms as provided in Rule .0603 of this Subchapter.~~

Authority G.S. 130A-124.

10A NCAC 43F .0203 OUT-OF-STATE CARE

(a) ~~Children's Special Health Services shall not ordinarily support medical or hospital care outside of North Carolina if the needed treatment is available within the state.~~

(b) ~~In instances where appropriate care cannot be provided, due to problems of access or availability, a request for authorization accompanied by a letter of justification for out-of-state services may be submitted by a rostered physician to the program director for approval, in accordance with this Subchapter.~~

Authority G.S. 130A-124.

10A NCAC 43F .0204 SPONSORED CLINICS

(a) ~~Various types of sponsored clinics, with the participation of at least one rostered physician, will be conducted periodically throughout the State of North Carolina.~~

(b) ~~Return visits and cost services that are not available in the clinic (hospitalization, surgery, special therapy, appliances, etc.) shall be provided upon approval of an application and certification of eligibility by Children's Special Health Services. Clinics may require appointments which can be made by telephone or letter to the coordinator of the clinic at the health department or agency in which the clinic is held.~~

Authority G.S. 130A-124.

10A NCAC 43F .0205 PARTICIPATING PHYSICIANS, ORTHODONTISTS AND PROSTHODONTISTS

- ~~(a) Children's Special Health Services shall require physicians, orthodontists and prosthodontists to be rostered, as provided in Section .0700 of this Subchapter.~~
- ~~(b) Rostered physicians, orthodontists and prosthodontists shall be responsible for requesting cost services.~~
- ~~(c) Rostered physicians, orthodontists and prosthodontists may request cost services relating only to their specialty but may refer patients to other specialists or clinics.~~

Authority G.S. 130A-124.

10A NCAC 43F .0206 NEW CLINIC DIRECTORS AND NEW CLINICS

~~The director of Children's Special Health Services shall appoint new clinic directors and establish new clinics. In the performance of this task, the Director shall consider the recommendations of the North Carolina Medical Society advisory committee to the program as well as that of the local medical society and the director of the local health department.~~

Authority G.S. 130A-124.

10A NCAC 43F .0207 SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

- ~~(a) Children's Special Health Services shall require speech and language pathologists and audiologists who provide evaluation and treatment in sponsored clinics to be rostered, as provided in .0700 of this Subchapter.~~
- ~~(b) Speech and language pathologists providing speech therapy on a fee-for-service basis shall be rostered, as provided in .0700 of this Subchapter.~~
- ~~(c) When there is no rostered speech and language pathologist in the area, exceptions may be made by the Medical Director of Children's Special Health Services on an individual basis for non-rostered specialists to serve eligible children.~~
- ~~(d) Rostered speech and language pathologists and audiologists may request services relating only to their specialty, but may refer patients to other specialists or clinics.~~

Authority G.S. 130A-124.

SECTION .0300 - ELIGIBILITY

10A NCAC 43F .0301 DETERMINATION

~~Determination of eligibility shall be made by Children's Special Health Services based upon criteria set forth in this Section and based upon rules found in 10A NCAC 45A.~~

Authority G.S. 130A-124.

10A NCAC 43F .0302 AGE

~~The age requirement for receiving services from Children's Special Health Services shall be from date of birth to 21 years of age, except for those conditions mandated by legislative act to be covered at any age (e.g., cystic fibrosis); or as specified in specific agreements as in Rule .1003(2) of this Subchapter; or as~~

~~provided in 10A NCAC 43F .1100; NORTH CAROLINA HEMOPHILIA ASSISTANCE PLAN.~~

Authority G.S. 130A-124.

10A NCAC 43F .0303 MEDICAL CONDITIONS SUPPORTED BY THE PROGRAM

~~Medical conditions that qualify for program support include, but shall not be limited to, the following:~~

- ~~(1) certain disabilities requiring orthopedic treatment, e.g., orthopedic birth defects, scoliosis, Perthe's disease, etc.;~~
- ~~(2) certain disabilities requiring plastic surgery, e.g., repair of cleft lip and cleft palate, burns (rehabilitative stage, for grafting and associated care), facial dysostosis restructure;~~
- ~~(3) congenital cardiac defects and rheumatic heart disease requiring medical and surgical treatment;~~
- ~~(4) certain other conditions requiring surgery, e.g., hydrocephalus, bladder tumor, tracheoesophageal fistula, etc.;~~
- ~~(5) cerebral palsy;~~
- ~~(6) orthodontics/prosthodontics if incidental to cleft palate, facial dysostosis restructure or scoliosis;~~
- ~~(7) cystic fibrosis;~~
- ~~(8) chronic seizure disorders;~~
- ~~(9) sickle cell anemia and hemophilia;~~
- ~~(10) nephrotic syndrome;~~
- ~~(11) speech language pathology, chronic otological diseases, and hearing impairment;~~
- ~~(12) malignancies;~~
- ~~(13) diabetes mellitus;~~
- ~~(14) immunodeficiency diseases.~~

Authority G.S. 130A-124.

10A NCAC 43F .0304 MEDICAL CONDITIONS OR PROCEDURES NOT SUPPORTED

~~Medical conditions or procedures not supported by Children's Special Health Services shall include at least the following:~~

- ~~(1) most acute illnesses and accidents, i.e., those which do not usually result in chronic disability;~~
- ~~(2) appendectomy and inguinal herniorrhaphy;~~
- ~~(3) allergies;~~
- ~~(4) respiratory distress syndrome;~~
- ~~(5) ophthalmological conditions;~~
- ~~(6) surgery for cosmetic purposes only.~~

Authority G.S. 130A-124.

10A NCAC 43F .0305 APPEALS PROCEDURE CONCERNING ELIGIBILITY

~~Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.~~

Authority G.S. 130A-124.

SECTION .0400 - SERVICES

10A NCAC 43F .0401 CLINIC SERVICES

~~(a) Children's Special Health Services shall sponsor clinics to provide care for children with a number of conditions. To be eligible for diagnostic services provided by Children's Special Health Services contract clinics, a child must meet the eligibility criteria established by the local provider. Financial eligibility requirements may not be more restrictive than the official poverty guidelines issued annually by the United States Department of Health and Human Services. To receive treatment services in program funded clinics, a child must meet the Children's Special Health Services eligibility criteria of age, residence, medical condition, and annual net family income based on the official poverty guidelines issued annually by the United States Department of Health and Human Services. A concerted effort shall be made to coordinate services received in sponsored clinics and in hospitals with primary care providers. There shall be the following kinds of special clinics:~~

- ~~(1) Orthopedic clinics. These clinics shall be located throughout the state, and may be held monthly or more frequently. Arrangements for treatment, such as hospitalization, appliances, or physical therapy, may be made at that time.~~
- ~~(2) Congenital heart and rheumatic fever clinics. These clinics shall provide diagnosis and clinic observation; Children's Special Health Services shall provide prophylactic and condition specific drug therapy and hospitalization. Surgery may be provided for remediable congenital or rheumatic cardiac defects in program approved hospitals.~~
- ~~(3) Speech and hearing clinics. These clinics shall provide diagnostic evaluation and therapy when feasible and shall offer the services of a speech and language pathologist, audiologist, and otolaryngologist with other specialty consultations as indicated. Speech and language therapy provided on a fee for service basis required by patients of these clinics shall be requested through a sponsored speech and hearing clinic.~~
- ~~(4) Cystic fibrosis clinics. These clinics shall provide evaluation, diagnosis and prescriptions for condition specific medication, appliances, and referral for hospitalization for individuals with this condition and certain other chronic lung diseases.~~
- ~~(5) Hematology and oncology clinics. These clinics shall provide services for individuals with malignancy and program supported hematological conditions. Prescriptions for chemotherapy for malignancy shall be provided. Lyophilized anti hemophilic Factor VIII Concentrate (human) shall be supplied by providers on a replacement basis.~~
- ~~(6) Neurological clinics. These clinics shall provide diagnosis and treatment of chronic~~

~~seizure and certain other neurological disorders. Prescriptions for condition specific medications for seizure shall be provided also.~~

- ~~(7) Nephrology clinics. These clinics shall provide evaluation, diagnosis, prescriptions for condition specific medication for nephrotic syndrome, and referral for hospitalization for children with certain renal diseases.~~
- ~~(8) Oral and facial clinics. These clinics shall provide multidisciplinary evaluation, diagnosis, treatment, and referral for hospitalization for children with cleft lip, cleft palate, or facial dysostosis. Services to patients with oral and facial problems shall not be supported unless provided under the auspices of a sponsored clinic. Speech and language therapy on a fee for service basis required by patients of these clinics shall be requested through a sponsored oral and facial clinic.~~
- ~~(9) Myelodysplasia clinics. These clinics shall provide multidisciplinary evaluation, diagnosis, treatment, appliances, and referrals for hospitalization.~~
- ~~(10) Pediatric rehabilitation clinic. This clinic shall provide diagnosis, clinical observation, therapy, and referral for hospitalization and surgery for children with supported congenital problems.~~

~~(b) Program eligible patients shall be encouraged to utilize the services of sponsored clinics when such clinics provide the type of services needed and are located within 50 miles of the patient's residence. Program support shall not be available for services provided by non sponsored clinics when such services are available through sponsored clinics within 50 miles of the patient's residence, unless a rostered physician submits a written claim that good cause exists for the patient's inability to utilize the sponsored clinic service, due to the cost of transportation in relation to the economic value of services needed or a medical hardship occasioned in relation to the patient's physical condition, and the program director determines that good cause exists.~~

~~(c) Rostered clinic physicians, orthodontists or prosthodontists who refer patients for interim follow up care between clinic visits may refer them to a local non rostered physician or dentist and have their care supported by the program, provided the requesting rostered physician, orthodontist or prosthodontist signs the request for care.~~

~~(d) Individuals with accepted medical conditions who develop emergency situations related to their disability between regular clinic visits may be authorized by Children's Special Health Services for treatment by a local rostered physician.~~

~~(e) Cost services that require equipment or other resources not available in a sponsored clinic may be supported when such services must be obtained elsewhere.~~

~~(f) A child eligible to be served in a sponsored speech and hearing clinic may be served in the private office of a rostered otolaryngologist when the patient has a medical problem not usually associated with a chronic speech and hearing disorder.~~

Authority G.S. 130A-124.

10A NCAC 43F .0402 OTHER OUTPATIENT SERVICES

Certain ambulatory care for which there are no sponsored clinics may be provided in physicians' offices, local health departments, or hospital outpatient facilities. Such care shall be authorized only when requested by a rostered physician.

Authority G.S. 130A-124.

10A NCAC 43F .0403 HOSPITALS

Hospitals receiving payment for services from Children's Special Health Services must meet certification requirements for providers and suppliers of services and must have adequate facilities to provide the type of service requested.

Authority G.S. 130A-124.

10A NCAC 43F .0404 HOSPITALIZATION

Children's Special Health Services shall support inpatient hospitalization for children with accepted medical conditions as provided in Rule .0306 of this Subchapter, when authorized in accordance with Rule .0502 of this Subchapter, and with 10A NCAC 45A .0302.

Authority G.S. 130A-124.

10A NCAC 43F .0405 SPECIAL THERAPY

- (a) Special therapy not available through the school system shall be provided by local therapists in accordance with Rules .0501 and .0504 of this Subchapter.
- (b) Physical and occupational therapy shall be provided when requested by rostered physicians.
- (c) Speech and language therapy shall be provided when requested by a rostered speech and language pathologist who is a team member of a sponsored speech and hearing or oral and facial clinic following evaluation in such clinic.
- (d) Unless the program director determines that additional therapy is required, special therapy shall not be approved for more than three times a week.
- (e) Special therapy shall be authorized for a six month period. Requests for additional authorizations shall be made in accordance with all other provisions of this Rule and with Rule .0504 of this Subchapter.

Authority G.S. 130A-124.

10A NCAC 43F .0406 ORTHODONTIC AND PROSTHODONTIC DENTAL CARE

Orthodontic and prosthodontic care shall be provided only for children with cleft palate, facial dysostosis, or to prevent deformities resulting from treatment of scoliosis. The child must be seen or referred by an appropriate rostered physician, orthodontist or prosthodontist representing a program sponsored oral and facial clinic team. Treatment must be authorized by Children's Special Health Services.

Authority G.S. 130A-124.

10A NCAC 43F .0407 APPLIANCES AND EQUIPMENT

- (a) All unused, re-usable or non-expendable equipment purchased by Children's Special Health Services shall remain the property of the State of North Carolina, and shall revert to the program when no longer needed.
- (b) Appliances and equipment shall be furnished to eligible patients when prescribed by physicians rostered in the appropriate specialty and authorized by Children's Special Health Services. These shall include at least orthotic and prosthetic devices, respiratory equipment, special beds, wheelchairs, lifts, hearing aids, and similar items. Colon bags, cement and sterile equipment may be supported, but expendable supplies shall not be approved.
- (c) The requesting physician must approve all orthotics, prosthetics and adaptive devices for quality and fit; for hearing aids, the audiologist must approve and co-sign the request with the rostered otolaryngologist.
- (d) The vendor shall make such adjustments as are recommended by the requesting physician, and audiologist in the case of hearing aids.
- (e) A licensed hearing aid dealer shall sign the Department of Human Resources Hearing Aid Vendor Agreement in order to be reimbursed for equipment and services provided to Children's Special Health Services eligible patients.

Authority G.S. 130A-124.

10A NCAC 43F .0408 DRUGS

- (a) All hospital inpatient drugs shall be supported by Children's Special Health Services.
- (b) Children's Special Health Services shall support condition-specific drugs and related supplies for outpatient treatment of eligible children with:
 - (1) cystic fibrosis,
 - (2) bronchiectasis,
 - (3) hemophilia,
 - (4) glycogen storage disease,
 - (5) vitamin D resistant rickets,
 - (6) chronic seizure disorder,
 - (7) congenital and rheumatic heart disease,
 - (8) nephrotic syndrome,
 - (9) immunodeficiency disorders,
 - (10) diabetes mellitus,
 - (11) malignancies,
 - (12) sickle cell disease,
 - (13) myelodysplasia, or
 - (14) other conditions if the program's medical director determines that drug therapy may improve the patient's condition.
- (c) Children's Special Health Services shall supply bicillin, penicillin, and oral lanoxin to rheumatic fever clinics and local health departments for distribution to eligible patients. Requests for these drugs shall be made by telephone or letter to the program by the clinic director or director of the local health department. Children with rheumatic fever who are allergic to penicillin may obtain a prescription from a rostered physician for an alternate drug which may be filled by any licensed pharmacist.

~~(d) — Lyophilized antihemophilic Factor VIII Concentrate (human) shall be supplied to providers on a replacement basis.~~

Authority G.S. 130A-124.

10A NCAC 43F .0409 BLOOD

~~(a) The cost of processing blood or blood derivatives and administering transfusions shall be supported by the program; but the cost of blood or blood derivatives shall not be supported. The family, guardian or custodian of the child shall be responsible for securing replacement blood.~~

~~(b) Notwithstanding the provisions of Paragraph (a) of this Rule, for those individuals supported by the North Carolina Hemophilia Assistance Plan in accordance with rules found in Section .1100 of this Subchapter, the rules of that section shall apply.~~

Authority G.S. 130A-124.

10A NCAC 43F .0410 STAFF CONSULTANT AND ADVISORY SERVICES

~~(a) Staff consultants shall be available in the central and regional offices of the Department for special services relating to clinics, in service and patient education programs, planning and implementation of programs or services to children and their families.~~

~~(b) Staff consultant services shall be available in medicine, nursing, social work, physical therapy, speech language pathology and audiology, nutrition, and administration.~~

Authority G.S. 130A-124.

SECTION .0500 - AUTHORIZATION AND BILLING PROCEDURES

10A NCAC 43F .0501 AUTHORIZATION POLICIES

~~(a) If an individual is known to be (or appears to be) eligible for program support, it shall be the responsibility of program providers to request support for cost services.~~

~~(b) If there is another third party which would normally finance the requested cost services, that source shall be utilized as provided in Section .0300 of this Subchapter.~~

~~(c) Requests for cost services shall be submitted on forms described in Rule .0602 of this Subchapter.~~

~~(d) Final approval for support of care shall be decided in accordance with Section .0300 of this Subchapter.~~

Authority G.S. 130A-124.

10A NCAC 43F .0502 SERVICE AUTHORIZATION

~~(a) Inpatient authorizations are approved when the authorization request form for cost services is returned with the signature of Children's Special Health Services' director or the director's designee.~~

~~(b) The date or expected date of hospital admission must be stated on the request for admission. Separate authorizations shall be required for each admission.~~

~~(c) Unless the program's medical director determines that additional inpatient hospitalization is necessary, initial inpatient~~

~~authorization shall not exceed 30 days. When the program's medical director determines that an extension of the authorization is necessary, the extension shall not exceed 30 days. To request an extension, a provider shall:~~

~~(1) Submit an authorization request form including the medical justification to the claims processing unit prior to the expiration of the authorization currently in effect; or~~

~~(2) Request an extension by telephone to the claims processing unit. All telephone requests must be followed by a submission of the authorization request form including the medical justification to the claims processing unit within 15 days, including the day of telephone request.~~

~~(d) A copy of the authorization for hospitalization shall be sent by the claims processing unit to the hospital, the physician, the local health department of residence, and to other appropriate agencies and individuals.~~

~~(e) Authorization requests for augmentative communication aids, electronic devices, or electric wheelchairs, shall be approved only when accompanied by acceptable individual justification.~~

~~(f) Authorization requests for outpatient drugs shall be approved for a period not to exceed eight months.~~

Authority G.S. 130A-124.

10A NCAC 43F .0503 CANCELLATIONS

~~Long term drug authorizations shall be automatically cancelled eight months after the date of approval. The program will not honor bills submitted by providers on the basis of cancelled authorizations.~~

Authority G.S. 130A-124.

10A NCAC 43F .0504 SPECIAL THERAPY REQUESTS

~~Requests for speech and language, physical, and occupational therapy shall include:~~

~~(1) a statement that the therapy is not available through the school system for children six years of age and over;~~

~~(2) a summary of progress for children in continual therapy for whom an authorization is submitted requesting an extension for an additional six month period;~~

~~(3) an annual re-evaluation for children receiving therapy for one or more years with a statement from the appropriate rostered specialist that the child can benefit from additional therapy.~~

Authority G.S. 130A-124.

10A NCAC 43F .0505 BILLING POLICIES

~~(a) Claims for payment shall be submitted and payment shall be made in accordance with rules found in 10A NCAC 45A.~~

~~(b) If an authorized service is cancelled the claims processing unit must be notified so that the authorization may be cancelled and the encumbered money released for use.~~

Authority G.S. 130A-124.

10A NCAC 43F .0506 PHYSICIANS' BILLING POLICIES

~~(a) Physician's bills shall be submitted in accordance with rules found in 10A NCAC 45A.~~

~~(b) Physician's services in a clinic may be billed as follows:~~

- ~~(1) Bills may be submitted based on an hourly rate for the period of time in attendance at the clinic;~~
- ~~(2) Bills may be submitted on a per patient basis or on a negotiated rate agreed upon by the program;~~
- ~~(3) Bills may be submitted by means of an expenditure report according to terms specified by previous agreement.~~

Authority G.S. 130A-124.

10A NCAC 43F .0507 OTHER PROFESSIONAL SERVICES

~~(a) Bills for other professional services shall be submitted in accordance with the rules found in 10A NCAC 45A.~~

~~(b) When a therapy session or a series of therapy sessions is being billed for, bills shall state the date and length of each session.~~

Authority G.S. 130A-124.

10A NCAC 43F .0508 CLINIC CHARGES AND OUTPATIENT CHARGES

~~(a) Bills for ambulatory hospital-based services and emergency care shall be submitted and payment shall be made in accordance with rules found in 10A NCAC 45A.~~

~~(b) In non contract sponsored clinics, Children's Special Health Services shall be billed at a rate previously agreed upon.~~

~~(c) In contract sponsored clinics, Children's Special Health Services shall be billed according to the terms specified in a contractual agreement.~~

Authority G.S. 130A-124.

10A NCAC 43F .0509 CLERICAL CHARGES

~~(a) Payment for clerical services may be made on a fee for service basis. The billing procedure shall indicate whether the clerical service is provided by a local health department employee or by an individual employed only to provide the additional clerical service for the clinic. The bill shall indicate the number of patients seen.~~

~~(b) Clerical services provided through a contract shall be billed by means of an expenditure report as specified in the contract.~~

Authority G.S. 130A-124.

10A NCAC 43F .0510 AUTHORIZED HOSPITALIZATION

~~All bills for hospitalization shall be submitted in accordance with rules found in 10A NCAC 45A.~~

Authority G.S. 130A-124.

10A NCAC 43F .0511 AUTHORIZED APPLIANCES

~~(a) Bills for appliances shall include appropriate charge data and shall be transmitted in triplicate to Children's Special Health Services in accordance with 10A NCAC 45A .0302.~~

~~(b) Insurance or any other coverage shall be exhausted before a bill can be paid by the program.~~

Authority G.S. 130A-124.

10A NCAC 43F .0512 AUTHORIZED DRUGS FOR OUTPATIENTS

~~(a) Bills for drugs shall be submitted to Children's Special Health Services in accordance with 10A NCAC 45A .0302. Billing forms approved by the program shall be used.~~

~~(b) Insurance or any other coverage shall be exhausted before a bill can be paid by the program.~~

Authority G.S. 130A-124.

10A NCAC 43F .0513 REIMBURSEMENT RATES

~~Reimbursement rates for Children's Special Health Services are found in 10A NCAC 45A .0400.~~

Authority G.S. 130A-124.

10A NCAC 43F .0514 APPEALS PROCEDURE

~~Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.~~

Authority G.S. 130A-124.

SECTION .0600 - FORMS

10A NCAC 43F .0601 REQUESTS FOR FORMS

~~All forms for Children's Special Health Services may be obtained from Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699 1915.~~

Authority G.S. 130A-124.

10A NCAC 43F .0602 REQUEST FORM FOR COST SERVICES

~~(a) The purpose of the request form for cost services shall be to:~~

- ~~(1) provide information to establish and justify clinical eligibility;~~
- ~~(2) notify requesting parties that they are authorized to provide a service which may be paid for by Children's Special Health Services.~~

~~(b) The request form for cost services shall include at least the following information:~~

- ~~(1) patient identification;~~
- ~~(2) diagnosis;~~
- ~~(3) services requested and anticipated dates of services;~~
- ~~(4) justification when needed;~~

- ~~(5) signature of rostered physician or other appropriate rostered specialist;~~
- ~~(6) date of request.~~

Authority G.S. 130A-124.

10A NCAC 43F .0603 FINANCIAL ELIGIBILITY FORM

The Financial Eligibility forms shall be submitted in accordance with rules found in 10A NCAC 45A.

Authority G.S. 130A-124.

10A NCAC 43F .0604 FORMS FOR DENIAL OF REQUESTS FOR SERVICE

~~Forms used to reply to requests for services may serve as a rejection notice. These forms shall indicate the reasons for denial of a request. The forms shall be sent to the requesting party and to the patient, parent or guardian.~~

Authority G.S. 130A-124.

10A NCAC 43F .0605 CLINIC NOTES FORM

~~Physicians and other professionals shall record patient information on a clinic notes form. The form shall include notes concerning the patient's complaints, history, physical examination, progress notes, diagnosis, and recommended treatment.~~

Authority G.S. 130A-124.

10A NCAC 43F .0606 CLINIC RECORD

~~(a) A medical record shall be maintained for each patient seen in sponsored clinics.~~

~~(b) The clinic record shall include at least:~~

- ~~(1) identifying information about the patient;~~
- ~~(2) complaint and history;~~
- ~~(3) physical examination;~~
- ~~(4) diagnosis and treatment;~~
- ~~(5) a copy of the patient's clinic notes.~~

~~(c) Children's Special Health Services shall be entitled to review the clinic record of a patient upon request.~~

Authority G.S. 130A-124.

10A NCAC 43F .0607 CLERICAL SERVICES

~~(a) Reimbursable clerical services shall be certified as "completed" by the clinic secretary and the local health director, on a form which is acceptable to Children's Special Health Services.~~

~~(b) The form shall contain:~~

- ~~(1) name and address of clerk;~~
- ~~(2) date of service;~~
- ~~(3) number of patient records processed;~~
- ~~(4) signature of clerk and local health director.~~

Authority G.S. 130A-124.

SECTION .0700 - ROSTERS

10A NCAC 43F .0701 QUALIFICATIONS

~~(a) There shall be two categories of rostered physicians under Children's Special Health Services:~~

- ~~(1) In order to be accorded full rostering status, an applicant must be a resident of North Carolina, licensed to practice medicine in the state, have hospital privileges in the community of his/her practice, and be board certified in pediatrics. Physicians who are not board certified in pediatrics may be fully rostered if they are board certified in a specialty with pediatric training in that specialty, and:~~

- ~~(A) meet the applicable membership criteria of the American Academy of Pediatrics for that specialty, or~~
- ~~(B) meet substantially equivalent credentialing requirements for a pediatric subspecialty in a specialty.~~

- ~~(2) A physician may be conditionally rostered if that physician serves an area not adequately served by a fully rostered physician. A conditionally rostered physician shall meet all of the requirements set forth in Paragraph (a)(1) of this Rule for a fully rostered physician, except for the requirements that a physician be board certified in pediatrics and meet the applicable membership criteria of the American Academy of Pediatrics for that specialty or meet substantially equivalent credentialing requirements for a pediatric subspecialty in a specialty. However, the physician shall possess pediatric experience in a specialty and provide services necessary for the care of children in an area that is not adequately served. The status of the conditionally rostered physician shall be reviewed every three years.~~

~~(b) Physicians rostered by the Program prior to September 1, 1989 shall be considered fully rostered.~~

~~(c) The orthodontist/prosthodontist applicant for rostering must be a resident of North Carolina, licensed to practice dentistry in the state, board eligible or certified by the American Board of Orthodontics or by the American Board of Prosthodontics, respectively, and a member of a Children's Special Health Services oral/facial clinic team.~~

~~(d) The speech/language pathologist or audiologist applicant for rostering must be a resident of North Carolina, licensed to practice in the state in accordance with G.S. Chapter 90, Article 22, and certified by the American Speech and Hearing Association. In addition, the applicant must be practicing 20 hours per week with at least 12 hours in direct patient contact, and within the previous two years, an average of one half or more of the patients served must have been children.~~

Authority G.S. 130A-124.

10A NCAC 43F .0702 FURTHER INFORMATION

~~Children's Special Health Services reserves the right to ask a roster applicant for further information, or credentials, or to~~

determine whether the hospital of affiliation is equipped adequately for the practice of the applicant's specialty.

Authority G.S. 130A-124.

10A NCAC 43F .0703 APPEALS PROCEDURE

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

Authority G.S. 130A-124.

10A NCAC 43F .0704 ADMINISTRATIVE REQUIREMENTS

Rostered physicians shall:

- (1) Encourage insurance clerk and office manager to be properly trained regarding Children's Special Health Services and its forms;
- (2) Properly prepare or ensure the completion of forms and paperwork as indicated or needed for services to the family;
- (3) Take responsibility for preparing requests for ancillary services such as drugs and supplies; and
- (4) Not hold the patient or family responsible for unprocessed or unpaid bills for physician's services which are due to provider error or non-compliance with program guidelines.

Authority G.S. 130A-124.

SECTION .0800 - ADOPTION

10A NCAC 43F .0801 GENERAL PROVISION

(a) If the requirements of this Section are met, a child who has been legally adopted and has no natural parent with legal responsibility for the child, shall, after the final order of adoption, be considered a family of one under 10A NCAC 45 .0204(c) for purposes of determining financial eligibility for program support.

(b) Authorization and payment for services shall be made pursuant to Section .0500 of this Subchapter and 10A NCAC 45A .0302 and .0303.

(c) After the adoption is completed, the agency handling the adoption shall inform the program of the following:

- (1) the child's new name and address; and
- (2) the adoptive parents' name and address.

If the child was placed independently, the adoptive parents shall provide this information to the program.

Authority G.S. 130A-124.

10A NCAC 43F .0802 REQUIREMENTS FOR THE ADOPTIVE CHILD

To be eligible for program support, the child must meet the following requirements:

- (1) The child must have a program supported medical condition as provided in 10A NCAC 43F .0303 which is documented by a

physician rostered by the program to be existing prior to the final order of adoption; and

- (2) The child must meet the residency requirements of 10A NCAC 45A .0201(b)(1).

Authority G.S. 130A-124.

10A NCAC 43F .0804 APPLICATION FOR COVERAGE AFTER ADOPTION

(a) Application for post adoption coverage shall be made on a form provided by the Department by the agency having legal responsibility, in the case of a state or private agency placement, or by the adoptive parents, in the case of an independent placement. The application must be received by Children's Special Health Services prior to the final order of adoption.

(b) Applications for state agency placed children shall be submitted to the North Carolina Adoption Resource Exchange, Division of Social Services, Department of Human Resources, for forwarding to Children's Special Health Services. Applications from private adoption agencies and for children adopted independently shall be submitted directly to the medical director of Children's Special Health Services.

Authority G.S. 130A-124.

SECTION .0900 - AGREEMENTS WITH OTHER AGENCIES

10A NCAC 43F .0901 AGREEMENT WITH VOCATIONAL REHABILITATION

Children's Special Health Services maintains an agreement with the division of vocational rehabilitation in order to best utilize the services of both parties:

- (1) The division of vocational rehabilitation may utilize sponsored clinics for diagnostic and follow up care for Children's Special Health Services eligible individuals under 21 years of age.
- (2) Sponsored orthopedic clinic services shall be provided to clients of the division of vocational rehabilitation who are over 21 years of age, based on a transfer of line item funds from vocational rehabilitation to Children's Special Health Services.

Authority G.S. 130A-124.

SECTION .1000 - CHILDREN'S SPECIAL HEALTH CONTRACT FUNDS

10A NCAC 43F .1001 OUTPATIENT CLINIC SERVICES

To provide access to outpatient clinic services, the division contracts with appropriate agencies. This Section includes the funding guidelines under which these contracts are let.

Authority G.S. 130A-124.

10A NCAC 43F .1002 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~"Division" means the Division of Public Health.~~
- (2) ~~"Provider" means a county or district health department or other public or private non-profit agency receiving Children's Special Health Services funds. ("Local provider" means a county or district health department; "Non Local provider" means an educational institution, medical center or other public or private non-profit agency.)~~
- (3) ~~"New state or federal funds" means any funds which are in excess of the amount allocated by the Children's Special Health Services to providers as of July 1, 1984.~~

Authority G.S. 130A-124.

10A NCAC 43F .1003 PROVIDER ELIGIBILITY

- (a) ~~Children's Special Health Services funds may be awarded to any public or private non profit agency.~~
- (b) ~~An agency to whom funds are awarded must be able to demonstrate capability for provision of Children's Special Health Services as outlined in this Subchapter.~~
- (c) ~~Existing Children's Special Health Services' contractors are eligible to receive priority for program funds based on their continued compliance with Children's Special Health Services' standards and rules, and on demonstration of acceptable service performance.~~

Authority G.S. 130A-124.

10A NCAC 43F .1004 CLIENT ELIGIBILITY

~~To be eligible for outpatient clinic services, the client must meet the eligibility criteria of age, residence, medical condition and financial resources established in this Subchapter.~~

Authority G.S. 130A-124.

10A NCAC 43F .1005 SCOPE OF SERVICES

- (a) ~~Outpatient clinics for specific diagnostic categories shall be established based upon needs and the availability of funds.~~
- (b) ~~Outpatient clinic services shall include evaluation, treatment, follow up and referral. Program eligible children shall be given first priority for clinic services paid through the Children's Special Health Services contract.~~
- (c) ~~Within the service limitations of this Section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and type of services offered will be negotiated annually with each provider, approved by the program, and detailed in the addendum of the contract.~~

Authority G.S. 130A-124.

10A NCAC 43F .1006 ALLOCATION OF FUNDS: CONTRACT

- (a) ~~Contract funds will be negotiated with the provider. These negotiations will include a consideration of the number of counties or size of area to be serviced, Children's Special Health Services eligible population, existing contracts, new funds, and state equity.~~
- (b) ~~Any new state or federal funds to be distributed statewide to providers shall be allocated based upon the following formula:~~
 - (1) ~~Each provider's percentage of total state need for Children's Special Health Services compared to their percentage of total Children's Special Health Services funding for providers.~~
 - (2) ~~Service delivery gaps in given catchment areas.~~
 - (3) ~~Actual utilization of funds in previous fiscal years, special population groups, and other management considerations that relate to a provider's ability to effectively and efficiently use funds.~~

~~(c) Any new state or federal funds that are not distributed to existing contract providers shall be governed by the section entitled "Application for Funds".~~

~~(d) In order to maximize the utilization of Children's Special Health Services funds, in the event a local or non-local provider is expending funds at a rate which will, if continued, result in an underexpenditure of funds at the end of the contract period, the Children's Special Health Services may after consulting with the provider reduce the amount of funds budgeted by an amount consistent with the projected level of underexpenditure. Funds projected to be unexpended may be reallocated to other contract providers in accordance with community needs and performance records. Children's Special Health Services shall notify the provider in writing prior to any reduction of funds.~~

~~(e) A contract is signed annually with each provider. Contracts for Children's Special Health Services funds are subject to annual renewal and are subject to the availability of funds.~~

~~(f) A provider that consistently fails to meet acceptable levels of performance as determined through site reviews by the program or data from the Health Services Information System and has been offered state consultation and technical assistance, may have Children's Special Health Services funds reduced or discontinued. Recommendations to reduce or discontinue must be reviewed and approved by the State Health Director.~~

Authority G.S. 130A-124.

10A NCAC 43F .1007 REPORTING REQUIREMENTS

~~Providers receiving funds from Children's Special Health Services must report client and service data through the Health Services Information System (HSIS). Data may be submitted on hard copy forms provided by the division, diskette or magnetic tape. Data must be submitted on no less than a monthly basis.~~

Authority G.S. 130A-124.

10A NCAC 43F .1008 CLIENT AND THIRD PARTY FEES

~~(a) If a Children's Special Health Services contract clinic imposes any charges for diagnostic services provided to children, such charges:~~

- ~~(1) Will be applied according to a public schedule of charges;~~
- ~~(2) Will not be imposed on low-income individuals or their families; and~~
- ~~(3) Will be adjusted to reflect the income, resources, and family size of the individual receiving the services.~~

~~(b) If client fees are charged, Children's Special Health Services contract clinics must make reasonable efforts to collect from third party payors.~~

~~(c) Client and third party fees collected by Children's Special Health Services contract clinics for the provision of diagnostic services must be used, upon approval of the program, to expand, maintain, or enhance these services. No person shall be denied services because of an inability to pay.~~

Authority G.S. 130A-124.

10A NCAC 43F .1009 APPLICATION FOR FUNDS

~~(a) New grants for provision of services shall be awarded through a request for proposal (RFP) process that includes notification of local providers of the eligibility criteria and requirements for funding.~~

~~(b) Grant proposals for Children's Special Health Services' funds must be sent to the Children and Youth Section, Division of Maternal and Child Health, P.O. Box 27687, Raleigh, NC 27611-7687. The grant proposal shall include at least the following information:~~

- ~~(1) A Children's Special Health Services annual plan which includes an assessment of the need for the clinic services; measurable project objectives, and strategies for meeting the project objectives.~~
- ~~(2) A proposed budget.~~
- ~~(3) The plan will be in accordance with the rules of this Subchapter.~~

~~(c) Technical assistance in preparing a grant proposal shall be available from central and regional office Children's Special Health Services staff.~~

~~(d) Children's Special Health Services shall approve or deny a grant proposal for Children's Special Health Services funds or request additional information within 60 days after receipt of a grant proposal. If additional information is requested, the provider shall have 45 days to submit the information. Failure by the provider to submit the additional information requested within 45 days shall be grounds for denying the grant proposal. Upon receipt of the additional information, the Children's Special Health Services shall approve or deny the application within 45 days.~~

Authority G.S. 130A-124.

10A NCAC 43F .1010 BUDGETING OF GRANT FUNDS

~~Upon approval of an application for grant funds, a budget will be negotiated and a contract will be signed between the grantee and the Children's Special Health Services.~~

Authority G.S. 130A-124.

10A NCAC 43F .1011 ANNUAL PLAN

~~The contractor shall submit an updated annual plan each year to Children's Special Health Services according to program specifications and within the time frame specified each year by the program.~~

Authority G.S. 130A-124.

10A NCAC 43F .1012 RENEWAL OF GRANT FUNDS

~~When considering renewal of funding, the Children and Youth Section shall consider the extent to which:~~

- ~~(1) objectives are met as described in progress reports or site reviews by the program, and~~
- ~~(2) contract requirements are met.~~

Authority G.S. 130A-124.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0105.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☒ RRC certified on: *October 17, 2013*
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdoj.gov

Proposed Effective Date: *April 1, 2014*

Public Hearing:

Date: *January 10, 2014*

Time: *2:00 p.m.*

Location: *4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

Reason for Proposed Action: *It conforms the Board's rule on prohibited acts to the Board's statute on providing false information.*

Comments may be submitted to: *Anthony Bonapart, PPSB Deputy Director, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

Comment period ends: *February 14, 2014*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS
LICENSING BOARD**

**SECTION .0100 - ORGANIZATION AND GENERAL
PROVISIONS**

12 NCAC 11 .0105 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in ~~these Regulations~~ this Subchapter and in Chapter 74D of the General Statutes, any applicant, licensee, or registrant who does any of the following may have his application denied, or his license or registration revoked or suspended:

- (1) Displays or causes or permits to be displayed, or has in his possession any cancelled, revoked, suspended, fictitious, fraudulently altered license or registration identification card, or any document simulating a license or registration identification card or purporting to be or to have been issued as a license or registration identification card;
- (2) Lends his license or registration identification card to any person or allows the use thereof by another;
- (3) Displays or represents any license or registration identification card not issued to him as being his license or registration identification card;
- (4) Includes in any advertisement a statement which implies official state authorized certification or approval other than this statement: "Licensed by the Alarm Systems Licensing Board of the State of North Carolina." Licensees may include their license number.

- (5) Includes in the company name the word "police" or other law enforcement designation that implies that the alarm company is affiliated with a local, state, or federal law enforcement agency.
- (6) Made any false statement or given any false information to a third party in connection with any criminal history record check provided to the Board.

Authority G.S. 74D-5; 74D-10.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10A .1301-.1303; 10C .0217; 10G .0601 and amend the rules cited as 15A NCAC 10B .0111, .0116, .0118, .0120, .0202, .0203; 10C .0203, .0205-.0206, .0302, .0314, .0401-.0402, .0404, .0407; 10D .0102-.0104; 10F .0107; 10K .0101.

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: *December 6, 2013*
- ☐ RRC certified on:
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncwildlife.org/ProposedRegulations.aspx

Proposed Effective Date:

May 1, 2014 - 15A NCAC 10A .0301-.0303; 10B .0118; 10K .0101

August 1, 2014 - 15A NCAC 10B .0111, .0116, .0120, .0202, .0203; 10C .0203, .0205-.0206, .0217, .0302, .0314, .0401-.0402, .0404, .0407; 10D .0102-.0104

January 1, 2015 - 15A NCAC 10F .0107

Public Hearing:

Date: *January 7, 2014*

Time: *7:00 p.m.*

Location: *Bladen Community College, 7418 NC Hwy 41W, Dublin, N.C. 28332*

Date: *January 8, 2014*

Time: *7:00 p.m.*

Location: *Courthouse, 212 W Elm St., Graham, N.C. 27253*

Date: *January 9, 2014*

Time: *7:00 p.m.*

Location: *South Stanly High School, 40488 South Stanly School Road, Norwood, N.C. 28128*

Date: *January 14, 2014*

Time: *7:00 p.m.*

Location: Tri-County Community College, 21 Campus Circle, Murphy, N.C. 28906

Date: January 15, 2014

Time: 7:00 p.m.

Location: 1924 Courthouse 30 N College Avenue, Newton, NC 28658

Date: January 16, 2014

Time: 7:00 p.m.

Location: Wilkes Community College, The Walker Center, 1328 S. Collegiate Drive, Wilkesboro, N.C. 28697

Date: January 21, 2014

Time: 7:00 p.m.

Location: Swain Auditorium, 200 E. Church St., Edenton, N.C. 27932

Date: January 22, 2014

Time: 7:00 p.m.

Location: Courthouse, 302 Broad St., New Bern, N.C. 28560

Date: January 23, 2014

Time: 7:00 p.m.

Location: Nash Community College, 522 North Old Carriage Rd., Rocky Mount, N.C. 27804

Reason for Proposed Action:

15A NCAC 10A .1301; 15A NCAC 10A .1302; 15A NCAC 10A .1303 -Legislation passed in 2013 by the General Assembly, S.L. 2013-380, created a Wildlife Poacher Reward Fund to pay rewards to persons who provide information that results in the arrest and conviction of persons who have committed wildlife offenses. The legislation directs the Commission to adopt rules and to administer the fund and to set a percentage of the replacement and investigative costs to be directed into the fund.

15A NCAC 10B .0111 - As amended, this rule would allow hunters to hunt raccoon during the day west of U.S.1.

15A NCAC 10B .0116 - As amended, this rule would reduce the draw weight for crossbows.

15A NCAC 10B .0118 - As amended, this rule would allow people who have mounted wild animals to sell those mounts, except bear, turkey, and migratory game birds which cannot be sold under state or federal law. The WRC receives between 25 to 50 inquiries a year from people who want to sell mounts

15A NCAC 10B .0120 - As amended, this rule would eliminate the caliber restrictions in place for taking big game with handguns. Although this rule would expand the type of handguns hunters could use to take big game, handguns are only infrequently used to do so and we do not anticipate hunters purchasing handguns based upon the change to this rule.

15A NCAC 10B .0202 - As amended, this rule would open Piedmont counties to bear hunting with the use of unprocessed foods (natural bait).

15A NCAC 10B .0203 - As amended, this rule changes the deer season in one county and changes the name of muzzleloading season to blackpowder season. In addition, it changes the dates of the Western Deer Season to include Sundays.

15A NCAC 10C .0203 - As amended, this rule modifies the boundary for the NC/VA border per reciprocal license agreement.

15A NCAC 10C .0205 - As amended, this rule makes changes to the designations of several public mountain trout waters.

15A NCAC 10C .0206 - As amended, this rule gives anglers the option to label their trotlines, set hooks and jug hooks with their WRC customer numbers instead of their names and addresses, the current requirements.

15A NCAC 10C .0217 - As amended, this rule clarifies the purpose of Public Access for Fishing Only and lists a set of prohibited activities.

15A NCAC 10C .0302 - As amended, this rule would allow anglers using a cast net to collect nongame fish to keep any white perch they catch, too, in all impounded waters west of Interstate 95 and in the Tar River Reservoir.

15A NCAC 10C .0314 - As amended, this rule changes the minimum size limit for striped bass in Lake Norman.

15A NCAC 10C .0401 - As amended, this rule clarifies that the daily possession limit for freshwater mussels is 200 in the aggregate.

15A NCAC 10C .0402 - As amended, this rule would allow anglers using a cast net to collect nongame fish to keep any white perch they catch, too, in all impounded waters west of Interstate 95 and the Tar River. It also adds spear, gigs, traps and eel pots to the list of equipment that can be used to take nongame fish for bait or personal consumption.

15A NCAC 10C .0404 - As amended, this rule would reduce the minimum mesh size for eel pots in order to standardize North Carolina with other Atlantic States.

15A NCAC 10C .0407 - As amended, this rule prohibits the use of bow nets. Bow nets are primarily used to harvest anadromous fish. Currently, all NC species of anadromous are either illegal to take or otherwise are of conservation concern to the Commission.

15A NCAC 10D .0102 - To designate open hours and days for shooting ranges by posting signs at each shooting range. Currently all shooting ranges are open Monday through Saturday, sunrise to sunset. Apply range restrictions to ranges that occur on game lands which are not state-owned.

15A NCAC 10D .0103 - Makes the Lick Creek tract of Alcoa Game Land in Davidson County an Archery-only area for deer hunting; Designates certain areas of Bladen Lakes State Forest Game land as still hunting only for deer and bear; allows overnight primitive camping year-round in a designated camping area along the Mountain-to-Sea trail (MST) on the Butner-Falls of Neuse Game Land in Durham County; Designate Holly Shelter Game Land in Pender County as a six-day-per-week game land (currently three) and allow dog hunting for deer and bear on M,W,F, and Sa only, and as otherwise authorized by permit on the Bear Garden Tract; Relax Access restrictions on the Parker Farm Tract of Goose Creek Game Lands in Beaufort and Pamlico Counties; Allow hunting deer with dogs on Stones Creek Game Land in Onslow County on T, Th, and F only.

15A NCAC 10D .0104 - As amended, this rule would designate 05 mile of the West Fork Pigeon River in Haywood County below Lake Logan located on the Cold Mountain Game Land as

Public Mountain Trout Waters and classify as Catch and Release/Artificial Lures Only Trout Waters.

15A NCAC 10F .0107 - Legislation passed in the 2013 Session of the General assembly that amended the vessel registration requirements. As amended, vessel owners will be required to display a validation decal on both the starboard and port side of a vessel. Currently, the requirement is to place the decal on the starboard side bow only. The change will provide law enforcement officers the opportunity to visually determine compliance with vessel registration rules.

15A NCAC 10G .0601 - Legislation passed in 2013 by the General Assembly authorized the NC Wildlife Resources Commission to establish rules defining documentation acceptable for determining eligibility of totally and permanently disabled residents for the purpose of obtaining a discounted lifetime license.

15A NCAC 10K .0101 - As amended, this rule eliminates the mandatory 10 hours of instruction for a hunter education course and replaces it with subject-based requirements and no minimum time for instruction.

Comments may be submitted to: Kate Pipkin, 1722 Mail Service Center, Raleigh, NC 27699-1722, email regulations@ncwildlife.org.

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1300 – WILDLIFE POACHER REWARD FUND

15A NCAC 10A .1301 FUNDING SOURCES

The Wildlife Resources Commission shall direct at least 10 percent of compensatory restitution associated with replacement costs and investigative costs as defined in G.S. 15A-1343(b1)(5) and specified in Rules 15A NCAC 10B .0117 and 15A NCAC 10C .0215 to the Wildlife Poacher Reward Fund.

Authority G.S. 113-134; 113-294.1.

15A NCAC 10A .1302 OFFENSES AND REWARD AMOUNTS

(a) Rewards shall be paid only for information leading to the arrest and conviction of persons who have committed Class 1 or Class 2 misdemeanors specified in G.S. 113-294 and G.S. 113-337, and Class 1 misdemeanors involving wildlife resources specified in G.S. 113-264(b).

(b) The reward amount shall be equivalent to the amount of the fine, replacement costs, or restitution assessed by the court, whichever is greatest, not to exceed one thousand dollars (\$1,000). If no fine, replacement cost or restitution is assessed, including in cases that result in a prayer for judgment, the reward shall be one hundred dollars (\$100.00).

Authority G.S. 113-134; 113-294.1.

15A NCAC 10A .1303 ELIGIBILITY

(a) Rewards shall be paid only to individuals who provide information that results in the arrest and conviction of persons who have committed the offenses specified in Rule .1302(a) of this Section. If more than one individual provides information leading to the arrest of a person for the same offense, the Commission shall pay reward money in equal amounts to each individual not to exceed the amount specified in Rule .1302(b) of this Section.

(b) Rewards shall be paid after the final disposition of a case has resulted in a conviction or a prayer for judgment. For purposes of this Rule, a conviction shall be as defined in G.S. 113-171(a).

(c) The following individuals are not eligible to receive reward money:

- (1) any current Wildlife Resources Commission employee or members of his or her immediate family;
- (2) any current Wildlife Resources Commissioner;
- (3) any sworn law enforcement officer;
- (4) the perpetrator of the crime for which the information has been given and any accomplice or accessory to that crime; and
- (5) any individual who refuses to provide the Commission with his or her name and contact information.

Authority G.S. 113-134; 113-294.1.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0111 RESTRICTIONS ON RACCOON AND OPOSSUM HUNTING

- (a) Axes or saws may not be carried when raccoon or opossum hunting.
- (b) ~~Except in Richmond County, raccoon may not be shot during daylight hours west of US 1.~~

Authority G.S. 113-134; 113-291.1.

15A NCAC 10B .0116 PERMITTED ARCHERY EQUIPMENT

- (a) Only longbows and recurved bows having a minimum pull of 40 pounds, compound bows having a minimum pull of 35 pounds and crossbows shall be used for taking game.
- (b) Only arrows with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths of an inch in the open position shall be used for taking bear, deer or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including rabbits, squirrels, quail, grouse and pheasants. Poisonous, drugged, barbed, or explosive arrowheads shall not be used for taking any game.
- (c) Crossbows shall have a minimum pull rated at least 100 ~~150~~ pounds. Heads on bolts used with crossbows shall conform to those described for arrows in Paragraph (b) of this Rule.

Authority G.S. 113-134; 113-291.1(a).

15A NCAC 10B .0118 SALE OF WILDLIFE

- (a) The carcasses or pelts of bobcats, opossums and raccoon which have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossum and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B ~~.0106, 0106(e)(4) and 15A NCAC 10B .0127.~~
- (b) Except as otherwise provided in Paragraphs ~~(a), and (a), (d) and (e)~~ of this Rule, the sale of game birds and game animals or parts thereof is prohibited, except that processed products other than those made from edible portions may be sold provided that no label or advertisement identifies the product as a game bird, game animal, or part thereof and provided further that the game bird or game animal was lawfully acquired. and the product is not readily identifiable as a game bird or game animal, or part thereof.
- (c) The sale of edible portions or products of game birds and game animals is prohibited, except as may be otherwise provided by statute.
- (d) The pelt, or feathers of deer, elk, fox, pheasant, quail, rabbit or squirrel (fox and gray), may be bought or sold for the purpose of making fishing flies ~~flies~~ provided the source of these animals can be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with C.F.R. 50, part ~~20.94(j), 20.91.~~
- (e) The Executive Director or his designee may issue Trophy Wildlife Sale permits as authorized in G.S. 113-274 for the sale of lawfully taken and possessed individual dead wildlife

specimens or their parts that are mounted, stuffed, or otherwise permanently preserved that may be sold under applicable statutes. A copy of the permit must be retained with the specimen. If the Executive Director believes that issuing the permit would be contrary to the best interests of the conservation of wildlife resources, he must not issue the permit pursuant to 113-276.2.

Authority G.S. 113-134; 113-273; 113-276.2; 113-291.3; 113-337; 113-274.

15A NCAC 10B .0120 TAKING DEER AND BEAR WITH HANDGUNS

- Handguns of any type may be used to take deer and bear. Ammunition of any type may be used to take deer and bear, except armor-piercing projectiles shall not be used.
- ~~(a) Handguns used to take big game animals shall be capable of receiving and firing a type of ammunition approved for such use by this rule.~~
- ~~(b) Type of Ammunition. Only metallic center fire cartridges firing single projectiles shall be used to take big game with handguns. Armor piercing projectiles shall not be used.~~
- ~~(c) Power and Caliber. Handgun ammunition used to take big game shall be no less than .24 caliber.~~

Authority G.S. 113-134; 113-291.1.

SECTION .0200 - HUNTING

15A NCAC 10B .0202 BEAR

- (a) Open Seasons for hunting bear shall be from the:
- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke and Cleveland counties.
 - (2) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender and Sampson counties.
 - (3) First Monday in December to the third Saturday thereafter in Brunswick ~~and Columbus~~ Columbus and Robeson counties.
 - (4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of ~~Alexander,~~ Beaufort, Camden, ~~Catawba,~~ Chowan, Craven, Dare, Edgecombe, Greene, Halifax, ~~Harnett,~~ Hyde, ~~Iredell, Johnston,~~ Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, ~~Stokes,~~ Tyrrell, ~~Vance, Warren,~~ Washington, Wayne, Wilson and ~~Yadkin~~ counties.
 - (5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Currituck, Gates, Hertford and Perquimans counties.

- (6) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Warren, Wake and Yadkin counties.

(b) Restrictions

- (1) For purposes of this paragraph, bait means "any natural, unprocessed food product that is not a processed food product as defined in G.S. 113-294(r) and is not a bear bait attractant, including scented sprays, aerosols, scent balls, and scent powders."
- (2) Bears may be taken with the aid of bait from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule.
- (2) Bears shall not be taken while in the act of consuming bait.
- (3) Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.
- (4) Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Alexander, Anson west of N.C. Hwy 742, Cabarrus, Catawba, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Iredell, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Stokes, Union, Wake south of N.C. Hwy 98 and Yadkin. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

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

Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary except by permit only

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

Beaufort and Pamlico counties--Gum Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary

Brunswick County--Green Swamp bear sanctuary

Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary

Carteret, Craven and Jones counties--Croatan bear sanctuary

Clay County--Fires Creek bear sanctuary

Columbus County--Columbus County bear sanctuary

Currituck County--North River bear sanctuary

Dare County--Bombing Range bear sanctuary except by permit only

Haywood County--Harmon Den bear sanctuary

Haywood County--Sherwood bear sanctuary

Hyde County--Gull Rock bear sanctuary

Hyde County--Pungo River bear sanctuary

Jackson County--Panthertown-Bonas Defeat bear sanctuary

Macon County--Standing Indian bear sanctuary

Macon County--Wayah bear sanctuary

Madison County--Rich Mountain bear sanctuary

McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only

Mitchell and Yancey counties--Flat Top bear sanctuary

Wilkes County--Thurmond Chatham bear sanctuary

~~(e)(d)~~ Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

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

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

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Open Seasons (All Lawful Weapons) for hunting deer:

- (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties.

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(B) Saturday before Thanksgiving through January 1 in all of Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln,

- Stokes, Surry, Watauga, Wilkes*, and Yadkin counties.
 *Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, ~~Polk~~, Swain, Transylvania, and Yancey counties.
- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.
- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of ~~Cleveland~~ Cleveland, Polk and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph: (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison and Transylvania counties.**
 *except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280
 **see 15A NCAC 10D .0103 for deer of either sex seasons on game lands that differ from the days identified in this Subparagraph
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Avery, Burke, Caldwell, McDowell, Mitchell and Yancey counties.

- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland, Polk and Rutherford counties.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln and Gaston counties and in the following parts of counties:
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and
 Henderson. That part east of NC 191 and north and west of NC 280.
- (b) Open Seasons (Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
- (C) ~~Monday—Saturday~~ on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in ~~Cleveland~~ Cleveland, Polk and Rutherford counties.
- (D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.
- (c) Open Seasons (~~Blackpowder Muzzle-Loading~~ Firearms and Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with ~~blackpowder muzzle-loading~~ firearms and bow and arrow during the following seasons:
- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
 *Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in ~~Cleveland—Cleveland,~~ Cleveland, Polk and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.

(D) The fourth Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

(A) Deer of either sex may be taken during ~~blackpowder muzzle-loading~~ firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, ~~Watauga~~, ~~Watauga~~ and Ashe. Deer of either sex may be taken on the last day of this season in all other counties.

(B) Dogs shall not be used for hunting deer during the ~~blackpowder muzzle-loading~~ firearms and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

(3) As used in this Paragraph, blackpowder firearms means "Any firearm — including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system — manufactured in or before 1898; and any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading handguns, which is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the muzzle and which cannot use fixed ammunition."

(d) Open Season (Urban Season) for hunting deer:

(1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.

(2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee. Cities must also submit a map of the city's boundaries within which the urban season shall apply.

(3) Restrictions:

(A) Dogs shall not be used for hunting deer during the urban season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

(B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) Bag limits. In and east of Vance, Franklin, Wake, Harnett, Moore and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of the state the possession limit is six deer, up to two of which may be deer with visible antlers. The season limit in all counties of the state is six deer. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on lands others than lands enrolled in the Commission's game land program during any open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (a)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on state-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program (DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0203 RECIPROCAL LICENSE AGREEMENTS

(a) Virginia. In accordance with a reciprocal license agreement between the States of Virginia and North Carolina, all valid

licenses and permits authorizing sport fishing and legally obtained from the Virginia Commission of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing by means of rod and reel, hook and line, casting, or trotline in the Dan River east of the ~~Brantly Steam Plant Union Street Dam~~ at Danville, and east of the ~~Rte. 360 bridge-mouth of Difficult Creek~~ on the Staunton River arm of Kerr Reservoir to the Gaston Dam on the Roanoke River, including all tributary waters lying in either Virginia or North Carolina which are accessible by boat from the main bodies of the Kerr and Gaston Reservoirs, or from the Island Creek subimpoundment. ~~The Rte. 360 bridge is the first bridge crossing the Staunton River upstream of Kerr Reservoir.~~ Senior citizen and juvenile license exemptions authorized by either state will be honored by both states. In addition, all valid fishing licenses and permits legally obtained from the Virginia Game and Fish Commission or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing with rod and reel, hook and line or by casting in that portion of the New River between the confluence of the North and South forks of the New River in North Carolina (Alleghany County) and the confluence of the New and Little Rivers in Virginia (Grayson County).

(b) Georgia. In accordance with a reciprocal license agreement between the States of North Carolina and Georgia, all valid statewide fishing licenses, permits and license exemptions required by and legally obtained from the North Carolina Wildlife Resources Commission or the Georgia Department of Natural Resources, or duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line in all of Chatuge Reservoir including all tributary waters lying in either Georgia or North Carolina which are accessible by boat from the main body of Chatuge Reservoir. All persons fishing in the waters of Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore.

(c) Tennessee. In that portion of Slick Rock Creek which coincides with the state line between North Carolina and Tennessee and in all of Calderwood Reservoir, when fishing from boat, all valid statewide fishing licenses obtained from the North Carolina Wildlife Resources Commission or the Tennessee Wildlife Resources Agency, or the duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line or fishing in designated mountain trout waters, according to the tenor thereof.

Authority G.S. 113-134; 113-275; 113-304.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. For the purposes of this Rule, artificial lure is defined as a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell. Natural bait is defined as any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell. The waters listed herein or in 15A

NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

(1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (a)(1)(A) through (Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein.

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam) [Delayed Harvest Regulations apply to portion between Whitehead and a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]

Brush Creek (NC 21 bridge to confluence with Little River, except where posted against trespass)

Big Pine Creek
(Big) Glade Creek
Bledsoe Creek
Pine Swamp Creek
South Fork New River (not trout water)
Prather Creek
Cranberry Creek
Piney Fork
Meadow Fork

(B) Ashe County:

New River (not trout waters)

North Fork New River (Watauga County line to Sharp Dam)

Helton Creek (Virginia State line to New River)
[Delayed Harvest

- Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River) [Delayed Harvest Regulations apply to portion between SR 1324 bridge and North Fork New River. See Subparagraph (a)(5) of this Rule.]
 Buffalo Creek (SR 1133 bridge to NC 194-88 bridge)
 Big Laurel Creek
 Three Top Creek (portion not on game lands)
 South Fork New River (Todd Island park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]
 Cranberry Creek (Alleghany County line to South Fork New River)
 Nathans Creek
 Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Roan Creek
 Beaver Creek
 Old Fields Creek
- (C) Avery County:
 Nolichucky River (not trout waters)
 North Toe River – upper (Watauga Street to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespass)
 North Toe River – lower (SR 1164 to Mitchell County line, except where posted against trespass)
 Squirrel Creek
 Elk River (SR 1305 crossing immediately upstream of Big
- Falls to the Tennessee State line)
 Wildcat Lake
 Catawba River (not trout water)
 Johns River (not trout water)
 Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
 Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Boyde Coffey Lake
 Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
 Milltimber Creek
- (D) Buncombe County:
 French Broad River (not trout water)
 Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 Dillingham Creek (Corner Rock Creek to Ivy Creek)
 Stony Creek
 Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
 Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
 Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)

PROPOSED RULES

- 28:12 *NORTH CAROLINA REGISTER* *DECEMBER 16, 2013*

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- (I) Graham County:
- Buck Creek (game land portion downstream of US 64 bridge)
 - Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah River (not trout water)
 - Yellow Creek (Lake Santeelah hydropower pipeline to Cheoah River)
 - Santeelah Reservoir (not trout water)
 - West Buffalo Creek
 - Santeelah Creek (Johns Branch to Lake Santeelah)
 - Big Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - (Big) Snowbird Creek (USFS Road 2579 to SR 1127 bridge)
 - Tulula Creek (headwaters to lower bridge on SR 1275)
 - Cheoah Reservoir
 - Fontana Reservoir (not trout water)
 - Stecoah Creek
 - Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
- (J) Haywood County:
- Pigeon River (Stamey Cove Branch to upstream US 19-23 bridge)
 - Cold Springs Creek (Fall Branch to Pigeon River)
 - Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)
- (K) Henderson County:
- Richland Creek (Russ Avenue (US 276) bridge to US 19 bridge)
 - West Fork Pigeon River (Tom Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
 - (Rocky) Broad River (Rocky River Lane to Rutherford County line)
 - Green River (Lake Summit Powerhouse to game land boundary)
 - (Big) Hungry River (S.R. 1885 to Green River)
 - French Broad River (not trout water)
 - Cane Creek (railroad bridge upstream SR 1551 to US 25 bridge)
 - Mud Creek (not trout water)
 - Clear Creek (Laurel Fork to SR 1582)
 - Mills River (not trout water)
 - North Fork Mills River (~~game lands portion below the~~ Hendersonville watershed dam to the lower game land boundary). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
- Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between the downstream NC 107 bridge and the falls located 275 yards ~~upstreams~~ upstream of US 23-441 bridge as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]
 - Scott Creek (entire stream, except where posted against trespass)
 - Dark Ridge Creek (Jones Creek to Scotts Creek)

- Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
 Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
 Cullowhee Creek (Tilley Creek to Tuckasegee River)
 Cedar Cliff Lake
 Bear Creek Lake
 Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Wolf Creek Lake
 Balsam Lake
 Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Tanasee Creek Lake
- (M) Macon County:
 Little Tennessee River (not trout water)
 Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]
 Queens Creek Lake
 Burningtown Creek (Left Prong to Little Tennessee River)
 Cullasaja River (Sequoyah Dam to US 64 bridge near junction of SR 1672)
~~Skitty Creek~~
 Cliffside Lake
 Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)
- (N) Madison County:
 French Broad River (not trout water)
 Shut-in Creek
 West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
 Spring Creek - upper (junction of NC 209 and NC 63 to US Forest Service road 223)
 Spring Creek - lower (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Meadow Fork Creek
 Roaring Fork (Fall Branch to Meadow Fork)
 Max Patch Pond
 Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)
 Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Spillcorn Creek
 Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
 Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
 Big Pine Creek (SR 1151 bridge to French Broad River)
 Ivy Creek (not trout waters)
 Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
- (O) McDowell County:
 Catawba River – upper (Catawba Falls Campground to Old Fort Recreation Park)
 Catawba River – lower (portion adjacent to Marion Greenway) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Buck Creek (portion not on game lands, not trout water)

- Little Buck Creek
(game land portion)
Curtis Creek game lands
portion downstream of US
Forest Service boundary at
Deep Branch. [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
North Fork Catawba River
(headwaters to SR 1569
bridge)
Armstrong Creek (Cato
Holler line downstream to
upper Greenlee line)
Mill Creek (upper railroad
bridge to I 40 bridge, except
where posted against
trespass) [Delayed Harvest
Regulations apply to that
portion between US 70
bridge and I 40 bridge. See
Subparagraph (a)(5) of this
Rule.]
- (P) Mitchell County:
Nolichucky River (not trout
water)
Big Rock Creek (headwaters
to NC 226 bridge at SR 1307
intersection)
Little Rock Creek
(Green Creek Bridge to
Big Rock Creek, except
where posted against
trespass)
Cane Creek (SR 1219 to SR
1189 bridge) [Delayed
Harvest Regulations apply to
that portion from NC 226
bridge to SR 1189 bridge.
See Subparagraph (a)(5) of
this Rule.]
Grassy Creek (East Fork
Grassy Creek to mouth)
East Fork Grassy Creek
North Toe River (Avery
County line to SR 1121
bridge)
North Toe River (US 19E
bridge to NC 226 bridge)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]
- (Q) Polk County:
Broad River (not trout water)
North Pacolet River (Joels
Creek to NC 108 bridge)
- (R) Rutherford County:
(Rocky) Broad River (Henderson
County line to US 64/74 bridge,
except where posted against
trespass)
- (S) Stokes County:
Dan River (Virginia State line
downstream to a point 200 yards
below the end of SR 1421)
- (T) Surry County:
Yadkin River (not trout water)
Big Elkin Creek (dam 440
yards upstream of NC 268
bridge to a point 265 yards
downstream of NC 268
bridge as marked by a sign
on each bank)
Ararat River (SR 1727
bridge downstream to the
NC 103 bridge)
Araat River (NC 103 bridge
to US 52 bridge) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Stewarts Creek (not
trout water)
Pauls Creek
(Virginia State line
to 0.3 mile below
SR 1625 bridge -
lower Caudle
property line)
Fisher River
(Cooper Creek) (Virginia
State line to Interstate 77)
Little Fisher River
(Virginia State line to NC 89
bridge)
Mitchell River (0.6 mile
upstream of the end of SR
1333 to the SR 1330 bridge
below Kapps Mill Dam)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]
- (U) Swain County:
Little Tennessee River (not trout
water)

- Calderwood Reservoir
(Cheoah Dam to Tennessee State line)
Cheoah Reservoir
Fontana Reservoir (not trout water)
Alarka Creek (game lands boundary to Fontana Reservoir)
Nantahala River (Macon County line to existing Fontana Reservoir water level)
Tuckasegee River (not trout water)
Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
Connelly Creek (Camp Branch to Tuckasegee River)
- (V) Transylvania County:
French Broad River (confluence of North Fork French Broad River and West Fork French Broad River to the Island Ford Road (SR 1110) Access Area)
Davidson River (Avery Creek to lower US Forest Service boundary line)
East Fork French Broad River (Gladys Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Fork French Broad River
West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
- (W) Watauga County:
New River (not trout waters)
South Fork New River (canoe launch 70 yards upstream of US 421 bridge to lower boundary of Brookshire Park)
- Meat Camp Creek
Norris Fork Creek
Middle Fork New River (Lake Chetola Dam to South Fork New River)
Yadkin River (not trout water)
Stony Fork (headwaters to Wilkes County line)
Elk Creek (SR 1510 bridge at Triplett to Wilkes County line, except where posted against trespass)
~~Watauga River (adjacent to the intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 upper (S.R. 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~
Watauga River lower (S.R. 1103 bridge to confluence with Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]
Beech Creek
Buckeye Creek Reservoir
Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
Laurel Creek
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
Dutch Creek (second bridge on SR 1134 to mouth)
- (X) Wilkes County:
Yadkin River (not trout water)
Roaring River (not trout water)
East Prong Roaring River (from Bullhead Creek downstream to Stone Mountain State Park lower boundary)

[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 East Prong Roaring River (Stone Mountain State Park lower boundary to Brewer's Mill on SR 1943)
 Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Prong Roaring River (headwaters to second bridge on SR 1736)
 Bell Branch Pond
 Boundary Line Pond
 West Prong Roaring River (not trout waters)
 Pike Creek
 Pike Creek Pond
 Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
 Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
 South Fork Reddies River (SR 1355 bridge to confluence with Middle Fork Reddies River)
 North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
 Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)

Lewis Fork Creek (not trout water)
 South Prong Lewis Fork (Fall Creek to SR 1155 bridge)
 Fall Creek (SR 1300 bridge to confluence with South Prong Lewis Fork except portions posted against trespass)
 Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Elk Creek – lower (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

(Y) Yancey County:

Nolichucky River (not trout water)
 Cane River [Bee Branch (SR 1110) to Bowlens Creek]
 Bald Mountain Creek (except portions posted against trespass)
 Indian Creek (not trout water)
 Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
 North Toe River (not trout water)
 South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

(A) Alleghany County:

Big Sandy Creek (portion on Stone Mountain State Park)
 Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:

Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and

- Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:
- Birchfield Creek (entire stream)
- Cow Camp Creek (entire stream)
- Cranberry Creek (headwaters to US 19E/NC 194 bridge)
- Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- Gragg Prong (entire stream)
- Horse Creek (entire stream)
- Jones Creek (entire stream)
- Kentucky Creek (entire stream)
- North Harper Creek (entire stream)
- Plumtree Creek (entire stream)
- Roaring Creek (entire stream)
- Rockhouse Creek (entire stream)
- Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
- South Harper Creek (entire stream)
- Webb Prong (entire stream)
- Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) Buncombe County:
- Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:
- All waters located on South Mountain State Park, except Clear Creek Reservoir, the main stream of Jacob Fork
- Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
- (F) Nettle Branch (game land portion)
- Caldwell County:
- Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
- Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
- Rockhouse Creek (entire stream)
- (G) Cherokee County:
- Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
- Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- Little Buffalo Creek (entire stream)
- South Fork Squally Creek (entire stream)
- Squally Creek (entire stream)
- (I) Haywood County
- Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]
- Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Jackson County:
- Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- Gage Creek (entire stream)
- North Fork Scott Creek (entire stream)
- Tanasee Creek (entire stream)
- Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) Madison County:
- Big Creek (headwaters to the lower game land boundary, including

- tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) Mitchell County:
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
Wiles Creek (game land boundary to mouth)
- (M) Transylvania County:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) Watauga County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
Dutch Creek (headwaters to second bridge on SR 1134)
Howard Creek (entire stream)
Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]
Watauga River (Avery County line to SR 1580 bridge)
Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)
- (O) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
Garden Creek (portion on Stone Mountain State Park)
Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
Licksillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Haywood County:
West Fork Pigeon River (game land portion below Lake Logan Dam)
- ~~(F)~~ Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- ~~(G)~~ McDowell County:
Newberry Creek (game land portion)
- ~~(H)~~ Watauga County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn

- Mountain developments, including tributaries)
Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)
- (H)(I) Wilkes County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (headwaters to Upper Creek, including tributaries)
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Alleghany County:
Little River (Whitehead to a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank)
- (B) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
South Fork New River (Todd Island Park)
Big Horse Creek (SR 1324 bridge to North Fork New River)
- (C) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (D) Caldwell County:
Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)
- (E) Clay County:
Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area)
- (F) Graham County:
(Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579)
- (G) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (H) Henderson County:
North Fork Mills River (~~game land portion below the~~ Hendersonville watershed dam to the lower game land boundary)
- (I) Jackson County:
Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23-441 bridge as marked by a sign on each bank)
- (J) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (K) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)
- (L) McDowell County:
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)

- (M) Mill Creek (US70 bridge to I 40 bridge)
 Mitchell County:
 Cane Creek (NC 226 bridge to SR 1189 bridge)
 North Toe River (US 19E bridge to NC 226 bridge)
- (N) Polk County:
 Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (O) Surry County:
 Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
 Ararat River (NC 103 bridge to US 52 bridge)
- (P) Transylvania County:
 East Fork French Broad River (Gladly Fork to French Broad River)
 Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (Q) Watauga County:
 Watauga River (~~adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 upper~~ S.R. 1114 bridge to NC 194 bridge at Valle Crucis)
Watauga River lower (S.R. 1103 bridge to confluence with Laurel Creek)
 Coffee Lake
- (R) Wilkes County:
 East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
 Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
 Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
 Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club)
 Elk Creek – lower (portion on Leatherwood Mountains development)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)]:
- (A) Cherokee County:
 Bald Creek (game land portions)
 Dockery Creek (game land portions)
 North Shoal Creek (game land portions)
- (B) Graham County:
 Deep Creek
 Long Creek (game land portion)
 Franks Creek
- (C) Haywood County:
 Hemphill Creek (including tributaries)
 Hurricane Creek (including portions of tributaries on game lands)
- (D) Jackson County:
 Buff Creek
 Chattooga River (SR 1100 bridge to South Carolina state line)
 (lower) Fowler Creek (game land portion)
 Scotsman Creek (game land portion)
- (E) Macon County:
 Chattooga River (SR 1100 bridge to South Carolina state line)
 Jarrett Creek (game land portion)
 Kimsey Creek
 Overflow Creek (game land portion)
 Park Creek
 Tellico Creek (game land portion)
 Turtle Pond Creek (game land portion)
- (F) Madison County:
 Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:
 North Fork French Broad River (game land portions downstream of SR 1326)
 Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:
- Burke County
 Catawba River (Muddy Creek to City of Morganton water intake dam).

Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length. There are no bait restrictions and no closed season.

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
 - (A) Open Season. There is a year round open season for the licensed taking of trout.
 - (B) Creel Limit. The daily creel limit is four trout.
 - (C) Size Limit. The minimum size limit is seven inches.
 - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in Subparagraph (a)(6) of this Rule.
 - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Authority G.S. 113-272; 113-292.

15A NCAC 10C .0206 TROTTLINES AND SET-HOOKS

(a) For purposes of this Rule, the following definitions apply:

- (1) "set-hook" means any hook and line that is attached at one end only to a stationary or floating object and that is not under immediate control and attendance of the person using the device.
- (2) "jug-hook" means a single hook and line attached to a float.
- (3) "untended" means no bait is present on the device.

(b) Except as otherwise prohibited in this Rule, trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used. Trotlines and set-hooks may not be set in any of the impounded waters on the Sandhills Game Land.

Trotlines and set-hooks may not be set in any designated public mountain trout waters except impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Waccamaw, trotlines or set-hooks may be set only from October 1 through April 30.

(c) Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and ~~address~~ address or the user's WRC customer number. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernible by boat operators and swimmers. Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited. The number of jug-hooks that may be fished is limited to 70 per boat. All trotlines, throwlines, set-hooks, and jug-hooks shall be fished at least once daily and all fish removed at that time. Untended trotlines, set-hooks, and jug-hooks may be removed from the water by wildlife enforcement officers when located in areas of multiple water use. It is unlawful to use metal cans or glass jugs as floats.

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0217 PUBLIC ACCESS FOR ANGLERS ONLY

(a) A landowner who has accepted from the Wildlife Resources Commission a sign indicating Public Access for Fishing Only and posted such sign on his property agrees to allow any licensed angler, and accompanying youths, to cross his or her property in order to access public waters for the purpose of fishing.

(b) By accepting and posting the Public Access for Fishing Only sign the landowner has designated the Wildlife Resources Commission as an agent as described in G.S. 14-159.6. As agent, the Commission confers access to any member of the public with a valid fishing license and accompanying youths. Anglers who access property under the terms of this Rule are prohibited from engaging in any of these activities while on the private property unless otherwise posted:

- (1) building fires;
- (2) littering;
- (3) swimming;
- (4) launching or retrieving boats;
- (5) camping;
- (6) causing property damage;
- (7) entering before 7 am; and
- (8) remaining on the property after 9 pm.

Authority G.S. 14-159.6; 113-134; 113-305.

SECTION .0300 - GAME FISH

15A NCAC 10C .0302 MANNER OF TAKING INLAND GAME FISHES

(a) Except as provided in this Rule, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint

fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of ~~licensed~~ special devices for taking nongame fishes ~~as authorized in Rule 10C .0402 of this Subchapter or from inland fishing waters as authorized in Rule .0402 of this Subchapter or as authorized by 15A NCAC 10C .0407 by anglers licensed under G.S. 113-272.2(c)~~ shall be immediately returned to the water unharmed, ~~except that a daily creel limit of American and hickory shad may be taken with dip nets and bow nets from March 1 through April 30 in those waters where such gear may be lawfully used except white perch may be taken when captured in a cast net being used to collect nongame fishes in all impounded waters west of Interstate 95 and in the Tar River Reservoir (Nash County).~~

(b) In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with a single barbless hook may be used from 1 April to 30 June. Barbless as used in this Rule, requires that the hook does not have a barb or the barb is bent down.

Authority G.S. 113-134; 113-273; 113-292; 113-302.

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for Striped Bass and its hybrids is eight fish in the aggregate, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 16 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no closed season, except for waters identified in Paragraphs (g), (h), (i), (j) and (k) of this Rule.

(b) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on Striped Bass and its hybrids is two in the aggregate and the minimum size limit is 24 inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on Striped Bass and its hybrids is four in the aggregate with no minimum size limit.

(c) In the Cape Fear River upstream of Buckhorn Dam; the Deep River to the first impoundment; the Haw River to the first impoundment; B. Everett Jordan Reservoir; Lake Rhodhiss; Lake Hickory; and Lookout Shoals Reservoir, the daily creel limit on Striped Bass and its hybrids is four in the aggregate and the minimum size limit is 20 inches.

(d) In Lake Gaston and Roanoke Rapids Reservoir, the daily creel limit on Striped Bass and its hybrids is four in the aggregate. The minimum size limit for these fish is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(e) In Lake Norman the daily creel limit on Striped Bass and its hybrids is four in the ~~aggregate. The aggregate and the~~ minimum size limit for these fish is 16 ~~inches. inches from~~ inches. ~~from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.~~

(f) In Lake Matamuskeet and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit is three fish in the aggregate and the minimum size limit is 18 inches.

(g) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs (f), (h), (i) and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 18 inches but no Striped Bass or hybrids between the lengths of 22 inches and 27 inches shall be possessed. In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.

(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam, the season for taking and possessing Striped Bass is closed year-round.

(i) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.

(j) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), Striped Bass fishing season, size limits and creel limits are the same as those established by ~~rules~~ Rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

(k) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

SECTION .0400 – NONGAME FISH

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) While boating on or fishing in the following inland fishing waters, no person shall take

river herring (alewife and blueback) that are greater than six inches in total length or possess such herring regardless of origin in:

- (A) Roanoke River downstream of Roanoke Rapids Dam,
- (B) Tar River downstream of Rocky Mount Mill Dam,
- (C) Neuse River downstream of Milburnie Dam,
- (D) Cape Fear River downstream of Buckhorn Dam,
- (E) Pee Dee River downstream of Blewett Falls Dam,
- (F) Lumber River including Drowning Creek,
- (G) all the tributaries to the rivers listed above,
- (H) all other inland fishing waters east of Interstate 95.

- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island ~~Reservoir and Reservoir, Lake Wylie, Wylie and John H. Kerr Reservoir~~, except that one fish per day may be taken ~~by bow and arrow with archery equipment.~~
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters is the same as the trout fishing season.

(c) ~~Nongame fishes, except alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties), blue crab, and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Eels less than six inches in length may not be taken from inland waters for any purpose sold, with the following exceptions:~~

- (1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);
- (2) blue crab; and
- (3) bowfin.

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may be taken only from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. ~~It is unlawful to possess more than 200~~

~~freshwater mussels. The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (*Corbicula fluminea*).~~

(e) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel, white, or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate. Waters to which this creel limit applies shall be posted, as specified in 15A NCAC 10E .0103.

(f) In Lake Norman and Badin Lake, the daily creel limit for blue catfish greater than 32 inches is one fish.

(g) The daily creel limit for American eels taken from inland fishing waters is 25, and the minimum size limit is 9 inches.

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT OR PERSONAL CONSUMPTION

(a) It is unlawful to take nongame fish for bait or personal consumption in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- ~~(4)~~ a gig (except in Public Mountain Trout Waters);
- ~~(5)~~ up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- ~~(6)~~ up to two eel pots;
- ~~(7)~~ a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
- ~~(4)(8)~~ minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and that are under the immediate control and attendance of the individual operating them;
- ~~(5)(9)~~ a hand-held line with a single bait attached;
- ~~(6)(10)~~ a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device; with a limit of one line per person and no more than one line per vessel; or
- ~~(7)(11)~~ a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved or

lowered to the bottom, with a limit of one trap per person.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.

(c) Game fishes ~~and their young~~ taken while netting for bait shall be returned unharmed to the ~~water~~ water, except white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of Interstate 95 and in the Tar River Reservoir (Nash County).

(d) No person shall take or possess during one day more than 200 nongame fish in aggregate for bait or personal consumption subject to the following restrictions:

- (1) No more than ~~50~~ 25 eels, none of which may be less than ~~six~~ nine inches in length, shall be taken or possessed from inland fishing waters;
- (2) While boating on or fishing in the following inland fishing waters, no river herring (alewife and blueback) that are greater than six inches in total length shall be taken and no such river herring shall be possessed regardless of origin:
 - (A) Roanoke River downstream of Roanoke Rapids Dam,
 - (B) Tar River downstream of Rocky Mount Mill Dam,
 - (C) Neuse River downstream of Milburnie Dam,
 - (D) Cape Fear River downstream of Buckhorn Dam,
 - (E) Pee Dee River downstream of Blewett Falls Dam,
 - (F) Lumber River including Drowning Creek,
 - (G) the tributaries to the rivers listed above,
 - (H) all other inland fishing waters east of Interstate 95.
- (3) No more than 50 crabs per person per day or 100 per vessel per day with a minimum carapace width of five inches (point to point) shall be taken.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and from the bodies of water specified for the following counties:

- (1) Chatham County
Deep River
Rocky River
Bear Creek
- (2) Lee County
Deep River
- (3) Moore County
Deep River
- (4) Randolph County
Deep River below the Coleridge Dam
Fork Creek

(g) In the waters of the Little Tennessee River, including all the tributaries and impoundments thereof, and on adjacent

shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292.

15A NCAC 10C .0404 SPECIAL DEVICE FISHING

(a) ~~Bow and Arrow. The use of bow [as defined in 15A NCAC 10B .0116(a)] and arrow~~ Archery equipment. The use of archery equipment, as defined in 15A NCAC 10B .0116, as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless prohibited by Marine Fisheries Commission rules in 15A NCAC 03, bow and arrow may be used in joint fishing waters.

(b) Nets. Where authorized, manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license. No fixed gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) owner's N.C. motor boat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name and initials.

It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(c) Traps. Baskets and traps, excluding collapsible crab traps, may be used under the special device fishing license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed 60 inches in length or 30 inches in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special fishing device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. It is unlawful to use crab pots in inland fishing waters, except by persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries who are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

(f) Eel pots. It is unlawful to use pots with mesh sizes smaller than ~~one-one-half~~ one-half inch by one-half ~~inch~~ inch ~~unless such pots contain an escape panel that is at least four inches square with a~~

~~mesh size of one inch by one half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots.~~ Each pot must be marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) owner's N.C. motorboat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name and initials.

(g) Hand-crank electrofisher. For the purposes of this rule, a hand-crank electrofisher is any manually-operated device which is capable of generating a low voltage electrical current not exceeding 300 volts for the taking of catfish. Hand-crank electrofishers may be used only where authorized by local law and only in those waters specified in 15A NCAC 10C .0407.

Authority G.S. 113-134; 113-272.2; 113-276; 113-292.

15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by ~~archery equipment~~ bow and arrow. The use of special fishing devices, including crab pots in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (1) Alamance:
 - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
 - (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - ~~(b) March 1 to April 30 with bow nets in Pee Dee River below Blewett Falls Dam;~~
 - ~~(c)~~ (b) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;

- (6) Beaufort:
 - ~~(a)~~ July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters;~~
- (7) Bertie:
 - ~~(a)~~ July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- (8) Bladen:
 - ~~(a) March 1 to April 30 with bow nets in Black River;~~
 - ~~(b)~~ July 1 to March 1 with hand-crank electrofishers (local law) in Cape Fear River between Lock and Dam 1 and 3 and in Black River, except that hand-crank electrofishing is prohibited within 400 yards of Lock and Dam 1, 2, and 3 on Cape Fear River;
- ~~(9) Brunswick: March 1 to April 30 with bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;~~
- ~~(10)~~ (9) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(11)~~ (10) Burke:
 - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- ~~(12)~~ (11) Cabarrus:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- ~~(13)~~ (12) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- ~~(14)~~ (13) Camden:
 - ~~(a)~~ July 1 to June 30 with traps in all inland public waters;
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(15) Carteret: March 1 to April 30 with bow nets in all inland public waters except South River and the tributaries of the White Oak River;~~

- ~~(16)~~(14) Caswell:
- (a) July 1 to June 30 with gigs in all public waters;
 - (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
 - (c) July 1 to June 30 with traps in Hyco Reservoir;
- ~~(17)~~(15) Catawba:
- (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
 - (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- ~~(18)~~(16) Chatham:
- (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
 - (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
 - (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- ~~(19)~~(17) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(20)~~(18) Chowan:
- ~~(a) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
 - ~~(b)~~ July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- ~~(21)~~(19) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(22)~~(20) Cleveland:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- ~~(23)~~(21) Columbus:
- (a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
 - ~~(b) March 1 to April 30 with bow nets in Livingston Creek;~~
 - ~~(c)~~(b) July 1 to March 1 with hand-crank electrofishers (local law) in Waccamaw and Lumber rivers;
- ~~(24)~~(22) Craven:
- ~~(a)~~ July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters, except Pitch~~
- ~~(25)~~(23) Currituck:
- ~~(a)~~ July 1 to June 30 with traps in Tulls Creek and Northwest River;
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(26)~~(24) Dare:
- ~~(a)~~ July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
 - ~~(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(27)~~(25) Davidson:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;
- ~~(28)~~(26) Davie:
- (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- ~~(29)~~(27) Duplin:
- ~~(a)~~ December 1 to June 5 with seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;
 - ~~(b) March 1 to April 30 with bow nets in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;~~
- ~~(30)~~(28) Durham:
- (a) July 1 to August 31 with seines in Neuse River;
 - (b) July 1 to June 30 with gigs in all public waters;
- ~~(31)~~ Edgecombe: ~~March 1 to April 30 with bow nets in all public waters;~~
- ~~(32)~~(29) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;
- ~~(33)~~(30) Franklin:

- (a) July 1 to August 31 with seines in Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;
- ~~(34)~~(31) Gaston:
 - (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- ~~(35)~~ Gates: ~~March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(36)~~(32) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(37)~~(33) Granville:
 - (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
 - (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
 - (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- ~~(38)~~(34) Greene: March 1 to April 30 with ~~bow nets~~ and reels in Contentnea Creek;
- ~~(39)~~(35) Guilford:
 - (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
 - (b) July 1 to June 30 with gigs in all public waters;
- ~~(40)~~ Halifax: ~~March 1 to April 30 with bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;~~
- ~~(41)~~(36) Harnett:
 - ~~(a)~~ January 1 to May 31 with gigs in Cape Fear River and tributaries;
 - ~~(b)~~ ~~March 1 to April 30 with bow nets in Cape Fear River;~~
- ~~(42)~~(37) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;
- ~~(43)~~(38) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(44)~~(39) Hertford:
 - ~~(a)~~ July 1 to June 30 with traps in Wiccacon Creek;
 - ~~(b)~~ ~~March 1 to April 30 with bow nets in all inland public waters, excluding~~
- ~~(45)~~(40) Hyde:
 - ~~(a)~~ July 1 to June 30 with traps in all inland waters;
 - ~~(b)~~ ~~March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(46)~~(41) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;
- ~~(47)~~(42) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(48)~~ Johnston: ~~March 1 to April 30 with bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;~~
- ~~(49)~~(43) Jones:
 - ~~(a)~~ July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;
 - ~~(b)~~ ~~March 1 to April 30 with bow nets in all inland public waters, except the tributaries to the White Oak River;~~
- ~~(50)~~(44) Lee:
 - (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River;
 - (b) July 1 to August 31 with seines in Cape Fear River;
 - (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;
- ~~(51)~~(45) Lenoir:
 - ~~(a)~~ July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;
 - ~~(b)~~ ~~March 1 to April 30 with bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;~~
- ~~(52)~~(46) Lincoln:
 - (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;
- ~~(53)~~(47) McDowell:
 - (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;

- (54)(48) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (55)(49) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (56) ~~Martin: March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- (57)(50) Mecklenburg:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;
- (58)(51) Montgomery:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (59)(52) Moore:
- (a) July 1 to August 31 with seines in all running public waters except in Deep River;
 - (b) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;
- (60)(53) Nash:
- (a) July 1 to June 30 with gigs in all public waters, except Tar River;
 - (b) ~~March 1 to April 30 with bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;~~
- (61) ~~New Hanover: March 1 to April 30 with bow nets in all inland public waters, except Sutton (Catfish) Lake;~~
- (62)(54) Northampton:
- (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;
 - (b) ~~March 1 to April 30 with bow nets in Oeconechee Creek, Old River Landing Gut and Vaughans Creek below Watsons Mill;~~
- (63)(55) Onslow:
- (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
 - (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
- (c) ~~March 1 to April 30 with bow nets in the main run of New River and in the main run of the White Oak River;~~
- (d) ~~March 1 to April 30 with bow nets in Grant's Creek;~~
- (64)(56) Orange:
- (a) July 1 to August 31 with seines in Haw River,
 - (b) July 1 to June 30 with gigs in all public waters;
- (65) ~~Pamlico: March 1 to April 30 with bow nets in all inland public waters, except Dawson Creek;~~
- (66)(57) Pasquotank:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) ~~March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- (67)(58) Pender:
- (a) December 1 to June 5 with seines in the main run of Northeast Cape Fear River;
 - (b) ~~March 1 to April 30 with bow nets in the Northeast Cape Fear River, Long Creek, Moore's Creek approximately one mile upstream to New Moon Fishing Camp, and Black River;~~
 - (c)(b) July 1 to March 1 with hand-crank electrofishers (local law) in Black River;
- (68)(59) Perquimans:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) ~~March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- (69)(60) Person:
- (a) July 1 to August 31 with seines in Hycro Creek and Mayo Creek;
 - (b) July 1 to June 30 with gigs in all public waters.
- (70)(61) Pitt:
- (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
 - (b) ~~March 1 to April 30 with bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;~~
 - (c)(b) December 1 to June 5 with seines in Tar River;
- (71)(62) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(72)~~(63) Randolph:

- (a) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
- (b) July 1 to June 30 with gigs in all public waters;

~~(73)~~(64) Richmond:

- (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
- ~~(c) March 1 to April 30 with bow nets in Pee Dee River below Blewett Falls Dam;~~

~~(74)~~(65) Robeson: December 1 to March 1 with gigs in all inland public waters.

~~(75)~~(66) Rockingham:

- (a) July 1 to August 31 with seines in Dan River and Haw River;
- (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;

~~(76)~~(67) Rowan:

- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;

~~(77)~~(68) Rutherford:

- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
- (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;

~~(78)~~(69) Sampson:

- ~~(a) March 1 to April 30 with bow nets in Big Coharie Creek, Black River and Six Runs Creek;~~
- (b) July 1 to March 1 with hand-crank electrofishers (local law) in Black River downstream of NC 1105 bridge;

~~(79)~~(70) Stanly:

- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;

~~(80)~~(71) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public

mountain trout waters, and traps may not be used in Belews Creek Reservoir;

~~(81)~~(72) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;

~~(82)~~(73) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(83)~~(74) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(84)~~(75) Tyrrell:

~~(a)~~ July 1 to June 30 with traps in Scuppernong River and Alligator Creek;

~~(b) March 1 to April 30 with bow nets in all inland public waters, excluding Lake Phelps, the drainage canals that connect Lake Phelps and Scuppernong River, public lakes, ponds and other impounded waters;~~

~~(85)~~(76) Union:

- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;

~~(86)~~(77) Vance:

- (a) July 1 to August 31 with seines in the Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;

~~(87)~~(78) Wake:

~~(a)~~ July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;

~~(b) March 1 to April 30 with bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;~~

~~(88)~~(79) Warren:

- (a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;
- (b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;

~~(89)~~ Washington: ~~March 1 to April 30 with bow nets in all inland public waters, excluding~~

~~Lake Phelps, the drainage canals that connect Lake Phelps and Scuppernon River, public lakes, ponds and other impoundments.~~

~~(90) Wayne: March 1 to April 30 with bow nets in Little River, Mill Creek and Neuse River.~~

~~(91)(80) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;~~

~~(92)(81) Wilson:~~

~~(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;~~

~~(b) March 1 to April 30 with bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;~~

~~(93)(82) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.~~

Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall

be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Use of weapons. No person shall discharge:

- (1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;
- (2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and
- (3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game

lands and Pee Dee River Game Land north of U.S. 74, and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

- (1) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;
- (2) the firearm is cased or not immediately available for use;
- (3) the firearm is used by persons participating in field trials on field trial areas; or
- (4) the firearm is possessed in designated camping areas for defense of persons and property.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A field trial participant is defined as a judge, handler, scout or owner. (2) Exceptions

- (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (B) The resident and nonresident sportsman's licenses include game lands use privileges.
- (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
- (D) On the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident handler, scout or owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the Commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon

of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;

- (2) in posted "safety zones" located on any game land;
- (3) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (4) on the John's River Waterfowl Refuge in Burke County; and
- (5) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (j) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

(h) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(i) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(j) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts, an individual shall possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles or other passenger vehicles:

- (1) on ungated or open-gated roads normally closed to vehicular traffic; and
- (2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one companion provided such companion has in his possession the

companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

(k) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a North Carolina Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(l) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (j) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but must comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act, may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(m) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (j) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(n) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(o) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" is defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

(p) Shooting Ranges. ~~On state-owned game lands, public shooting ranges,~~ no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except that activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. ~~Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms shall be unloaded and cased when being transported to the shooting range while on Game Lands.~~ No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(q) Limited-access Roads. During the months of June, July and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

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

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic or gates, or otherwise prevent vehicles from using any roadway.

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

(d) Time and Manner of Taking. Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
- (2) not hunt after 1:00 p.m. on such hunting dates;
- (3) not set decoys out prior to 4:00 a.m.;
- (4) remove decoys by 3:00 p.m. each day; and
- (5) not operate any vessel or vehicle powered by an internal combustion engine.

On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

- (1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

- (2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday and Fridays. Falconry may also be practiced on Sundays. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons.
- (f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.
- (g) Bear Sanctuaries. On Three Days per Week Areas and Six Days per Week Areas bears shall not be taken on lands designated and posted as bear sanctuaries except when authorized by permit only elsewhere in this Chapter. Feral Swine shall not be taken with the use of dogs on bear sanctuaries. Dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15 on bear sanctuaries in and west of the counties and parts of counties described in 15A NCAC 10B .0109.
- (h) The listed seasons and restrictions apply in the following game lands:
- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (C) On the Lick Creek Tract, deer hunting is archery only.
 - (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
 - (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (4) Bachelor Bay Game Land in Bertie, Martin and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used.
 - (D) On the Singletary Lake Tract ~~the use of dogs for hunting~~ deer and bear ~~may be taken only by still hunting~~ is prohibited.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (7) Brinkleyville Game Land in Halifax County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable deer with visible antlers season.
 - (C) Horseback riding is prohibited.
 - (8) Brunswick County Game Land in Brunswick County
 - (A) Hunting is by permit only.
 - (B) The use of dogs for hunting deer is prohibited.
 - (9) Buckhorn Game Land in Orange County
 - (A) Hunting is by permit only.
 - (B) Horseback riding is prohibited.
 - (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November

- Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
- (A) Six Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding is prohibited.
- (E) Target shooting is prohibited
- (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
- (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area.
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road and south of NC 210 to the Black River.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area

- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (18) Catawba Game Land in Catawba County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
 - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on the following days:

- (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
- (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (26) Currituck Banks Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
 - (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
 - (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) No hunting is allowed on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
 - (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (30) Elk Knob Game Land in Watauga County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
 - (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas

- both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 ~~to the end of February~~ through January 1 and April 1 ~~through to~~ May 15 to individuals that possess a valid hunting opportunity permit.
- (33) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (34) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (35) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (36) Harris Game Land in Chatham, Harnett and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) The use or construction of permanent hunting blinds shall be prohibited.
- (E) Wild turkey hunting is by permit only.
- (F) Target shooting is prohibited.
- (37) Holly Shelter Game Land in Pender County
- (A) ~~Three-Six~~ Six Days per Week Area.
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited:
- (i) all open days on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park ~~Road, Road; and~~
- (ii) on Tuesdays, Thursdays and Fridays, except for the area north of Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, where the use of dogs for deer and bear hunting is by permit only.

- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (38) Hyco Game land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
 - (A) Hunting is by permit only.
 - (B) During permitted deer hunts deer of either-sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31 except by lawful waterfowl hunting permit holders and only on those days written on the permits.
 - (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
 - (A) Six Days per Week Area
 - (B) Use of centerfire rifles is prohibited.
 - (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
 - (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
 - (F) Hunting on posted waterfowl impoundments is by permit only.
 - (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
 - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six

- open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (53) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) New Lake Game Land in Hyde and Tyrrell counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) On Lake Upchurch, the following activities are prohibited:
- (i) No person shall operate any vessel or vehicle powered by an internal combustion engine; and
- (ii) Swimming.
- (56) North River Game Land in Camden and Currituck counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

- (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (D) Hunting on the posted waterfowl impoundment is by permit only.
- (57) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (58) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (D) Target shooting is prohibited.
- (59) Perkins Game Land in Davie County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited from November 1 through January 1.
- (60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (61) Pond Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Deer and bear hunting is by permit only.
- (62) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Rhodes Pond Game Land in Cumberland and Harnett counties
 - (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- (64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties
 - (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (66) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (67) Rockfish Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - (H) Taking fox squirrels is prohibited.
- (68) Rocky Run Game Land in Onslow County: Hunting is by permit only.

- (69) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
 - (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
 - (i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with legal muzzleloading firearms and archery equipment all the open days of the muzzleloader season through the second Saturday before Thanksgiving; and with all legal weapons from the second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
 - (iii) opossum, raccoon and squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
 - (v) waterfowl may be taken on open days during any waterfowl season; and
 - (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt.
 - (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the muzzleloader season as stated in this Subparagraph.
- (E) Muzzleloader season is all the open days from the fourth Saturday preceeding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with muzzle-loading firearms on all open hunting days during the muzzleloader season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.
- (I) The following areas are permit-only for all quail and woodcock hunting and dog training on birds:
 - (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County-hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesday and Saturdays.
 - ~~(C)~~(D) Swimming in all lakes is prohibited.
 - ~~(D)~~(E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County

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| <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited.</p> <p>(81) Thurmond Chatham Game Land in Alleghany and Wilkes counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area.</p> <p>(D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.</p> <p>(82) Tillery game Land in Halifax County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited.</p> <p>(D) The use of dogs for hunting deer is prohibited.</p> <p>(E) Wild turkey hunting is by permit only.</p> <p>(83) Toxaway Game Land in Jackson and Transylvania counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.</p> <p>(84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.</p> <p>(85) Vance Game Land in Vance County</p> <p>(A) Six Days per Week Area</p> | <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.</p> <p>(86) Van Swamp Game Land in Beaufort and Washington counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.</p> <p>(87) White Oak River Game Land in Onslow County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:</p> <p style="margin-left: 20px;">(i) the opening and closing days of the applicable waterfowl seasons;</p> <p style="margin-left: 20px;">(ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and</p> <p style="margin-left: 20px;">(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.</p> <p>(D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.</p> <p>(E) The Huggins Tract and Morton Tracts have the following restrictions:</p> <p style="margin-left: 20px;">(i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;</p> <p style="margin-left: 20px;">(ii) Hunting is by permit only; and</p> <p style="margin-left: 20px;">(iii) The use of dogs for hunting deer is prohibited.</p> <p>(F) Wild turkey hunting is by permit only.</p> <p>(88) Whitehall Plantation Game Land in Bladen County</p> <p>(A) Hunting and trapping is by permit only.</p> |
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- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands,
 - (2) Bertie County—Roanoke River National Wildlife Refuge,
 - (3) Bladen County—Suggs Mill Pond Game Lands,
 - (4) Burke County—John's River Waterfowl Refuge,
 - (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting),
 - (6) Dare County—Roanoke Sound Marshes Game Lands, and
 - (7) Henderson and Transylvania counties—Dupont State Forest Game Lands.
- (k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission will be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (l) Free-ranging swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt free-ranging swine except on game lands that allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.
- (m) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule.
- (n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.
- (o) As used in this Rule, horseback riding includes all equine species.
- (p) When waterfowl hunting is specifically permitted in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.
- Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305.*
- 15A NCAC 10D .0104 FISHING ON GAME LANDS**
- (a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b)(c)(d) and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on game lands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.
- (b) Designated Public Mountain Trout Waters
- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to the natural gas pipeline crossing.
 - (2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond Cheoah River downstream of Santeetlah Reservoir, Little River from 100 yards downstream of Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, ~~the portion of~~

~~West Fork Pigeon River below Lake Logan,~~
North Fork Catawba River downstream of the
mouth of Armstrong Creek, Green River
downstream of the natural gas pipeline
crossing, and Spring Creek below US Forest
Service road 223.

Dupont State Forest Game Lands in
Henderson and Transylvania
counties.

Three Top Mountain Game Land in
Ashe County.

Nantahala National Forest Game
Lands in Cherokee, Clay, Graham,
Jackson, Macon, Swain and
Transylvania counties.

Pisgah National Forest Game Lands
in Avery, Buncombe, Burke,
Caldwell, Haywood, Henderson,
Madison, McDowell, Mitchell,
Transylvania and Yancey counties.

Thurmond Chatham Game Land in
Wilkes County.

Toxaway Game Land in Transylvania
County.

South Mountains Game Land in
Cleveland and Rutherford
counties.

Cold Mountain Game Land in
Haywood County.

Green River Game Land in
Henderson and Polk
counties.

- (3) All designated public mountain trout waters
located on the game lands listed in
Subparagraph (b)(2) of this Rule are wild trout
waters unless classified otherwise. [See 15A
NCAC 10C .0205(a)(1)].

(c) Ponds. In all game lands ponds, it is unlawful to take
channel, white or blue catfish (forked tail catfish) by means
other than hook and line and the daily creel limit for forked tail
catfish is six fish in aggregate.

Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0100 - MOTORBOAT REGISTRATION

15A NCAC 10F .0107 VALIDATION DECAL

In addition to the certificate of number, the Wildlife Resources
Commission shall supply to the owner of each vessel that is
numbered, ~~a two validation decal~~ decals indicating the year of
expiration. The owner shall affix ~~such one~~ one validation decal so as
to be clearly visible and legible on the starboard bow and one
validation decal on the port side bow of the vessel following and
within six inches of the vessel number. The owner of a United
States Coast Guard documented vessel shall affix one validation
decal so as to be clearly visible and legible on the forward half

of the starboard bow and one validation decal on the forward
half of the port side bow. Any validation ~~decal~~ decals issued for
a vessel numbered on application by a governmental entity shall
contain no expiration date, but shall bear the letter "P" and shall
not be subject to renewal so long as the vessel remains the
property of a governmental entity. When any such vessel is
transferred to private ownership, the ~~decal~~ decals shall be
removed or obliterated by the transferring agency.

Authority G.S. 75A-3; 75A-5; 75A-7; 33 C.F.R. 174.15.

SUBCHAPTER 10G - DISTRIBUTION AND SALE OF HUNTING: FISHING: AND TRAPPING LICENSE

SECTION .0600 – LICENSE ELIGIBILITY

15A NCAC 10G .0601 TOTALLY DISABLED LICENSE ELIGIBILITY

(a) The Wildlife Resources Commission shall accept
documentation from individual residents who are certified as
totally and permanently disabled by the Social Security
Administration, Civil Service Retirement System, Railroad
Retirement Board, or the North Carolina State Retirement
System for the purpose of obtaining a lifetime totally disabled
hunting and fishing license as described in G.S. 113-270.1C,
113-270.1D, 113-271 and 113-351.

Authority G.S. 113-270.1C; 113-270.1D; 113-271; 113-35.

SUBCHAPTER 10K – HUNTER EDUCATION COURSE

15A NCAC 10K .0101 COURSE REQUIREMENTS

(a) ~~The hunter safety course shall provide a minimum of 10~~
~~hours of instruction except that a self paced, independent study~~
~~hunter safety course that~~ A hunter education instructor-led
course or a self-paced, independent study option shall be
provided that meets the standards required by International
Hunter Education Association. ~~Association and includes~~
~~instruction on safe management of all terrain vehicles and proper~~
~~use of hunting dogs may also be administered.~~

(b) ~~Of the 10 hours of instruction required by Paragraph (a) of~~
~~this Rule, 60 percent of the time shall be devoted to instruction~~
~~related to the safe handling of firearms. The remaining four~~
~~hours course time shall include instruction on hunter~~
~~responsibility (ethics), wildlife conservation and wildlife~~
~~management, and may include wildlife~~
identification, game care, specialty hunting, survival and first
aid, water safety, and special concerns (alcohol and drugs,
turkey hunting, trapping, all terrain vehicles, vehicles and
hunting dogs).

(c) The hunter education course shall be administered by an
instructor certified by the North Carolina Wildlife Resources
Commission.

(d) The following requirements must be satisfied by the course
participant in order to successfully complete a hunter education
course and be entitled to the issuance of a Certificate of
Competency:

- (1) complete all ~~40 hours~~ of the instruction or all the material contained in the independent study course;
- (2) score a minimum of 70 percent on the final examination; and
- (3) ~~demonstrate~~ review safe firearm handling skills. skills, except current and former military personnel, current and former law enforcement officers, and National Rifle Association certified firearms instructors are exempt from this requirement. Exempt individuals must show current documentation of their exempt status.

Authority G.S. 113-134; 113-270.1A.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0102, .0103 and .0106.

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: December 6, 2013
- ☐ RRC certified on:
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncwildlife.org/ProposedRegulations.aspx

Proposed Effective Date: August 1, 2014

Public Hearing:

Date: January 28, 2014

Time: 10:00 a.m.

Location: 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action:

15A NCAC 10F .0102, .0106 – Legislation passed in the 2013 session of the General Assembly that amended the vessel registration requirements. As a result, amendments are necessary to Rules 15A NCAC 10F .0102 and .0106 to make them consistent with current law.

15A NCAC 10F .0103 – As amended, the rule removes obsolete language.

Comments may be submitted to: Kate Pipkin, Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722; email regulations@ncwildlife.org

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 – WILDLIFE RESOURCES COMMISSION

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0100 - MOTORBOAT REGISTRATION

15A NCAC 10F .0102 APPLICATION FOR CERTIFICATE OF VESSEL NUMBER

(a) General. Every owner applying for a certificate of number or certificate of title of a vessel required to be numbered pursuant to G.S. 75A-4 and 75A-7 or required to be titled pursuant to G.S. 75A-34 and 75A-35 shall apply to the North Carolina Wildlife Resources Commission or to one of its Wildlife Service Agents for a certificate of number or certificate of title using an application provided by the Wildlife Resources Commission. The application shall contain the following information:

- (1) name of owner(s);
- (2) address, telephone number, date of birth, and North Carolina driver license number of owner(s);
- (3) present or previous certificate of number (if any);
- (4) desired period of certificate of number (one or three years);
- (5) primary use of vessel (pleasure, livery, demonstration, commercial passenger, commercial fishing, other commercial, other);
- (6) model of vessel (if known);
- (7) manufacturer if known;
- (8) year of manufacture or model year (if known);
- (9) manufacturer's hull identification number (if any);
- (10) overall length of vessel in feet and inches;
- (11) type of vessel (open, cabin, houseboat, personal watercraft, pontoon, other);
- (12) hull material (wood, metal, fiberglass, inflatable, plastic, other);

- (13) type of propulsion (inboard; outboard; inboard-outdrive; jet drive; sail; auxiliary sail/inboard; auxiliary sail/outboard, other);
- (14) type of fuel (gasoline, diesel, electric, other);
- (15) proof of ownership document;
- (16) signature of owner(s);
- (17) make of motor (if over 25 horsepower), serial number, purchase price of motor;
- (18) lien holder name, address, and telephone number;
- (19) effective lien date; ~~and~~
- (20) county where vessel is ~~taxed~~, taxed; and
- (21) status of United States Coast Guard documentation.

(b) Application for certificate of number and certificate of title. The owner(s) shall complete and submit an application for a certificate of number, along with the proof of ownership document and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. A new certificate of number shall be issued for new or never before registered vessels. For a period of 60 days following the date of sale, the new owner may use a copy of the proof of ownership document, provided it contains the date of sale, as a temporary certificate of number pending receipt of the original certificate. If the vessel is ~~over~~ 4 feet or longer or is a personal watercraft, then a Certificate of Title for Vessel shall be issued, including recordation of any liens listed on the application.

(c) Livery Vessel Owners. A "livery" vessel is one that is rented or leased to an individual for a specific time period by the owners(s). The certificate of numbering and certificate of titling requirements of G.S. 75A-4, 75A-7, 75A-34 and 75A-35 apply to livery vessels. Upon receipt of a completed application, a copy of the lease or rental agreement form and fee, the Wildlife Resources Commission shall issue to the applicant a certificate of number and certificate of title, if applicable.

(d) Dealers and Manufacturers of Vessels. A "manufacturer" as the term is used in this Rule is defined as a person, firm, or corporation engaged in the business of manufacturing vessels either upon prior commission or for the purpose of selling them after manufacture. A "dealer" as the term is used in this Rule is defined as a person, firm, or corporation engaged in the business of offering vessels for sale at retail or wholesale from an established location(s). The certificate of numbering requirements of G.S. 75A-4 and 75A-7 apply to vessels belonging to dealers and manufacturers. Upon receipt of a completed application and fee the Wildlife Resources Commission shall issue to the applicant a certificate of number, as appropriate, which may be used in connection with the operation of any vessel in the possession of the dealer or manufacturer when the vessel is being demonstrated. Dealer and manufacturer certificate of numbers shall not be transferred. A new certificate of number shall be issued upon transfer. Demonstration vessels shall not be titled so long as the vessel is owned by the dealer or manufacturer. Vessels owned or possessed by dealers or manufacturers for personal use or for any use other than for demonstration and testing purposes shall be individually registered in the name of the dealer or manufacturer in accordance with Paragraph (a) of this Rule.

Additional dealer's or manufacturer's certificates of number may be obtained by making application in the same manner as prescribed for the initial certificate with payment of an additional fee for each additional certificate. Dealers and manufacturers may register individual vessels in accordance with Rule .0104(a) of this Section.

(e) Government Agency Vessels. The certificate of numbering requirements of G.S. 75A-4 and 75A-7 apply to vessels belonging to state or local government agencies. Upon receipt of a completed application from a state or local government agency, the Wildlife Resources Commission shall issue to the applicant a permanent certificate of number. There is no fee for a permanent state or local government agency certificate of number and the certificate is valid until the vessel is transferred to another government agency, an individual, business, or dealer. Government agency registered vessels shall not be titled.

(f) Commercial Fishing Vessel. The certificate of numbering and certificate of titling requirements of G.S. 75A-4, 75A-7, 75A-34 and 75A-35 apply to commercial fishing vessels. The standard application for a certificate of number shall be used for commercial fishing vessels with the term "commercial fishing" marked in the section designated for "primary use." Upon receipt of a completed application, proof of ownership document, and fee, as provided for in G.S. 75A-3 and 75A-5, the Wildlife Resources Commission shall issue to the applicant a certificate of number and certificate of title, if applicable. ~~The vessel owner shall pay for the first certificate of number. Subsequent renewals renewals, for a period of one year, are free for a period of one year provided the owner provides proof of a valid Commercial Fishing Vessel Registration, Registration when applying to the Wildlife Resources Commission for a renewal certificate of number. A valid Commercial Fishing Vessel Registration is one that has been issued by the Division of Marine Fisheries.~~

(g) Commercial Passenger Vessel. The certificate of numbering requirements of G.S. 75A-4, 75A-7, 75A-34 and 75A-35 apply to commercial passenger vessels. Upon receipt of a completed application, proof of ownership document, and fee, the Wildlife Resources Commission shall issue to the applicant a certificate of number and certificate of title, if applicable.

Authority G.S. 75A-3; 75A-5; 75A-7; 75A-19; 75A-34; 75A-35; 33 C.F.R. 174.17.

15A NCAC 10F .0103 TRANSFER OF OWNERSHIP

(a) Transfer of previously registered and titled vessels.

(1) Transfer of previously registered and titled vessels from one individual owner(s) to another.

(A) When the ownership of a titled vessel is transferred, the owner(s) listed on the face of the Certificate of Title for Vessel shall complete the Assignment of Title section on the reverse side of the certificate of title and surrender the title to the new owner(s). All outstanding liens shall be satisfied before the certificate of title is surrendered to the new owners(s). If

- the ownership of a titled vessel is transferred by court order, will, settlement agreement, separation agreement, judgment or other document and the original title is not available, the previous owner(s) or estate representative shall provide the new owner(s) with documents establishing ownership.
- (B) The new owner(s) shall submit an application for a certificate of number and certificate of title, along with the properly assigned certificate of title and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. The new owner(s) shall indicate on the application whether or not any liens exist on the vessel. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner. A new certificate of number shall be issued to vessels previously registered in another state or to vessels never before registered.
- (C) For 60 days following the transfer of ownership of a previously titled vessel, the new owner may use a copy of the properly assigned certificate of title as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (2) Transfer of previously registered and titled vessels through a dealer.
- (A) When the ownership of a titled vessel is transferred to a dealer, the owner(s) listed on the face of the Certificate of Title for Vessel shall complete the Assignment of Title section on the reverse side of the certificate of title and surrender the title to the dealer. All outstanding liens shall be satisfied before the certificate of title is surrendered to the dealer.
- (B) When the vessel is subsequently sold, the dealer shall, on the day of the sale, provide the new owner(s) the original certificate of title completed by the previous owner(s) and a Dealer Bill of sale. The Dealer's Bill of Sale shall include the dealer's name, the name of the new owner(s), the date of sale, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The Dealer's Bill of Sale shall be signed by both the dealer and the new owner(s).
- (C) The new owner(s) shall complete and submit the standard application for a certificate of number and certificate of title, along with the properly assigned certificate of title, Dealer Bill of Sale, and applicable fees, to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner(s). A new certificate of number shall be issued to vessels previously registered in another state or vessels never before registered.
- (D) For a period of 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the Dealer's Bill of Sale as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (b) Transfer of previously registered, non-titled vessels.
- (1) Transfer of a previously registered, non-titled vessel from one individual owner to another.
- (A) If the ownership of a previously registered vessel is transferred, by sale or gift, the previous owner(s) shall complete a notarized bill of sale. The bill of sale shall be given to the new owner and shall include the previous owner's name, the new owner's name, the date of sale or gift, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The previous owner's signature shall be notarized. ~~An individual may also use the Statement of Transfer form provided with some certificates of numbers. The statement shall be completed by the previous owner and given to the new owner at the time of sale or gift.~~ If the ownership of a

- previously registered vessel is transferred by a court order, will, settlement agreement, separation agreement, judgment or other document, the previous owner(s) or representative of the estate shall provide the new owner(s) with documents establishing ownership.
- (B) The new owner shall complete and submit an application for a certificate of number and certificate of title, along with the proof of ownership document and applicable fees, to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale or gift. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel previously registered in North Carolina is transferred to a new owner. A new certificate of number shall be issued to vessels previously registered in another State or to vessels never before registered.
- (C) For 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the proof of ownership document, provided it contains the date of sale, as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (2) Transfer of a previously registered, non-titled vessel through a dealer.
- (A) The owner(s) selling or transferring a previously registered vessel to a dealer shall complete a notarized bill of sale naming the dealer as the new owner. The bill of sale shall be given to the dealer and shall include the previous owner's name, date of sale, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The signature of the previous owner(s) shall be notarized. ~~An individual may also use the Statement of Transfer form provided with some certificates of numbers. The statement shall be completed by the previous owner(s) and given to the dealer.~~
- (B) When the vessel is subsequently sold, the dealer shall, on the day of the sale, provide the new owner(s) a dealer bill of sale. The dealer's bill of sale shall include the dealer's name, the new owner(s) name, the date of sale, certificate of number, manufacturer's hull identification number, model and year of the vessel. The dealer's bill of sale shall be signed by both the dealer and the new owner(s).
- (C) The new owner(s) shall complete and submit the standard application for a certificate of number and certificate of title, along with the proof of ownership document and applicable fees, to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner(s). A new certificate of number shall be issued to vessels previously registered in another state or vessels never before registered.
- (D) For a period of 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the dealer's bill of sale as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (3) Transfer of a vessel individually-registered to a dealer or manufacturer. Vessels that have been individually numbered by dealers or manufacturers shall upon transfer of ownership be governed by the provisions of Subparagraph (b)(1) of this Rule.

Authority G.S. 75A-3; 75A-5; 75A-19; 75A-37; 33 C.F.R. 174.21.

15A NCAC 10F .0106 DISPLAY OF VESSEL NUMBERS

(a) The vessel numbers shall be painted on or attached to each side of the forward half of the vessel for which issued in such a position as to provide clear visibility and legibility for identification. The numbers shall read from left to right and shall be in block characters not less than three inches in height. The numbers shall be of a solid color which will contrast with

the color of the background and so maintained as to be clearly visible and legible; i.e., dark numbers on a light background, or light numbers on a dark background.

(b) No other number, except the year date of the validation decal described in Rule .0107 of this Section, shall be carried on the bow of such vessel.

(c) Manufacturers or dealers may have the number awarded to them printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being demonstrated, so long as the display meets the requirements of the Rules in this Section. Where a currently or previously-numbered vessel is being demonstrated with a set of dealer's numbers, the permanent numbers painted on or attached to the bow shall be covered.

(d) A vessel registered to a governmental entity and bearing the letter "P" shall continue to display the assigned numbers for so long as the vessel belongs to a governmental entity. Upon transfer of ownership to a private individual(s) or business the new owner shall apply to the Wildlife Resources Commission for a new certificate of number and shall be assigned a new certificate of number.

(e) A United States Coast Guard documented vessel registered in North Carolina shall not display the state vessel numbers.

Authority G.S. 75A-3; 75A-5; 75A-19.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0326, .0336 and .0354.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** November 21, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncwildlife.org/ProposedRegulations.aspx

Proposed Effective Date: May 1, 2014

Public Hearing: for 15A NCAC 10F .0326 and .0354

Date: January 22, 2014

Time: 7:00 p.m.

Location: 302 Broad Street, New Bern, NC 28560

Public Hearing: for 15A NCAC 10F .0336

Date: January 23, 2014

Time: 7:00 p.m.

Location: 522 Old Carriage Road, Rocky Mount, NC 27804

Reason for Proposed Action: To remove a No-Wake Zone designation on a portion of the Tar River in Pitt County near Seine Beach and the Grimesland Bridge. The No-Wake Zone was originally adopted to mitigate hazards caused by boat traffic at a nearby public access point and danger to people using waters near a campground in the area. The public access

and the campground have both since closed, and therefore the water safety hazard no longer exists.

Comments may be submitted to: Kate Pipkin, Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722; email regulations@ncwildlife.org

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 10 – WILDLIFE RESOURCES COMMISSION

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0326 PAMLICO COUNTY

(a) Regulated Areas. This Rule applies to the following waters or portions of waters in Pamlico County:

- (1) Silverthorn Bay: the waters of Silverthorn Bay, a tributary of Lower Broad Creek;
- ~~(2) Intracoastal Waterway: that portion of the Intracoastal Waterway beginning at the north side of the State Forestry Dock and extending to the land cut entrance on the south side of Jones Bay;~~
- ~~(3)~~(2) Minnesott Beach: the Minnesott Beach Yacht Basin and its access channel inland from the shoreline to 30 yards beyond the outermost points of the rock jetties in Neuse River.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Pamlico County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0336 NORTHAMPTON AND WARREN COUNTIES

(a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Northampton and Warren Counties.

(b) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Northampton and Warren Counties.

(c) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(d) Speed Limit in specific waters. No person shall operate a vessel at greater than no-wake speed within the following bodies of water.

- (1) ~~the North Point Cove Section B located on the north shore of Gaston Lake within Northampton County at the end of "Vincent Lane";~~ Northampton County, the waters of the cove on the north shore of Lake Gaston east of Vincent Drive, shore to shore from a point at 36.51652 N, 77.82232 W to a point at 36.51580 N, 77.82273 W;
- (2) Warren County, the waters of Big Stonehouse Creek within 50 yards of the culvert under at State Road 1357; Highway 903;
- (3) Warren County, the waters of Songbird Creek within 50 yards of the culvert under at State Road 1360; Highway 903;
- (4) Warren County, the waters of Six Pound Creek within 50 yards of the culvert under at State Road 1334; 1707;
- (5) Warren County, the waters of Lizard Creek within 50 yards of the culvert at SR 1362, under Highway 903.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of Gaston Lake in Northampton and Warren Counties.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Northampton County and Warren County are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0354 PITT COUNTY

(a) Regulated Areas. This Rule applies to the waters described in this Paragraph:

- (1) The entire inlet of Hardee Creek from the Tar River in Pitt County; County; and
- ~~(2) The Seine Beach area of the Tar River beginning at Chicod Creek and extending to the east side of the Grimesland Bridge as marked by appropriate markers; and~~
- ~~(3)~~(2) that portion of Tranters Creek east of a line from a point on the north shore at 35.56961 N, 77.09159 W to a point on the south shore at 35.56888 N, 77.09118 W and north of a line from a point on the east shore at 35.56714 N, 77.08941 W to a point on the west shore at 35.56689 N, 77.09029 W, beginning at a line, shore to shore, from a point at 35.56925 N, 77.09138 W and ending at a line, shore to shore, to a point at 35.56703 N, 77.08981 W as delineated by appropriate markers.

(b) Speed Limit. No person shall operate a motorboat or vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Pitt County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14A .0401; 14H .0401, .0504-.0505; 14I .0401; 14P .0113; 14R .0105; 14T .0604-.0606, .0615-.0617, .0701; and repeal the rules cited as 21 NCAC 14A .0104; 14B .0504; 14K .0107; 14O .0106.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccosmeticarts.com/uploads/Board/November2013.pdf>

Proposed Effective Date: May 1, 2014

Public Hearing:

Date: January 6, 2014

Time: 9:00 a.m.

Location: 1207 Front Street, Suite 110, Raleigh, NC 27609

Reason for Proposed Action: *These rule changes remove unnecessary requirements and address required changes due to new statutory requirements.*

Comments may be submitted to: Lynda Elliott, 1207 Front Street, Suite 110, Raleigh, NC 27609

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0104 ADDRESS

~~The address for the board is 1201 110 Front Street, Raleigh, North Carolina 27609.~~

Authority G.S. 88-23.

SECTION .0400 – LICENSE WAIVER FOR ARMED FORCES

21 NCAC 14A .0401 LICENSE WAIVER FOR ARMED FORCES

(a) Licensees in good stand and standing and serving in the armed forces of the United States or spouse of an individual in good standing and serving in the armed forces of the United States are allowed an extension on license renewal payment and required continuing education hours as permitted G.S. 93B-15.

(b) Individuals holding current and valid licensure as determined by G.S. 93B-15.1 may apply for licensure with the Board by providing a copy of the current and valid license along with a the license application, fees and documentation of military training. If the individual was not trained by the military, the individual may submit an original, unopened license certification from the Board with which he or she is licensed along with the Board license application a copy of the out of state license and the license fees.

Authority G.S. 93B-15.

SUBCHAPTER 14B – RULE-MAKING PROCEDURES

SECTION .0500 – DECLARATORY RULINGS

21 NCAC 14B .0504 ISSUANCE OF DECLARATORY RULING

~~Where a declaratory ruling is deemed appropriate the Board will issue the ruling within 60 days of receipt of the petition.~~

Authority G.S. 150B-17.

SUBCHAPTER 14H – SANITATION

SECTION .0400 – SANITATION PROCEDURES AND PRACTICES

21 NCAC 14H .0401 LICENSEES AND STUDENTS

(a) Notwithstanding Rule .0201 in this Subchapter, this Rule applies to students and licensees in practice in cosmetic art schools and shops. 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.

(b) Each licensee and student shall wear clean garments and shoes while serving patrons.

(c) Licensees or students must not use or possess in a cosmetic art school or shop any of the following:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin including skin tags, corns and calluses;
- (3) FDA rated Class III devices;
- (4) Carbolic acid (phenol) over two percent strength;
- (5) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (6) A variable speed electrical nail file on a natural nail unless it has been designed for use on a natural nail.

(d) A licensee or student must not:

- (1) Use any product, implement or piece of equipment in any manner other than the product's, implement's or equipment's intended use as described or detailed by the manufacturer;

- (2) Diagnose any medical condition or treat any medical condition unless referred by a physician;
- (3) Provide any service unless trained prior to performing the service;
- (4) Perform services on a client if the licensee has reason to believe the client has any of the following:
 - (A) ~~a contagious condition or disease; fungus, lice, or nits;~~
 - (B) an inflamed, infected, broken, raised or swollen skin or nail ~~tissue; tissue in the area to be worked on;~~ or
 - (C) an open wound or sore in the area to be worked on;
- (5) Alter or duplicate a license issued by the Board;
- (6) Advertise or solicit clients in any form of communication in a manner that is false or misleading;
- (7) Use any FDA rated Class II device without the documented supervision of a licensed physician;
- (8) Use any product that will penetrate the dermis; or

- (9) Make any statement to a member of the public either verbally or in writing stating or implying action is required or forbidden by Board rules when such action is not required or forbidden by Board rules. A violation of this prohibition is considered practicing or attempting to practice by fraudulent misrepresentation.

- (e) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Material Safety Data Sheet.

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-24.

SECTION .0500 – ENFORCEMENT, MAINTENANCE OF LICENSURE

21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

Sanitation	Point Value
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.	2
Each licensee and student shall wear clean garments and shoes while serving patrons.	2
The cosmetic art facility shall be kept clean.	3
Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.	4
All doors and windows shall be kept clean.	2
Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.	3
Clean protective capes, drapes, linens and towels shall be used for each patron.	3
After a cape, drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.	5
Any paper or nonwoven protective drape or covering shall be discarded after one use.	2
There shall be a supply of clean protective drapes, linens and towels at all times.	2
Clean drapes, capes, linens and towels shall be stored in a clean area.	5
Bathroom facilities must be kept cleaned.	3
All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.	2
All implements shall be disinfected.	10
All disinfected electrical implements shall be stored in a clean area.	2
Disposable and porous implements and supplies must be discarded after use or upon completion of the service.	10
Any product that comes into contact with the patron must be discarded upon completion of the service.	3
Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.	10
Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.	2 <u>1</u>
<u>The presence of animals or birds. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.</u>	<u>1</u>

All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions may be returned to the container.	10
After each patron's use each whirlpool or footspa must be cleaned and disinfected.	10
The water in a vaporizer machine must be emptied daily and the unit disinfected daily.	2
The area where services are performed that come in contact with the patron's skin including chairs, tables and beds shall be disinfected between patrons.	3

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26.

21 NCAC 14H .0505 RULE COMPLIANCE AND ENFORCEMENT MEASURES

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses.

(b) The use of or possession of the following in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per use or possession:

- (1) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (2) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:

- (1) Use of any product, implement or piece of equipment in any manner other than the product's, implement's or equipment's intended use as described or detailed by the manufacturer;
- (2) Diagnosis of any medical condition or treatment of any medical condition unless referred by a physician; or
- (3) Use of any product that will penetrate the dermis; or
- (4) Provision of any service unless trained prior to performing the service; or
- (5) Performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) a contagious condition or disease;
 - (B) inflamed infected, broken, raised or swollen skin or nail tissue; or
 - (C) an open wound or sore in the area to be worked on; or
- (6) Alteration of or duplication of a license issued by the Board; or

(7) Advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or

(8) Use of any FDA rated class II device without the documented supervision of a licensed physician.

~~(d) The presence of animals or birds in a cosmetic art shop or school shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per animal or bird. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.~~

~~(e)(d)~~ The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this Subchapter including the date, time, reason and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.

~~(f)(e)~~ The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.

~~(g)(f)~~ The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

~~(h)(g)~~ The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).

~~(i) The failure to maintain a water supply within 20 feet of the door or 25 feet from the service table or chair shall result in civil penalty in the amount of fifty dollars (\$50.00) per inspection occurrence.~~

~~(j)(h)~~ The failure to provide ventilation at all times in the areas where patrons are serviced in all cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

~~(k)(i)~~ The failure to effectively screen all doors and windows open for ventilation shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

~~(l)(j)~~ The failure to maintain equipment and supplies necessary to safely perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).

~~(m)(k)~~ The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).

~~(a)(1)~~ Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop or school shall result in a mandatory disciplinary hearing.

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27.

SUBCHAPTER 14I – OPERATIONS OF SCHOOLS OF COSMETIC ART

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) Any applicant convicted of a felony or charged with a felony that is still pending 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.

(b) 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 any commitment order for each felony for which there has been a conviction;
- ~~(2)~~ A copy of the applicant's restoration of rights certificate, if applicable;
- ~~(3)(2)~~ 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;
- ~~(4)~~ The name and address of the applicant's current employer;
- ~~(5)(3)~~ A summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service;
- ~~(6)(4)~~ Records of any cosmetology, esthetics, natural hair care or manicurist school disciplinary actions; or a statement from the school indicating no disciplinary actions were taken;
- ~~(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; and~~

~~(8)(5)~~ 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; request.~~

~~(c) If a felony conviction was for an offense involving drugs or alcohol, the applicant shall also provide 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).

SUBCHAPTER 14K – MANICURIST CURRICULUM

SECTION .0100 – MANICURIST CURRICULUM

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 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 and which does not include performing the service on a mannequin.~~

Authority G.S. 88B-4; 88B-10.

SUBCHAPTER 14O – ESTHETICIAN CURRICULUM

SECTION .0100 – ESTHETICIAN CURRICULUM

21 NCAC 14O .0106 LIVE MODEL PERFORMANCES

~~(a) All esthetician students shall complete the following minimum number of live model performances during the esthetics course under the supervision of a licensed cosmetologist or esthetician teacher before taking the esthetician examination:~~

- ~~(1) Facials:~~
 - ~~(A) 40 Manual (skin analysis, cleansing, scientific manipulations, packs and masks);~~

~~(B) 20 Electrical (the use of electrical modalitus, including dermal lights, and electrical apparatus for facials and skin care);~~

~~(2) 50 Eyebrow arching and hair removal;~~

~~(3) 40 Make up (skin analysis, complete and corrective make up);~~

~~(b) A minimum of 60 hours of technical and practical instruction in application areas are required prior to conducting performances on the public.~~

Authority G.S. 88B-4.

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

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, natural hair care specialist 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 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 times is:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$200.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$600.00 |

(h) The presumptive civil penalty for failure to have any student wear a clean washable uniform or identification 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 renew or file school bond or bond alternative 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.

SUBCHAPTER 14R – CONTINUING EDUCATION

SECTION .0100 – CONTINUING EDUCATION

21 NCAC 14R .0105 CONTINUING EDUCATION

(a) This Rule pertains to all cosmetic art licensees. Each licensee wishing to maintain his or her license shall obtain continuing education during each licensing period. The licensee shall maintain records of attendance at a continuing education course including the following information:

- | | |
|-----|---|
| (1) | Course title and description; |
| (2) | Date conducted; |
| (3) | Address of location where the course was conducted; and |
| (4) | Continuing education hours earned. |

(b) Each licensee must ensure at least 50 percent of the subject matter in a course broadens the licensee's knowledge of the cosmetic arts profession in which he or she is licensed.

(c) Each cosmetic art teacher must ensure at least 50 percent of the subject matter in a course taken for the purpose of license renewal relates to teacher training techniques and enhances the ability to communicate.

(d) Continuing education courses shall be approved by the board providing the courses meet the requirements above.

(e) The Board or an agent of the Board may conduct audits of the licensee's continuing education at any time. Upon the Board's request each licensee shall provide completed records to the Board to support the last affirmation given pursuant to Subparagraph (j)(3) of this Rule. Records must be maintained until the end of the next renewal cycle after the affirmation for audit purposes.

(f) Continuing education courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit.

(g) Apprentices do not need to earn continuing education for license renewal.

(h) Licensees are exempt from the eight hours of continuing education requirement until the licensing period commencing after their initial licensure.

(i) After completion of the continuing education requirements for any licensing cycle the licensee shall forward to the Board the following:

- | | |
|-----|---|
| (1) | the license renewal application; |
| (2) | the license renewal fee; and |
| (3) | A date and signature affirming <u>Affirmation of</u>
the following pledge: "I hereby certify that I |

have obtained all continuing education hours required in accordance with the G.S. 88B-21 and board rules and regulations. I am aware that 1) false or dishonest misleading information may be grounds for disciplinary action against my license; and further that 2) false statements are punishable by law."

(j) Failure to produce documents or file a response to a request for audit from the Board within 30 days of the request shall result in a civil penalty to the licensee in the amount of two hundred fifty dollars (\$250.00).

(k) The presentation of fraudulent continuing education documentation to the Board by a licensee shall result in a civil penalty of five hundred dollars (\$500.00).

(l) Licensees in inactive status may reactivate licensure by taking no fewer than eight hours of continuing education per year of inactivity up to 24 total hours.

Authority G.S. 88B-2; 88B-4; 88B-21; 88B-24; 88B-29.

SUBCHAPTER 14T – COSMETIC ART SCHOOLS

SECTION .0600 – CURRICULA

21 NCAC 14T .0604 ESTHETICS CURRICULUM

(a) To meet the approval of the Board, an esthetician training course must consist of at least 600 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: anatomy/physiology, hygiene, disinfection, first aid, chemistry, draping, facial/body treatment (cleansing, manipulations, masks), hair removal, basic dermatology, machines, electricity, apparatus, aromatherapy, nutrition, make-up/color theory,	75 <u>40</u>		
Advanced: Styles and techniques of esthetics services including facials, makeup application, performing skin care, hair removal, eyelash extensions and applying brow and lash color; business management; and professional ethics	525 <u>560</u>		
Performance Requirements		Mannequin	Live Model
Facials Manual (skin analysis, cleansing, surface manipulations, packs and masks)		10	30
Facials Electronic (the use of electrical modalitus, including dermal lights, and electrical apparatus for facials and skin care including galvanic and faradic)			30
Eye eyebrow arching		5	15
Hair removal (hard wax, soft wax, depilatories)		5	25
Makeup application (skin analysis, complete and corrective makeup)		10	20
Eyelash extensions		5	5
Brow and lash color		5	5

(b) A minimum of ~~75~~ 40 hours of theory is required prior to conducting live model performances on the public.

(c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.

(d) A live model may be substituted for a mannequin for any mannequin service.

(e) All mannequin services may be performed using a simulated product.

(f) Simulated product is not allowed for credit for live model performance.

(g) Mannequin services shall not be substituted for live model services.

(h) Sharing of performance completions is not allowed.

(i) Credit for a performance shall be given to only one student.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0605 MANICURING CURRICULUM

(a) To meet the approval of the Board, a manicurist training course must consist of at least 300 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: Manicuring theory, disinfection, first aid, trimming, filing, shaping, decorating, arm and hand manipulation, sculptured and artificial nails; and pedicuring	60 <u>25</u>		
Advance: Styles and techniques for the care, treatment and decoration of fingernails, toenails, cuticles, nail extensions and artificial nails; electric file; business management; and professional ethics	240 <u>275</u>		
Performance Requirements		Mannequin	Live Model
Manicures including trimming, filing, shaping, decorating and arm and hand manipulations		5	10
Applications or repair of sculptured or artificial nail sets		5	15
Pedicures			10

- (b) A minimum of ~~60~~ 25 hours theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0606 NATURAL HAIR CARE CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course must consist of 300 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Services	
Beginners: Sanitation, bacteriology, disinfection, first aid, shampooing, draping, anatomy, disorders of the hair and scalp, client consultation.	60 <u>25</u>		
Advanced: Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blowdry and thermal iron; and business management and professional ethics.	240 <u>275</u>		
Performance Requirements		Mannequin	Live Model
Braids		5	5
Twists		5	5
Knots		3	2
Corn rows		3	2
Hairlocking		5	5
Artificial hair and decorations		5	5
Blow dry and thermal iron		5	5
Braid Removal		5	5

- (b) A minimum of ~~60~~ 25 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the Board examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.

- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed unless the live model service consists of 20 or more lengths of hair.
- (i) Credit for a performance shall be given to only one student.
- (j) A performance shall consist of 10 or more lengths of hair.

Authority G.S. 88B-2; 88B-4; 88B-16.

21 NCAC 14T .0615 FIELD TRIPS

(a) Cosmetic art schools must notify the Board prior to any field trip and record the field trip hours of each student. Cosmetic Art Educational Field Trips include the following activities:

- (1) Cosmetic art shops;
- (2) Cosmetic art Conventions;
- (3) Competition Training;
- (4) Other Schools;
- (5) State Board Office;
- (6) Supply Houses;
- (7) College or Career Day at School;
- (8) Fashion Shows;
- (9) Rest Homes/Nursing Homes;
- (10) Hospitals; and
- (11) Funeral Homes.

(b) An instructor must be present during these educational field trips listed in Paragraph (a) of this Rule, for credit to be given to students, with a ratio of one instructor per 25 students present.

(c) The maximum number of hours a student may earn for field trips is 40 credit hours for cosmetology students, 20 credit hours for esthetician students and 10 credit hours for manicurist or natural hair care students.

(d) Students may earn up to four additional hours of credit for interviews at a licensed cosmetic art shop.

(e) Students may not earn credit for any service performances completed outside of the school.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0616 ADDITIONAL HOURS

(a) Notwithstanding any other provision of the rules in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetologist, apprentice, esthetician, manicurist, natural hair care specialist or teacher candidate who has failed either section of the examination three times, shall complete the following amounts of study at an approved cosmetic art school before ~~reapplication~~ for examination shall be accepted by the Board:

- (1) Cosmetologist 200 hours;
- (2) Apprentice 150 hours;
- ~~(2)~~(3) Esthetician 80 hours;
- ~~(3)~~(4) Manicurist 40 hours;
- ~~(4)~~(5) Natural Hair Care Specialist 40 hours; and
- ~~(5)~~(6) Teacher:
 - (A) cosmetology 100 hours;
 - (B) esthetician 80 hours; and
 - (C) manicurist 40 hours.

(b) Schools shall evaluate students returning to complete additional hours to fulfill three time examination failure requirements and shall provide remedial assistance and training in the areas of deficiency.

(c) Teacher candidates with no prior cosmetic art teacher training program experience shall provide a written affidavit documenting a minimum of required work experience as outlined in 21 NCAC 14N .0115 or complete a minimum of the hours required for the teacher curriculum in the discipline in which they hold a license.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0617 TEACHER TRAINEES

(a) A cosmetic art teacher trainee may not perform clinical services on a patron at the cosmetic art school.

(b) 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 except as set out in Paragraph (c) of this Rule.

(c) A manicurist, natural hair care or esthetician teacher may supervise a cosmetic art teacher trainee with regard to manicuring, natural hair care or esthetics, as appropriate.

(d) A cosmetic art teacher trainee program may be a full time program or a part time program. A cosmetic art teacher trainee, however, may not receive credit for more than ~~eight~~ 10 hours per day.

(e) Teacher trainees may present lessons they have prepared under the direct supervision of a licensed cosmetic art teacher as long as the supervising teacher is present in the classroom.

(f) Persons receiving teacher training in a cosmetic art school shall be furnished a teacher's manual and shall spend all of their training time under the direct supervision of a licensed cosmetic art teacher and shall not be left in charge of students or the school at any time.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0700 – SCHOOL LICENSURE, OPERATIONS, CLOSING AND RELOCATING SCHOOLS

21 NCAC 14T .0701 SCHOOL OPERATIONS/LICENSURE MAINTENANCE

(a) No individual shall be given credit for any hours earned in a cosmetic art school before the date the school is granted a license, before the student is enrolled or after graduation or withdrawal without a new enrollment.

(b) All Cosmetic Art schools must submit hours of operation per cosmetic art discipline to the Board. Any changes to the hours of operation must be submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services or performances are provided.

(c) Students may be required to clean and disinfect work areas, reception areas, implements and the dispensary. Students shall not be required to perform regular maintenance.

- (d) All cosmetic art schools must adhere to all Board sanitation regulations located in 21 NCAC 14H Sanitation.
- (e) Cosmetic art schools may permit students to leave the cosmetic art school during instructional time to visit on campus libraries and other educational resource rooms such as computer labs for research and study under the supervision of a cosmetic art instructor.
- (f) Cosmetic art schools shall use the following grading scale as a minimum for passing grades:

Grade A	100-90
Grade B	80-89
Grade C	70-79
Grade F (Fail)	0-69

- (g) Cosmetic art schools shall not graduate any student who has not met the minimum school and Board requirements for graduation.
- (h) Examinations shall be administered in all subjects of the cosmetic art curriculum.
- (i) Students present at school must be supervised by a cosmetic art teacher at all times. If a guest lecturer is leading a class, at least one cosmetic art teacher must be present in the lecture.
- (j) All cosmetic art schools shall provide:
- (1) One teacher for every 25 students enrolled in the beginner department;
 - (2) One teacher for every 20 students during practical work on live models in the advanced department; and
 - (3) Cosmetic art teachers at a ratio of 1:25 teacher to teacher trainees; or
 - (A) one teacher and up to 25 beginner cosmetic art students and 5 teacher trainees; or
 - (B) one teacher and up to 20 cosmetic art students in practice on the clinic floor and 5 teacher trainees.

- (k) In theory classes the teacher-student ratio may exceed the ratios established in this Rule.
- (l) The teacher student ratios established in this Rule shall be adhered to when schools are in operation.
- (m) A teacher ~~shall not~~ may administer instruction to up to 10 students enrolled in beginner and advanced departments at the same time. A teacher shall not administer instruction to more than 10 students enrolled in beginner and advanced departments at the same time.
- (n) At no time can any one teacher be simultaneously responsible for students in a theory class and students in practice on the clinic floor.
- (o) In cases of change in teaching staff, the school shall notify the Board of the change in writing prior to beginning instruction. A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board.
- (1) 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, natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher, and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.

- (2) A licensed cosmetologist not licensed as a cosmetology teacher may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural hair care teacher may substitute for a natural hair care teacher; and a licensed esthetician not licensed as an esthetician teacher may substitute for an esthetician teacher.

- (p) In no event may any cosmetic art licensee substitution last for more than 15 consecutive working days per year per teacher. If any teacher substitution is 16 consecutive days or longer, the school must provide a new cosmetic art teacher.
- (q) Enrolled students may earn a maximum of 10 hours per day per discipline of cosmetic art and a maximum of 48 hours per week per discipline. A student enrolled in more than one cosmetic art discipline may not earn hours or complete performances concurrently.
- (r) A cosmetic art student must complete at least 1/3 of the minimum required hours in the cosmetic art school certifying his or her application for the state board examination.
- (s) Upon written petition by the student and the school, the Board shall make an exception to the requirements set forth in Paragraph (r) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing a minimum of 1/3 hours at the school certifying his or her application.
- (t) The Board shall certify student hours for any North Carolina cosmetic art school that is closed. The Board shall not certify student hours between any North Carolina open cosmetic art schools. The Board shall certify student hours earned at North Carolina cosmetic art schools to other state boards and schools open outside of the state of North Carolina as set forth in Rule .0502 of this Subchapter.

Authority G.S. 88B-2; 88B-4; 88B-16.

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that NC State Hearing Aid Dealers and Fitters Board intends to adopt the rules cited as 21 NCAC 22F .0301-.0306 and 22J .0116; amend the rules cited as 21 NCAC 22F .0104-.0105; and repeal the rules cited as 21 NCAC 22F .0113-.0116.

Agency obtained G.S. 150B-19.1 certification:

- ☐ **OSBM certified on:**
☐ **RRC certified on:**

☒ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nchalb.org/regulatory/rulechange.php>

Proposed Effective Date: April 1, 2014

Public Hearing:

Date: February 6, 2014

Time: 12:45 p.m.

Location: Commission Room, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: Session Law 2013-410: 93D-1.1 was added to define the scope of practice for a hearing aid specialist, listing 16 activities that now fall within the scope of practice for regulated individuals. Additionally, 93D-5(a) was amended to state that "No person shall undertake any activity within the scope of practice of a hearing aid specialist in this State unless the person first has been issued a license by the Board or is an apprentice working under the supervision of a Registered Sponsor."

The Board now seeks to update and adopt rules necessary to regulate licensees and apprentices as they provide services under the new scope of practice, including making clear that it is unethical to engage in activities for which they are not properly trained. The proposed rules will better define the apprentice/sponsor relationship and the responsible party for services provided, providing greater clarity and – it is hoped – greater supervision and control on the part of the licensee for his apprentice.

Comments may be submitted to: Catherine Jorgensen, Rulemaking Coordinator, NC State Hearing Aid Dealers and Fitters Board, P.O. Box 97833, Raleigh, NC 27624

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation

- ☐ **Local funds affected**
☐ **Substantial economic impact (≥\$1,000,000)**
☒ **No fiscal note required by G.S. 150B-21.4**

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

21 NCAC 22F .0104 QUALIFICATIONS TO REGISTER FOR EXAM

(a) The Board may require such supplemental information to all applications for issuance and renewal of a license or an apprentice registration certificate as it deems necessary to determine the facts governing the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. Supplemental information may include, but is not necessarily limited to, letters of recommendation, affidavits, photographs, official transcripts, and personal appearances before the Board.

~~(b) Any registered apprentice who holds a masters degree in Audiology and any Audiologist who elects to be a registered apprentice shall, prior to the next scheduled qualifying examination, submit to 250 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.~~

~~(c) Any registered apprentice who is not an Audiologist and does not hold a masters degree in Audiology shall, for each week prior to the next scheduled qualifying examination, submit to 15 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.~~

(b) An apprentice may elect to take Part A, Part B or Part C of the licensing exam at any time during the apprenticeship by submitting an application for license and exam registration prior to the registration deadline.

(c) An apprentice shall complete 365 days of apprenticeship prior to taking Part D of the licensing exam.

(d) The Board shall waive the application for license fee and exam registration fee for an applicant's initial registration to take Part D of the exam only if the applicant took and passed Part A, Part B and Part C prior to completing 365 days of apprenticeship.

(e) Except as provided in Paragraph (d) of this Rule, an applicant shall submit a new application for license and exam registration and pay the fees set forth in 21 NCAC 22A .0501 each time the applicant registers for any part of the licensing exam.

(f) The Board shall not prorate the application for license fee or the exam registration fee for retesting an applicant who failed any part of the licensing exam.

Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9.

21 NCAC 22F .0105 PASSING EXAMINATION

(a) The exam shall consist of four parts:

- (1) Part A shall assess applicant's knowledge of hearing testing through a computer simulation program.

- (2) Part B shall assess applicant's practical knowledge and ability to make an ear impression.
- (3) Part C shall assess the applicant's knowledge of relevant laws and regulations governing hearing aid specialists.
- (4) Part D shall assess the applicant's knowledge of the following:
 - (A) audiometry;
 - (B) anatomy and physiology pertaining to the dispensing of hearing aids;
 - (C) hearing aids;
 - (D) hearing aid technologies; and
 - (E) the scope of practice for hearing aid specialists.

(b) The Board shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8(a), each registered applicant shall be informed in writing of the requirements for passing the examination prior to his taking the examination.

(c) An applicant may pass the exam in parts but shall pass all parts of the exam within 31 months of the initial issuance of the apprentice registration certificate in order to receive a license.

Authority G.S. 93B-8; 93D-3(c); 93D-8.

21 NCAC 22F .0113 APPRENTICESHIP REQUIREMENTS

~~(a) Pursuant to G.S. 93D-9, each individual who duly makes application for issuance or renewal of an apprentice registration certificate shall submit a plan, using the form provided by the Board, for completing the supervision requirement for the apprenticeship. The registered apprentice shall submit a report of the apprenticeship experience, using the form provided by the Board, no later than ten working days after the date that any of the following conditions exist:~~

- ~~(1) The apprentice and his sponsor are separated for any reason and thus causing the apprentice registration certificate to become invalidated;~~
- ~~(2) The apprentice, who is not an Audiologist, has held a valid apprentice registration certificate for 365 calendar days;~~
- ~~(3) The apprentice, who holds a masters degree in Audiology and is not an Audiologist, has completed 250 clock hours of supervision, prior to first taking the qualifying examination;~~
- ~~(4) The apprentice has been notified by the Board that he failed the qualifying examination and the individual is reapplying for issuance of a license by examination; or~~
- ~~(5) The Board has issued a written request to the registered apprentice for submission of a report, in order to determine fulfillment of the apprentice experience requirements.~~

~~(b) The initial apprentice registration certificate issued to any person who is not an Audiologist, and any subsequently issued replacements for an invalidated certificate, shall expire after the apprentice has held a valid apprentice registration certificate for~~

~~a total of 365 calendar days. Upon receipt of a duly made application for issuance of a license by examination, the Board shall, when necessary, extend the certificate, at no charge to the registered apprentice, until 30 consecutive days after the date of the next scheduled qualifying examination. The initial apprentice registration certificate, and any replacements which are issued to an Audiologist prior to his first taking the qualifying examination, shall expire 30 consecutive days after the date of the next scheduled qualifying examination.~~

~~(c) Whenever any registered apprentice takes and fails to pass the qualifying examination, the individual may duly make application for issuance of a renewal certificate which may be issued for good cause shown to the satisfaction of the Board. Such certificate shall expire 30 consecutive days after the date of the next scheduled qualifying examination.~~

~~(d) All registered apprentices shall comply with the rules, including the code of ethics, promulgated by the Board and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina. Failure to comply shall be sufficient grounds to invalidate an apprentice registration certificate, to deny future applications for issuance of an apprentice registration certificate, to deny renewal of an apprentice registration certificate, or to deny, suspend or revoke a license after proper notice and hearing.~~

Authority G.S. 93D-3(c); 93D-9(e).

21 NCAC 22F .0114 TRAINING AND SUPERVISION

~~Each registered apprentice shall submit to direct supervision by a Registered Sponsor who shall be responsible for the apprentice's training and supervision in the following areas:~~

- ~~(1) Anatomy, physiology, and pathology of the auditory mechanism;~~
- ~~(2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;~~
- ~~(3) Hearing aid technology including instrument circuitry and acoustic performance data;~~
- ~~(4) Design, selection, and modification of earmold or shell coupling systems;~~
- ~~(5) Hearing aid selection procedures and fitting and adjustment techniques;~~
- ~~(6) Post delivery care including hearing aid orientation and counseling techniques and hearing aid servicing;~~
- ~~(7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and~~
- ~~(8) Other related topics that the sponsor or apprentice deem necessary.~~

Authority G.S. 93D-3(c); 93D-5; 93D-9.

21 NCAC 22F .0115 SPONSORS' DUTIES

~~(a) Each sponsor of a registered apprentice shall supervise, instruct, and train his apprentice in accordance with the rules and regulations promulgated by the Board, including the code of ethics, and with Chapter 93D of the General Statutes of North Carolina.~~

~~(b) Pursuant to G.S. 93D-9(c), the sponsor shall assist his apprentice in submitting all required plans for completing the supervision requirements for the apprenticeship and all required reports of the apprenticeship experience.~~

~~(c) In accepting an apprentice, including any individual who is an Audiologist or holds a masters degree in Audiology, the sponsor shall be responsible for the conduct of such registered apprentice while that individual is engaged in the fitting and selling of hearing aids and shall acquaint his apprentice with all federal and state regulations concerning the fitting and selling of hearing aids.~~

~~(d) In accepting any apprentice who has taken and failed to pass the qualifying examination, the sponsor shall provide training and direct supervision in accordance with this Rule and 21 NCAC 22F .0004.~~

Authority G.S. 93D-3(c); 93D-9.

21 NCAC 22F .0116 SEPARATION OF APPRENTICE AND SPONSOR

~~(a) In any case where a registered apprentice is separated from his sponsor for any reason, the apprentice registration shall become invalid and the following procedures shall apply:~~

- ~~(1) The apprentice shall return the original and all copies of his invalidated apprentice registration certificate, to the office of the Board within 10 working days after such separation;~~
- ~~(2) The apprentice shall cease to fit and sell hearing aids until a new certificate is issued by the Board;~~
- ~~(3) The sponsor shall notify the Board, in writing, of any separation from his apprentice within ten working days after such separation; and~~
- ~~(4) The sponsor shall assist the apprentice by returning to the office of the Board, within ten working days after such separation, the original and all copies of the apprentice's invalidated apprentice registration certificate that may be in the possession of the sponsor.~~

~~(b) Failure to abide by this rule may result in denial of any future applications for issuance of an apprentice registration certificate or a license, and may result in disciplinary action for the sponsor after proper notice and hearing.~~

Authority G.S. 93D-3(c); 93D-5; 93D-9.

SECTION .0300 – APPRENTICESHIPS

21 NCAC 22F .0301 APPRENTICESHIP REQUIREMENTS

(a) Each individual who seeks a license under G.S. 93D shall complete one full year of apprenticeship as defined in 21 NCAC 22A .0401 unless eligible for waiver of the apprenticeship requirement under G.S. 93D-5(c).

(b) Under the supervision of the proposed sponsor, an individual shall complete the apprentice registration application and pay the fee as set forth in 21 NCAC 22A .0501.

(c) An apprentice may perform duties within the scope of practice for a Hearing Aid Specialist under the registered

sponsor's supervision only after the apprentice certificate is approved and posted on the Board's website.

(d) For an apprenticeship issued prior to the effective date of this Rule, the registered sponsor shall provide general supervision to the apprentice until the expiration date of the apprentice certificate. For any renewal of an apprenticeship or issuance of an apprenticeship after the effective date of this Rule, the registered sponsor shall provide supervision in accordance with 21 NCAC 22F .0302.

Authority G.S. 93D-1.1; 93D-3(c); 93D-9.

21 NCAC 22F .0302 SPONSORS' DUTIES

(a) The registered sponsor shall assist the apprentice in submitting all required applications and reports of the apprenticeship experience and shall act as a liaison between the Board and the apprentice.

(b) In accepting an apprentice, the registered sponsor shall be responsible for the conduct of the apprentice in his performance of his duties as an apprentice.

(c) The registered sponsor shall provide for the personal supervision of an apprentice until receiving an Official Notice of Examination Results confirming that the apprentice successfully passed Part A, Part B and Part C of the licensing exam, at which time the registered sponsor shall provide general supervision for the remainder of the apprenticeship, which may include direct or personal supervision at the discretion of the registered sponsor.

(d) The registered sponsor shall provide the relevant level of supervision to the apprentice as defined in 21 NCAC 22A .0401 in the following areas:

- (1) Anatomy, physiology, and pathology of the auditory mechanism;
- (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) Hearing aid technology including instrument circuitry and acoustic performance data;
- (4) Design, selection, and modification of earmold or shell coupling systems;
- (5) Hearing aid selection procedures and fitting, verification, and adjustment techniques;
- (6) Post-delivery care including hearing aid orientation and counseling techniques and hearing aid servicing;
- (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) All areas within the scope of practice as defined in 93D-1.1.

(e) Failure by a registered sponsor to properly train or supervise an apprentice shall be grounds for disciplinary action after proper notice and hearing.

Authority G.S. 93D-1.1; 93D-3(c); 93D-9.

21 NCAC 22F .0303 CERTIFICATE EXPIRATION

(a) The initial apprentice registration certificate, and any subsequently issued replacement certificates issued within the

first year of apprenticeship, shall expire after the apprentice has held a valid certificate for a total of 365 days.

(b) When an apprentice submits a duly made application for license and exam registration upon completion of 365 days of apprenticeship, the Board shall extend the expiration date of the initial apprentice registration certificate, at no additional charge to the apprentice, until 30 days after the date on the Official Notice of Examination Results of the next available exam.

(c) Each renewal of an apprentice registration certificate shall expire 30 days after the date on the Official Notice of Examination Results of the next available exam.

Authority G.S. 93D-3(c); 93D-5; 93D-9.

221 NCAC 22F .0304 SEPARATION OF APPRENTICE AND SPONSOR

(a) If the apprentice is separated from the registered sponsor for any reason, the apprentice certificate shall immediately be invalid and the apprentice shall cease to fit and sell hearing aids until a valid certificate is issued by the Board.

(b) Within 10 business days of a separation of the apprentice and registered sponsor shall return all their copies of the apprentice certificate to the office of the Board and the registered sponsor shall notify the Board in writing of the separation from the apprentice.

(c) The registered sponsor and apprentice shall submit a final Report of Apprenticeship Experience in accordance with 21 NCAC 22F .0305.

Authority G.S. 93D-3(c); 93D-5; 93D-9.

21 NCAC 22F .0305 REPORT OF APPRENTICESHIP EXPERIENCE

(a) The registered sponsor and the apprentice shall jointly submit a Report of Apprenticeship Experience, using the form provided by the Board, no later than ten business days following the date that any of the following conditions exist:

- (1) The apprentice has held a valid apprentice registration certificate for 365 days;
- (2) The apprentice and registered sponsor are separated for any reason causing the apprentice registration certificate to be invalidated;
- (3) The Board issues a written request for the submission of a Report of Apprenticeship Experience to the registered sponsor or apprentice.

(b) If an apprentice or sponsor is not cooperative in timely completing the joint report, the other party shall submit a report individually with an explanation.

Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13.

21 NCAC 22F .0306 APPRENTICE DISCIPLINE

(a) Apprentices shall comply with the rules, including the code of ethics, promulgated by the Board and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina.

(b) The Board shall refer all matters on noncompliance to the Committee on Investigations, which shall determine whether

sufficient grounds exist to invalidate an apprentice registration certificate, to deny future applications for issuance of an apprentice registration certificate, to deny renewal of an apprentice registration certificate, or to deny, suspend or revoke a license or registration of the Registered Sponsor after proper notice and hearing.

Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13.

SUBCHAPTER 22J – CODE OF ETHICS

21 NCAC 22J .0116 SCOPE OF PRACTICE

It shall be unethical for licensees or apprentices to perform services for which they have not been trained.

Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Rules Review Commission intends to adopt the rules cited as 26 NCAC 05 .0201-.0210.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☐ RRC certified on:
☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncoah.com/rules/>

Proposed Effective Date: March 1, 2014

Public Hearing:

Date: January 16, 2014

Time: 11:00 a.m. or after the RRC meeting, whichever is later

Location: RRC Commission meeting room, 1711 New Hope Church Rd., Raleigh, NC 27609

Reason for Proposed Action: *The proposed adoptions are to set out the RRC procedures for agencies to follow in the implementation of S.L. 2013-413. This law amended the APA to add G.S. 150B-21.3A, the periodic review and expiration of existing rules. These rules establish the procedures the RRC will use in conducting that review and establishing deadlines.*

Comments may be submitted to: Joseph J. DeLuca, OAH/Rules Review Commission, 6714 Mail Service Center, Raleigh, NC 27699-6714, phone (919) 431-3081, fax (919) 431-3104, email joe.deluca@oah.nc.gov.

Comment period ends: February 14, 2014

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 after the adoption of the Rule. If the

Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 05 – RULES REVIEW COMMISSION

SECTION .0200 - PERIODIC REVIEW OF EXISTING RULES

26 NCAC 05 .0201 SCOPE

The purpose of this Section is to implement the existing rules review required by G.S. 150B-21.3A.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0202 DEFINITIONS

In addition to the definitions in G.S. 150B-21.3A and in Rule .0101 of this Chapter, for the purposes of this Section the following definitions apply:

- (1) "Determination" means a classification of a rule as
 - (a) unnecessary;
 - (b) necessary with substantive public interest; or
 - (c) necessary without substantive public interest.
- (2) "Existing rules" means rules currently in the Code; effective; and not repealed, transferred, expired, or reserved.
- (3) "Report" means the report established pursuant to Rule .0206 of this Section.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0203 DEADLINES

(a) The Commission shall submit via email to the rulemaking coordinator of an agency participating in the review a report containing its existing rules. Agencies shall have 10 business days after the report is sent to review it for accuracy and completeness. An agency must notify the Commission staff via email at oah.rules@oah.nc.gov of any errors or missing rules

within the 10 business days following the date the RRC sent the report.

(b) An agency must complete the report as set out in Rule .0206(b) of this Section. The agency shall then submit its initial report to the Office of Administrative Hearings at the above email address and OAH shall post the report within five business days of receipt.

(c) All final reports must be filed on or before the 15th day of the month for Commission review of the report at its meeting the following month. Commission counsel shall notify an agency if he or she intends to recommend reviewing this report at a later meeting. The Commission may delay reviewing a report until a later meeting if the workload of the Commission and its staff makes the review impracticable. In the event the Commission delays reviewing a report, it shall notify the agency. In rescheduling any review, the Commission shall consider the date on which the rules were filed with the Commission.

(d) All deadlines that require filing or notification as set forth in this Rule shall be by 5 p.m. on the business day of the deadline or the next business day following the deadline if the deadline falls on a non-business day.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0204 EXTENSION OF TIME

(a) If the agency cannot meet the filing deadline schedule, the agency head may request an extension of time from the Commission. The Commission shall consider the arguments of the agency and shall make the determination on a case by case basis, and consider the following:

- (1) the involvement of the agency in the review;
- (2) any illness or incapacity of the staff member assigned responsibility for submitting the report;
- (3) changes in composition to the agency or its staff that require delay in the review;
- (4) whether the agency received an unexpected volume of comments and requires additional time to respond; and
- (5) arguments against the delay by members of the public.

(b) An agency must provide sufficient justification for an extension of time. A request merely citing time constraints to complete the review process shall be insufficient for an extension of time.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0205 AGENCY REQUEST TO ADD UNNECESSARY RULES TO THE SCHEDULE

(a) If an agency designates a rule as unnecessary and places it on the current year schedule as set forth in G.S. 150B-21.3A(e), it shall file written notice of this designation with the Commission. The agency shall request that the Commission consider this request at its next meeting.

(b) The Commission shall consider a request filed on or before the 15th day of the month at its meeting the next month and shall then place the rule or rules on the schedule. The Commission

shall notify the agency of the date the agency must submit the report to the Commission.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0206 REPORT

(a) All agencies participating in the review shall use the report prepared by the Commission.

(b) The agency shall complete the following fields of the report prior to posting:

- (1) the initial agency determination;
- (2) whether a rule is necessary to implement or conform to federal law. If it is, the agency must include a citation to that law in the report; and
- (3) the public comment period, which shall be no less than 60 days and begin upon posting on the agency's and the Office of Administrative Hearings' websites. If the posting does not occur on the same day for both sites, the comment period shall begin upon posting on the second website.

(c) The agency shall post the report on its website continuously throughout the public comment period and accept comments on the initial determinations made by the agency in the report.

(d) The agency shall complete the following fields prior to submitting the report to the Commission:

- (1) all comments received. The full text of all comments must be included with or attached to the report, although an agency may summarize the contents of similar comments to complete this field;
- (2) agency response to the merits of any public comment; and
- (3) the final agency determination for each rule.

(e) The agency must attach to the report a copy of every comment received.

(f) The agency must file the report with the Commission or have obtained an extension of time to file as set out in Rule .0204 of this section by the schedule deadline.

(g) The agency must submit a report with all fields completed along with all required attachments. Reports that are not complete shall be considered not filed and shall be returned to the agency to complete.

(h) The agency shall submit the report to the Commission with one original of the document and the comments received. The agency shall also submit an electronic version of the report, which must be compatible with or convertible to the most recent version of Microsoft Excel. The electronic report shall be submitted via email at oah.rules@oah.nc.gov.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0207 PUBLIC COMMENT

(a) For purposes of this Section, an agency shall accept public comments submitted to the agency via US Postal Service or other delivery service and electronic communication, including telefacsimile and email where available to the agency.

(b) The agency is required to send notice of the posting and public comment period to its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d).

(c) Each agency must include on its website and in any notice sent to interested persons instructions on how a person may comment on the determination and to whom the comment should be directed. These instructions shall include the definition of public comment in the statute, and inform commenters that in order for a comment to be considered by the Commission, the comment must address the content of the rule.

Authority G.S. 150B-21.2(d); 150B-21.3A.

26 NCAC 05 .0208 AGENCY RESPONSE TO PUBLIC COMMENT

(a) The agency shall address the substance of a public comment as defined in G.S. 150B-21.3A(a)(5).

(b) Agencies are not required to respond to the individual but must include its response to the merits of the public comment in the report submitted to the Commission.

(c) The Commission shall consider a report incomplete if the agency does not respond to the substance of the public comments and shall return the report to the agency.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0209 EXEMPTION FROM THE PERIODIC REVIEW OF EXISTING RULES

(a) An agency requesting an exemption from the review pursuant to G.S. 150B-21.3A(d) may make an exemption request for an entire Section, Subchapter, Chapter, or Title of rules if the entire Section, Subchapter, Chapter, or Title of rules were adopted or amended within the previous 10 years prior to the review.

(b) The Commission shall not grant an exemption for individual rules.

(c) The agency head must make the request.

(d) If an agency head submits a request for exemption, the agency must post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d).

(e) The Commission shall post notice of the request on its website and notice of a public hearing at its meeting.

(f) The Commission shall conduct a public hearing to determine whether it is in the interest of the public to grant the waiver. The Commission shall consider the following:

- (1) The arguments of the agency;
- (2) Public input;
- (3) Interests affected by the rule; and
- (4) Whether granting the waiver is within the public interest.

(g) If the Commission grants the waiver request, the Section, Subchapter, Chapter, or Title shall be removed from the current schedule and shall not be reviewed under this Section until the new review schedule is set.

Authority G.S. 150B-21.3A.

**26 NCAC 05 .0210 AGENCY PRESENTATION TO
THE COMMISSION**

When the agency's report is being reviewed, if a representative
from the agency does not appear at the meeting and a question

regarding the report is raised, the Commission shall defer the
review to a subsequent Commission meeting.

Authority G.S. 150B-21.3A.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Rule-making Agency: NC Board of Agriculture

Rule Citation: 02 NCAC 37 .0202

Effective Date: December 3, 2013

Date Approved by the Rules Review Commission: November 21, 2013

Reason for Action: The proposed increase in waste analysis fees will offset budget cuts generated by the managerial flexibility cuts mandated by the General Assembly in S.L. 2013-360. As seen on page H1 of the Conference Report on the Continuation, Capital and Expansion Budget, the Department was directed, under Management Flexibility Reserve, to reduce funds by 1.5 percent or \$1.5 million. The increase in the waste analysis fee offset this reduction in funding. The temporary rule is needed in order for the division to begin assessing the increased fees as soon as possible so that they may make up for lost revenue and meet their projected budget for the year. The other fees listed have been a part of the fee schedule adopted in 2005, but are added here to make the rule as up to date and accurate as possible. A request for Gov Ops consultation was sent on September 30, 2013. Gov Ops met and discussed our request on October 29, 2013.

Immediate adoption is required so that the Agronomics Division may begin collected the waste sample fee as soon as possible in order to make up for lost revenue and meet their projected budget. These fees enable the Agronomics Division to efficiently and effectively provide their services to the public of North Carolina.

CHAPTER 37 – AGRONOMIC SERVICES

SECTION .0200 – PROGRAMS

02 NCAC 37 .0202 PLANT ANALYSIS SERVICE

(a) Individuals desiring plant analysis may obtain plant tissue mailers and instructions from the Agronomic Services Division, county extension office, farm supply dealers, Agronomic Division Regional Agronomists, or other local agricultural advisors. All samples will be analyzed for nitrogen, phosphorus, potassium, calcium, magnesium, manganese, copper, zinc, boron and other elements as needed. Results of the test and recommendations for corrective action will be provided. For the purposes of this Rule, "plant analysis" ~~shall~~ may include analysis of ~~wastes~~ wastes, soilless media, and other solutions for

agronomic purposes. ~~A fee of four dollars (\$4.00) will be charged for each sample analyzed.~~

(b) Fees for these services, to be paid at the time of submission, are as follows:

- (1) Routine plant analysis - \$5.00.
- (2) Routine solution analysis - \$5.00.
- (3) Routine soilless media analysis - \$5.00.
- (4) Routine waste analysis - \$8.00.
- (5) Research plant, waste, soilless media, and solution analysis - \$12.00.
- (6) Nonresident plant, waste, soilless media, and solution analysis - \$25.00.
- (7) Special services:
 - (A) Waste-heavy metals - \$10.00.
 - (B) Waste-N breakout - \$10.00.
 - (C) Waste-liming equivalent - \$10.00.
 - (D) Plant-chloride - \$2.00.
 - (E) Plant-molybdenum - \$2.00.
 - (F) Plant-petiole nitrates - \$2.00.

History Note: Authority G.S. 106-22(17);

Eff. July 17, 1981;

Filed as a Temporary Amendment Eff. July 7, 1989 for a Period of 180 Days to Expire on January 2, 1990;

Amended Eff. June 1, 1990; January 2, 1990;

Temporary Amendment Eff. December 3, 2013.

TITLE 04 – DEPARTMENT OF COMMERCE

Rule-making Agency: NC Industrial Commission

Rule Citation: 04 NCAC 10K .0101-.0103, .0201-.0203, .0301-.0302, .0401-.0403, .0501

Effective Date: December 3, 2013

Date Approved by the Rules Review Commission: November 21, 2013

Reason for Action: These rules are necessary to efficiently and effectively administer the Eugenics Asexualization and Sterilization Compensation Program created by Section 6.18(a) of Session Law 2013-360. G.S. 143B-426.52(d) mandates the Industrial Commission to "adopt rules for the determination of eligibility and the processing of claims." Such claims must be filed prior to June 30, 2014. The short time frame requires the Industrial Commission to promulgate temporary rules at this time. Later efforts will be made by the agency to comply with the permanent rule making process set forth in G.S. 150B-21.2.

The legislation necessitating these rules became effective on July 26, 2013 and directly impacts two separate agencies. The Office of Justice for Sterilization Victims is required to accept all claims filed by June 30, 2014. The claims are then passed to the Industrial Commission for a determination of whether the claimant is a "qualified recipient." It is necessary and best serves the public interest, based upon the statute of limitations date of June 30, 2014, that these rules be immediately adopted so that claimants have notice of the procedure and practice requirements of the Industrial Commission to timely file a claim by June 30, 2014 with the Office of Justice for Sterilization Victims.

CHAPTER 10 – INDUSTRIAL COMMISSION

SUBCHAPTER 10K – RULES FOR THE EUGENICS ASEXUALIZATION AND STERILIZATION COMPENSATION PROGRAM

SECTION .0100 – ADMINISTRATION

04 NCAC 10K .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

(a) For purposes of this Subchapter, the offices of the North Carolina Office of Justice for Sterilization Victims are located in the Archives and History State Library Building, 109 East Jones Street, Raleigh, North Carolina. The hours of operation are Monday through Thursday, 10:00 a.m. until 4:00 pm. The mailing address is 1330 Mail Service Center, Raleigh, North Carolina 27699-1330.

(b) For purposes of this Subchapter, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The hours of operation are 8:00 a.m. through 5:00 p.m., Monday through Friday. The mailing address is 4336 Mail Service Center, Raleigh, North Carolina 27699-4336.

History Note: Authority G.S. 143B-426.50; 143B-426.52(d); Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms regarding the Eugenics Asexualization and Sterilization Compensation Program can be obtained by contacting the Commission in person, by written request mailed to 4336 Mail Service Center, Raleigh, NC 27699-4336, or from the Commission's website at www.ic.nc.gov.

(b) The following forms shall be used to process a claim for compensation at the Commission:

- (1) Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation Program;
- (2) Motion to Reconsider Decision of the Deputy Commissioner under the Eugenics Asexualization and Sterilization Compensation Program;
- (3) Request for Evidentiary Hearing before a Deputy Commissioner under the Eugenics

Asexualization and Sterilization Compensation Program;

(4) Notice of Appeal to the Full Commission under the Eugenics Asexualization and Sterilization Compensation Program; and

(5) Notice of Appeal to the Court of Appeals under the Eugenics Asexualization and Sterilization Compensation Program.

(c) Attorneys and other interested parties may reproduce forms for their own use, provided:

(1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and

(2) the substituted form is identical in size and format with the Commission form.

History Note: Authority G.S. 143B-426.52(b),(d); Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0103 AUTHORITY TO FILE ON BEHALF OF THIRD PARTY

(a) If a claimant is living, an action may be brought under this Subchapter only by the claimant or a person lawfully authorized to act on behalf of the claimant. A person is lawfully authorized to act on behalf of the claimant if such person has a General Power of Attorney or a Letter of Appointment of Guardian for the claimant.

(b) If the claimant was living on June 30, 2013, but deceased at time of filing a claim, an action may be brought under this Subchapter only by a person lawfully authorized to act on behalf of the claimant's estate. A person is lawfully authorized to act on behalf of the claimant if such person has Letters Testamentary or Letters of Administration for the claimant's estate.

History Note: Authority G.S. 143B-426.50; 143B-426.52(d); Temporary Adoption Eff. December 3, 2013.

SECTION .0200 – REVIEW BY DEPUTY COMMISSIONER

04 NCAC 10K .0201 INITIAL DETERMINATION OF CLAIMS BY THE COMMISSION

(a) A claimant, or a person lawfully authorized to act on a claimant's or claimant's estate's behalf, shall file a claim on or before June 30, 2014, by filing the Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation Program with the Office of Justice for Sterilization Victims. The form shall request the following information:

- (1) the claimant's current name, mailing address, county, email address, phone numbers;
- (2) if applicable, the claimant's maiden name;
- (3) the claimant's birthdate;
- (4) the claimant's full name at time of procedure;
- (5) the claimant's nickname or alias at time of procedure;
- (6) the estimated date or year of procedure;
- (7) the county of residence at time of procedure;

- (8) the name of facility where procedure was performed;
- (9) if applicable, the name of facility where institutionalized at time of procedure; and
- (10) if claim is filed by a person lawfully authorized to act on a claimant's or claimant's estate's behalf, then the following additional information is required:
 - (A) proof of authority under 04 NCAC 10K .0103;
 - (B) applicant's current name, mailing address, county, email address, phone numbers;
 - (C) applicant's birthdate; and
 - (D) relationship to claimant.

(b) The Commission will not dismiss a claim solely because all of the information listed in Subparagraph (a)(1)-(9) is not submitted.

(c) The Office of Justice for Sterilization Victims shall search the program records for the North Carolina Eugenics Board and collect the following documentation as available:

- (1) Petition for Operation of Sterilization or Asexualization;
- (2) Order for Operation of Sterilization;
- (3) Certificate of Surgeon;
- (4) Letter of Authorization to Surgeon;
- (5) consent of parent, guardian, spouse, or next of kin;
- (6) minutes of proceedings of the Eugenics Board;
- (7) proof of any search efforts of the Justice for Sterilization Victims Foundation;
- (8) other pertinent records; and
- (9) any other evidence submitted by the claimant.

The Office of Justice for Sterilization Victims shall complete and transmit the Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation Program along with the available documentation to the Industrial Commission. The Industrial Commission shall provide a copy of the Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation Program along with the available documentation to the claimant upon receipt from the Office of Justice for Sterilization Victims.

(d) The Commission shall make an initial determination of eligibility for compensation by filing a written decision.

History Note: Authority G.S. 143B-426.52; 143B-426.53(a); Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0202 REQUESTS FOR ADDITIONAL REVIEW BY THE DEPUTY COMMISSIONER

(a) A motion to reconsider or a request for a redetermination of the Deputy Commissioner's decision shall be filed within 30 days of receipt of notice of the Deputy Commissioner's decision, and may be filed by using the form Motion to Reconsider Decision of the Deputy Commissioner under the Eugenics Asexualization and Sterilization Compensation Program. If a motion to reconsider or a request for a redetermination is filed, the Deputy Commissioner's decision is not final until the

disposition is filed by the Deputy Commissioner on the pending motion to reconsider or request for a redetermination.

(b) A request for a full evidentiary hearing before the Deputy Commissioner shall be filed within 30 days of receipt of notice of the Deputy Commissioner's final decision, and may be filed by using the form Request for Evidentiary Hearing before a Deputy Commissioner under the Eugenics Asexualization and Sterilization Compensation Program. The Deputy Commissioner shall set a hearing location, date, and time.

History Note: Authority G.S. 143B-426.52(d); 143B-426.53(a),(c),(d);

Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0203 HEARINGS BEFORE A DEPUTY COMMISSIONER

(a) The Commission shall give no less than 30 days' notice of a hearing in every case. A motion for a continuance shall be allowed by the Deputy Commissioner before whom the case is set only in the interests of justice or to promote judicial economy. Where a claimant has not notified the Commission of the attorney representing the claimant prior to the mailing of calendars for hearing, notice to that claimant constitutes notice to the claimant's attorney.

(b) All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be tendered or delivered upon the Deputy Commissioner before whom the case is calendared, or to the attention of the Docket Section of the Commission should the case not be calendared.

(c) The Commission may issue writs of habeas corpus ad testificandum in cases arising under the Eugenics Asexualization and Sterilization Compensation Program. Requests for issuance of a writ of habeas corpus ad testificandum shall be served upon the Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the Commission should the case not be calendared.

(d) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed when the proceedings before the General Court of Justice in the county of the scheduled hearings are cancelled or delayed.

History Note: Authority G.S. 143B-426.52(d); 143B-426.53(a),(d);

Temporary Adoption Eff. December 3, 2013.

SECTION .0300 – APPEALS TO THE FULL COMMISSION

04 NCAC 10K .0301 APPEAL TO THE FULL COMMISSION

(a) A claimant may appeal a Deputy Commissioner's final decision by filing a notice of appeal to the Full Commission within 30 days of receipt of notice of the Deputy Commissioner's decision, and may be filed by using the form Notice of Appeal to the Full Commission under the Eugenics Asexualization and Sterilization Compensation Program. The

Deputy Commissioner's decision is binding if not appealed within the timeframe.

(b) After receipt of notice of appeal, the Commission shall supply to the claimant a transcript of the record upon which the Deputy Commissioner's decision is based and from which an appeal is being taken to the Full Commission. The claimant shall, within ten days of receipt of transcript of the record, file with the Commission a written statement of the particular grounds for the appeal.

(c) When an appeal is made to the Full Commission, the claimant may file a written brief in support of his ground for appeal. The brief shall be filed with the Commission no less than 15 days prior to the hearing. A brief to the Full Commission shall not exceed 10 pages, excluding attachments.

(d) Upon the request of the claimant, the Commission may waive oral arguments in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file a decision based on the record and briefs.

History Note: Authority G.S. 143B-426.52(d); 143B-426.53(e);

Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0302 MOTIONS FOR RECONSIDERATION BY THE FULL COMMISSION

A motion to reconsider or to amend the Full Commission's decision shall be filed within 30 days of receipt of notice of the Full Commission's decision. If a motion to reconsider or to amend is filed, the Full Commission's decision is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend.

History Note: Authority G.S. 143B-426.52(d);

Temporary Adoption Eff. December 3, 2013.

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

04 NCAC 10K .0401 STAYS

When a case is appealed to the Court of Appeals, all decisions of the Full Commission are stayed pending appeal.

History Note: Authority G.S. 143-294; 143B-426.50; 143B-426.52(d); 143B-426.53(f);

Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0402 MOTIONS FOR COURT OF APPEALS CASES

Prior to the docketing of the record on appeal to the Court of Appeals, all motions filed by the claimant regarding an appeal to the Court of Appeals shall be addressed to and ruled upon by the Chair of the Commission, or the Chair's designee.

History Note: Authority G.S. 143-293; 143-294; 143B-426.50; 143B-426.52(d); 143B-426.53(f);

Temporary Adoption Eff. December 3, 2013.

04 NCAC 10K .0403 REMAND FROM APPELLATE COURTS

When a case is remanded to the Commission from an appellate court, the claimant may file a statement, with or without a brief to the Full Commission, setting forth his position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed with the Commission within 30 days of the issuance of the court's mandate.

History Note: Authority G.S. 143-293; 143B-426.50; 143B-426.52(d);

Temporary Adoption Eff. December 3, 2013.

SECTION .0500 – RULES OF THE COMMISSION

04 NCAC 10K .0501 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a claimant or upon its own initiative only if the claimant is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the claimant's responsibility for the conditions creating the need for a waiver;
- (3) the claimant's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by any opposing parties; and
- (6) the harm to the claimant if the waiver is not granted.

History Note: Authority G.S. 143-293; 143B-426.50; 143B-426.52(d);

Temporary Adoption Eff. December 3, 2013.

This Section contains information for the meeting of the Rules Review Commission on October 17 and November 21, 2013 at 1711 New Hope Church Road, RRC Commission 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde
Margaret Currin
Jay Hemphill
Faylene Whitaker

Appointed by House

Ralph A. Walker
Anna Baird Choi
Jeanette Doran
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

Joe Deluca	(919)431-3081
Amanda Reeder	(919)431-3079
Abigail Hammond	(919)431-3076

RULES REVIEW COMMISSION MEETING DATES

January 16, 2014	February 20, 2014
March 20, 2014	April 17, 2014

**RULES REVIEW COMMISSION MEETING
MINUTES****November 21, 2013**

The Rules Review Commission met on Thursday, November 21, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Jay Hemphill, Stephanie Simpson, Ralph Walker and Faylene Whitaker. Commissioner Dunklin joined via skype.

Staff members present were: Commission Counsels Joe DeLuca, Amanda Reeder, and Abigail Hammond; and Molly Masich, Dana Vojtko, Julie Brincefield, and Tammara Chalmers.

The meeting was called to order at 10:04 a.m. with Vice-Chairman Currin 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).

APPROVAL OF MINUTES

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the October 17, 2013 meeting. Commission Dunklin requested a correction to the minutes concerning the time of adjournment.

Vice-Chairman Currin introduced new Commission Counsel Abigail Hammond.

LOG OF FILINGS

Vice-Chairman Currin presided over the review of the log of permanent rules.

Department of Transportation

19A NCAC 02C .0208 was unanimously approved.

Appraisal Board

21 NCAC 57A .0202 was withdrawn by the agency.

Board of Examiners for Speech and Language Pathologists and Audiologists

All rules were unanimously approved.

Substance Abuse Professional Practice Board

All rules were unanimously approved.

Building Code Council

All rules were unanimously approved.

TEMPORARY RULES

Vice-Chairman Currin presided over the review of the log of temporary rules.

Chairman Walker was not present for the discussion or vote on these rules.

Board of Agriculture

02 NCAC 37 .0202 was unanimously approved.

Industrial Commission

All rules were unanimously approved.

G.S 150B-19.1(h) RRC CERTIFICATION

Vice-Chairman Currin presided over the review of the log of RRC Certification.

Chairman Walker returned for the discussion and vote on these rules.

Home Inspector Licensure Board

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 11 NCAC 08 .1011, .1020, .1103, .1201, .1301, .1302, .1318.

11 NCAC 08 .1303 was withdrawn by the agency.

Department of Justice – Division of Criminal Information

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 04E .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0304, .0305, .0401, .0402, .0403, .0404, .0405; 04F .0101, .0102, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0501, .0502, .0601, .0602, .0603, .0604, .0701, .0801; 04G .0101, .0102, .0201, .0301.

COMMISSION BUSINESS

The Commission discussed its response to a request from the Joint Legislative Administrative Procedure Oversight Committee to justify its continuing need for an exemption from rulemaking. The Commission approved the response to the Committee.

The Commission discussed rules to be adopted that address the HB 74 process and approved the rules for publication.

The meeting adjourned at 11:59 a.m.

The next scheduled meeting of the Commission is Thursday, December 19th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

Julie Brincefield
Editorial Assistant

Rules Review Commission
Meeting

Please Print Legibly

NOVEMBER 21, 2013

Name	Agency
BARAY GUPTON	NCDOI, NCBC
Joel Brown	NCSOS
CLINT PINYAN	NCBOP
Wanda Hong	NCMED. BOARD
DALE STORCES	NC DOT, SIGNING & DELINEATION
Felme Landi	NC DOT
Chrissy Waggett	NCDH&CS
Jay Campbell	NCBOP
Dale Willetts	NC SAPPB
Mike Hegde	NCDOI/NCHELB
Nina Roque	NCIC
Chris Loutit	NCIC
Wanda Taylor	NCIC
Meredith Henderson	NCIC
Roberta Ouellette	NC Appraisal Bd
Alex Christian	NC SAPPB
Lynn Jones	NC SAPPB
BRENDACLEVELAND	NCDA AGRONOMIC DIV
Chae Evans	BCBSNC
Catherine Jorgensen	HAOFB
Nadia Luhr	NCCN

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
STEVEN WEBB	NCHBA
ROBERT PRIVOTT	NCHBA
Nahale Kafas	NCSOECLA
Karen Wadchell	NCDOT
LYNN INMAN	NCSAPPR
Jennifer Everett	NCDENR
June Nickerson	DOA
Joelle Burleson	NCDENR
BRIAN L'VECCHI	NCDOT

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**LIST OF APPROVED PERMANENT RULES
November 21, 2013 Meeting****TRANSPORTATION, DEPARTMENT OF**Wheel Chair Ramps

19A NCAC 02C .0208

HEARING AID DEALERS AND FITTERS BOARDCommittee on Investigations

21 NCAC 22L .0101

Request for Hearing

21 NCAC 22L .0103

Granting or Denying Hearing Requests

21 NCAC 22L .0104

Notice of Hearing

21 NCAC 22L .0105

Presiding Officer

21 NCAC 22L .0106

Informal Procedures

21 NCAC 22L .0109

Disqualification of Board Members

21 NCAC 22L .0110

Failure to Appear

21 NCAC 22L .0111

Subpoenas

21 NCAC 22L .0113

Proposals for Decisions and Final Decision

21 NCAC 22L .0115

Publication of Disciplinary Actions

21 NCAC 22L .0116

MEDICAL BOARDApplication for Physician License

21 NCAC 32B .1303

PHARMACY, BOARD OFDefinitions

21 NCAC 46 .3401

General Requirements for the Use of Automated Medication ...

21 NCAC 46 .3402

Multidisciplinary Committee for Decentralized Automated M...

21 NCAC 46 .3403

Stocking or Restocking of an Automated Medication System

21 NCAC 46 .3404

Centralized Automated Medication Systems

21 NCAC 46 .3405

Quality Assurance Program

21 NCAC 46 .3406

Record Keeping

21 NCAC 46 .3407

Compliance

21 NCAC 46 .3408

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FORName and Address of Agency

21 NCAC 64 .0101

Examinations

21 NCAC 64 .0103

Notice Mailing List

21 NCAC 64 .0502

Additional Information

21 NCAC 64 .0503

Written Submissions

21 NCAC 64 .0604

Submission of Request for Ruling

21 NCAC 64 .0702

Request for Hearing

21 NCAC 64 .0802

Licensee Requirements

21 NCAC 64 .1003

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARDDefinitions

21 NCAC 68 .0101

Process for Prevention Consultant

21 NCAC 68 .0206

Reciprocity

21 NCAC 68 .0209

Scope

21 NCAC 68 .0301

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<u>Application for Deemed Status by Professional Discipline</u>	21	NCAC 68	.0303
<u>Three-Year Standards Review of Deemed Status Standing</u>	21	NCAC 68	.0304
<u>Licensure Requirements for Individual Applicant</u>	21	NCAC 68	.0305
<u>Renewal of Individual Licensure as Clinical Addictions Sp...</u>	21	NCAC 68	.0306
<u>Responsibilities of Supervisor to Supervisee</u>	21	NCAC 68	.0512

BUILDING CODE COUNCIL

<u>2012 NC Building Code/Corridor continuity</u>	1018.6
<u>2012 NC Energy Conservation Code/Building Envelope Requir...</u>	502.1.2, 502.2(1)
<u>2012 NC Fire Code/Structures and outdoor storage undernea...</u>	316.5
<u>2012 NC Fire Code/Manual smoke removal</u>	909.20.6
<u>2012 NC Plumbing Code/Picnic Shelters</u>	403.6.3
<u>2012 NC Plumbing Code/Requirements for discharge piping</u>	504.6
<u>2012 NC Residential Code/Protection of openings</u>	R301.2.1.2
<u>2012 NC Residential Code/Elevation Requirements</u>	R322.2.1, R322.3.2

LIST OF APPROVED TEMPORARY RULES
November 21, 2013 Meeting

AGRICULTURE, BOARD OF

<u>Plant Analysis</u>	02 NCAC 37	.0202
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INDUSTRIAL COMMISSION

<u>Location of Offices and Hours of Business</u>	04 NCAC 10K	.0101
<u>Official Forms</u>	04 NCAC 10K	.0102
<u>Authority to file on Behalf of Third Party</u>	04 NCAC 10K	.0103
<u>Initial Determination of Claims by the Commission</u>	04 NCAC 10K	.0201
<u>Requests for Additional Review by the Deputy Commissioner</u>	04 NCAC 10K	.0202
<u>Hearings Before a Deputy Commissioner</u>	04 NCAC 10K	.0203
<u>Appeal to the Full Commission</u>	04 NCAC 10K	.0301
<u>Motions for Reconsideration by the Full Commission</u>	04 NCAC 10K	.0302
<u>Stays</u>	04 NCAC 10K	.0401
<u>Motions for Court of Appeals Cases</u>	04 NCAC 10K	.0402
<u>Remand from Appellate Courts</u>	04 NCAC 10K	.0403
<u>Waiver of Rules</u>	04 NCAC 10K	.0501

LIST OF CERTIFIED RULES
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HOME INSPECTOR LICENSURE BOARD

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<u>Definitions</u>	11 NCAC 08	.1020
<u>Purpose and Scope</u>	11 NCAC 08	.1103
<u>Definitions</u>	11 NCAC 08	.1201
<u>Definitions</u>	11 NCAC 08	.1301

<u>Continuing Education Required for Renewal of Active License</u>	11 NCAC 08 .1302
<u>Elective Course Component</u>	11 NCAC 08 .1318
 JUSTICE, DEPARTMENT OF - DIVISION OF CRIMINAL INFORMATION	
<u>Name and Location</u>	12 NCAC 04E .0101
<u>Function of DCI</u>	12 NCAC 04E .0102
<u>Advisory Policy Board</u>	12 NCAC 04E .0103
<u>Definitions</u>	12 NCAC 04E .0104
<u>Forms</u>	12 NCAC 04E .0105
<u>Manuals</u>	12 NCAC 04E .0106
<u>Eligibility for Full or Limited Access to the DCI Network</u>	12 NCAC 04E .0201
<u>Management Control Requirements</u>	12 NCAC 04E .0202
<u>Non-Terminal Access</u>	12 NCAC 04E .0203
<u>SBI Task Force Management Control</u>	12 NCAC 04E .0204
<u>User Agreement</u>	12 NCAC 04E .0301
<u>User Access Fee Agreement</u>	12 NCAC 04E .0302
<u>Servicing Agreement</u>	12 NCAC 04E .0303
<u>Management Control Agreement</u>	12 NCAC 04E .0304
<u>Disclosure Agreement</u>	12 NCAC 04E .0305
<u>DCI Terminal Operator</u>	12 NCAC 04E .0401
<u>Certification and Recertification of DCI Operators</u>	12 NCAC 04E .0402
<u>Suspension and Revocation of Operator Certification</u>	12 NCAC 04E .0403
<u>Period of Suspension</u>	12 NCAC 04E .0404
<u>Minimum Standards for DCI Terminal Operators</u>	12 NCAC 04E .0405
<u>Security of DCI Equipment</u>	12 NCAC 04F .0101
<u>Official Use of DCI Information</u>	12 NCAC 04F .0102
<u>Documentation and Accuracy</u>	12 NCAC 04F .0201
<u>Validations</u>	12 NCAC 04F .0202
<u>Hit Confirmation</u>	12 NCAC 04F .0203
<u>Arrest Fingerprint Card</u>	12 NCAC 04F .0301
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<u>Prison Fingerprint Card</u>	12 NCAC 04F .0303
<u>Dissemination of CCH Records</u>	12 NCAC 04F .0401
<u>Accessing of CCH Records</u>	12 NCAC 04F .0402
<u>Use of CCH for Criminal Justice Employment</u>	12 NCAC 04F .0403
<u>Individual's Rights to Review</u>	12 NCAC 04F .0404
<u>CCH Licensing and Non-Criminal Justice Employment Purposes</u>	12 NCAC 04F .0405
<u>Restrictive Use of CCH for Employment Purposes</u>	12 NCAC 04F .0406
<u>Research Use and Access of CCH Records</u>	12 NCAC 04F .0407
<u>Limitations Requirements</u>	12 NCAC 04F .0408
<u>Expungements</u>	12 NCAC 04F .0501
<u>Purges</u>	12 NCAC 04F .0502
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<u>Eligibility for Full or Limited Access to the AFIS Network</u>	12 NCAC 04F .0602
<u>AFIS Agreement</u>	12 NCAC 04F .0603
<u>Available Data</u>	12 NCAC 04F .0604

<u>Dissemination of Driver History Information</u>	12 NCAC 04F .0701
<u>Audits</u>	12 NCAC 04F .0801
<u>Definitions</u>	12 NCAC 04G .0101
<u>Penalty Provisions</u>	12 NCAC 04G .0102
<u>Notice of Violation</u>	12 NCAC 04G .0201
<u>Informal Hearing Procedure</u>	12 NCAC 04G .0301

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) 431-3000. 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	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Craig Croom
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
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Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
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Two Brothers Food Market Inc., Circle Mart, Kenneth Kirkman v. ABC Commission	13 ABC 16233	09/30/13	
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Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12	
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12	

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Vanda Lawanda Johnson v. Office of Victim Compensation	12 CPS 09709	04/25/13
Latoya Nicole Ritter v. Crime Victim Compensation Commission, Janice Carmichael	12 CPS 10572	04/25/13
Teresa f. Williams v. Crime Victims Compensation Commission	13 CPS 09790	07/11/13
Angela Clendenin King v. Office of Administrative Hearings NC Crime Victims Comp Commission	13 CPS 11239	08/02/13
Matthew B. McGee v. NC Victims Compensation Commission	13 CPS 12133	08/26/13

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Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
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WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
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Wallace Connell Ranson v. Sheriffs' Education and Training Standards Commission	12 DOJ 05141	05/07/13	28:07 NCR 676
Raymond Louis Soulet v. Sheriffs' Education and Training Standards Commission	12 DOJ 05142	08/27/12	
Graham Avon Hager v. Sheriffs' Education and Training Standards Commission	12 DOJ 05143	12/19/12	28:07 NCR 686
Dustin Wilson Grant v. Sheriffs' Education and Training Standards Commission	12 DOJ 05145	10/25/12	
Glenn Alvin Brand v. Sheriffs' Education and Training Standards Commission	12 DOJ 05146	10/08/12	
Shannon Wallace v. DHHS	12 DOJ 05355	02/26/13	
Lawrence W. Sitgraves v. Private Protective Services	12 DOJ 06059	09/13/12	
Collin Michael Berry v. Private Protective Services Board	12 DOJ 06590	10/22/12	
Tiffany Ann Misel v. Private Protective Services Board	12 DOJ 06817	10/17/12	

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John Machouis v. Alarm Systems Licensing Board	12 DOJ 07161	12/19/12	
Christopher A. Field v. Private Protective Services Board	12 DOJ 07548	12/19/12	
Porschea Renee Williams v. Private Protective Services Board	12 DOJ 07549	01/09/13	
Ralph R. Hines v. Criminal Justice Education and Training Standards	12 DOJ 07812	11/07/12	
William Franklin Dietz v. Criminal Justice Education and Training Standards	12 DOJ 08010	02/19/13	
Elizabeth Crooks Goode v. Criminal Justice Education and Training Standards Commission	12 DOJ 08014	12/14/12	
Kareen Jesaad Taylor v. Sheriffs' Education and Training Standards Commission	12 DOJ 08018	04/02/13	28:08 NCR 751
Brian Thomas Jones v. Sheriffs' Education and Training Standards Commission	12 DOJ 08023	11/26/13	
Sabrina Richelle Wright v. Sheriffs' Education and Training Standards Commission	12 DOJ 08048	01/16/13	
Phillip Eugene Dendy v. Sheriffs' Education and Training Standards Commission	12 DOJ 08049	01/18/13	
Reginald E. James v. Private Protective Services Board	12 DOJ 08195	12/20/12	
Omega Young v. Private Protective Services Board	12 DOJ 08261	12/17/12	
Joseph T. Ferrara v. Private Protective Services Board	12 DOJ 08309	01/11/13	
Jovan Lamont Sears v. Private Protective Services Board	12 DOJ 08447	12/20/12	
Christopher Robell Hunter v. Sheriffs' Education and Training Standards Commission	12 DOJ 10182	05/07/13	28:08 NCR 758
Joseph Ryan Fowler v. Sheriffs' Education and Training Standards Commission	12 DOJ 10184	11/26/13	
Marilyn Cash Smalls v. Sheriffs' Education and Training Standards Commission	12 DOJ 10188	04/29/13	
Timothy Allen Bruton v. Criminal Justice Education and Training Standards Commission	12 DOJ 10199	05/29/13	
Bilal Abdus-Salaam v. Criminal Justice Education and Training Standards Commission	12 DOJ 10200	08/16/13	
Lee Daniel Wilkerson v. Criminal Justice Education and Training Standards Commission	12 DOJ 10201	10/10/13	
Brad Tisdale v. Criminal Justice Education Training Standards Commission	12 DOJ 10203	05/06/13	
Clinton Weatherbee Jr v. Criminal Justice Education and Training Standards Commission	12 DOJ 10206	03/25/13	

JonPaul D. Wallace v. Private Protective Services Board	13 DOJ 02422	04/26/13	
Andrew George Anderson v. Sheriffs' Education and Training Standards Commission	13 DOJ 03417	08/29/13	
Frank John Fontana, Jr. v. NC Alarm Systems Licensing Board	13 DOJ 03740	09/12/13	
Jerome Douglas Mayfield v. Private Protective Services Board	13 DOJ 04393	04/26/13	
Cameron Imhotep Clinkscale v. Private Protective Services Board	13 DOJ 05095	04/26/13	
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Eddie Hugh Hardison v. Private Protective Services Board	13 DOJ 08765	04/02/13	
Tony Lynn Cannon v. Sheriffs' Education and Training Standards Commission	13 DOJ 09567	10/22/13	
Marcus Teer Benson v. Private Protective Services Board	13 DOJ 09974	05/15/13	28:10 NCR 1155
Steven Wesley Jones v. Sheriffs' Education and Training Standards Commission	13 DOJ 11188	10/22/13	
Logan Roy Clonts v. Sheriffs' Education and Training Standards Commission	13 DOJ 11694	10/17/13	
LaMarcus Jarrel Outing v. Criminal Justice Education and Training Standards Commission	13 DOJ 11932	08/07/13	
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Myron Troy Davidson v. Private Protective Services Board	13 DOJ 13379	09/13/13	
Marcus L. Fuller v. Private Protective Services Board	13 DOJ 13653	09/03/13	
Martise Lamar Jones v. NC Alarm Systems Licensing Board	13 DOJ 14844	10/30/13	
Charles Robert Austin, Jr. v. NC Alarm Systems Licensing Board	13 DOJ 15507	10/30/13	
Reza M. Salami v. NC Department of Justice and Attorney General Roy Cooper	13 DOJ 17903	11/12/13	

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United Quest Care Services v. Department of Labor	13 DOL 12224	09/17/13	
Absolute Contracting Service Inc., Felicia Myers v. NCDOL, Adriana King	13 DOL 16701	10/30/13	

DEPARTMENT OF TRANSPORTATION

Lorie Cramer v. NC Quick Pass Customer Service Center and DOT	13 DOT 08753	07/19/13	28:06 NCR 589
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DEPARTMENT OF STATE TREASURER

Dwaine C. Coley v. Department of State Treasurer	10 DST 00233	04/05/13	28:02 NCR 81
Ella Joyner v. Department of State Treasurer Retirement System Division	11 DST 02437	07/12/12	27:07 NCR 758
William R. Tate v. Department of Treasurer, Retirement System Division	11 DST 04675	09/07/12	27:15 NCR 1574
Brenda C. Hemphill v. Department of Treasurer, Retirement System Division	11 DST 10252	09/26/12	
Russell E. Greene v. Department of State Treasurer Retirement Systems Division	11 DST 10875	06/14/12	27:04 NCR 543
James A Layton v. Department of State Treasurer	11 DST 12958	11/30/12	
Marsha W Lilly, Robert L Hinton v. Retirement System	12 DST 01108	05/22/12	

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Reza M. Salami v. North Carolina A & T State University, Chancellor Harold Martin, General Counsel Charles Waldrup, Vice Chancellor Linda McAbee, Interim Provost Winser Alexander, and Chairman Willie Deese	13 EBD 13916	11/20/13	
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STATE BOARD OF EDUCATION

Louis A. Hrebar v. State Board of Education	11 EDC 01445	07/27/12	
Delene Huggins v. Department of Public Instruction	11 EDC 08899	06/28/12	
Myra F. Moore v. NC Board of Education	11 EDC 11927	05/01/12	
Dwayne White v. Department of Public Instruction, NC State Board of Education	11 EDC 11864	07/18/12	27:07 NCR 769
Jeffery Sloan v. NCDPI	11 EDC 14077	11/09/12	27:21 NCR 1974
Lia C Long v. DPI	12 EDC 00805	10/18/13	27:16 NCR 1716
North Carolina Learns Inc. d/b/a North Carolina Virtual Academy	12 EDC 01801	05/18/12	
Katherine Kwesell Harris v. Public Schools, Board of Education	12 EDC 06520	09/05/12	
Bonnie Aleman v. State Board of Education, Department of Public Instruction	12 EDC 07293	06/14/13	
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Jodi Esper v. Department of Public Instruction	12 EDC 10259	06/04/13	
Glennette McRae v. NC State Board of Education	12 EDC 10448	11/15/13	
Matthew Schneider v. Department of Public Instruction	12 EDC 12183	07/17/13	28:12 NCR 1467
Wanda McLaughlin v. State Board of Education	12 EDC 12410	03/27/13	

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc	09 EHR 1839	04/26/12	27:01 NCR 87
ALCHEM Inc., v. NCDENR	10 EHR 00296	02/05/13	
Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
ALCHEM Inc., v. NCDENR	10 EHR 05463	02/05/13	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99
Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
Friends of the Green Swamp and Blue Ridge Environmental Defense League, Inc v. DENR Division of Waste Management and Waste Management of the Carolinas, Inc., d/b/a Waste Management of Wilmington	11 EHR 12185	08/08/12	27:12 NCR 1224
Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Ik Kim IT and K Enterprise v. DENR	11 EHR 13910	11/06/12	
Edward Dale Parker v. DENR	11 EHR 14390	02/22/13	
Janezic Building Group LLC v. Orange County	12 EHR 01104	12/03/12	27:21 NCR 2008
Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
NC Coastal Federation, Cape Fear River Watch, PenderWatch, and Conservancy Sierra Club v. DENR, Division of Air Quality and Carolina Cement Company, LLC	12 EHR 02850	09/23/13	
James D. Halsey v. DENR, Division of Environmental Health	13 EHR 10216	06/05/13	
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DIVISION OF EMPLOYMENT SECURITY

Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
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DEPARTMENT OF INSURANCE

Megan L. Hartzog v. NC State Health Plan	12 INS 00364	05/06/13	28:07 NCR 691
Jan Fjelsted v. NC State Health Plan	12 INS 04763	01/16/13	28:07 NCR 706
Susan E. Montgomery Lee v. State Health Plan; Blue Cross Blue Shield	12 INS 10145	03/25/13	
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Jean Kirkland and John Ritchie v. State Health Plan	12 INS 11957	04/11/13	

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Richard Lee Taylor v. City of Charlotte	11 MIS 14140	05/15/12	
Lloyd M Anthony v. New Hanover County Sheriff Office	12 MIS 01803	06/07/12	
Jackie Poole, Jamyan Brooks v. Orange County	12 MIS 02379	11/09/12	27:21 NCR 2016
David L. Smith v. NC Innocence Inquiry Commission	13 MIS 12404	06/19/13	28:10 NCR 1160
Thomas Franklin Cross, Jr. v. NC Innocence Inquiry Commission	13 MIS 12642	06/19/13	28:10 NCR 1160
Moses Leon Faison v. NC Parole Commission, Paul G. Butler, Jr.	13 MIS 13004	09/05/13	

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Paul Michael Simmons v. Luis Hernandez, Forest City Police Department	13 MIS 14274	11/13/13	
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Amanda Thaxton v. State Ethics Commission	09 OSP 03754	09/20/12	
Jacob W. Scott v. Department of Crime Control and Public Safety Alcohol Law Enforcement	10 OSP 04582	07/19/13	28:12 NCR 1419
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 05424	03/28/12	27:01 NCR 119
Stephen R. West v. The University of North Carolina at Chapel Hill	10 OSP 01567	11/26/12	27:21 NCR 1959
Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
Teresa J. Barrett v. DENR	10 OSP 04754	10/22/12	27:16 NCR 1726
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
Valerie Small v. NC Agricultural and Technical State University	11 OSP 03245	05/24/13	28:11 NCR 1231
Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
Brenda D. Triplett v. DOC	11 OSP 4605	03/20/12	27:06 NCR 669
Tommie J. Porter v. DOC	11 OSP 5352	06/05/12	27:06 NCR 678
Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
Kimberly F. Loflin v. DOT, DMV	11 OSP 06762	07/10/12	
John Hardin Swain v. DOC, Hyde Correctional Inst.	11 OSP 07956	04/23/12	27:06 NCR 693
John Fargher v. DOT	11 OSP 08111	04/18/12	
Maria Isabel Prudencio-Arias v. UNC at Chapel Hill	11 OSP 09374	03/28/13	28:02 NCR 99
Gerald Price v. Department of Agriculture & Consumer Services, Standards Division	11 OSP 09588	02/27/13	28:02 NCR 139
Tammy Cagle v. Swain County, Department of Social Services	11 OSP 10307	09/26/12	27:16 NCR 1747
Doris Wearing v. Polk Correctional Inst. Mr. Solomon Superintendent	11 OSP 11023	10/19/12	
Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
Derick A Proctor v. Crime Control and Public Safety, State Capital Police Division	11 OSP 11499	12/06/12	
David B. Stone v. Department of Cultural Resources	11 OSP 11926	08/10/12	27:12 NCR 1245
Pattie Hollingsworth v. Fayetteville State University	11 OSP 12152	02/27/13	
William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
Terrence McDonald v. NCSU	11 OSP 12682	05/21/12	
Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
Phyllis Campbell v. DOC	11 OSP 13381	08/27/12	27:15 NCR 1579
Thomas W. Wheeler v. NC Department of Transportation	11 OSP 13440	12/03/13	
Raeford Quick v. DOC	11 OSP 14436	05/22/12	
Tawana McLaurin v. DOC	12 OSP 00116	08/21/12	
Vera Ricks v. NC Department of Public Safety	12 OSP 00246	03/28/13	28:07 NCR 714
Marva G. Scott v. Edgecombe County Social Services Board (Larry Woodley, Fate Taylor, Ernest Taylor, Viola Harris and Evelyn Johnson), Edgecombe County Commissioners and Edgecombe county manager, Lorenzo Carmon	12 OSP 00430	12/20/12	27:22 NCR 2152
Ladeana Z. Farmer v. Department of Public Safety	12 OSP 00460	04/10/13	28:06 NCR 564
Rhonda Whitaker v. DHHS	12 OSP 00519	05/17/13	28:08 NCR 766
Thomas B. Warren v. DAG, Forest Services Division	12 OSP 00615	11/27/12	
Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Sherry Baker v. Department of Public Safety	12 OSP 00841	10/09/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
Cynthia Moats v. Harnett County Health Dept	12 OSP 01536	08/10/12	
Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
John Medina v. Department of Public Safety	12 OSP 01940	01/30/13	28:08 NCR 783
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
Ricco Donnell Boyd v. NC A&T University	12 OSP 02219	01/31/13	
Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
Larry Batton v. Dept of Public Safety	12 OSP 02320	02/18/13	
Sandra Kay Tillman v. County of Moore Department of Social Services, John L. Benton, Director	12 OSP 02433	07/29/13	
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12	
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12	
Donnette J Amaro v. Onslow County Department of Social Services	12 OSP 02578	11/21/12	
Ronald Gilliard v. N.C. Alcoholic Law Enforcement	12 OSP 02618	09/26/12	

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Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12	
Katie F. Walker v. Rutherford County/Department of Social Services	12 OSP 03041	03/15/13	28:08 NCR 791
Norlishia Y. Pridgeon v. Department of Public Safety, Division of Adult Correction and Department of Corrections	12 OSP 03150	08/02/13	
Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12	
Ronald Wayne Crabtree Jr., v. Butner Public Safety	12 OSP 03846	10/09/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 04107	10/22/12	
Michelle Houser v. Department of Public Safety, Division of Prisons	12 OSP 04826	09/26/12	
Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Jonathan Ashley Stephenson v. UNC-Chapel Hill	12 OSP 05223	01/15/13	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
Edwards Robert Esslinger v. DPI	12 OSP 05459	09/12/12	
Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 06309	10/22/12	
Paul Jeffrey Treadway v. Department of Public Safety, Division of Adult Supervision	12 OSP 06634	12/18/12	
Darrion Smith v. Murdock Developmental Center and the NC DHHS; Ricky Bass v. NC DHHS; Darrion Smith v. NC DHHS	12 OSP 06780	07/24/13	28:12 NCR 1472
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Asia T. Bush v. DOT	12 OSP 06980	04/23/13	28:03 NCR 293
Bonnie S. Rardin v. Craven Correctional Institution, Department of Public Safety	12 OSP 07443	04/19/13	
Shirley M. Parker v. Department of Public Safety Caledonia Correctional Institution	12 OSP 07617	04/04/13	
Christopher Rashad Pippins v. PCS BOE PCS Facility Services	12 OSP 07744	10/18/12	
Wanda Edwards v. UNC School of Dentistry	12 OSP 07851	01/09/13	
Gary C. Clement v. DHHS	12 OSP 08105	11/14/12	
Oswald Woode v. DHHS, Central Regional Hospital	12 OSP 08664	01/09/13	
Gary C. Clement v. DHHS	12 OSP 09581	01/04/13	
Roseth Kyremartin v. DHHS	12 OSP 10209	06/21/13	28:11 NCR 1278
Daniel J. Dugan, Jr. v. UNCW	12 OSP 10620	10/15/13	
Judy Knox v. UNC at Charlotte	12 OSP 10856	07/11/13	
Sherry Young v. DHHS, Division of Child Development and Early Education	12 OSP 11078	10/07/13	
Anesa Trevon Lucas v. NC Division of Child Development and Early Education	12 OSP 12082	11/04/13	
David Ryan Brown v. Department of Public Safety, Division of Community Corrections	12 OSP 12179	10/08/13	
David A. Tuno v. Lincoln Correctional Center	13 OSP 00031	09/10/13	
Jeffrey Wayne Ellis v. North Carolina A & T University	13 OSP 09564	08/08/13	
Kimberly D. Hinton v. Department of Transportation	13 OSP 09565	09/06/13	
Wiley Daniel Thomas v. Department of Transportation, Division of Motor Vehicles	13 OSP 10577	10/07/13	
Helen Karen Radford v. Buncombe County Department of Health	13 OSP 10629	09/27/13	
Alphonsus U. Nwadike v. DHHS, Central Regional Hospital (Butner)	13 OSP 10977	07/15/13	
Kevin D. Terry v. State of NC Office of State Controller	13 OSP 11088	07/15/13	
Lionel James Randolph v. NC Office of State Personnel	13 OSP 11170	07/15/13	
Cynthia C. Goodwin v. Department of Revenue	13 OSP 11232	08/02/13	
Robert E. Hines v. Department of Transportation	12 OSP 11278	09/13/13	
Natalie Wallace-Gomes v. Winston-Salem State University	13 OSP 11293	08/13/13	
Joann C. Pearson v. UNC-Charlotte	13 OSP 11562	09/17/13	
Rotisha Hawthorne v. Department of Safety (Polk)	13 OSP 12639	09/05/13	
Stephanie K. Willis v. Montgomery County Board of Education	13 OSP 13012	08/07/13	
David M. Andrews v. Department of Transportation, Technical Services-Client Support	13 OSP 15144	10/03/13	
Luchana A. Woodland v. Fayetteville State University	13 OSP 15499	09/11/13	
Mary E. Wilson v. Mecklenburg County, NC	13 OSP 15512	10/03/13	
Joy Diane Felton v. J. Iverson Riddle Developmental Center and DHHS	13 OSP 17603	11/13/13	

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Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
James Cooper III Sui Juris v. Department of Revenue	11 REV 13792	11/14/12	
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
James M. Slowin, REFS LLC v. Department of Revenue	12 REV 02218	02/11/13	28:06 NCR 583

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William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
Noah D. Sheffield v. Department of Revenue	12 REV 07074	11/14/12	
Jenny M. Sheffield v. Department of Revenue	12 REV 07075	11/14/12	
Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
Sybil Hyman Bunn v. Department of Revenue	12 REV 08973	05/06/13	
William Scott v. Department of Revenue	13 REV 06646	04/29/13	28:06 NCR 593
Chase Auto Finance Corporation v. Department of Revenue	13 REV 10115	06/19/13	28:10 NCR 1164
Olivier N. Sayah v. Department of Revenue	13 REV 13956	11/19/13	
Joseph Lewis Moore v. Department of Revenue	13 REV 17720	11/13/13	
Tavious Montrell Hinson v. Department of Revenue	13 REV 17727	11/26/13	

OFFICE OF SECRETARY OF STATE

Michael Anthony Farrow-Bey v. Department of Secretary of State	12 SOS 07865	12/14/12	
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12	
Bethany Thompson v. Department of the Secretary of State	12 SOS 11648	05/02/13	
Holley Shumate Knapp v. Ann Wall, General Counsel Department of the Secretary	13 SOS 09039	05/23/13	
Trvuun B. Alston v. Department of the Secretary of State	13 SOS 10113	07/08/13	
John Claude Barden v. Department of the Secretary of State	13 SOS 12528	10/03/13	

UNC HOSPITALS

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12	
Nephatiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12	
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12	
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12	
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12	
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	
David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13	
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12	
Tracy A. Spaine (Currier) v. UNC Hospitals	12 UNC 06822	11/06/12	
Candis Miller v. UNC Hospitals	13 UNC 10374	08/19/13	
Deborah Wright v. UNC Hospitals	13 UNC 10574	11/15/13	
Chiduzie Oriaku v. UNC Hospitals	13 UNC 11434	10/07/13	
Julie C. Rose v. UNC Hospitals	13 UNC 12019	11/05/13	
Jason Paylor v. UNC Hospitals Patient Accounts	13 UNC 12636	07/26/13	
Robbyn L. Labelle v. UNC Hospitals	13 UNC 13685	11/18/13	
Pamela Klute v. UNC Hospitals	13 UNC 15828	11/25/13	

WILDLIFE RESOURCES COMMISSION

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission	12 WRC 07077	11/13/12	27:22 NCR 2165
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/19/2013 10:51 AM

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10OSP04582

JACOB W SCOTT PETITIONER, V. NC DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY ALCOHOL LAW ENFORCEMENT RESPONDENT.	PROPOSAL FOR DECISION
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This contested state personnel case was heard before J. Randall May, Administrative Law Judge, on November 6-9, 2012, in Wilmington, North Carolina; November 10, 2012, in Raleigh, North Carolina; and April 9, 2013, in Wilmington, North Carolina.

APPEARANCES

Petitioner: J. Michael McGuinness
The McGuinness Law Firm
Elizabethtown, N.C.

Respondent: Tamara S. Zmuda
Hal S. Askins
N.C. Attorney General's Office
Raleigh, N.C.

ISSUES

1. Whether Respondent has proven that there was just cause to terminate Petitioner's employment in light of the totality of the relevant facts and circumstances based on a complete objective investigation regarding Petitioner and the sole alleged charge against him as reflected in the dismissal letter; or, was Respondent's termination of Petitioner arbitrary, capricious, and without just cause?

2. Whether a single instance of voluntarily disclosed untruthfulness about an incident not involving a case, constitutes just cause for termination where the employee was suffering adverse effects from post-traumatic stress disorder, irritable bowel syndrome and other stressors?

EXHIBITS

- Petitioner: 1, 2, 3 (excluding letter from J. Edwards), 4, 5, 6 (excluding the redaction beginning with the line "J. S." on page 7), 7A, 7B, 8, 9, 10, 11, 12, 13, 16, 17, 22A, 22B, 25, 26A, 26B and 29.
- Respondent: 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 17, 18, and 26 were admitted as evidence based on the April 9, 2013 ruling concerning the expert testimony of Dr. Zarzar.

It is noted that all evidence, whether offered or admitted, is subject to the Protective Order of June 28, 2011.

PRE-TRIAL MOTION AND OFFER OF PROOF

The first matter addressed was the Petitioner's motion *in limine* pursuant to N.C.G.S. 126-35 to limit the Respondent's evidence to what was stated in the dismissal letter. This requirement is also codified as an SPC regulation; *see* 25 N.C.A.C. 1J.0613.

Accusations not specifically set out in numerical order in the dismissal letter may not be used to support any additional assertions of unacceptable personal conduct or unsatisfactory job performance. "Failure to provide names, dates, or locations makes it impossible for the employee 'to locate [the] alleged violations in time or place, or to connect them with any person or group of persons' " *Id.*, thereby violating the statutory requirement of sufficient particularity. *See Id.*; *Sherrod v. N.C. Dept. of Human Resources*, 105 N.C. App. 526, 532, 414 S.E.2d 50, 54 (1992); *Meyers v. Dept. of Human Resources*, 92 N.C. App. 193, 197-198, 374 S.E.2d 280, 283 (1988), *aff'd*, 332 N.C. 655, 422 S.E.2d 576 (1992); *Leiphart v. N.C. School of the Arts*, 80 N.C. App. 339, 351-352, 342 S.E.2d 914, 923 (1986); *Owen v. UNC-G*, 121 N.C. App. 682; 468 S.E.2d 813 (1996), *review dismissed*, 344 N.C. 731, 477 S.E.2d 33 (1996). This notice is a statutory right of due process for career state employees in non-exempt positions. *Leiphart, supra.*; *Owen, supra.*

After hearing arguments on the written motion, the Court granted the motion *in limine* in part and explained: "What I'm ruling is that the *Leiphart* case - - that the State may not bring in additional reasons for discharge, or as stated herein, search for additional subsequent to the letter of discharge dated May the 25th." T16

By limitation, this ruling prohibited the Respondent from attempting to supplement Petitioner's letter of discharge by offering additional evidence of untruthfulness. However, it did not preclude the attempted impeachment, if such were to occur, of Petitioner as to his credibility.

After this ruling, in his opening statement, counsel for Petitioner argued that Petitioner had "(N)ever been disciplined before in his law enforcement career." T46 This was countered by the statement of Respondent's counsel who stated: "And in his opening statement, Mr. McGuinness says that this person has never been disciplined ever in the past, and I think the

record will indicate, if I'm able to develop this very slightly again, that that is not, in fact a true statement and a misrepresentation." T73

With this "road map" of the case, the evidence commenced.

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 admissible record in this proceeding; the undersigned makes the following findings of fact. In making these findings of fact, the undersigned has weighed all the evidence, or the lack thereof, 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.

FINDINGS OF FACT

1. Jacob Scott was born on January 3, 1975, and was 37 years old at the time of trial. T174. Scott grew up in Duplin County and completed high school in 1993 at Southern Wayne Senior High School. T174. Scott has been married for over 14 years to Dawn Scott and they have three children. T177

2. After high school, Scott completed a two year mission in New Zealand for his church, during 1994 to 1996. T175. After returning home from his mission work in New Zealand, he attended and completed the Basic Law Enforcement Training at Pitt Community College. T176. Scott earned a law enforcement certification and began serving with the Mount Olive Police Department in 1996. T176. While with the Mount Olive Police Department, Scott earned a promotion to Sergeant in 1998. T177. Scott has served in law enforcement for over 16 years. T177. While serving with the Mount Olive Police Department, Scott was not subjected to any disciplinary action. T178

3. Scott began service with ALE in 1999. T177. In addition to his service as an ALE Agent, Scott also served on the ALE Basic School staff, and was a certified instructor. T181

4. Scott earned awards for various types of service. T181. Scott earned an award from *Mothers against Drunk Driving* and he received the *ALE Agent of the Year* award for three years. T182. Scott was involved with work with the Special Olympics program. T182

5. Scott earned a promotion to Advanced ALE Agent, approximately in 2009. T182. In 2010, Scott was successful in passing the phases in the promotional process and was placed on a list of eligible candidates to be promoted to assistant supervisor. T183

6. Scott was never served with any type of written warning. T183. From the personnel file and documents that were disclosed, there was no written warning. T183

7. Petitioner's Exhibit No. 2 contains accurate copies of numerous awards and plaques earned by Scott. T184 Petitioner's Exhibit No. 10 consists of accurate copies of Scott's more recent performance evaluations conducted by his supervisors and agency officials. T184

8. Ted Carlton is the supervisor of District Three, Wilmington. T66 Scott has known Carlton since 2003. T66 Carlton gave Scott good reviews and never disciplined him for anything. T68

9. Scott is currently employed as a Brunswick County Deputy Sheriff. T186 Scott has been most recently involved in drug enforcement work for the Sheriffs Department. T186 Scott serves in Vice and Narcotics Division. T62 Scott is also a county ABC officer, with dual status. T62-63 As a part of his duties with ALE, Scott also became a Training Officer. T64

The 2009 Automobile Accident Fatality

10. In 2009, Scott was involved in an automobile crash involving a single car and a pedestrian, where the pedestrian was killed. T69 Scott was placed on medical leave. T69

11. On June 8, 2009, around 9:30 p.m., Scott was involved in a fatal automobile accident. T186-187 Scott was traveling on a rural highway at dark and there were no street lights. T187 Scott heard a loud thud on the right passenger side of his patrol car, and he immediately stopped to examine. T187 Scott looked and saw what appeared to be blood, hair, and skeletal fragments on his patrol car and on his windshield. T187

12. Scott eventually saw a body lying on the shoulder of the highway and Scott observed that "the whole complete left side of his head was missing." T188 The whole left side of the decedent's face was gone and the head and face was substantially damaged. T189

13. When asked to explain how he felt at the time of discovering that someone had been killed that night, Scott explained: "It was the worst feeling. I've never felt anything like it since or before. It's the worst feeling I've ever felt in my life. My heart dropped. You know, kind of in a panic mode." T190 Scott further observed that the state that he found the body in, no clothes on and only in his underwear, was also throwing him for a loop as well. T190

14. Counsel for the Respondent observed on the record that: "We're not even contesting whether or not he had PTSD or not as a result of this ..." T191

15. Scott went out on sick leave for a period of time after the accident. T191 Scott eventually returned to his full time service with ALE and it seemed that he was continuing to get better. T192

16. Scott was referred to Dr. Dan Chartier for assistance. Scott reported to Dr. Chartier that he was "very distressed" and that he was experiencing sleep disturbance. T194 Petitioner's Exhibit No. 12 is true and accurate copies of records provided by Dr. Chartier about Scott's consultation with him in June, 2009. T192

17. Later in the fall of 2009, Scott began to experience other medical difficulties, which resulted in acid reflux and irritable bowel syndrome. T195 Acid reflux was a new condition for Scott following the accident in June, 2009. T195 Scott also had not previously had symptoms or been diagnosed with irritable bowel syndrome prior to the automobile accident. T196 Scott was prescribed medication to treat the irritable bowel syndrome problem. T196

18. Scott explained how he was “having flashbacks of that thud against my windshield, the visualization of a body laying on the side of the highway ...” T200 Scott acknowledged that his behaviors were causing frustration and difficulty with his wife, his marriage, and his family. T200 Scott’s behavior as related to dealing with his wife and children and matters around his home changed in the fall of 2009. T197 Scott explained how he distanced himself from his family. T198

Course of Events in 2010

19. Scott explained that the April 2, 2010, letter from Ms. Norma Howard caused him to relive the experience of the accident. T201 Scott was trying to put the whole accident behind him, and the letter was another one of the factors that kept bringing it back up and throwing it in his face. T201 As a result of the communication from the estate, that caused Scott to experience more worry and fear. T202-203

20. In March, 2010, Scott was assigned a trainee, Meredith Scottie Price. T65-66 Scott’s wife, Dawn Scott, discovered a number of text messages between Scott and Price, and accordingly became suspicious that that there could be some type of affair. On May 10, 2010, Scott contacted his supervisor, Ted Carlton, after he received a call from his wife. T70 Scott met with his wife in the parking lot of a local district office, where she had phone records. T70 Scott’s wife referred to the amount of text messages from Scott’s cell phone to Price’s cell phone. T71 Following that encounter, Scott informed his supervisor, Ted Carlton, that he was being accused of something that was not going on. T71 Dawn Scott was “pretty hot” about the texts. T71

21. Respondent attempted to develop a line of questions regarding an allegation from 2002 involving marital discord between Scott and his wife. T71-73 The Court sustained the objection to the question about what happened, if anything, seven years ago. T74 Respondent requested an opportunity to submit an offer of proof, which continued episodically throughout much of this trial. T74

22. After Scott’s wife confronted him about the possibility of inappropriate activity, Scott and Price met with Ted Carlton to make him aware of the situation. T78-79 Scott’s wife obtained the relevant phone records and offered them to Carlton, but he declined. T82

23. Scott and his wife had a meeting with Ted Carlton at the district office after lunch. T85 Scott was authorized by Carlton to go home and clear the air with his wife, and during that travel, the windshield in his vehicle was cracked. T89 Scott informed Carlton that a rock flew up and cracked his windshield. T89

24. Scott explained that he was being accused of an inappropriate relationship with a trainee; he was building a house at the time; he had been undergoing stress related to the fatal motor vehicle accident, and had received correspondence from attorneys regarding the accident. Scott consequently "snapped on the telephone. That was a trigger. That was a breaking point in my life." T90

25. Scott explained that he got upset on the phone and threw his phone on the dash and it hit the windshield and cracked it. T90

26. Scott voluntarily told Diane Chapin, an ALE polygrapher, about the misrepresentation about the service of the cracked windshield. T99 Scott informed Diane Chapin that he had been untruthful about the windshield. T110-111 Scott was forthcoming with Chapin and acknowledged the misrepresentation. T114

27. Scott had the windshield repaired on his own; he was not instructed to have it repaired. T100

28. The allegation against Scott was that he provided untruthful information about how the windshield on his ALE vehicle was damaged. T112

29. Scott had discussions with Ken Pike about what happened. T116-117 Scott explained to Pike about his stress from the automobile accident and the letter that had been sent from the deceased's mother. T117 Scott told Pike about his living conditions at home, building a house, that all of that, and the totality of all of that, was why Scott misrepresented himself. T117

30. Regarding Scott's predisciplinary conference, Scott presented information to Bill Senter including a doctor's name and contact information and approval to obtain medical records through HIPPA. T120

31. Scott explained how his medical condition "clouded my judgment." T148 Scott observed that he was not truthful due to his inability to think due to illness, PTSD, fear, panic, complications by physical illness, and irritable bowel syndrome, and that IBS causes sufferers very visceral anxiety. T150-151

32. Scott explained how he had obtained a series of help from doctors. He was followed over a year by Dr. Howard Grotzky; he was put on medication and was seen regularly until his symptoms were controllable without medication. T152

33. Scott conferred with Dr. Grotzky, who was a psychologist available as a result of Scott's wife's employment. T203 Petitioner's Exhibit No. 13 is a true and accurate copy of the treatment summary prepared by Dr. Grotzky. T203-204

34. Dr. Grotzky stated that Scott "was a classic case of post-traumatic stress disorder." T210 Dr. Grotzky made recommendations to Scott regarding a treatment plan. T210 The treatment plan consisted of visits to his office, as much as twice a week, as well as seeing a

physician to obtain medication for the anxiety and the IBS that Scott was suffering. T210 A physician, Dr. Vreeland of the Wilmington Health Associates, recommended medications to help with his anxiety. T210 Scott attended the counseling sessions as recommended by Dr. Grotsky. T210

35. When Dawn Scott discovered the cell phone records and became suspicious regarding the quantity of calls, she was angry and upset. T221 As Scott continued to have conversations with his wife regarding her accusations and suspicions, those conversations became arguments. T222 The arguments between Scott and his wife were stressful and frustrating. T222

36. As noted in the record, Dawn Scott was never called as a witness for either party in this proceeding.

37. From what was shown in this proceeding, Scott's relationship with Agent Price was appropriate and professional and there was no interest in any type of personal relationship. T219

38. When Scott threw his telephone and cracked his windshield, the discussions prior to that involved his wife's concerns and beliefs of the alleged improper relationship. T222 Scott's wife elevated her voice loudly in that discussion. T223 That discussion was a "heated argument" immediately prior to the throwing of the phone. T223

39. At the time during the heated argument and immediately prior to throwing the phone, Scott was feeling "anger, frustration, hurt, just a whole combobulation of feelings all at one time." T223 Scott was embarrassed by the incident. T223

40. The allegation that was the subject of Diane Chapin's polygraph test to Scott was the alleged inappropriate relationship with Price. T225 Chapin did not pose any question to Scott at all relating to the windshield or how it was cracked. T225

41. Following the administration of the test, that is when Scott reported to Diane Chapin that he had in fact been untruthful in the statement to Carlton about the source of how the windshield was cracked. T225 Scott voluntarily made that statement of acknowledgment to Chapin of his own free will. T225

42. In the predisciplinary conference with Senter, Scott indicated that he had been to the doctor for purposes of his condition and had been diagnosed. T226 Scott offered to try to obtain that information so that Senter and Director Ledford could consider that. T226 Scott signed a HIPPA waiver at Dr. Grotsky's office allowing ALE access to those records. T227

43. On May 10, 2010, at the time that Scott made the untruthful statement to Carlton, his mental health was in jeopardy. T228 Under ordinary circumstances, Scott would not have made a misrepresentation about anything to his supervisors. T228

44. Scott was questioned about an investigation conducted in part by Richard Griffin and Scott remembered that investigation. T160 However, Scott had not previously received a copy of the investigation and it *was not* in his personnel file. T160

Mike Purdue

45. Mike Purdue testified on behalf of Scott. T250 Purdue owns the Chick-Fil-A on Oleander Drive. Purdue met Jacob Scott around 2003-2004 when Purdue's and Scott's children were involved in dancing together. T252 Purdue had seen Scott and his family a lot over the years since 2003. T252 Purdue was involved with Scott in other activities, such as the Special Olympics, trying to raise money for children. T253

46. Purdue observed Scott being involved in dance recital activities with his children where Scott would be with his children all day, which really impressed Purdue regarding Scott's activities as a father. T255

47. Purdue explained that Scott is "a man of integrity." T256 Purdue described Scott as a "good man of character." T256

48. Purdue discussed with Scott the fatal automobile accident in 2009. T257 Purdue thereafter observed changes in Scott over time. T257 Purdue described that Scott "wasn't himself... He became kind of cold to me..." T258 Scott had gained weight. T258 Purdue observed the changes in Scott were a couple of months after the fatal accident. T258

Ted Carlton

49. Ted Carlton, who is retired from the Alcohol Law Enforcement Division with 30 years of service, testified. T308 His last position was Special Agent in charge of the Wilmington office, which was the top supervisor in that office around 2000, and he retired in 2010. T308-309

50. Carlton was Scott's supervisor from around 2003. T309 Carlton described Scott as a "good agent." T311 Carlton described Scott as "a good police officer. He's got police officer traits." T314

51. Scott was out of work for three or four weeks following the fatal accident. T314 Weeks after the incident, after Scott returned to work, Carlton described how he seemed to be a little distraught. T322

52. In May 2010, Carlton recalled a call from Scott saying that his wife was accusing him of having an affair with Special Agent Price. T327 Carlton had a discussion with Scott and his wife. T330

53. A while after the meeting and conversation, Scott telephoned Carlton and said that a rock had flown up and hit his windshield. T330 Scott later called Carlton and told him that he had been untruthful about the windshield incident. T338 Carlton explained that it was a shock to him "over something such as a windshield to be untruthful about." T340

54. Carlton was asked whether he considered Scott to be a truthful person and he responded "absolutely." T333-334 Carlton described Scott as "very professional." T335

55. Carlton explained: "Jake was the best." T350

56. Carlton explained how he "made numerous phone calls to Deputy Director Page on Jake's behalf. I fought very hard to keep him..." T344

57. Carlton made recommendations regarding whether any discipline should be administered to Scott. T347 Carlton explained: "I would not have fired him." T347 Carlton explained that Scott had "given ALE good service. He's a good agent, and I would not have fired him..." T348

58. Carlton described Scott as very much an effective and efficient law enforcement officer. T350 Carlton found Scott to be consistently reliable. T350 Carlton found Scott to be a hard worker and had a good solid work ethic. T350 Scott had very good skills in the technical knowledge of his job. T350 Scott's reputation amongst his colleagues was very good to excellent. T351

59. Carlton reaffirmed that Scott was "distracted" about the fatal accident. T351 After a period of time, Scott seemed to be coming out of that grief. T351

60. Carlton explained that Scott's involvement in the fatality was "one of the most traumatic instances that I had as a supervisor..." T355

61. Carlton acknowledged that Scott had voluntarily reported that he had voluntarily disclosed to the agency that he had misrepresented about the source of the crack in the windshield. T358-359

62. Carlton gave a positive reference of recommendation to the Brunswick County Sheriff's Department for Scott. T359 Carlton would not have terminated Scott under the circumstances. T348

63. This witness was knowledgeable, objective, and impressed the undersigned with his credibility and personal knowledge of the Petitioner.

Reuben Young

64. The next witness was Reuben Young, Secretary of the Department of Public Safety. T274 Young reviewed all of the documents attached to the Employee Advisory Committee Report. T279 He considered the document entitled "Human Growth and Training Associates." T279 Young testified that the medical report from Human Growth and Training Associates "was a valuable document in terms of giving me insight with regard to some of the challenges that he was facing..." T279

65. Young had not seen Scott's personnel file. T285 Young acknowledged that Scott was "an employee of ALE, and a - - from a larger perspective, an employee of the Department of Crime Control and Public Safety." T285

66. The ALE Director is the person with the exclusive authority to initially make disciplinary decisions. T286 Young's role as the Secretary of the Department was that of an appellate review role. T286 When Young conducts a review and analysis of an employee appeal, the employee does not come and meet with Young. T287 There would also not be any communication by way of telephone or otherwise. T287

67. Young did not review Scott's personnel file. T291 Young had the authority to review the personnel file, which could have been available to him had he chosen to review it. T292

68. With regard to the underlying investigation, Young testified that "I don't know that I knew what the subject of the investigation was ongoing at the time." T292

69. Young was aware that the Agency elected to use polygraph examinations for two employees. T297 However, Young acknowledged that he didn't know what the subjects of the polygraph examinations were. T297

70. Exhibit No. 7 is an affidavit from Scott's wife, Dawn Scott, that Young reviewed and considered as a part of his analysis and decision. T298

71. Young acknowledged that the report from a licensed psychologist and the three-page affidavit from Scott's wife were considered as "some evidence" regarding Scott's medical and mental health. T299

72. Young acknowledged that Dr. Thomas Griggs has been an on-staff physician for the Department of Crime Control & Public Safety. T301 Young has found Dr. Griggs to be a very capable and qualified medical doctor. T301 Dr. Griggs is available for management officials to confer with if they need information about medical matters. T301□302

73. After Young read Dr. Grotsky's report, he did not have any communication with Dr. Griggs seeking any education or opinions from him. T302 Young had concern that Dr. Grotsky's report did not address the question of the causation of Scott's condition and behavior; however, the Department did not attempt to utilize some other doctor or otherwise address the causation issue. T302

74. Young agreed that the medical and mental health condition of an employee is relevant in considering whether there is just cause for discipline in some cases. T304 Young acknowledged that from Dr. Grotsky's report, one cannot tell if Scott had a moderate, severe, or light case of post-traumatic stress disorder. T304

Kendall Pike

75. Kendall Pike testified. T366 Pike has been employed with ALE and has served in the Professional Standard Section for a little over four years. T367

76. Pike described that he opened an inquiry regarding the allegations made by Scott's wife about Scott and his female trainee, Meredith Price. T370 Pike explained the polygraphing process, and that Scott was requested to take a second polygraph. T381-382

77. When Pike discussed with Scott what had occurred, including the misrepresentation about the windshield, Scott acknowledged how sorry Scott was for that and he talked about the stress that he was under. T385 Scott talked about the stress that he was under when he threw his phone, and he told Pike about the letter that the mother of the person involved in the accident had sent him. T385

78. Pike has generally respected Scott's work for ALE. T389 Pike has known Scott to be a good, hardworking and effective Agent for ALE. T389 Pike described how Scott was a capable supervisor. T390 Pike explained that Scott "appears to be a good person..." T390

79. Pike was present in a meeting that was tape-recorded with Page, Price, and Director Ledford where they had a general discussion and interview of Price about her response to the polygraph. T397 This meeting was after the second polygraph examination and there was more discussion needed with Price. T398

80. Pike read the transcript of the discussion between Director Ledford, Price, Page, and Pike. T415 Among other things, Pike stated to Price that he did not even need a polygraph examiner to read her body language to tell that there was something that she was not telling him. T417 Pike explained that "the fear was that she was concealing something..." T418 Pike indicated that they did not know how minor it was, but it was affecting her honesty and truthfulness. T418

81. Pike heard Director Ledford say: "If you were getting discipline, you would not be here, but I'm going to tell you, Agent Price, I'm going to tell you this with all sincerity. I know the polygraph. They ran the polygraph on you. There was - - I observed one and scored both. And they cut you a break. I would have had you more deceptive than what - - than what you were based on the scores. And I saw Brian House's interviews and the way he conducts them. You've got an issue, whatever it is." T419

82. Pike was aware that there was a letter that alleged that Scott had post-traumatic stress disorder from the automobile accident. T423 Director Ledford did not ask or request Pike to obtain a medical or mental health evaluation of Scott to determine the extent of his condition. T423-424 Director Ledford did not ask Pike to do anything to collect information about post-traumatic stress disorder and its criteria and symptoms. T424

83. Pike testified that he knew very little about post-traumatic stress disorder, but knew about it mainly from veterans coming back from war and those kinds of things. T425 Pike acknowledged that he did not do anything to attempt to determine if Scott's condition may have been responsible, in whole or in part, for his behavior. T429

84. Pike acknowledged that Price did not pass either of her two polygraph examinations administered by her employer. T430

Diane Chapin

85. The next witness was Diane Chapin, who was employed with ALE in the New Bern District. T436 Chapin is a polygraph examiner. T437 Chapin, however, is not a certified polygraph operator. T438 Chapin does pre-employment polygraphs and she has done "a few specific-issue polygraphs." T439

86. Chapin was requested by ALE to help determine whether Scott was being truthful regarding the information that he had given concerning the complaint about his relationship with Agent Price. T441

87. Chapin explained that Scott volunteered to her that he had misrepresented about the rock and the windshield. T464

88. This hearing was the first time that Chapin had ever offered any opinions relative to polygraph examinations in any court proceeding. T471 Chapin did not bring her polygraph charts from her examination to Court. T476

89. Chapin acknowledged that the polygraph testing procedure and process used for Scott was not recorded; neither video nor audio recorded. T478 Chapin explained that ALE video and audio records pre-employment tests, but not the "specific-issue tests." T478 Chapin made notes at the time of the polygraph with Scott but she did not have those notes and she did not know where those are at. T483

John Ledford

90. John Ledford, Director of ALE, testified at length. T556 Ledford acknowledged that the complaint under investigation and the basis for termination was whether Petitioner was untruthful regarding how his windshield was broken. T571

91. Ledford testified that once it was confirmed how the windshield was broken, he did not believe that "there was any further thing to investigate." T573

92. Deputy Director Senter held a pre-disciplinary conference for Scott and Senter discussed that conference with Ledford. T575-576 Ledford testified that Senter told him that Scott indicated "he was diagnosed now or suffering from PTSD." T576

93. Ledford explained that "I have to keep an open mind...I am charged with the responsibility of seeking out any information that might be pertinent before I render a decision." T577

94. Ledford contended that he took into consideration that an allegation in 2002 in Fayetteville, involving an alleged affair with a former topless dancer, that Scott had allegedly been untruthful to the investigator. T581-582 This was later contradicted by Ledford. T668 Petitioner objected to this alleged evidence, and the Court observed that, "We're not going to go further on this." T582 Ledford's answer was finished, and Petitioner then further objected and

moved to strike. T583 Petitioner further objected on both statutory and constitutional grounds that the termination letter made no reference whatsoever that anything other than what occurred on May 10, 2010, as a basis for termination. T584-586

95. After considering the additional argument, this Court sustained the objection, but allowed in the additional alleged basis for the termination as an offer of proof. T588 An offer of proof was continued. T600-611 Exhibit No. 20 from Respondent was marked as an offer of proof exhibit. T606

96. Ledford acknowledged that he was not provided any training in connection with his new responsibilities regarding state employees. T620 Ledford was not provided any training program regarding the State Personnel Act. T620 Ledford was not afforded an opportunity to attend the North Carolina State AOMP Program. T620

97. Ledford acknowledged that he came from a background as being a sheriff with a different legal standard. He was not afforded the benefit of any significant or specialized training regarding state employees. T622 Ledford has not been provided any decisions in state personnel cases to review. T622

98. When Ledford was asked about considering an employee's medical condition, if it was important for him to know how bad the condition was for purposes of his decision making, he responded by saying that he would "weigh whatever the individual is under investigation for with whatever the alleged medical condition might be." T628 When again asked if it was important for him to know the magnitude of the medical condition, he answered by saying, "Only if I feel it might be...if the medical condition might have a bearing on the decision I might make, I might - - then, I would consider reaching out for more information." T628

99. Ledford acknowledged that one of the things that he needed to be on the outlook for as a police supervisor, is whether officers are experiencing any illness that can impair their judgment and decision making. T630

100. Ledford specifically acknowledged that "being under undue stress has the ability to...impair almost anyone." T630 This would include impaired judgment and decision making, and impair them in many different ways. T630-631

101. Ledford acknowledged learning from another experience that law enforcement critical incidents can have a tremendous impact on the mental and physical well-being of employees. T632

102. Ledford acknowledged that he could have assigned Pike to retrieve information for him about post-traumatic stress disorder or other conditions. T634

103. Ledford acknowledged that he did not review a medical file involving Scott. T634 Ledford did not ask to review Scott's medical file. T634 Ledford acknowledged that because he did not review the medical file, he really does not know Scott's medical history. T635

104. Ledford recalled that Scott "may have said he'd been to the doctor and said he had PTSD...he did come in and say he had been diagnosed with PTSD..." T640

105. Ledford acknowledged that neither through any of his subordinate executives or anybody else, nobody did anything to determine whether Scott's PTSD condition had any bearing on his conduct or behavior. T641-642

106. When Ledford was asked whether he considered asking for Scott to come in so they could talk about how bad his condition was and how he was doing, Ledford explained that he "did not consider that" because "most everything that we do, as far as disciplinary, is fairly scripted in nature." T642

107. Ledford assumed that he was entitled as the Director of ALE to hold off and have a further investigation conducted. T644 Ledford acknowledged that the purpose of a predisciplinary conference is that if they hear something that they didn't know that might have bearing, they could hold off and further investigate. T644

108. When Ledford was asked about what documents were provided to him when Pike concluded the investigation, Ledford's responses indicated that "there may have been" interview transcripts and other documents, but he could not recall with any certainty. T649 Ledford could not recall whether Pike physically delivered the file to him. T649

109. Ledford was also very uncertain about Scott's personnel file and where it was located. T650-651 Ledford indicated that "I believe" that the personnel file is still maintained in ALE headquarters. T650 However, Ledford further acknowledged that there were personnel files being maintained in the office and personnel files were being maintained at headquarters. T651

110. When Ledford was asked whether he went to the area where the files were maintained to conduct the review, Ledford responded by saying "I could have." T652 Ledford acknowledged that he could not say for sure one way or the other whether the file was brought to him or whether he went to the file. T652

111. When Ledford was asked whether an agent's personnel history by way of annual performance evaluations would be contained in his personnel file, Ledford responded: "No, I believe that's in another file." T660 When Ledford was asked whether, as a part of his review, if he went and accessed and reviewed that file containing the performance evaluations as well, Ledford responded, "I don't remember..." T660

112. When Ledford was asked based on whatever he reviewed, whether he saw commendations, letters of awards and things of that nature, Ledford responded by saying, "I'm telling you it could have been possible, but I don't - - just don't specifically remember awards or - - -" T662

113. Ledford acknowledged that before an ALE agent is hired, the Agency has a pre-hire psychological evaluation conducted. T662 With regard to Scott's pre-hire psychological evaluation, Ledford acknowledged that he would not have reviewed that. T662

114. Ledford testified that the weekly work activity reports of ALE agents, contained in a form known as AL-4, were not maintained in the personnel file. T663 Ledford acknowledged that he did not access any of those weekly reports of Scott. T664 Ledford acknowledged that he did not review the background investigation on Scott. T665 Ledford explained that education related documents regarding an agent would be contained in a training file, which is not in a personnel file. T665-666

115. When Ledford was further asked about the personnel evaluations that he had reviewed involving Scott, Ledford acknowledged that "it may have been as simple as one year...I don't remember that, but I can remember reviewing and that Agent Scott was both a capable agent and was performing satisfactorily." T667-668 Ledford acknowledged that there was no issue with Scott's work performance. T668

116. Ledford acknowledged that in his review, "I did not go back to 2002, no, sir. I'm sure of that." T668 This contradicts Ledford's other testimony that he reviewed the allegation from 2002. See T581-582

117. When Ledford was asked about the allegations from 2002, as to where he saw that, Ledford responded by saying "That's a great question. Somebody may have said he had a prior investigation...But I don't remember specifically who would have said that." T668

118. Ledford acknowledged that a polygraph examination is an investigative tool, which can provide results and when conducted correctly, has a great deal of validity. T676 In the underlying investigation, there were no phone records that Ledford was able to review. T678

119. Ledford was asked whether he reviewed in Scott's personnel file, including the documents relating to Scott's automobile collision in June, 2009, when the fatality occurred causing him to have medical problems. Ledford responded by saying, "I am aware of that. It may have very well been contained within the file, but I just don't know..." T681 Ledford did not recall seeing documents indicating that there was a medical analysis and review of Scott after the fatal automobile accident. T682

120. Ledford identified Petitioner's Exhibit No. 6 as being the copy of the file that Pike prepared for Ledford, dated May 17, 2010. T684

121. Ledford acknowledged that he never said that he reviewed the personnel file "in its entirety." T687

122. Ledford recalled the conversation with Price, Page, Pike, and himself, which went on for about 39 minutes. T698 Ledford reviewed the transcript of the recording of that conversation and the transcript appeared to be a true and accurate copy. T700

123. Ledford acknowledged that he had a situation where he had a young agent that had flunked the polygraph twice by a highly qualified polygrapher, where there was deception indicated on both tests. T702 Ledford acknowledged that he had not already concluded that Price was not going to be disciplined, prior to the conference with her. T704

124. Ledford acknowledged that the agency was attempting to figure out whether or not Price was being truthful during the investigation. T713 Ledford acknowledged that Price failed the polygraph test twice. T713

125. The audiotape of the conversation between Price, Ledford, Page, and Pike was played for the Court. T718-719 The transcript of the conversation is Petitioner's Exhibit 26B.

126. Ledford acknowledged that "a medical condition could cause people to do things that they would not normally do." T721-722

127. Ledford acknowledged that after the information was available about Scott's PTSD, nobody in ALE made an effort to determine whether or not his medical condition had an impact on his behavior. T722

128. Ledford testified that if an agent recorded time on his timesheet where he claimed to be working, but was in fact at his residence, that would constitute untruthfulness. T727

129. Ledford testified that a truthfulness violation can be a termination offense, and that Ledford was not aware of any exceptions to that principle. T728 Ledford testified that everybody that had been charged with truthfulness has either resigned or been terminated. T729

130. In discussing with Ledford the instance of another employee, as reflected on page T729 and otherwise, this agent was punished with a two day suspension, after having been found to have inaccurately recorded time. T729-730

131. Ledford reviewed Petitioner's Exhibit No. 22A regarding this employee. T731 The form AL-48 within that indicates the subjects and offenses and it includes truthfulness. T731-732

132. Ledford reviewed the letter from the acting ALE Director regarding the particular agent, and Ledford acknowledged that it was an example of a misrepresentation and untruthfulness. T733 Ledford acknowledged that he has not re-evaluated that particular instance, where there was a *two day suspension for documented untruthfulness*. T734

133. The next example that was reviewed appeared in Exhibit No. 22B. T740 In this instance, in more than twenty instances, that employee reported under weekly activity reports that did not correspond with the work times recorded, and there was a variance in the work times for more than thirty hours. T741 Ledford imposed discipline in the form of a five day suspension for those twenty instances of misrepresentations. T742

134. Ledford acknowledged that the magnitude of misrepresentations of over thirty hours was very significant. T745 When Ledford was asked whether twenty instances of misrepresentation was also a clear indication that the employee was untruthful, Ledford acknowledged that the truthful information did not get recorded. T746

135. Agent Price received no discipline at all. T749 The lack of any discipline for Agent Price is surprising in light of the evidence that appeared on the tape recording of the discussion and interview of Agent Price, with Director Ledford, Page, and Pike. There, Director Ledford expressed his belief that Agent Scott was being deceptive by withholding information. Exhibit No. 8

136. Ledford acknowledged that he has learned a little bit about PTSD and he explained: *"I would say it could cause behavior inconsistent with what one might normally expect."* T750 (Emphasis added) Despite that, Ledford failed to request any examination or analysis to determine whether Scott's PTSD caused his poor judgment.

137. Ledford acknowledged hearing real horror stories of people with PTSD, going off and killing people. T750 Ledford has heard of people with PTSD committing suicide, shooting things up, and really hurting people and hurting their families. T750

138. Ledford acknowledged that the effects of PTSD can be horrible. T750 However, neither Ledford nor anyone on behalf of ALE made any effort to determine whether the effect of Scott's PTSD was horrible or otherwise.

139. Ledford agreed that it was easy to see how his predecessor, Director Roger Hutchings, came up with his finding of misrepresentation for the employee being analyzed in Exhibit 22B. T810

140. Ledford returned to the employee with over twenty instances of misrepresentations involving thirty hours of time, and where she had no explanation for most of the discrepancies, Ledford acknowledged that, "It caused me great concern." T814 That employee was not polygraphed. T815 Ledford acknowledged that employee did in fact cheat the state. T815

141. Neither of the employees reviewed in Petitioner's Exhibit Nos. 22(A) and 22(B) were terminated for their untruthfulness. Agent Price received no discipline.

Dr. Moira Artigues

142. The next witness called was Dr. Moira Artigues. T845 Exhibit No. 11 contains Dr. Artigues' expert report and her resume. T846

143. Dr. Artigues earned her M.D. degree at the Medical University of South Carolina and she thereafter went to Durham to do a four year psychiatry residency; she stayed an extra year to do a forensic year in psychiatry. T846 Dr. Artigues has been in private practice in Cary since 2000. T846 During her residency, Dr. Artigues moonlighted at the N.C. Department of Correction and she was also affiliated with Coastal Plain Hospital in Rocky Mount as a resident.

T848 Dr. Artigues is Board certified in psychiatry and in forensic psychiatry. T849 Dr. Artigues earned honors and awards and was the Chief Resident at Duke for a period of time. T851

144. Dr. Artigues practice is roughly divided into one half of her time seeing patients and the other half doing forensic work. T851 Dr. Artigues treats patients with post-traumatic stress disorder and other psychiatric illnesses. T851-852

145. Dr. Artigues has been involved as a forensic analyst hundreds of times. T852 Dr. Artigues' forensic practice involves work in both major criminal cases and civil cases. T853 Dr. Artigues has provided expert witness services for United States attorneys in competence and other proceedings in federal courts. T853 Dr. Artigues has been involved in medical research. T854 Dr. Artigues' resume, Exhibit No. 11, is true and accurate except that her teaching as a clinical instructor at Duke University School of Medicine should be until August, 2012. T855 She served as an instructor in the clinical practice course at the Duke School of Medicine from 2003 until August, 2012. T855

146. In her forensic analysis, Dr. Artigues tries to always conduct a clinical interview. T856 Dr. Artigues described how it was very important to actually meet with the person because medical records very commonly do not provide a lot of the data that Dr. Artigues wants. T857 Dr. Artigues further explained that forensic ethics guidelines provide that a psychiatrist should make every effort to meet with the person, and it is considered an ethical violation to not make every effort. T857

147. Dr. Artigues described her method and approach of forensic analysis of Scott. T859-862 Dr. Artigues analyzed numerous records including medical records from Dr. Dan Chartier, Dr. Howard Grotzky, and records from Scott's primary care providers as well. T869 She was able to analyze the report of Dr. Michael Zarzar. T869 Dr. Artigues relied upon information contained in those documents and there were ten listed areas of materials that had been provided to her. T869

148. Dr. Artigues explained that Dr. Grotzky referred Scott to his primary care doctor because he felt that some medication treatment would be useful. T873 Scott was prescribed Zoloft for the symptoms that he was experiencing, and Zoloft is FDA approved for post-traumatic stress disorder specifically. T873 Scott did not tolerate Zoloft very well and the medication was changed to Citalopram, which is Celexa, and she added Clonazepam. T873 Dr. Artigues explained that those were appropriate medicines for symptoms of PTSD and Scott's condition seemed to improve. T874

149. Scott was also diagnosed with Irritable Bowel Syndrome. T878

150. Dr. Artigues explained that PTSD is a syndrome. T876 It is a collection of symptoms that occurs after a person has been exposed to a traumatic stressor. T879 PTSD involves a situation where a person felt that they might be killed, or witnessed the killing of someone, or their body or integrity was threatened; and the person reacts to that with helplessness or horror. T879

151. Dr. Artigues explained that having killed someone, even if it is accidental, certainly reaches the threshold according to the diagnostic manual for a traumatic stressor. T879 She further explained that seeing a deceased body that is mangled would certainly constitute a traumatic stressor, a serious traumatic stressor. T879 Dr. Artigues was tendered to the Court as an expert witness in the field of forensic psychiatry and accepted. T880

152. Dr. Artigues explained that there are certain criteria that must be met in order for a physician to diagnose someone with PTSD. T880 Dr. Artigues explained that on May 10, 2010, Scott was experiencing “full blown post-traumatic stress.” T882

153. Additionally, Scott was experiencing many more stressors that were present in his life in 2010. T885 Dr. Artigues explained that PTSD can be reactivated, or a flare can be occasioned by stress, or anxiety, or something that reminds the person of the traumatic event. T885

154. Dr. Artigues explained that PTSD patients do not experience the symptoms in a straight line. T886 They get worse and better, and worse and better, but stress can be something that triggers the worsening. T886

155. Dr. Artigues explained in detail, reflected in several pages in the transcript, of the various symptoms that Scott was experiencing and his resulting stress. T885-889

156. Dr. Artigues explained that Scott’s post-traumatic stress disorder that he was experiencing in May, 2010, and his Irritable Bowel Syndrome, tend to make each other worse. T889-890

157. Dr. Artigues explained that PTSD can often affect how persons react under pressure and stress. T890

158. Dr. Artigues has seen automobile accidents where there has been significant trauma and especially a death, as common triggering events for PTSD, and she has seen those over time. T891

159. Dr. Artigues explained that PTSD is an anxiety disorder that can impair a person’s functioning and impair a person’s judgment, and Dr. Artigues has observed that over the years to be very true. T892

160. Dr. Artigues explained that PTSD often affects behavior in the sense of making decisions and exercising judgment. T892

161. Dr. Artigues has experienced patients with PTSD who have engaged in seriously irrational or negative behaviors. T892 Those behaviors are common for persons with PTSD. T893

162. Dr. Artigues has an opinion that Scott began to have symptoms of PTSD of a moderate nature, which were impairing his functioning to some degree, impairing his relationships. T893

163. Dr. Artigues explained that a spouse coming into the workplace, meeting with the supervisor, and talking about marital problems past and present, would be stressful. T895 Dr. Artigues observed that according to Ted Carlton's documentation, the meeting with Carlton, Dawn Scott, and Jacob Scott was "very, very stressful." T895 Dr. Artigues explained that "this highly stressful, emotionally charged meeting was what finally broke the camel's back in terms of his acting out on his anxiety and stress..." T896

164. Dr. Artigues testified that the totality of Scott's condition including his PTSD, Irritable Bowel Syndrome, and the other stressors, was a cause or a contributing factor to the misrepresentation that he made on May 10, 2010. T897

165. Dr. Artigues explained that Scott was suffering from PTSD of a moderate nature until stressors entered his life which caused his symptoms to worsen; then, on May 10, 2010, the stress level that he experienced skyrocketed to a point where most would have trouble exercising good judgment. T899 Dr. Artigues explained when you add an anxiety disorder on top of that, that was certainly a situation where it is difficult to maintain good judgment for anyone. T899

166. PTSD may cause impairment in one's job, impairment in relationships, and impairment in functioning; and a lack of judgment can go along with that. T900

167. Dr. Artigues conferred with other treating professionals that treated Scott including Dr. Grotsky, a physician's assistant, and other treating professionals. T925 Dr. Artigues believed that Dr. Grotsky's documentation was pretty good. T925

168. Dr. Artigues further believed that Scott's level of stress at the time was caused by complications of the physical illness, Irritable Bowel Syndrome. T925-926 Dr. Artigues explained that the IBS symptoms caused anxiety. T927

Dr. Michael Zarzar

169. The next witness called was Dr. Michael Zarzar. T961 At the inception of Dr. Zarzar's testimony, the Court ruled in response to Petitioner's motion *in limine* to limit Dr. Zarzar's testimony to that and those matters contained within his report of January 16, 2012. T960-961 The Court ruled that, "I am going to restrict Dr. Zarzar to the four corners of his report..." T961

170. Dr. Zarzar acknowledged that he is not a forensic psychiatrist. T968 Dr. Zarzar is not available for hire in the area of forensic psychiatry and he has never claimed to be a forensic psychiatrist. T968 Dr. Zarzar acknowledged that he has testified in court only four times, two in civil court and two in administrative courts. T970 Dr. Zarzar acknowledged that he has never taken any training that he would need in order to serve as a forensic psychiatrist. T971

171. Dr. Zarzar acknowledged that a doctor cannot diagnose someone without having seen them. T973 Dr. Zarzar also acknowledged that one could not give an effective forensic opinion about someone if he has not seen the particular individual. T973 Dr. Zarzar acknowledged that he received additional documents the day before his testimony. T978

172. In Dr. Zarzar's report, it was indicated that he was asked a question about whether PTSD was a substantial or contributing factor of Scott making an untruthful statement, and Dr. Zarzar answered by saying: "Because I've not interviewed Mr. Scott, I could not directly say with regards to Mr. Scott." T979

173. After hearing the totality of the *voir dire* questions from both parties directed to Dr. Zarzar, the Court observed that, "I can't even understand how he can apply what knowledge he has to this man without having interviewed him." T985

174. The Court initially ruled that Dr. Zarzar's proposed testimony was inadmissible. However, the Court subsequently reconsidered that ruling and admitted the testimony. However, the weight of Dr. Zarzar's testimony has to be carefully assessed in light of his admitted lack of forensic analysis and his lack of any individualized conference with Jacob Scott, the subject of this case.

175. On Respondent's offer of proof with Dr. Zarzar's testimony, he was asked: "Can PTSD cause someone to lie?" T994 Dr. Zarzar answered: "PTSD *in and of itself* would not cause someone to lie." T994 (Emphasis added) Respondent did not probe with Dr. Zarzar other factors, over and above the PTSD, that were present with Scott. Other evidence made clear that Scott was experiencing other medical conditions and other stressors over and above his PTSD.

176. When Dr. Zarzar was asked if PTSD was a substantial or contributing factor of Scott making an untruthful statement, he responded by saying that since he did not interview Scott, then he could not say specifically to him. T998 Therefore, Dr. Zarzar admittedly recognized that he could not opine about the most relevant medical issue before the Court.

177. Dr. Zarzar acknowledged that he was not previously provided the 1999 psychological evaluation conducted on Scott. T1011

178. Dr. Zarzar conceded that: "PTSD can in some individuals lead to impaired judgment." T1013

179. When asked whether automobile accidents resulting in death and bodies that are partially disfigured, as to whether those are known to be some common expected causes of PTSD, Dr. Zarzar answered that any horrific or traumatic event in which there is death, perceived death, or serious injury, could serve as a stimulus, and those "can be the triggering event for PTSD..." T1013

180. Dr. Zarzar observed that PTSD patients may have panic attacks as a symptom of their PTSD. T1015 Dr. Zarzar acknowledged that PTSD can impact judgment. T1016

OFFER OF PROOF RESUMED

Testimony of Jacob Scott

181. The resumption of the questioning of Scott was a continuation of the offer of proof regarding the Court's ruling on the motion *in limine* precluding the allegations from 2002. T1078

182. Scott was asked about being the subject of an investigation in 2002 and he acknowledged that he had been. T1086 Scott explained that he was not previously afforded an opportunity to see any of the investigation until November, 2012, when the parties were initially in court. T1087 When Scott was in court in November, it was the first time that he ever had an opportunity to see that investigation. T1087

183. Scott explained how the document from the 2002 investigation was provided to him on the first day of the hearing of this case. T1093

184. Scott was not charged with any alleged truthfulness violation from the investigation from 2002. T1098 Scott was not subjected to any discipline for any alleged untruthfulness in 2002. T1098

John Griffin

185. The next witness called was John Griffin. T1111 Griffin acknowledged that he believed that Bob Stocks interviewed Scott in connection with the matter in 2002. T1130 Griffin testified that he interviewed Scott on two separate occasions, and there might have been a third interview. T1132 Griffin had not previously been listed as a witness and testified that he was only notified that he would be needed as a witness to his 2002 investigation during the November 2012 portion of this hearing, and that he did not hear from anyone (ALE) about it during the intervening years. T1150

186. Griffin testified that Scott told him that there was *probably* an untruthful statement as to what he said relative to the bingo and that "probably" is a word that Scott used. T1143

187. Griffin did not attend any predisciplinary conference involving Scott in the 2002 matter. T1144 The deputy ALE Director did not ask Griffin to initiate any charge against Scott. T1144

188. Griffin sent his investigation report directly to ALE headquarters. T1144 Griffin explained that he also called Joe Dugdale, the Deputy Director of ALE Operations at the time, about the 2002 investigation. T1146 Griffin's investigative report was sent to headquarters and he provided Dugdale a summary of the investigation. T1147 Griffin in particular told Dugdale what he recalled that he heard about the discrepancy with the bingo. T1147 Dugdale is a lawyer and has been a lawyer for the Highway Patrol for many years. T1147

189. Other than the 16 page report, Griffin has not had the opportunity to review any of the other documents from that investigation. T1148

190. Griffin's investigation was thorough; however, the testimony of many of the civilian witnesses seemed unreliable, subjective, and often untruthful.

191. Griffin was not consulted by anyone about the possibility of a written warning for Scott. T1149

192. Griffin testified that Scott was ultimately truthful with him. T1153

193. In Griffin's conclusion of his report, Exhibit R20, page 462-463, there was no mention of the untruthfulness of Petitioner for which apparently no disciplinary action was ever taken.

194. When Respondent has chosen to take no action on such an allegation of untruthfulness in 2001, it is difficult to assess what if any weight should be given to such a remote statement for purposes of impeachment in this proceeding. Time has left too many unanswered questions regarding this report.

195. Griffin acknowledged that often times in interviews that he will simply not apprehend or understand the exact meaning of a question. T1161

196. No complaint was filed against Scott by Griffin. T1166

197. Neither Griffin nor ALE did anything to retain the underlying documents associated with the investigation consisting of his notes. T1169

ADDITIONAL FINDINGS OF FACT

198. Petitioner's witnesses and evidence was believable and credible.

199. Petitioner earned a very good to excellent record of performance and conduct with Respondent.

200. Petitioner earned a very good reputation including for honesty, integrity, and truthfulness.

201. On March 10, 2010, Petitioner was untruthful to his supervisor about the source of how his windshield was broken.

202. Scott was forthcoming about his misrepresentation and voluntarily disclosed it to an ALE official by his own free will and at a very early stage. There was no investigation of how Scott's windshield was broken. There was no prompting of Scott to address the windshield crack. It appears highly unlikely that Petitioner would have been able to be charged with untruthfulness unless he voluntarily acknowledged the misrepresentation as he did in this matter.

203. Petitioner's misrepresentation was narrow, limited, and not associated with any case or case related matter. It did not cause any injury to Respondent, to any case, or to any person.

204. Petitioner's misrepresentation was not significant or material to any significant matter. The misrepresentation was an extraneous remark that did not make sense because, *inter alia*, it did not afford Scott any self-gain or benefit. Petitioner's early and voluntary disclosure of the misrepresentation is an important consideration.

205. At the time of Petitioner's misrepresentation, Scott was experiencing adverse effects from post-traumatic stress disorder, irritable bowel syndrome and several other significant stressors, which combined to cloud his judgment and cause him to exercise poor judgment in making the misrepresentation about the source of the cracked windshield.

206. Respondent was on notice of Scott's medical condition and other stressors at the time Director Ledford made the decision to terminate Scott, but did not investigate or evaluate the magnitude of Scott's conditions and its impact on Scott's behavior.

207. Respondent had alternative opportunities to conduct an inquiry regarding the magnitude of Scott's medical condition, combined with the other stressors that he was experiencing, but elected not to do so.

208. Respondent did not conduct any inquiry into Scott's medical condition, the effects of Scott's medical condition, and other mitigating factors.

209. The Respondent's failure to properly investigate and evaluate Petitioner's medical condition resulted in an incomplete basis for a termination decision.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings and the Office of Administrative Hearings has personal and subject matter jurisdiction. The parties had adequate notice for the hearing.

2. The sole charge properly before the undersigned is an allegation of a single act of voluntarily disclosed untruthfulness. The misrepresentation before the Court did not harm any person or entity. The misrepresentation was insignificant and was not material to any significant matter. Petitioner's judgment and decision making was clouded and impaired by his post-traumatic stress disorder, his irritable bowel syndrome, and several other significant stressors.

3. Respondent has the burden of proving just cause for Petitioner's termination of employment as per N.C.G.S. 126-35(d). Petitioner meets the threshold requirements for protection under the State Personnel Act.

4. Petitioner was a career State employee entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. 126-1 *et. seq.*) At the time of his dismissal, Petitioner was protected by the just cause provision of N.C. Gen. Stat. 126-35. See, e.g., *Bulloch v. N.C.*

Department of Crime Control and Public Safety, 732 S.E. 2d 373 (N.C. App. 2012), aff'g. the decision by Administrative Law Judge Beecher R. Gray in 05 OSP 1178, 2010 WL 690232 (January 15, 2010); *Beatty v. Jones*, 721 S.E.2d 765 (N.C. App. 2012); *Warren v. N.C. Department of Crime Control*, 726 S.E.2d 920 (N.C. App. 2012).

5. N.C. Gen. Stat. 126-35(a) provides that “[n]o career state employee subject to the State personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” *NCDENR v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004) and its progeny provides the controlling just cause test under North Carolina law. E.g., *Bulloch*, *supra*; *Kelly v. NCDENR*, 664 S.E.2d (N.C. App. 2008); *Kenneth Hill v. N.C. Highway Patrol*, 04 OSP 1538, adopted by N.C. State Personnel Commission.

6. *Carroll*, *Bulloch*, and *Hill* all involve the application of medical conditions in just cause cases where the inappropriate employee behavior occurred when the employees were suffering medical conditions, or as in *Carroll*, reacting to a medical condition of another.

7. The sole charge against Petitioner was an alleged violation of the employer’s truthfulness policy as specified in the dismissal letter. Respondent had the burden to prove just cause for termination by proving: A) a violation of a clearly defined lawful and reasonable employment policy; and B) that such violation of policy was sufficiently severe to rise to the level required to establish just cause for termination after application of all just cause factors and the consideration of all mitigating and aggravating factors. See N.C.G.S. 126-35, and *Bulloch v. N.C. Department of Crime Control*, 732 S.E.2d 373 (N.C. App. 2012), aff’g. the decision by Administrative Law Judge Beecher R. Gray in 05 OSP 1178, 2010 WL 690232 (January 15, 2010). In *Bulloch*, Judge Gray framed the pertinent issues similarly as (A) and (B) above.

8. In *Carroll*, the Supreme Court explained that the fundamental question is “whether the disciplinary action taken was ‘just’.” Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.” 358 N.C. at 669. In *Carroll*, the Supreme Court explained that “‘just cause’, like justice itself, is not susceptible of precise definition.” The Court explained that just cause is a “flexible concept, embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case.” 358 N.C. at 669. The Supreme Court concluded that “not every violation of law gives rise to ‘just cause’ for employee discipline.” 358 N.C. at 669. If violations of law are not necessarily sufficient for just cause, a violation of agency policy, as in this case, is also not necessarily appropriate for just cause for termination.

9. “Just cause requires that an employer’s decision be based on substantial evidence, which is more than a scintilla or a permissible inference and cannot be established by cherry picking the facts upon which the employer relies without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.” *Overton v. Goldsboro City Board of Education*, 304 N.C. 312, 322, 283 S.E.2d 495, 501 (1981); *Kandler v. Department of Correction*, 80 N.C. App. 444, 451, 342 S.E.2d 910, 914 (1986); *Thompson v. Wake County Board of Education*, 292 N.C. 406, 414, 233 S.E.2d 538, 544 (1977) (citations omitted); *Wiggins v. North Carolina Department of Human Resources*, 106 N.C. App. 302, 306-07, 413 S.E.2d 3, 5-6 (1992).

10. The totality of Director Ledford's testimony demonstrates that he applied Respondent's truthfulness policy mechanically. He suggested that untruthfulness is a termination offense and that there have been no exceptions. This was demonstrated by his testimony and the speed with which he issued the letter of dismissal, May 25, 2010. *Carroll* made clear that a state employer's policies are not to be "mechanical[ly]" applied. 358 N.C. at 669.

11. Respondent failed to properly consider and correctly apply the required factors mandated by the Supreme Court in *Carroll* and its progeny. Respondent failed to engage in a proper and sufficient weighing and balancing of the necessary factors for determining whether just cause for termination was present.

12. In *Hill*, the Administrative Law Judge and the State Personnel Commission provided an excellent explanation of just cause law and a number of analytical factors, some of which were tailored to the particulars of the *Hill* case:

In *Carroll v. N.C. Department of Environment and Natural Resources*, 358 N.C. 649, 599 S.E. 888 (2004), our Supreme Court enunciated the current applicable just cause test under the North Carolina State Personnel Act. Applying the *Carroll* test to the facts and circumstances of this case, the Court concludes that the Respondent did not have just cause under N.C.G.S. 126-35 to terminate Petitioner's employment. The Court in *Carroll* found that "just cause" is a "flexible concept, embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case." 358 N.C. at 669. The Supreme Court concluded that "not every violation of law gives rise to 'just cause' for employee discipline." The Court's reasoning in *Carroll* demonstrates that just cause determinations are not simple or technical. Rather, the *totality of the circumstances* must be assessed using equity and fairness. The *Carroll* factors have been historically analyzed in determining whether there is just cause to discipline police officers. These factors necessitate a broad judicial review of a number of sub factors, which include: a) The officer's training and education on the relevant points of inquiry; b) The officer's history on the relevant points of inquiry including the officer's quantity of experience; c) Whether the conduct is isolated or a part of a pattern or practice of the officer; d) The motivation of the police agency in the suspension including whether there was any improper considerations; e) Did the officer intentionally violate clear agency policy and whether the violation was substantial; f) Was the officer acting under any *duress or injury* that may have contributed to his or her conduct; g) Was the officer motivated by any improper personal self gain; h) Was the officer acting consistent with Departmental practice or custom; i) What was the officer's conduct and performance history; and j) Any other significant mitigating factors. (Emphasis added)

13. *Hill* is significant and persuasive because it involved a similar scenario of an employee who suffered a medical condition that was not properly evaluated or considered by the Respondent employer.

14. As *Carroll* and many other cases have demonstrated, even if there was a violation of the employer's policy and/or law, there are many other required considerations in determining whether there is just cause for discipline. The reasoning of the Supreme Court in *Carroll* makes clear that a state employee's violation of a clear agency policy is only the starting point for just cause analysis. Director Ledford's analysis stopped when he learned the basis for the cracked windshield. T573 Much more analysis is required under *Carroll's* requirements of the required considerations of equity and justice.

15. Title 25 NCAC 1B .0413 provides that "all relevant factors and considerations" must be weighed "including factors of mitigation..." See *Dietrich*; see also *Etheridge v. N.C. Dept. of Administration*, 2006 WL 3290507 (August 3, 2006; Lassiter, ALJ). The evidence demonstrates that the Respondent failed to consider and credit substantial appropriate mitigation evidence in Petitioner's favor.

16. There were no aggravating factors, but there are several compelling mitigating factors that militate strongly in Petitioner's favor. The testimony of several witnesses demonstrated pertinent facts regarding Petitioner including his work performance, professionalism, conduct, and character, which were very good or excellent.

17. Traditional just cause analysis requires consideration of whether the employer has conducted an appropriate and complete investigation of the totality of the relevant facts and circumstances. *Bulloch, supra*. Applying *Carroll* requires consideration of the completeness and fairness of the underlying personnel investigation. In *Foard v. N.C. Highway Patrol*, 07 OSP 0135, Judge Joe L. Webster addressed a Patrol discipline case involving issues of an inadequate investigation. Judge Webster found that the underlying investigation of the alleged conduct was not complete. Judge Webster's decision was adopted by the Wake County Superior Court. See *Ralph Mitchell Foard v. N.C. Department of Crime Control*, 09 CVS 0035 19 (November 10, 2009, order of the Honorable Henry W. Hight, Jr.).

18. Here, the totality of the facts and circumstances warranted Respondent undertaking reasonable medical analysis to determine the extent and magnitude of Scott's condition and its impact on Scott's behavior. Respondent had available to it the medical expertise of Dr. Thomas Griggs. When Scott experienced the traumatic automobile accident in 2009, Dr. Dan Chartier was made available for a consultation. Dr. Griggs and Dr. Chartier could have been utilized here to enable Respondent to have relatively complete information about Scott's condition.

19. *Carroll, Bulloch, Hill*, and other cases demonstrate how just cause analysis requires fair consideration of the employee's medical condition at the time of the complained of conduct. Here, the underlying personnel investigation was incomplete, and resulted in a termination decision that was arbitrary.

20. An inadequate, incomplete or improper underlying personnel investigation may result in an arbitrary and capricious personnel decision. Scores of cases have condemned arbitrary and capricious public personnel decisions. E.g. *Weiman v. Updegraff*, 344 U.S. 183, 192 (1952); *Toomer v. Garrett*, 155 N.C. App. 462 (2002); *Johnson v. Branch*, 364 F.2d 177 (4th Cir. En

banc 1967); *Wall v. Stanly Board of Education*, 259 F. Supp. 238, 249 (M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967).

21. Under the State Personnel Act, the ALE Director had a *legal duty* to fairly and properly consider a range of important factors and considerations including, but not limited to, medical conditions and mitigation evidence, and to apply the standards mandated by our Supreme Court in *NCDENR v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004). E.g., 25 NCAC 1B .0413; *Kelly v. NCDENR*, 664 S.E. 2d 625 (N.C. App. 2008). Director Ledford's reasoning and analysis was not complete or adequate for purposes of just cause decision making.

22. The State Personnel Manual instructs that an employing agency should consider a number of factors when deciding the appropriate type of discipline to impose. *N.C. State Personnel Manual*, Section 7, page 11. Among the factors are: 1) Whether the supervisor should recommend disciplinary action based on the facts; 2) Whether more investigation is needed to make a recommendation; 3) The type and degree of disciplinary action to be taken; 4) The employee's work history; 5) Disciplinary actions received by other employees within the agency/work unit for comparable performance or behavior; and 6) other relevant factors. *Id.* See *N.C. State Personnel Manual*, Section 7, page 11: The employer "should examine a number of factors... [including]...The disciplinary actions received by other employees within the agency/work unit for comparable performance or behaviors." Many cases have applied the disparate treatment principle in discipline and selective enforcement evidence. See e.g., *Bulloch, supra.*; *Warren, supra.*

23. Selective enforcement of agency policy and disparate treatment in discipline should be considered under both State Personnel policy and as one of the recognized factors in determining whether there is just cause for discipline. See *Bulloch, supra.*; *Burgess v. N.C. Highway-Patrol*, 07 OSP 0052, adopted by N.C. State Personnel Commission. See also *Toomer v. Garrett*, 155 N.C. App. 462, 574 S.E.2d 76 (2002), disc. rev. denied, 357 N.C. 66, 579 S.E.2d 576 (2003) (Law enforcement officers held to be free from disparate treatment and selective enforcement by their employers).

24. Petitioner's evidence, including but not limited to Exhibit No. 22A and Exhibit No. 22B, and the treatment afforded to Agent Price, demonstrates that there has been some selective enforcement and disparate treatment in Respondent's personnel decision making. Evidence demonstrated that Respondent terminated some employees for untruthfulness but not others. See, e.g., *Bulloch, supra.* This just cause factor of disparate treatment/selective enforcement militates in Petitioner's favor.

25. In *Warren v. N.C. Department of Crime Control and Public Safety*, 726 S.E.2d 920 (2012), the Court of Appeals made clear that North Carolina is a "commensurate discipline" jurisdiction. The commensurate discipline principle is distilled down to the point that the punishment must fit the offense. In this case, termination is not appropriate commensurate discipline.

26. Some cases of untruthfulness warrant termination while others are appropriately remedied with discipline less than termination. E.g.; *Hager v. NCDOC*, 03 OSP 1926, 2004 WL 3252142.

27. A number of factors should be considered in determining the appropriate disciplinary penalty for discipline generally, including for untruthfulness. Scott's medical conditions and related factors at the relevant time is vitally important to proper just cause decision making. E.g., *Bulloch, supra*.

28. In *Dietrich v. N.C. Department of Crime Control*, 00 OSP 1039, Judge Gray explained how we ideally expect law enforcement officers to be near perfect, but that is not a realistic standard. Petitioner Scott made a mistake, but the totality of the circumstances does not make termination the appropriate discipline.

29. Applying *Carroll, Bulloch, Hill*, and other just cause law and principles, there was no just cause for the termination of Petitioner in light of the medical evidence. The totality of the facts and circumstances of this case, and the applicable law, does not warrant discipline in the form of termination.

30. A single instance of an insignificant misrepresentation involving a matter that is not material, when brought about by serious medical and mental health conditions, does not constitute just cause for termination. Other cases have demonstrated how not every misrepresentation warrants termination. This matter is especially unique because, *inter alia*, of Petitioner's serious medical and mental health conditions.

31. The undersigned has carefully weighed and balanced all of the interests of Petitioner and the Respondent, including all factors in determining just cause and factors in mitigation and aggravation. The undersigned has weighed and balanced all of the factors set forth in *Carroll, Bulloch*, and other cases cited herein. The undersigned concludes that the totality of all the pertinent factors militate heavily in Petitioner's favor and that there was no adequate just cause for termination. Termination is not the appropriate commensurate discipline. Respondent's termination of Petitioner was neither just, nor equitable, nor fair.

PROPOSAL FOR DECISION

To summarize, this case attempts to question whether the single, untruthful, statement of the Petitioner, under the facts *sub judice*, gives rise to the level of terminable sanction, which was imposed after Respondent's "just cause" determination. Much of the testimony in this case was the product of an extensive and reoccurring offer of proof that was neither admissible to show a non-alleged pattern of untruthfulness, nor to show any prior disciplinary action. Viability of this prior investigation and the offer of proof remained open throughout the course of the hearing for possible impeachment purposes.

An application of State personnel law to the relevant facts in this case reveals an inadequate just cause investigation by the Respondent to determine the appropriate level of

punishment for this veteran employee who had previously been the victim of an employment related tragedy.

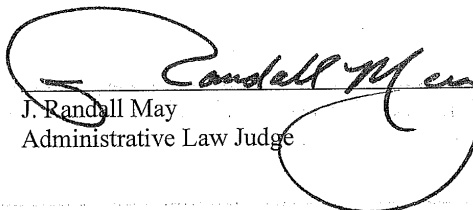
THEREFORE, BASED UPON the foregoing Findings of Fact and Conclusions of Law, the termination of employment of Petitioner is reversed and overruled; there was no just cause for the termination of Petitioner's employment. Petitioner shall be reinstated retroactive to his date of termination. Petitioner shall be awarded back pay compensation; reimbursement of all lost benefits, including all leave and contributions into the Retirement System; and counsel fees and costs. Petitioner may be subjected to reasonable commensurate discipline less than termination.

NOTICE AND ORDER

The Department of Public Safety is the agency that will make the Final Decision in this contested case. As the final decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. 150B-40(e).

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.

This the 22nd day of July, 2013.

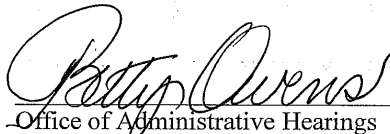

J. Randall May
Administrative Law Judge

On this date mailed to:

J. MICHAEL MCGUINNESS
ATTORNEY AT LAW
PO BOX 952
ELIZABETHTOWN, NC 28337
ATTORNEY FOR PETITIONER

HAL F. ASKINS
SPECIAL DEPUTY ATTORNEY GENERAL
TAMARA S. ZMUDA
ASSISTANT ATTORNEY GENERAL
N. C. DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
ATTORNEYS FOR RESPONDENT

This the 22nd day of July, 2013.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
Telephone: 919/431-3000
Fax: 919/431-3100

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 10447

THERAPEUTIC LIFE CENTER, INC.,
Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND
SERVICES, DIVISION OF MEDICAL
ASSISTANCE,
Respondent.

FINAL DECISION

On March 21, 2013, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Greenville, North Carolina. On November 19, 2012, Petitioner filed a contested case petition with the Office of Administrative Hearings, appealing Respondent's October 12, 2012 decision to recoup \$1947.00 in Medicaid payments to Petitioner for providing outpatient specialized therapy services to Medicaid recipients. On June 17, 2013, Chief Administrative Law Judge Julian Mann III extended the deadline for filing a Decision in this case to July 15, 2013.

APPEARANCES

For Petitioner: Pamela Klinger
Therapeutic Life Center, Inc.
102 Eastbrook Drive, Ste. B & C
Greenville, NC 27858

For Respondent: Thomas J. Campbell
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether Respondent is entitled to recoup \$1947.00 in Medicaid payments from Petitioner for failing to comply with Medicaid laws and policies in documenting the outpatient specialized therapy services that Petitioner provided to Medicaid recipients?

APPLICABLE STATUTES AND RULES

42 U.S.C. §§ 1396a - 1396v
42 C.F.R. Parts 455 and 456
N.C. Gen. Stat. § 150B-22 *et seq.*
10A N.C.A.C. 22F *et seq.*
21 N.C.A.C. 64 .0101 *et seq.*
N.C. State Plan for Medical Assistance

BURDEN OF PROOF

Respondent bears the burden of proof in this case pursuant to N.C. Gen. Stat. §108C-12(d).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: 1 – 19

WITNESSES

For Petitioner: Pamela Klinger

For Respondent: Roseann K. Sparano, Occupational Therapist, CCME
Cheri Hall, Physical Therapist & Review Specialist, CCME
Dr. John Feaganes, CCME

FINDINGS OF FACT

Background Facts

1. At all times material to this matter, Petitioner was an enrolled provider of Outpatient Specialized Therapy Services, i.e. occupational and physical therapies, to Medicaid recipients in the North Carolina Medicaid Program.

2. Petitioner entered into a North Carolina Medicaid Participation Agreement with the Division of Medical Assistance ("DMA") to participate in Medicaid program, and agreed to comply with:

... state laws and regulations, medical coverage policies of the Department, and all guidelines, policies, provider manuals, implantation updates, and bulletins published by CMS, the Department, its divisions and/or fiscal agent in effect at the time the service is rendered.

(Medicaid Participation Agreement, Respondent's Ex. 1).

3. By entering into the Medicaid Participation Agreement, Petitioner agreed to maintain for a period of six (6) years from the date of service:

... Complete and accurate medical and fiscal records in accordance with Department record-keeping requirements that fully justify and disclose the extent of the services or items furnished and claims submitted to the Department.

(Respondent's Ex. 1).

4. Pursuant to 42 CFR 455 and 42 CFR 456, and 10A NCAC 22F, the Program Integrity Section of Respondent's Division of Medical Assistance ("DMA") is required to conduct post-payment reviews of Medicaid paid claims. Respondent's DMA contracted with The Carolinas Center for Medical Excellence ("CCME") to conduct post-payment reviews when

Medicaid recipients have received certain outpatient therapies, such as physical therapy, occupational therapy, respiratory therapy, audiology, and speech language pathology services.

5. On March 1, 2012, Roseann K. Sparano and Cheri Hall, CCME review specialists, conducted an audit, and examined a random sampling of Petitioner's paid Medicaid claims, relating to outpatient specialized therapies, for the audit period March 1, 2011 through August 31, 2011. (Respondent's Ex. 3) Because Petitioner provided both occupational and physical therapy services, Ms. Sparano, a licensed occupational therapist, and Ms. Hall, a licensed physical therapist, reviewed the records involving their particular areas of expertise.

6. Sparano and Hall determined that Petitioner "failed to substantially comply with Medicaid Clinical Coverage Policy 10A, Outpatient Specialized Therapies" ("Medicaid Policy 10A") by:

- 2 of 101 records revealed noncompliance with the therapy order requirements of Medicaid Policy 10A – sections 5.1 e, f, and g, and 7.1, 7.2c.
- 2 of 101 records revealed claims billed that exceeded the limitations of the therapy order in violation of Medicaid Policy 10A – section 5.1 e.
- 16 of 101 records provided reveal noncompliance with therapy plan requirements in violation of Medicaid Policy 10A- sections 5.1 b, c, d, and f, and 7.1, 7.2b.
- 17 of 101 records provided revealed claims billed exceeded the limitations of the written plan in violation of Medicaid Policy 10A-section 5.1 b, c, and d.
- 30 of 101 records provided lacked service documentation per policy requirements for dates of service billed in violation of Medicaid Policy 10A-sections 3.1, 6, 7.1, 7.2 d, e, and f, Attachment A

As a result of the audit, CCME initially identified an overpayment of \$40,674.00 in Medicaid funds to Petitioner. (Respondent's Ex. 8)

7. On June 7, 2012, CCME notified Petitioner of the audit results via certified mail, and requested that Petitioner send a check for the overpayment within thirty (30) days, or file a Request for Reconsideration within fifteen (15) days. (Respondent's Ex. 8).

8. After Petitioner's timely Request for Reconsideration, Petitioner submitted additional documentation to CCME. Ms. Sparano and Ms. Hall reviewed Petitioner's documentation, and found that the identified overpayment should be modified to \$25,490.00. (Respondent's Ex. 10).

9. After conducting a Reconsideration Review on September 17, 2012, Respondent's Hearing Officer issued a decision on October 12, 2012, modifying the overpayment amount to \$1,947.00. (Respondent's Ex. 12)

10. The Hearing Officer reversed 11 of 14 CCME's recoupments for occupational therapy claims submitted by Petitioner for Medicaid reimbursement, and found no overpayment for 1 additional occupational therapy claim. The Hearing Officer upheld 2 of those 14 recoupments for occupational therapy services provided to Medicaid recipients J.H. and Y.S.

a. Regarding recipient J.H., the Hearing Officer found there was no documentation showing an order authorizing or covering J.H.'s 3/4/11 therapy session.

b. Regarding recipient Y.S., the Hearing Officer found there was no documentation, i.e. a service note for services on 7/25/11, but none for 7/26/11. She found the billing

administrator made a clerical error by entering 7/26/11 instead of 7/25/11 into the Medicaid billing system. However, she noted that while she did not question this was a clerical error, she “does not have the authority to pass this issue,” and thus, upheld recoupment, because “policy requires a service note for each date of service billed for.” (Respondent’s Ex. 12)

c. The Hearing Officer reversed 2 of 6 recoupments, and upheld 4 of those 6 recoupments for physical therapy services Petitioner billed Medicaid for reimbursement.

1. Regarding recipients S.W., E.W., and M.D., the Hearing Officer uphold recoupment, because Petitioner’s service documentation for the dates of service did not contain the provider’s signature.

2. Regarding recipient P.D., the Hearing Officer uphold recoupment because Petitioner’s documentation failed to satisfy the “specific content” requirement of Policy 10A sec. 5.1b, c, and d.

11. DMA issued Clinical Coverage Policy No. 10A, titled Outpatient Specialized Therapies, with an original effective date of October 1, 2002, and revised such policy December 1, 2009. Such policy was in effect when Petitioner rendered the services that Respondent examined during the subject audit. (Respondent’s Ex. 2).

Adjudicated Facts

12. Medicaid Clinical Coverage Policy 10A contains documentation requirements for providing Outpatient Specialized Therapies. (Respondent’s Ex. 2). Policy 10A states that the records must include the “signature of the person providing each service.” (DMA Clinical Coverage Policy No. 10A, 7.2f, Respondent’s Ex. 2)

13. Policy 10A states, “[a] verbal or written order must be obtained for services prior to the start of the services. Backdating is not allowed.” (DMA Clinical Coverage Policy No. 10A, 5.1e, Respondent’s Ex. 2)

14. Policy 10A states that:

There will be no payment for services rendered more than 6 months after the most recent **physician order signature date** and before the following renewal/revision signature date. The signature date must be the date the physician signs the order. Backdating is not allowed.

(DMA Clinical Coverage Policy No. 10A, 5.1f, Respondent’s Ex. 2, Emphasis added)

15. Medicaid Policy 10A further states, “Each plan must include a **specific content**, frequency, and length of visits of services for each therapeutic discipline.” DMA Clinical Coverage Policy No. 10A, 5.1d. (Respondent’s Ex. 2)(Emphasis added).

16. The audit identified problems with Petitioner’s documentation for Medicaid recipients for dates of service 3/1/11 through 8/31/11. Generally, they identified documentation errors such as plans of care did not include the specific content of the treatment plan, treatment notes were unsigned, there was no doctor’s order regarding the treatment, and there were no treatment notes provided for the date billed, all of which are required by DMA Clinical Coverage Policy No.: 10A (Respondent’s Ex. 2, 19).

25. Feaganes noted that the total universe (or sampling frame size) of claim details submitted by the Petitioner for services rendered during the audit period of 3/1/2011 to 8/31/2011 was 1,928 claim details, grouped into 1,791 clusters. The sample of 101 claim details worked out to be 85 clusters, given that multiple patients had more than one procedure performed on a given date of service.

26. Dr. Feaganes performed three successive calculations of the overpayment for: (1) the Tentative Notice of Overpayment; (2) after CCME's review of the additional records sent in by Petitioner, and (3) following the Hearing Officer's decision. (Respondents Exs. 7, 11, 13)

27. RATS-STATS calculated the final recoupment amount of \$1947.00 based on the Hearing Officer's decision. (Respondent's Ex. 13C) Dr. Feaganes opined that \$1,947.00 is the "lower limit" or "lower bound" figure for the 90% confidence range. In other words, if Respondent reviewed all of Petitioner's claim details in the universe over the entire audit period, there would be a 5% chance that the resulting overpayment would be less than \$1,947.00. On the other hand, if Respondent reviewed all of Petitioner's claim details in the universe over the entire audit period, there would be a 95% chance that the overpayment would actually exceed \$1,947.00.

28. Feaganes expounded that by using the lower limit or lower bound figure, between the provider and Respondent, that figure actually favors the provider. Dr. Feaganes opined that this was a statistically valid procedure, and that the \$1,947.00 lower limit figure was accurate within a reasonable degree of statistical certainty.

29. Respondent sought recoupment for Medicaid recipient J.H.'s 3/4/11 DOS for a \$44.32 overpayment amount, because "no valid physician's order was in place for that date of service," and "no plan of care covering services billed on 3/4/11." (Respondent's Ex. 12, p 3)

30. A preponderance of the evidence showed that the doctor who ordered the therapy services for J.H. signed the plan of care on 9/13/10. (Respondent's Ex. 4C)

a. DMA Clinical Coverage Policy 10A, section 5.1f provides that a plan of care is valid for 6 months after the date of the physician signature. Under that policy, the 9/13/10 order was valid for 6 months until 3/13/11. The Progress Update signed by the physician included a request by the therapist to extend services for an additional 12 weeks. Reading the signed Progress Update in its entirety, the doctor's signature approved all aspects of the update including the 12 week extension of services.

b. In Respondent's 10/12/12 Notice of Decision, the Hearing Officer wrote:

December 2010 Bulletin shows that the proposed dates the Provider chose to put on the Order do not determine when the order is valid. Rather, the date the order was signed determines the beginning and ending of the dates the Order is valid. . . .

As previously stated, I find that the proposed effective dates to have NO relevance to the actual period the order is valid.

(10/12/12 Notice of the Decision, p 4, Respondent's Ex. 12)

c. In addition, CCME granted prior authorization extensions for J.H.'s plan of care through 3/14/11. DMA Clinical Coverage Policy 10B, section 5.4 "Amount of Service"

states "The amount of service is determined by the prior approval process." Based on that policy and CCME's prior authorization extension, J.H.'s 3/4/11 DOS was covered by a valid doctor's order.

d. Given that the physician's 9/13/10 order was valid for 6 months per Policy 10A, sec. 5.1f, the Hearing Officer's determination regarding the signature date, the progress update signed by the physician which included an extension for 12 additional weeks of therapy, and CCME's extension of J.H.'s plan of care, the preponderance of the evidence established that J.H.'s 3/4/11 DOS was valid and covered by the doctor's signed order on 9/13/10.

31. DMA Clinical Coverage Policy 10A, section 5.1d provides that "each plan [of care] must include a specific content, frequency, and length of visits of services for each therapeutic discipline.

a. At hearing, Petitioner explained that in the Progress Update, J.H.'s therapist described the frequency of J.H.'s visits would be "1x/week for 12 weeks, Units per visit 4." She also described the goals, baseline, and progress of the therapy. JH was treated 1x a week for 12 non-consecutive weeks and then discharged.

b. Petitioner explained that J.H.'s therapist thought the doctor's order was valid for six months, and requested an additional 12 weeks of visits due to J.H.'s inconsistent attendance at his therapy sessions. (See 9/13/10 Progress Note, Respondent's Ex. 4C) The therapist wrote, "[a]dditional units are requested to work toward more functionality for J and improve the use of his hand for everyday activities." (Respondent's Ex. 4C) J.H.'s physician signed the Progress Update, including a request for additional 12 weeks of visits, on 9/13/10. Petitioner further explained that J.H. remained under CCME authorization through 3/13/11. (Petitioner's testimony)

32. Respondent sought recoupment for \$98.36 for recipient Y.S.'s date of service 7/26/11, because there was "no service documentation for services billed on 7/26/11." (Respondent's Ex. 12, p 7) A preponderance of the evidence established that Petitioner's billing administrator made a clerical or typographical error when she keyed in 7/26/11, instead of 7/25/11, as the date of therapy services for recipient Y.S which Petitioner requested Medicaid reimbursement.

a. However, Petitioner's documentation, i.e. service note, showed that Petitioner conducted therapy services with Y.S. on 7/25/11, not 7/26/11. Y.S.'s invoice for that service note was also dated 7/25/11. Petitioner's therapist's invoice for Y.S. for July 2011 also indicated that Petitioner saw Y.S. on July 8, 13, 19, 25.

b. Respondent's \$98.36 recoupment for date of service 7/26/11 was the same amount of reimbursement Petitioner would have received had it correctly billed Respondent for the 7/25/11 date of service. Petitioner did not receive more Medicaid reimbursement than it was entitled, and was not overpaid. (Petitioner's testimony)

c. In the Notice of Decision, Respondent's Hearing Officer acknowledged that Petitioner made a clerical error, but explained that she lacked the "authority to pass this issue because the policy does require a service note for each date of service billed." (Respondent's Ex. 12)

33. Respondent sought recoupment for Medicaid recipients M.D.'s DOS 3/22/11 (recoupment amount of \$98.36), E.W.'s DOS 3/15/11 and 4/25/11 (recoupment amount for each session \$96.38), and S.W.'s DOS 4/26/11 (recoupment amount \$97.24). Respondent found that "service document does not contain provider's signature" for these DOS.

a. At hearing, Petitioner explained that for each recipient, Petitioner listed several DOS on one page to accommodate financial costs of copying notes for the Child Developmental Service Agency (NC-CDSA) as state budget cuts had disallowed faxing of notes.

b. She noted that while the therapist failed to initial each individual DOS on those pages, all the service documents in question, for each recipient, contained a typed and written signature, along with professional status, by the physical therapist, at the bottom of the page below the lists of dates of service. (Respondent's Exs. 4A, 4E, 5) Respondent reviewed other DOS for that therapist for 5/19, 6/28, 7/14, 7/14, 8/8, 8/25, and 8/25, and approved those DOS. The therapist's usual practice was to initial each DOS, but she just missed initialing the DOS at issue.

34. Respondent sought recoupment for recipient P.D.'s DOS 6/30/11 (recoupment amount of \$17.08), because there was no specific content in the plan of care. Petitioner admitted at hearing that she was not contesting Respondent's decision to recoup \$17.08 for this DOS. Yet, Petitioner contended that, assuming Respondent erred in upholding recoupment on all other DOS discussed above, the total recoupment amount would only be \$17.08. She asserted that applying N.C. Gen. Stat. § 108C-8 to this case, Respondent was not entitled to pursue recoupment of only \$17.08.

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings. This tribunal has jurisdiction of the parties and of the subject matter at issue. 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.

2. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-12(d).

3. The North Carolina Administrative Code has two provisions titled "Recoupment:" 10A NCAC 22F .0706 and 10A NCAC 22F .0601. 10A NCAC 22F .0706 discusses how the money will be distributed in recoupment of overpayments. 10A NCAC 22F .0601 states "the Medicaid agency will seek full restitution of any and all improper payments made to providers by the Medicaid program." (Emphasis added) However, since the term "improper payments" is not defined in the Code, one may read such term *in pari materi* with other sections to discern the meaning and intent of that term.

4. 10A NCAC 22F .0103 provides:

[t]he Division shall develop, implement and maintain methods and procedures for preventing, detecting, investigating, reviewing, hearing, referring, reporting, and disposing of cases involving fraud, abuse, error, overutilization or the use of medically unnecessary or medically inappropriate services.

5. In this case, documentation errors are the only misdeeds applicable to this contested case. Respondent has not asserted or alleged that Petitioner was responsible for fraud as defined in N.C. Gen. Stat. § 108A-63, i.e. there is no allegation or assertion that Petitioner "knowingly and willfully making or causing to be made any false statement or representation of material fact" or other type of fraud as defined therein. Neither has Respondent made allegations against Petitioner of abuse, overutilization, or using medically unnecessary or inappropriate services.

6. Under 10A NCAC 22F .0103(b)(5), DMA "shall institute methods and procedures to recoup improperly paid claims." 10A NCAC 22F .0606 allows Respondent to use a Disproportionate Stratified Random Sampling Technique in establishing provider overpayments and to determine the total overpayment for recoupment.

7. The North Carolina Administrative Code requires Medicaid providers support reimbursement claims with proper documentation. Petitioner signed a "participation agreement" wherein he or she agrees to operate and provide services in accordance with state law and all manner of rules, regulations, policies, manuals and bulletins, which would command proper documentation.

8. By entering into the Medicaid Participation Agreement, Petitioner agreed to maintain for a period of six (6) years from the date of service:

. . . complete and accurate medical and fiscal records in accordance with Department record-keeping requirements that fully justify and disclose the extent of the services or items furnished and claims submitted to the Department.

9. By entering into the Medicaid Participation Agreement, Petitioner agreed:

To refund or allow the Department to recoup or recover any monies received in error or in excess of the amount to which the Provider is entitled from the Department (an overpayment) . . . , regardless of whether the error was caused by the Provider or the Department and/or its agents.

10. Medicaid Clinical Coverage Policy 10A contains documentation requirements for providing Outpatient Specialized Therapies, which include occupational therapy and physical therapy. Policy 10A states that the records must include the "signature of the person providing each service." DMA Clinical Coverage Policy No. 10A, 7.2f.

11. Policy 10A states, "[a] verbal or written order must be obtained for services prior to the start of the services. Backdating is not allowed." DMA Clinical Coverage Policy No.: 10A, 5.1e.

12. Policy 10A also states that:

There will be no payment for services rendered more than 6 months after the most recent physician order signature date and before the following renewal/revision signature date. The signature date must be the date the physician signs the order. Backdating is not allowed.

(DMA Policy 10A, section 5.1f, Respondent's Ex. 12)

13. Policy 10A provides that "[e]ach plan must include a specific content, frequency, and length of visits of services for each therapeutic discipline." (DMA Policy No.: 10A, section 5.1d, Respondent's Ex. 12).

14. Regarding the recoupment for Medicaid recipient J.H., DOS 3/4/11, Respondent failed to prove by a preponderance of the evidence that there was no valid physician's order in place for that date of service. The physician signed the order and Progress Update note for J.H.'s therapy services on 9/13/10. While the Progress Note called for occupational therapy one time per week for a period of 12 weeks, the order was valid for six months according to Policy 10A, Section 5.1f. Additionally, since the Progress Note that the J.H.'s doctor signed included the therapist's request for 12 additional weeks of visits, the doctor's signature on such note constituted approval of that additional treatment period, and therefore, covered treatment provided to J.H. on 3/4/11.

15. Respondent failed to prove by a preponderance of the evidence that there was no plan of care covering J.H.'s DOS for 3/4/11. In the 9/13/10 Progress Update, J.H.'s therapist explicitly described why 12 weeks of additional therapy was requested for J.H. Reading the Progress Update in its entirety, it is clear that the additional therapy would be a continuation of therapy services J.H. had already been authorized to receive, and had received.

16. Regarding recoupment for Medicaid recipient Y.S. DOS 7/26/11, the preponderance of the evidence proved that Petitioner made a typographical error in billing for services to Y.S. on 7/26/11, and that Petitioner actually rendered services to Y.S. on 7/25/11. N.C. Gen. Stat. § 108C-5(o) clearly provides, "The Department shall permit limited correction of clerical, typographical, scrivener's, and computer errors by the provider prior to final determination of any audit." Under N.C. Gen. Stat. § 108C-5(o), Respondent erred in seeking recoupment based on a typographical error.

17. Policy 10A, section 7.2f requires, "the signature of the person providing each service." (Respondent's Ex. 2) Regarding recoupment for Medicaid recipients M.D.'s DOS 3/22/11 (recoupment of \$98.36), E.W.'s DOS 3/15/11 and 4/25/11 (recoupment for each session \$96.38), and S.W.'s DOS 4/26/11 (recoupment of \$97.24), Respondent failed to prove by a preponderance of evidence that each recipient's "service document does not contain provider's signature" in violation of Policy 10A, section 7.2. To the contrary, the evidence showed that for each recipient, the signature of the therapist providing services appeared at the bottom of a page containing a list of DOS for that recipient. Policy 10A did not specify the format a provider must use in meeting the Policy 10A, section 7.2 requirements, and did not require that the "person providing the service" actually initial each DOS as part of the signature requirement.

18. At hearing, Petitioner admitted there was no specific content of treatment in the plan of care for recipient P.D. (DOS 6/30/11). Respondent proved by a preponderance of evidence that Petitioner failed to comply with Policy 10A, section 5.1, and that it was entitled to recoup \$17.08 for that provision of services.

19. N.C. Gen. Stat. § 108C-8 provides:

The Department shall not pursue recovery of Medicaid or Health Choice overpayments owed to the State for any total amount less than one hundred fifty dollars (\$150.00) unless directed to do so by the Centers for Medicare and Medicaid Services or unless such recovery would be cost-effective and in the best interest of the State of North Carolina and Medicaid recipients.

20. CCME's initial Tentative Notice of Overpayment to Petitioner could be construed to be a direction to Respondent to recover \$17.08 in Medicaid overpayments to Petitioner. However, applying N.C. Gen. Stat. § 108C-8 to this case, and the findings in this decision, Respondent failed to prove that it would be cost-effective, and would be in the best interest of the State of North Carolina and Medicaid recipients for Respondent to pursue \$17.08 in Medicaid overpayment from Petitioner.

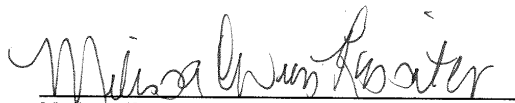
DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's decision to recoup \$1,947.00 from Petitioner is **REVERSED**.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 8th day of July 2013.


Melissa Owens Lassiter
Administrative Law Judge


CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing FINAL DECISION was served on the parties to this action by email and U.S. First Class Mail on the date shown below as follows:

Pamela Klinger
Therapeutic Life Center, Inc.
102 Eastbrook Drive, Ste. B & C
Greenville, NC 27858
Petitioner

Thomas J. Campbell
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Attorney for Respondent

This the 8th day of July 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Phone: 919-431-3000
Fax: 919-431-3100

Filed

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2013 AUG -9 PM 2:28

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 10569

Office of
Administrative Hearings
A GREAT CHOICE FOR HOME CARE, INC.,

Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

Respondent

**Order Granting Partial Summary
Judgment To Petitioner And Denying
Respondent's Motion For Summary
Judgment**

THIS MATTER came before the undersigned Administrative Law Judge under N.C.G.S. § 150(b)-33(b)(3)(a), 36(d) and Rule 56(c) of the North Carolina Rules of Civil Procedure on A Great Choice for Home Care, Inc.'s ("Petitioner"), Motion for Partial Summary Judgment and Sanctions and the N.C. Department of Health and Human Services' ("Respondent") Motion for Summary Judgment.

Petitioner asserts that based on the undisputed facts, Respondent violated N.C.G.S. § 108C-5(i) as a matter of law by extrapolating results of an audit when the Respondent did not determine that Petitioner failed to substantially comply with State or federal law or regulation or that Respondent had a credible allegation of fraud. Petitioner also asserts that the undisputed facts demonstrate that Respondent's audit was not performed and reviewed by individuals credentialed by the Respondent as required by N.C.G.S. § 108C-5(j) and summary judgment is appropriate as a matter of law.

Respondent asserts that its decision should be upheld as a matter of law because the undisputed facts show that Petitioner failed to comply with two provisions of Respondent's clinical coverage policy requiring, respectively, documenting Petitioner's in-home aides' training and competency evaluations, and completing criminal background checks on its in-home aides before hiring them.

ISSUE

Whether the Respondent's use of extrapolation in issuing a recoupment of \$118,692 in Medicaid overpayments was lawful.

Having considered the pleadings, exhibits, and affidavits, the undersigned finds the following facts.

FINDINGS OF FACT

1. Respondent is a state department responsible for administering North Carolina's program of medical assistance.

2. Petitioner provides Medicaid Personal Care Services ("PCS").
3. In the spring of 2012, Respondent conducted an audit of 101 claims for payment for services that Petitioner rendered to Medicaid clients between March 1, 2011 and February 1, 2012.
4. Around June 7, 2012, Respondent sent Petitioner a Tentative Notice of Overpayment (the "Tentative Notice") stating that Respondent had allegedly identified \$3,632.92 in Medicaid overpayments to Petitioner during its audit.
5. The Tentative Notice further notified Petitioner that the audit's results were extrapolated to calculate a total overpayment of \$118,692.00.
6. At Petitioner's request, the findings of the Tentative Notice underwent a reconsideration review on August 8, 2012.
7. On September 25, 2012, the Respondent's Hearing Office issued a Notice of Decision upholding Respondent's overpayment determination.
8. On November 21, 2012, Petitioner filed a petition for a contested case hearing challenging the Notice of Decision.
9. On November 30, 2012, this Court ordered the parties to file a prehearing statement within 30 days. Petitioner filed its prehearing statement on December 18, 2012.
10. Respondent filed its prehearing statement on June 6, 2013.
11. The Tentative Notice alleges that Petitioner failed to substantially comply with State or federal law or regulation.
12. The Tentative Notice contains four bullet points informing Petitioner that it violated various requirements of the PCS clinical coverage policies that were effective during the review. The Tentative Notice cites no State or federal law or regulation that it determined Petitioner violated during its audit.
13. The Notice of Decision did not assert that Petitioner failed to substantially comply with the requirements of State or federal law or regulation.
14. The Notice of Decision cites violations of DMA's clinical coverage policies and the Basic Medicaid Billing Guide to uphold the Tentative Notice.
15. The Notice of Decision contains a section entitled "Applicable Law, Regulations, and Policies" that cites 10A, Chapter 22, Subchapter F for the proposition that DMA has the authority to investigate providers "to ensure compliance with Medicaid laws, regulations, policies, and guidelines. This Section also cites 10A NCAC 22F .0103(b)(5) for the proposition that DMA has the authority to recoup funds for "improperly paid claims."
16. The State regulations cited in the Notice of Decision provide the Respondent the authority to conduct audits and recoup improperly paid claims, but do not form the basis of the alleged errors identified in the audit.

17. The only specific citation to an alleged violation of regulation identified in the Notice of Decision is 10A NCAC 13J .0901(9). This regulation requires a Certified Nursing Assistant ("CNA") to provide services if certain clinical conditions are met. In considering the Respondent's allegation, the hearing officer found that Petitioner complied with the regulation and reversed the Respondent's finding.
18. Respondent's Prehearing Statement also does not assert that the audit results revealed that Petitioner substantially violated the requirements of any State or federal law or regulation. Instead, the Prehearing Statement states Program Integrity discovered "billing errors," while conducting a post payment review of Petitioner's claims.
19. Respondent did not demonstrate that Petitioner failed to comply with any State or federal law or regulation.
20. When the Respondent hires an employee who holds a professional license, such as a registered nurse, the Respondent confirms the license status of the prospective employee with the applicable licensing board.
21. In conducting extrapolated audits, the Respondent does not issue credentials to employees related to the matters in which they conduct audits.
22. The Respondent did not issue a credential to the employees who conducted this audit that resulted in extrapolation.
23. The Notice of Decision states that Petitioner violated Section 7.2.3 of Clinical Coverage Policy 3C by failing to maintain documentation of aide training and competency evaluations.
24. Clinical Coverage Policy Section 7.2.3 does not specify how a provider must document an aide's competency nor proscribe how a provider determines competency.
25. Petitioner requires its aides to review a video on care delivery techniques before hiring. Petitioner's aides then take a test asking targeted questions about Petitioner's PCS care philosophy. Petitioner maintains the results of these tests in its files.
26. Petitioner also conducts nurse supervisory visits every 90 days. During these supervisory visits, one of Petitioner's nurses documents that the aide has sufficient skill to provide the personal care required for that Medicaid recipient.
27. Petitioner did not conduct criminal background checks before hiring the aides in question.
28. Although the policy requires background checks, the Respondent takes no position on whether specific criminal history disqualifies a prospective aide from getting the job. In conducting its audit, the Respondent does not review or consider any criminal history contained in the background checks the auditors review.
29. The policy does restrict hiring of aides who are listed on the North Carolina Health Personnel Registry.

30. Petitioner later conducted criminal background checks on the aides in question. Four out of five aides (80%) who have now passed background checks have no criminal history.
31. Most aides with a criminal history had only minor traffic or driving-related incidents in their record.
32. There is no allegation that Petitioner's aides were listed on the Health Care Personnel Registry or that Petitioner failed to confirm that its aides were not listed on the Health Care Personnel Registry.
33. The Respondent's Motion contained no supporting affidavits and Respondent has filed no affidavits or other evidence in response to Petitioner's Motion.

CONCLUSIONS OF LAW

1. Administrative Law Judges may rule on all prehearing motions authorized under the North Carolina Rules of Civil Procedure, including motions for summary judgment. See N.C. Gen. Stat. § 150B-33(b)(3a); 26 N.C.A.C. 3.0105(1) and (6).
2. Under N.C. Gen. Stat. § 1A-1, Rule 56(c), summary judgment appropriately is awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law."
3. The General Assembly, as part of the reforms to the Medicaid program and the Medicaid auditing process, determined that the Respondent "shall have the burden of proof in appeals of Medicaid providers concerning adverse determinations." N.C.G.S. § 108C-12(d).
4. The statute defines the term "adverse determination" to include decisions by the Respondent to recoup funds from a Medicaid provider. N.C.G.S. § 108C-2(1). As a result, the Respondent has the burden of proof in this case.
5. N.C.G.S. § 108C-5(i), which governs when extrapolation is permissible, states: "Prior to extrapolating the results of any audits, the Respondent shall demonstrate and inform the provider that (i) the provider failed to substantially comply with the requirements of State or federal law or regulation or (ii) the Respondent has credible allegation of fraud concerning the provider."
6. To use extrapolation in an audit of a Medicaid provider, the Respondent must demonstrate not just a mere policy violation but rather that the provider failed to comply with State or federal law or regulation. N.C.G.S. § 108C-5(i)
7. Respondent exceeded its authority by using extrapolation in this audit because Respondent did not show that Petitioner failed to substantially comply with the requirements of any State or federal law or regulation, nor assert that it has a credible allegation of fraud against the provider.
8. Medical Coverage Policies are "[t]hose policies, definitions, or guidelines utilized to evaluate, treat, or support the health or developmental conditions of a recipient so as to determine eligibility, authorization or continued authorization, medical necessity,

course of treatment and supports, clinical outcomes, and clinical supports treatment practices for a covered procedure, product, or service.” N.C.G.S. § 108A-54.2

9. To the extent that medical coverage policies are exempt from rulemaking under N.C.G.S. § 150B-1(d)(9), the alleged violations do not constitute medical coverage policies.
10. “Audits that result in the extrapolation of results must be performed and reviewed by individuals who shall be credentialed by the Respondent, as applicable, in the matters to be audited, including, but not limited to coding or specific clinical issues.” N.C.G.S. § 108C-5(j)
11. The Respondent must affirmatively issue credentials to its auditors in the matters to be audited if that audit is to result in extrapolation. N.C.G.S. § 108C-5(j)
12. That Respondent verifies only that prospective auditors are registered nurses before hiring them does not meet the statutory requirement that the Respondent credential the auditors in the matters to be audited.
13. That Petitioner showed documentation of its aides’ competency to provide personal care services creates a sufficient factual dispute to render summary judgment inappropriate as a matter of law on that issue.
14. Under the current requirements of Clinical Coverage Policy 3C, that Petitioner hired aides without conducting background checks may represent harmless error where the Respondent takes no position on whether specific criminal history removes an aide from consideration for the job.
15. Respondent failed to refute Petitioner’s evidence as Respondent has neither served an affidavit or other supporting evidence to support its motion or dispute facts set forth by Petitioner’s motion.

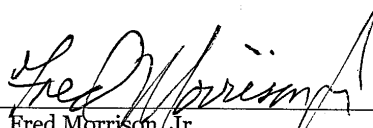
DECISION

Based on the above facts and the foregoing conclusions of law, Petitioner’s Motion for Partial Summary Judgment is granted and Petitioner’s alternative Motion for Sanctions is therefore denied.

Respondent’s Motion for Summary Judgment is hereby denied.

This Court directs further proceedings in the form of a contested case hearing on the issue of whether Petitioner’s aide competency documentation complies with Clinical Coverage Policy 3C and any other such contested portions of the Respondent’s decision that remain in light of this Order. Pursuant to this Court’s ruling set forth above, the amount in controversy that remains in this case is the actual repayment amount determined by the Department’s post-payment review not including extrapolation.

This the 9th day of August, 2013.

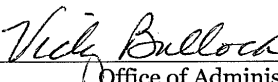

Fred Morrison, Jr.
Administrative Law Judge

On this date mailed to:

Renée J. Montgomery
Robert A. Leandro
Matthew W. Wolfe
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602
Attorneys - Petitioner

Brenda Eaddy
Assistant Attorney General
North Carolina Department of Justice
Health and Public Assistance Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Attorney - Respondent

This the 9th day of August, 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714
Telephone: 919-431-3000
Fax: 919-431-3100

STATE OF NORTH CAROLINA

COUNTY OF MADISON

FILED

2013 JUL 17 AM 12:44

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

NO. 12 EDC 12183

MATTHEW SCHNEIDER,

OFFICE OF
ADMINISTRATIVE HEARINGS

Petitioner,

v.

FINAL DECISION

NC DEPARTMENT OF PUBLIC
INSTRUCTION,

Respondent.

This matter coming on to be heard before the undersigned Administrative Law Judge on June 21, 2013, and the court having heard and considered the testimony and other evidence presented, the undersigned makes the following Findings of Fact and Conclusions of Law.

APPEARANCES

For the Petitioner: Matthew Schneider, Pro Se
97 Paradise Lane
Mars Hill, NC 28754

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether the Respondent wrongfully denied Petitioner's request for salary credit for "non-teaching" experiences based upon his prior experience as: a student services coordinator at the University of Phoenix; an assistant director of admissions at Mars Hill College; an admissions counselor at Montreat College; and an assistant manager at Helzberg Diamonds jewelry store.

STATUTES AND POLICIES INVOLVED

N.C. Gen. Stat sec. 150B-23; 115C-296; and State Board of Education Policy TCP-A-006.

FINDINGS OF FACT

1. N.C. General Statute § 115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.

G.S. 115C-296(a)

2. Pursuant to its statutory authority to “determine and fix the salary for each grade and type of license which it authorizes,” the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-006, entitled “Policies related to experience/degree credit for salary purposes.”

3. The policy recognizes that educators employed in the public schools may be awarded salary credit for past employment experience as well as for certain graduate degrees. Generally, the salary credit falls into three main categories: prior experience as a teacher; prior work experience that is non-teaching in nature; and possession of a graduate degree.

4. In order to be eligible to receive credit for prior “non-teaching” work experience, the prior work experience must meet several criteria. The critical factor for deciding whether to award “non-teaching” work experience credit, however, is whether that prior work experience is “directly related” to an individual’s area of licensure and work assignment.

5. Specifically, TCP-A-006 provides, in pertinent part, as follows:

‘Relevant non-teaching work experience’ shall be defined as professional work experience in public or private sectors that is directly related to an individual’s area of licensure and work assignment.

State Board of Education Policy TCP-A-006, section 6.20 (emphasis added).

6. Petitioner is employed by the Madison County Public Schools as a secondary level social studies teacher.

7. After beginning employment in 2011, Petitioner requested credit for eleven years of past non-teaching work experience. At the time, Petitioner was licensed in social studies. Petitioner’s teaching assignment at the time of his request was in history and geography.

8. Petitioner’s request for credit for his experience as a student services coordinator at a university; as an assistant director of admissions at a college; as an admissions counselor at a college; and as an assistant manager at a jewelry store was accordingly denied by members of licensure staff at the Department of Public Instruction. The denial was based upon the Department’s determination that the prior experience was not “directly related” to Petitioner’s area of licensure and teaching assignment.

9. Following this initial denial, and pursuant to SBE Policy TCP-A-006, Petitioner, through Madison County Public Schools, requested a review by the Experience/Degree Credit Appeals Panel.

10. The Panel consists of professional educators, none of whom is employed by the State Board of Education or the Department of Public Instruction. The Panel was created to give another level of review in the process and specifically to permit teachers another opportunity to present information in an objective forum.

11. The Panel here thoroughly reviewed and considered the information submitted, including a detailed letter by the Petitioner in which he explained how his previous work experience related to the teaching profession in general, as well as job descriptions relating to Petitioner's past work experiences. After deliberating, the Panel voted to deny Petitioner's request. In the Panel's opinion, Petitioner's prior work experience, while helpful to Petitioner as a teacher generally, was not directly related to the subject area in which he was licensed and his current teaching assignment.

12. The term "directly related" as used in the State Board Policy at issue here, and as applied by DPI staff and the Panel members, is a term of art that is understood by the licensure staff, by members of the Panel, and by personnel administrators in the local school systems. It is defined by a "subject matter" test: Is the prior experience in a subject area that the teacher is both licensed in and assigned to teach?

13. In this case, while Petitioner's prior work was helpful in his teaching duties, the prior work did not involve the subject area he was licensed in and assigned to teach and thus did not meet the definition of "directly related" as used in TCP-A-006.

CONCLUSIONS OF LAW

1. Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of the evidence. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988).

2. The State Board of Education has the constitutional power "to supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art IX, § 5. This power includes the power to "regulate the grade [and] salary... of teachers." Guthrie v. Taylor, 279 N.C. 703, 709, 185 S.E.2d 193, 198 (1971), cert. denied, 406 U.S. 920, 32 L.Ed.2d 119 (1972). The State Board has the specific duty "to certify and regulate the grade and salary of teachers and other school employees." N.C. Gen. Stat. § 115C-12(9)a; Guthrie at 711.

3. Finally, the State Board has the statutory authority to "determine and fix the salary for each grade and type of certificate which it authorizes..." G.S. 115C-296(a).

4. Based upon a preponderance of the evidence presented, the intent of the State Board of Education in adopting TCP-A-006 was to recognize prior work experience that directly supported the subject area to which a teacher was assigned and licensed to teach. Incidental skills or duties that are helpful in any work environment are not deemed to be directly related to

the subject area in which the teacher is licensed and assigned to teach and thus are not creditable for salary purposes.

5. In reaching this determination, the court relies upon the testimony of individuals with years of experience in applying the policy and the uninterrupted interpretation of that policy over the years. This court may rely upon consistent interpretation by a State Agency of its own statutes and policies in reaching a conclusion with regard to the application of a particular policy to a given set of facts. See State v. Jones, 358 N.C. 473, 598 S.E.2d 125 (2004); Frye Regional Medical Center, Inc. v. Hunt, 350 N.C. 39, 510 S.E.2d 159 (1999). Moreover, the agency's interpretation of its own policies is controlling unless it is plainly erroneous. Morrell v. Flaherty, 338 N.C. 230, 237, 449 S.E.2d 175, 179-80 (1994).

6. Petitioner has not met his burden of demonstrating that Respondent has deprived him of property or has otherwise substantially prejudiced his rights and that Respondent has:

- a. Exceeded its authority;
- b. Acted erroneously;
- c. Failed to use proper procedure;
- d. Acted arbitrarily or capriciously; or
- e. Failed to act as required by law or rule.

DECISION

The undersigned finds and holds that there are sufficient undisputed facts, findings, and evidence in the record to support the Conclusions of Law stated above that the Petition for Contested Case should be denied. The preponderance of the evidence supports the decision by the State Board of Education and Petitioner has failed to meet its burden to show otherwise.

ACCORDINGLY, based upon the foregoing, it hereby is ORDERED, ADJUDGED, AND DECREED as follows:

1. The relief requested by the Petition for Contested Case hereby is DENIED.

This is a final decision under the authority of N.C.G.S. § 150B-34.

NOTICE

Under the provisions of North Carolina General Statute §150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute §1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with

the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 15th day of July, 2013.



Selina M. Brooks
Administrative Law Judge

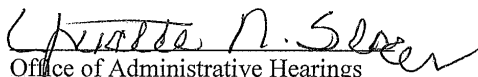
CERTIFICATE OF SERVICE

A copy of the foregoing was sent to:

Matthew Schneider
97 Paradise Lane
Mars Hill, NC 28754
PETITIONER

Tiffany Y. Lucas
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 17th day of July, 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431-3000
Fax: (919) 431-3001

STATE OF NORTH CAROLINA
COUNTY OF VANCE

Filed
2013 JUN 24 PM 2:00 ADMINISTRATIVE HEARINGS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

Darrion Smith, Petitioner, v. Murdock Developmental Center and the North Carolina Department of Health and Human Services, Respondent.	12OSP06780
Ricky Bass, Petitioner, v. North Carolina Department of Health and Human Services, Respondent.	12DHR08134
Darrion Smith, Petitioner, v. North Carolina Department of Health and Human Services, Respondent.	12DHR08136

FINAL DECISION

The above-captioned cases were heard before Administrative Law Judge Beecher R. Gray on March 11th and 12th, 2013, in Raleigh, North Carolina. A decision was rendered at the close of evidence and after argument from the three parties. The decision was issued on both the Just Cause issue and on the entry of substantiated findings in the North Carolina Health Care Personnel Registry. Petitioner submitted a proposed decision on March 26, 2013. Respondent submitted its proposed decision on June 19, 2013.

APPEARANCES

For Petitioner: Gabe Talton, Attorney at Law
Law Office of Talton & Gilbert
318 South Academy Street
Cary NC 27511
Tel. 919-397-1026

For Respondents: Roy A. Cooper, III, Attorney General
Derek Hunter, Assistant Attorney General, Appearing
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

Adam Shestak, Assistant Attorney General Appearing
300 Veazey Road
Butner, NC 27509

Josephine Tetteh, Assistant Attorney General, appearing
N.C. Department of Justice
P.O. Box 629
Raleigh NC 27602-0629

WITNESSES

The witnesses consisted of Nicola Elwood, Darrion Smith, Ricky Bass, Mike Senter, Carmelo Asuncion, Solomon Weiner, Corie Henderson, and Joanna Crews.

EXHIBITS

Petitioner's exhibits ("P. Exs.") 1 and 2 and Respondent's exhibits ("R. Exs.") 1-40 were admitted. All admitted exhibits were entered into the record upon stipulation of the parties as to authenticity.

ISSUES

- 1) Whether Respondent Murdoch Developmental Center ("Murdoch Center") and the North Carolina Department of Health and Human Services ("DHHS") had just cause to terminate Petitioner Darrion Smith from employment for unacceptable personal conduct.
- 2) Whether Respondent North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section ("HCPR") properly substantiated allegations of abuse and neglect against Petitioners Darrion Smith and Ricky Bass.

FINDINGS OF FACT

- 1) The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.

- 2) In the State Personnel Manual, with which DHHS and its Divisions, including Murdoch Center, are required to comply, the State of North Carolina has adopted a policy that establishes that State employees are subject to disciplinary action for unacceptable personal conduct. Unacceptable personal conduct includes, among other things, (i) conduct for which no reasonable person should expect to receive prior warning; (ii) the willful violation of known or written work rules; and (iii) conduct unbecoming a State employee that is detrimental to State service. (R. Ex. 1, pg 397)
- 3) Murdoch Center is a certified intermediate care facility for the treatment of individuals with mental retardation ("ICF/MR") operated by the North Carolina Department of Health and Human Services, Division of State Operated Healthcare Facilities. To be eligible for admission to Murdoch Center, a person must have a diagnosis of profound, severe, or moderate intellectual/developmental disabilities or a related developmental disability.
- 4) Petitioner Ricky Bass ("Bass") was hired at Murdoch Center in October 2001. Petitioner Bass had been working as a Youth Program Assistant I in the Meadowview Cottage for six (6) years after working in other capacities at Murdoch Center. He had returned to work on February 2, 2012, after medical leave.
- 5) Petitioner Darrion Smith ("Smith") was hired as a Youth Program Assistant I at Murdoch Center in March 2010 and worked in the Meadowview Cottage.
- 6) The STARS (Specialized Treatment for Adolescents in a Residential Setting) Unit, located in Meadowview Cottage, serves adolescents, ages 13-17, who have a dual diagnosis of a developmental disability and a mental illness.
- 7) Petitioner Bass consistently had received a rating of "Very Good" on his performance evaluations in his time at Murdoch Center and never had been subject to any discipline.
- 8) Petitioner Smith consistently had received a rating of "Very Good" on his performance evaluations in his time at Murdoch Center and never had been subject to any major disciplinary actions.
- 9) On March 6, 2012, the census of the STARS Unit was thirteen (13) residents, which required a minimum coverage of six (6) staff persons. There were six (6) staff members assigned to the STARS Unit, which therefore met the minimum staff coverage.
- 10) Resident W was a resident on the STARS Unit who had a history of committing violent acts against staff and other residents. Resident W was known to kick, bite, pull hair, hit, and spit at staff and other patients.
- 11) Murdoch Center employs and trains its employees in North Carolina Interventions ("NCI"). NCI is a standardized training program created by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services ("DMH/DD/SAS"), designed to prevent the

unnecessary use of restraints and seclusion for individuals with mental illness and developmental disabilities. NCI teaches physical restraints and interventions that can be performed to subdue and protect combative individuals from harming themselves, others, and/or damaging property. NCI is used in all DMH/DD/SAS facilities.

- 12) On March 6, 2012, Resident W struck another resident in the dining room of Meadowview Cottage. Resident W was disciplined for this incident.
- 13) Subsequently, Resident W attacked Resident H without provocation while sitting on the bleachers in the gymnasium waiting for a basketball game to start. Resident W lunged at Resident H and bit Resident H on his inner thigh. This was less than 30 minutes after the first incident in the dining room. Both Petitioners Smith and Bass were present when the incident with Resident H occurred. In response to this attack, Petitioners Smith and Bass correctly and appropriately implemented Resident W's special NCI floor restraint, as developed by Resident W's treatment team to be performed to restrain Resident W in the event of aggressive behavior.
- 14) Once Resident W was released from the floor restraint, he walked up the bleacher stairs and attacked Resident J, knocking off Resident J's glasses and attempting to bite him on the leg.
- 15) Petitioners Smith and Bass removed Resident W from the bleachers and correctly and appropriately implemented Resident W's special floor restraint a second time. Division Director Nicola Elwood was present and witnessed Resident W's behavior and Petitioners' restraint of Resident W, as assisted by employee Felicia Thompson. Employee Nicole Lee, in her third trimester of pregnancy, timed the floor hold of Resident W.
- 16) Once Petitioners Smith and Bass released Resident W from his special floor restraint, they escorted him back to Meadowview Cottage in a prescribed controlled walk, with a Petitioner on each side of Resident W.
- 17) Petitioners Smith and Bass entered Meadowview Cottage with Resident W in an NCI-approved limited control walk. At this time, Resident H was in the nurses' station being treated by Carmelo Asuncion, RN ("Nurse Asuncion") for the bite inflicted by Resident W. As Petitioners and Resident W passed the nurses' station, Resident W became agitated at the sound of Resident H's voice and became violent against Petitioners Smith and Bass while they sought to contain Resident W as he attempted to break free and get into the nurses' station where Resident H was located. Petitioners Smith and Bass and Resident W were approximately 5 feet from the STARS Unit Door when Resident W turned himself around by twisting and squirming so as to face back toward the sound of Resident H's voice in the nurses' station. Resident W went limp and dropped to the floor in an attempt to free himself from the hold of Petitioners Smith and Bass.
- 18) Program Coordinator Joanna Crews testified that she emerged from a conference room and witnessed Petitioners Smith and Bass "dragging" Resident W backwards down the

hallway towards the STARS Unit. At the time Program Coordinator Crews entered the hallway from the conference room, Petitioners Smith and Bass each were holding Resident W by one of his arms facing away from Program Coordinator Crews, while Resident W, facing toward Program Coordinator Crews and the nurses' station, had his heels on the floor. Program Coordinator Crews could not tell if Resident W's bottom was on the floor. Program Coordinator Crews assisted Petitioners Smith and Bass in taking Resident W to the floor in a sitting position right at the STARS Unit doorway.

- 19) Program Coordinator Crews yelled out, "guys," when she saw Petitioners Smith and Bass pulling Resident W, and they stopped moving with him. Program Coordinator Crews knew that Resident W had a special procedure that was to be used in the event that he needed to be restrained and saw that Petitioners Smith and Bass were not employing Resident W's special procedure. Program Coordinator Crews, having just stepped out of a conference room into the hallway, apparently was unaware of the exigent circumstances faced by Petitioners Smith and Bass as they struggled to contain Resident W and get him decelerated from his determined effort to go after Resident H in the nurses' station.
- 20) Nurse Asuncion testified that he also saw Petitioners Smith and Bass pulling Resident W backwards by his arms towards the STARS Unit. He exited the nurses' station to assist in the restraint of Resident W, but did not have to intervene as Petitioners Smith and Bass and Program Coordinator Crews correctly had employed Resident W's special procedure by the time Nurse Asuncion reached them in the hallway.
- 21) Petitioner Bass testified that he and Petitioner Smith had been thrown off balance by Resident W's weight shift when he went limp. Petitioner Bass could not remember the moment to moment struggle with Resident W, but testified that Resident W had slipped from their grasp, and they were trying to prevent his escaping so as to attack Resident H, who was in the nurses' station. Petitioner Bass--newly returned to work after a one year absence while being treated for cancer and somewhat weak--described pulling Resident W down the hallway backwards by his arms as the best they could do under exigent circumstances until a proper hold could be obtained, but did not characterize the action as "dragging."
- 22) Petitioner Smith testified that Resident W had gone limp and slumped toward the floor in an effort to get free and attack Resident H, who was located in the nurses' station. He demonstrated the limited control walk and how Resident W tried to resist him and Petitioner Smith. Petitioner Smith similarly described pulling Resident W down the hallway backwards and by his arms as an effort to prevent Resident W's determined effort to go after Resident H.
- 23) Nurse Asuncion testified that he examined Resident W after the incident and that Resident W had no injuries.
- 24) Program Coordinator Crews reported the incident to Division Director Nicola Elwood. The incident then was referred to Patient Advocacy for an investigation. Mike Senter conducted an investigation. Investigator Senter took the statements of Petitioners Smith,

Bass, and the staff members who were involved in or witnessed the incident. After his investigation, Investigator Senter substantiated the allegations of abuse against Petitioners Smith and Bass.

- 25) Corie Henderson is a preceptor at Murdoch Center who is an NCI instructor and trains Murdoch Center's employees in NCI. Corie Henderson testified that when Resident W attempted to break free of the limited control walk outside the nurses' station, proper NCI technique would have been for Petitioners Smith and Bass to release Resident W and immediately attempt to implement his special procedure. Corie Henderson further testified that pulling Resident W in the manner that Petitioners Smith and Bass did is not an NCI-approved technique. Corie Henderson also testified that no consideration was given, in the formulation of that opinion, to Resident W's intent, strenuous attempt, and threat to go after Resident H in the nearby nurses' station.
- 26) Solomon Weiner, RN, an investigator for HCPR, conducted an independent investigation regarding this incident. As a result of his investigation, Investigator Weiner substantiated the allegations of abuse and neglect against Petitioners Smith and Bass. Investigator Weiner based his opinion that the abuse and neglect allegations should be substantiated upon his belief that Resident W's mental anguish was aggravated by Petitioners because they did not release Resident W and attempt to implement the correct NCI hold when he dropped to the floor. Investigator Weiner interviewed Petitioners Smith and Bass, as well as other employees who had some involvement in the incident with Resident W, but did not interview Resident W. Investigator Weiner also established that part of Resident W's diagnosis includes cognitive disabilities.
- 27) By letter dated March 7, 2012, Petitioner Smith was notified in writing that he was being placed on investigatory leave with pay to allow Murdoch Center to conduct an investigation into the March 6, 2012, incident.
- 28) By letter dated March 13, 2012, Petitioner Smith was notified that a recommendation was made that he be dismissed from his position as a Youth Program Assistant I for unacceptable personal conduct and that a pre-disciplinary conference was scheduled for March 14, 2012, during which time the matter would be discussed with him, and he would be allowed to present any additional information.
- 29) The pre-disciplinary conference was held on March 14, 2012, and, by letter dated March 16, 2012, Petitioner Smith was notified that he was being terminated from his position as a Youth Program Assistant I at Murdoch Center for unacceptable personal conduct as a result of the March 6, 2012, incident.
- 30) Petitioner Smith participated in the internal grievance process and, by letter dated July 2, 2012, his termination was upheld by Albert A. Delia, then-Acting Secretary of DHHS.
- 31) Abuse is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish." 10A NCAC 130.0101(1); 42 CFR § 488.301.

- 32) Neglect is denied as a "failure to provide good and services necessary to avoid physical harm, mental anguish or mental illness." 10A NCAC 13O.0101(10); 42 CFR § 488.301.

Based on the foregoing findings of fact, I make the following:

CONCLUSIONS OF LAW

- 1) The parties properly are before the Office of Administrative Hearings.
- 2) Petitioner Darrion Smith is a "career State employee" as defined in N.C.G.S. § 126-1.1.
- 3) As Youth Program Assistants, Petitioner Smith and Petitioner Bass both are health care personnel as defined in N.C.G.S. § 131E-256(c) and are subject to the provisions of N.C.G.S. § 131E-256.
- 4) The evidence produced by Respondent is insufficient to demonstrate unacceptable personal conduct by Petitioner Smith or Petitioner Bass, or any conduct amounting to abuse or neglect by Petitioner Smith or Petitioner Bass.
- 5) Respondent's evidence does not establish just cause for the termination of Petitioner Smith's employment under the provisions of Chapter 126 of the North Carolina General Statutes as interpreted and applied in existing case law.
- 6) The evidence would support an oral warning for inadequate performance of duties as to Petitioner Smith.
- 7) The evidence is sufficient to demonstrate that substantiations of abuse and neglect improperly were entered by the North Carolina Health Care Personnel Registry.

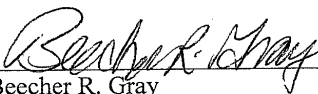
FINAL DECISION

- 1) Based upon the foregoing Findings of Fact and Conclusions of Law, I find that Respondent has failed to establish, by a preponderance of the evidence, just cause for the of Petitioner Smith from his employment as a Youth Program Assistant I. Petitioner Smith is entitled to reinstatement to the same or a similar position from which he was discharged, back pay, front pay until satisfactory reinstatements occur, and reasonable attorney's fees and costs.
- 2) Based upon the foregoing Findings of Fact and Conclusions of Law, I find that Petitioners Darrion Smith and Ricky Bass met their burdens, by a preponderance of the evidence, that the allegations of abuse and neglect improperly were substantiated by the Health Care Personnel Registry and said entries shall be removed as pertains to Petitioners Smith and Bass.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 24 day of July, 2013.



Beecher R. Gray
Administrative Law Judge

On this date mailed to:

J GABE TALTON
Attorney At Law
318 SOUTH ACADEMY STREET
CARY, NC 27511
Attorney For Petitioner

DEREK L HUNTER
JOSEPHINE TETTEH
N.C. Department Of Justice
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
Attorney For Respondent

ADAM SHESTAK
300 VEAZEY RD.
BUTNER, NC 27509
Attorney For Respondent

This the 25th day of July, 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
Telephone: 919/431-3000
Fax: 919/431-3100

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/25/2013 12:48 PM

STATE OF NORTH CAROLINA
COUNTY OF VANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

Darrion Smith, Petitioner, v. Murdock Developmental Center and the North Carolina Department of Health and Human Services, Respondent.	12OSP06780
Ricky Bass, Petitioner, v. North Carolina Department of Health and Human Services, Respondent.	12DHR08134
Darrion Smith, Petitioner, v. North Carolina Department of Health and Human Services, Respondent.	12DHR08136

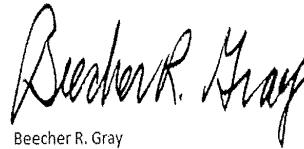
ORDER AMENDING DECISION

Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS
HEREBY ORDERED that the above-captioned Decision, issued from this Office on July 24,
2013 is amended as follows:

FINAL DECISION

- 1) Based upon the foregoing Findings of Fact and Conclusions of Law, I find that Respondent has failed to establish, by a preponderance of the evidence, just cause for the dismissal of Petitioner Smith from his employment as a Youth Program Assistant I. Petitioner Smith is entitled to back pay, front pay until satisfactory reinstatements occur, and reasonable attorney's fees and costs.

This the 25th day of July, 2013.



Beecher R. Gray
Administrative Law Judge

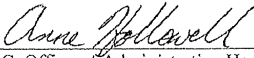
On this date mailed to:

J GABE TALTON
Attorney At Law
318 SOUTH ACADEMY STREET
CARY, NC 27511
ATTORNEY FOR PETITIONER

DEREK L HUNTER
JOSEPHINE TETTEH
N.C. Department of Justice
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
ATTORNEY FOR RESPONDENT

Adam M L Shestak
N.C. Department Of Justice
300 Veazey Rd.
BUTNER, NC 27509
ATTORNEY FOR RESPONDENT

This the 25th day of July, 2013.



N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919 431 3000
Facsimile: 919 431 3100