

NORTH CAROLINA REGISTER

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July 17, 2017

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NORTH CAROLINA REGISTER
Publication Schedule for January 2017 – December 2017

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
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
32:12	12/15/17	11/22/17	12/30/17	02/13/18	02/20/18	04/01/18	05/2018	09/11/18

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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



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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, 13 NCAC 07F .0501, and 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 1910, 1915, and 1926 promulgated as of January 9, 2017, 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 1910—General Industry Standards.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, Occupational Exposure to Beryllium, 29 CFR § 1910 (General Industry), 1915 (Shipyard Employment), 1926 (Construction) (82 FR 2470, January 9, 2017)

The final rule, published in the Federal Register on January 9, 2017 (82 FR 2470), establishes new substance-specific standards governing occupational exposure to beryllium for general industry, maritime and construction. The new rule lowers the 8-hour time-weighted average (TWA) permissible exposure limit (PEL) to 0.2 micrograms per cubic meter, sets a short-term exposure limit of 2.0 micrograms per cubic meter over a 15-minute period and establishes an action level of 0.1 micrograms per cubic meter as an 8-hour TWA.

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:

Jill F. Cramer, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

Summary of Verbatim Adoptions
Effective January 9, 2017

Occupational Safety and Health Standards

The final rule, published in the Federal Register on January 9, 2017 (82 FR 2470), establishes new substance-specific standards governing occupational exposure to beryllium for general industry, maritime and construction. The new rule lowers the 8-hour time-weighted average (TWA) permissible exposure limit (PEL) to 0.2 micrograms per cubic meter, sets a short-term exposure limit of 2.0 micrograms per cubic meter over a 15-minute period and establishes an action level of 0.1 micrograms per cubic meter as an 8-hour TWA. OSHA's final rule was effective May 20, 2017.

The attached amendments of 13 NCAC 07F .0101, 13 NCAC 07F .0501, and 13 NCAC 07F .0201 are required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), **the effective date of this action is July 1, 2017.**

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 and G.S. 150B-21.3A(c)(2)g. that the NC Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC 10 .0308, .0309, .0313, .0602, and .0702.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp>

Proposed Effective Date: November 1, 2017

Public Hearing:

Date: September 13, 2017

Time: 10:00 a.m.

Location: Division of Social Services, 820 South Boylan Avenue, Conference Room 151, Raleigh, NC 27603

Reason for Proposed Action: The North Carolina Social Services Commission and the Division of Child Development and Early Education (DCDEE) propose to amend rules 10A NCAC 10 .0308, .0309, .0313, .0602 and repeal rule .0702. The amendments to rule .0308 will add DCDEE to the parties that may impose sanctions on recipients and providers for fraudulent misrepresentation and increase the penalties imposed for fraudulent misrepresentation. Amendments to rule .0309 will define the process of correcting overpayments and underpayments made to a provider that was a result of an inadvertent error or fraudulent misrepresentation. In rule .0313 amendments are to adjust the wording of the rule and provide greater clarity to providers and the public. Amendments to rule .0602 will meet Federal requirements for training under the Child Care and Development Block Grant Act of 2014 (CCDBG) and provide clarification for the requirements for participation in the NC Subsidized Child Care Assistance Program in regards to non-compliance. The amendments are requirements or clarifications needed to obtain funds through the CCDBG which is the largest source of federal funding for North Carolina's Subsidized Child Care Assistance Program. This rule also addresses the new procedures for enrollment in the NC FAST Provider Portal. Rule .0702 is being repealed because it will no longer be necessary. This rule addresses requirements of family child care homes which is being incorporated into rule 10A NCAC 10 .0602 as child care facilities. Once rule .0602 is amended, it will address requirements for all child care facilities.

Comments may be submitted to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2200; phone (919) 527-6502; fax (919) 715-0968; email Dedra.Alston@dhhs.nc.gov

Comment period ends: September 15, 2017

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)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☐ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 10 - SUBSIDIZED CHILD CARE

SECTION .0300 - REQUIREMENTS FOR CHILD CARE SERVICE FUNDS

10A NCAC 10 .0308 SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION

(a) The local purchasing agency or the Division shall impose sanctions for fraudulent misrepresentation when a person, whether an operator, as defined in G.S. 110-86(7) ~~provider~~ or recipient of child care subsidies, or someone claiming to be a ~~provider~~ an operator an operator or recipient of child care subsidies, does the following:

- (1) With ~~the~~ intent to deceive, makes a false statement or representation regarding a material fact, or fails to disclose a material fact; ~~and~~ or
- (2) With reckless disregard as to the accuracy of records, submits inaccurate records to the Department, Division, or local purchasing agency; and
- (2)(3) As a result of the false statement or ~~representation or the omission,~~ representation, omission, or submission of inaccurate records, obtains, attempts to obtain, or continues to

receive a child care subsidy for himself or herself or for another person.

(b) Upon the first instance of fraudulent misrepresentation by a recipient, the local purchasing agency or the Division shall impose the following sanctions for fraudulent misrepresentation in addition to requiring the recipient to repay the amount of child care subsidy for which he or she was is ineligible to receive: receive, and the recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

- (1) ~~After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to receive subsidized child care services until overpayment is recouped in full or the local purchasing agency shall enter into a repayment agreement with the recipient if the recipient so desires;~~
- (2) ~~After the second incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to participate in the subsidized child care program for three months; and~~
 - (A) ~~shall repay the overpayment in full; or~~
 - (B) ~~the local purchasing agency shall enter into a new repayment agreement with the recipient if the recipient so desires;~~
- (3) ~~After the third incidence of fraudulent misrepresentation by a recipient, the recipient shall be permanently ineligible to participate in the subsidized child care program and shall repay the overpayment in full.~~
- (4) ~~After the first incidence of fraudulent misrepresentation by a provider the provider shall not be paid with subsidized child care funds for any new children who enroll in the provider's program for 12 months; and~~
 - (A) ~~the provider shall repay the overpayment in full; or~~
 - (B) ~~the local purchasing agency shall enter into a repayment agreement with the provider if the provider so desires; and~~
- (5) ~~After the second incidence of fraudulent misrepresentation by a provider, the provider shall repay the overpayment in full, shall be permanently ineligible to participate in the subsidized child care program, and shall not be reimbursed for any services provided to children enrolled in the provider's program from the date of notification of sanction in accordance with G.S. 150B-23(e).~~

(c) Upon the first instance of fraudulent misrepresentation by an operator, the local purchasing agency or the Division shall require the operator to repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program. If a recipient or provider enters into a repayment agreement and fails to comply with terms of that agreement: eligibility to participate in the subsidized child care program shall cease until repayment is made in full or the

~~recipient or provider and the local purchasing agency agree to modify the repayment agreement.~~

(d) Notwithstanding Paragraphs (b) and (c) Subparagraphs (b)(4), (5), and (6) of this Rule, the recipient or provider operator shall also be permanently ineligible to participate in the subsidized child care program if: Subsidized Child Care Assistance Program if convicted of fraudulent misrepresentation pursuant to G.S. 110-107.

- (1) ~~the total dollar amount of the fraudulent misrepresentation exceeds ten thousand dollars (\$10,000); or~~
- (2) ~~the recipient or provider is convicted of fraudulent misrepresentation pursuant to G.S. 110-107.~~

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction. ~~Appeal of a sanction shall not stay the termination of payments under this Rule.~~

(f) If an operator subject to a sanction under this Rule sells or transfers ownership of a child care facility, the new owner, as defined in 10A NCAC 10 .0102(5), shall be prohibited from receiving funds through the Subsidy Child Care Assistance Program for six months after the sale or transfer. If an operator subject to a sanction purchases a new child care facility or opens another facility, the sanction in effect against the operator shall attach to the new child care facility.

(g) The Division may require the local purchasing agency to investigate instances of suspected fraudulent misrepresentation or suspected falsification by a recipient, or to assist the Division in investigating instances of suspected fraudulent misrepresentation or falsification by an operator.

(h) The local purchasing agency shall notify the Division in writing within five days of issuing any sanction. Nothing in this Rule shall be construed as limiting child care services pursuant to 10A NCAC 10 .0906.

~~(f)(i) A child care provider~~ An operator may appeal any sanction imposed in Paragraph (b) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues any sanction pursuant to this Rule, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

~~(g)(j) When a court of competent jurisdiction finds a recipient or provider operator guilty of fraudulent misrepresentation pursuant to Subparagraph (d)(2)(d) of this Rule, the sanction imposed is not subject to appeal under this Section.~~

(k) Nothing in this Rule shall prevent the Division from initiating its own investigation of suspected falsification, inaccurate records, or fraudulent misrepresentation related child care subsidy, and taking administrative action as a result of its findings and conclusions.

Authority G.S. 143B-153.

10A NCAC 10 .0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS

(a) An overpayment made to an operator as a result of an inadvertent error shall be recouped by withholding the amount overpaid from monies due to the operator for services provided

pursuant to the state's Subsidized Child Care Assistance Program in an amount not to exceed 20 percent of each payment to the operator. Should the operator cease to participate in the Subsidized Child Care Assistance Program before the overpayment is fully repaid, the remaining monies shall be recouped by:

- (1) Repayment agreement made with the local purchasing agency; however, the local purchasing agency shall prosecute the operator for failure to make timely payments as required to comply with the terms of the agreement;
- (2) Involuntary repayment by pursuing court action; or
- (3) Wage garnishment as permitted by law.

~~(a) An overpayment made as a result of inadvertent error or fraudulent misrepresentation by the recipient or provider as described in Rule .0308(a) of this Section shall be recouped as follows:~~

- ~~(1) From the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and~~
- ~~(2) By:~~
 - ~~(A) voluntary repayment by the recipient or provider by;~~
 - ~~(B) involuntary repayment by pursuing court action; or~~
 - ~~(C) wage garnishment as permitted by law.~~

(b) An overpayment made to an operator as a result of fraudulent misrepresentation by the recipient or operator shall be recouped by:

- (1) Withholding the amount overpaid from monies due to the operator for services provided pursuant to the state's Subsidized Child Care Assistance Program;
- (2) Repayment agreement made with the local purchasing agency; however, the local purchasing agency shall prosecute the operator for failure to make timely payments as required to comply with the terms of the agreement;
- (3) Involuntary repayment by pursuing court action; or
- (4) Wage garnishment as permitted by law.

~~(b)(c) An overpayment made due to agency error in complying with program rules and statutes shall be corrected by adjustment through the state's subsidized child care Subsidized Child Care Assistance payment system.~~

~~(c)(d) An underpayment made due to agency or provider operator error in complying with program rules and statutes shall be corrected within 30 days of discovery of the error, but in no event shall an underpayment be corrected more than 90 days from the date of the underpayment. the local purchasing agency is not required to correct the underpayment if it is discovered more than 45 days from the date the payment is made.~~

~~(d)(e) Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10 .0311 and 10A NCAC 10 .0312.~~

Authority G.S. 143B-153.

10A NCAC 10 .0313 TERMINATION OF APPROVAL BASED UPON AN ADMINISTRATIVE ACTION ISSUED AGAINST OPERATOR

(a) Approval to participate in the Subsidized Child Care Assistance Program All child care subsidy payments made pursuant to a Provider Agreement shall terminate 45 days after issuance of an administrative action revoking, summarily suspending, or denying a license to operate a child care facility issued pursuant to G.S. 110-90.

(b) An appeal of an administrative action revoking, summarily suspending, or denying a license ~~does~~ shall not stay the termination of approval to participate in the state's Subsidized Child Care Program. Assistance Program.

(c) ~~If under appeal,~~ If the operator appeals the termination of approval, the maximum time period during which payments from the state's Subsidized Child Care Program may be made is 45 days from the date on the notice of the administrative action.

(d) ~~A provider~~ An operator subject to administrative action as described in this Rule Paragraph shall not be paid with subsidized child care funds for any new children enrolled during the 45 day period after the date on the notice of the administrative action.

(e)(e) A child care ~~provider~~ operator who has received an administrative action revoking or denying a license by the Division of Child Development and Early Education, or who is currently under summary suspension, is ineligible to participate in the state's Subsidized Child Care Assistance Program as a nonlicensed child care home. Program. This includes facilities that are exempt from licensure pursuant G.S. 110-106, facilities operating in other states, and facilities certified by the United States Department of Defense.

Authority G.S. 143B-153.

SECTION .0600 - REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 10 .0602 PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local purchasing agency. Operators shall:

- (1) enroll to participate in the State's Subsidized Child Care Assistance Program through the State's automated provider portal located at providerportal.nc.gov;
- (2) enter into and maintain a contract for payment through the State's Subsidized Child Care Assistance Program vendor; and
- (3) enter into the Subsidized Child Care Assistance Program's Provider Agreement annually.

(b) Any ~~center~~ operator approved for participation in the Subsidized Child Care Assistance Program shall continue to be eligible for as long as the ~~center~~ provider or operator maintains compliance with all of the requirements set forth in this Subchapter. Chapter.

(c) To be eligible to participate in the Subsidized Child Care Assistance Program, centers that are exempt from licensure pursuant to G.S. 110-106 must comply with all staff orientation and training requirements of the Child Care and Development

Block Grant Act, 42 U.S.C. 9858, et seq. as set forth in 10A NCAC 09 .1101, .1102, and .0304.

(e)(d) When a center is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the center to comply with the requirement. If the center fails to comply within the set time limit, approval may be terminated. Upon the first instance that the Division or the LPA determines an operator is out of compliance with any requirement for participation the Division shall:

- (1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c); and
- (2) issue a corrective action plan to address the areas of non-compliance and assist the operator to come into compliance; and
- (3) set a time limit for the center to complete the corrective action plan.

(e) Upon the second instance that the Division or the LPA determines an operator is out of compliance with any requirement for participation, the operator shall be prohibited from enrolling new children who receive subsidized child care for one year, and the Division shall:

- (1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c); and
- (2) issue a corrective action plan to address the areas of non-compliance and assist the operator to come into compliance; and
- (3) set a time limit for the center to complete the corrective action plan.

(f) An operator who fails to maintain compliance in accordance with Paragraphs (c) and (d) of this Rule three times in a two-year period shall be terminated from and permanently ineligible to participate in the Subsidized Child Care Assistance Program.

(g) When an operator is subject to a corrective action plan, the operator shall be prohibited from accepting any new Subsidized Child Care Assistance Program children.

(h) If the operator fails to fully complete the corrective action plan within the required timeframe, the Division shall terminate the operator's participation in the Subsidized Child Care Assistance Program and the operator shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

(d)(i) Upon request for review by a local, state, or federal agency representative, the operator of a child care center facility shall immediately provide all records pertaining to his or her participation in the state's Subsidized Child Care Assistance Program.

(j) If the LPA determines an operator to be out of compliance with any requirement for participation in the Subsidized Child Care Assistance Program, the LPA shall notify the Division of the noncompliance within five days of its determination.

(k) An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues the determination, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312.

Authority G.S. 143B-153(2a).

SECTION .0700 - REQUIREMENTS FOR FAMILY CHILD CARE HOMES

10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM

~~(a) Any family child care home approved for participation in the subsidized child care program shall continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this Subchapter.~~

~~(b) When a home is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the home to comply with the requirement. If the home fails to comply within the set time limit, approval shall be terminated.~~

~~(c) Upon request for review by a local, state or federal agency representative, the operator of a family child care home shall provide records pertaining to his or her participation in the state's subsidized child care program.~~

Authority G.S. 143B-153(2a).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g, that the Department of Insurance intends to readopt with substantive changes the rules cited as 11 NCAC 18 .0103; 20 .0202-.0204, .0302, .0404, and .0601 and readopt without substantive changes the rules cited as 11 NCAC 20 .0301, .0410; and 21 .0106.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncdoi.com/>

Proposed Effective Date: *November 1, 2017*

Public Hearing:

Date: *August 8, 2017*

Time: *10:00 a.m.*

Location: *1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603*

Reason for Proposed Action: *Pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g the Department of Insurance is initiating the re-adoption process for 11 NCAC 18 .0103; 20 .0202, .0203, .0204, .0301, .0404, .0410, .0601; and 21 .0106.*

Comments may be submitted to: *Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; email NCDOIRulesComments@ncdoi.gov*

Comment period ends: *September 15, 2017*

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)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 18 - MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

11 NCAC 18 .0103 FILING REQUIREMENTS

(a) All communications and filings ~~must shall~~ be made ~~with the Compliance Officer, Technical Services Group, North Carolina Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611, to the Deputy Commissioner, Life and Health Division, North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201.~~

(b) To apply for licensure, ~~in addition to~~ the information required by G.S. 58-49-50, the following items pertaining to the MEWA ~~must~~ G.S. 58-49-50 shall be submitted:

- (1) ~~Form MEWA-1 entitled "Application for License for Multiple Employer Welfare Arrangement (MEWA);"~~ The Commissioner prescribed Form MEWA-1 entitled "Application for License for Multiple Employer Welfare Arrangement (MEWA)" required by G.S. 58-49-50;
- (2) ~~The Commissioner prescribed~~ The Commissioner prescribed Form MEWA-2 entitled "Financial Statement", which shall contain the information required by G.S. 58-49-50(8);
- (3) ~~Signed and notarized biographical affidavits by all trustees of the MEWA on~~ Signed and notarized biographical affidavits by all trustees of the MEWA on ~~Commissioner prescribed~~ Commissioner prescribed Form MEWA-3 entitled "Biographical Questionnaire", ~~The Questionnaire,~~ The Questionnaire, signed and notarized biographical affidavits by all trustees of the

MEWA that shall contain information to enable the Commissioner to determine if such persons satisfy the criteria specified in G.S. 58-49-40(e);

- (4) A ~~complete~~ list of all names, ~~addresses~~ addresses, and telephone numbers of participating employers and the number of employees covered by the MEWA; and
- (5) A statement of the reasons for applying for a North Carolina MEWA license; a description of ~~exactly~~ how the MEWA proposes to develop and supervise its operations in North Carolina; the name, title, and qualifications of the person who will be responsible for the MEWA's operation in North Carolina (the managing general agent if the MEWA is domiciled outside of North Carolina); and the location of and a description of the office facilities that will be provided by the MEWA in North Carolina.

~~(b)(c)~~ All forms may be obtained from the ~~Compliance Officer~~ Department's website at http://www.ncdoi.com/lh/LH_MEWA.aspx. Every application ~~must shall~~ contain a certification that any changes to the information required by G.S. 58-49-50 and this Rule shall be reported to the Commissioner.

~~(e)(d)~~ During the pendency of an application, the MEWA shall keep all required information, statements, documents, and materials ~~current and factual.~~ current.

~~(d)(e)~~ An application for a license is not complete until the MEWA has satisfied the Commissioner that the MEWA is in compliance with all of the requirements of Article 49 of General Statute Chapter 58 and this Section. The Commissioner ~~is not required shall not process to process~~ an incomplete application.

~~(e)(f)~~ All financial information required by G.S. 58-49-50 and ~~this the rules of this~~ Section shall be prepared in accordance with statutory accounting principles.

~~(f)(g)~~ Any change in the information required by Article 49 of General Statute Chapter 58 or by this Section shall, unless otherwise specified in that Article or in this Section, be reported to the Commissioner within two business days after such change.

Authority G.S. 58-2-40(1); 58-49-40; 58-49-50; 58-49-60.

CHAPTER 20 - MANAGED CARE HEALTH BENEFIT PLANS

SECTION .0200 - CONTRACTS BETWEEN NETWORK PLAN CARRIERS AND HEALTHCARE PROVIDERS

11 NCAC 20 .0202 PROVIDER CONTRACT PROVISIONS

All provider contract forms that are created or amended on or after the effective date of this Section, and all provider contract forms that are executed later than six months after the effective date of this Section, shall contain provisions addressing the following:

- (1) Whether the contract and any attached or incorporated amendments, exhibits, or appendices constitute the entire contract between the parties.

- (2) Definitions of technical insurance or managed care terms used in the contract, and whether those definitions reference other documents distributed to providers and are consistent with definitions included in the evidence of coverage issued in conjunction with the network plan.
- (3) ~~An indication of the term of the contract. A statement indicating the term of the contract.~~
- (4) Any requirements for written notice of termination and each party's grounds for termination.
- (5) The provider's continuing obligations after termination of the provider contract or in the case of the carrier or intermediary's insolvency. The obligations shall address:
 - (a) Transition of administrative duties and records.
 - (b) Continuation of care, when inpatient care is on-going. If the carrier provides or arranges for the delivery of health care services on a prepaid basis, inpatient care shall be continued until the patient is ready for discharge.
- (6) The provider's obligation to maintain licensure, accreditation, and credentials sufficient to meet the carrier's credential verification program requirements and to notify the carrier of subsequent changes in status of any information relating to the provider's professional credentials.
- (7) The provider's obligation to maintain professional liability insurance coverage in an amount acceptable to the carrier and notify the carrier of subsequent changes in status of professional liability insurance ~~on a timely basis, within 30 days of the change.~~
- (8) With respect to member billing:
 - (a) If the carrier provides or arranges for the delivery of health care services on a prepaid basis under G.S. 58, Article 67, the provider shall not bill any network plan member for covered services, except for specified coinsurance, copayments, and applicable deductibles. This provision shall not prohibit a provider and member from agreeing to continue non-covered services at the member's own expense, as long as the provider has notified the member in advance that the carrier may not cover or continue to cover specific services and the member chooses to receive the service.
 - (b) Any provider's responsibility to collect applicable member deductibles, copayments, coinsurance, and fees for noncovered services shall be specified.
- ~~(9) Any provider's obligation to arrange for call coverage or other back up to provide service in accordance with the carrier's standards for provider accessibility.~~
- ~~(10)(9)~~ The carrier's obligation to provide a mechanism that allows providers to verify member eligibility, based on current information held by the carrier, before rendering health care services. Mutually agreeable provision may be made for cases where incorrect or retroactive information was submitted by employer groups.
- ~~(11)(10)~~ Provider requirements regarding patients' records. The provider shall:
 - (a) Maintain confidentiality of enrollee medical records and personal information as required by G.S. 58, Article 39 and other health records as required by law.
 - (b) ~~Maintain adequate medical and other health records~~ all medical records applied to the patient according to industry and carrier standards.
 - (c) Make copies of such records available to the carrier and Department in conjunction with its regulation of the carrier.
- ~~(12)(11)~~ The provider's obligation to cooperate with members in member grievance procedures.
- ~~(13)(12)~~ A provision that the provider shall not discriminate against members on the basis of race, color, national origin, gender, age, religion, marital status, health status, or health insurance coverage.
- ~~(14)(13)~~ Provider payment that describes the methodology to be used as a basis for payment to the ~~provider~~ for provider. For example, Medicare DRG reimbursement, discounted fee for service, withhold arrangement, HMO provider capitation, or capitation with ~~bonus~~ bonus.
- ~~(15)(14)~~ The carrier's obligations to provide data and information to the provider, such as:
 - (a) Performance feedback reports or information to the provider, if compensation is related to efficiency criteria.
 - (b) ~~Information on benefit exclusions; administrative and utilization management requirements; credential verification programs; quality assessment programs; and provider sanction policies. Notification of changes in these requirements shall also be provided by the carrier, allowing providers time to comply with such changes on:~~
 - (i) Benefit exclusions;

- (ii) Administrative and utilization management requirements
- (iii) Quality assessment programs; and
- (iv) Provider sanction policies.

Notification of changes in these requirements shall also be provided by the carrier allowing providers time to comply with such changes.

- ~~(16)~~(15) The provider's obligations to comply with the carrier's utilization management programs, credential verification programs, quality management programs, and provider sanctions programs with the ~~provide~~ stipulation that none of these shall override the professional or ethical responsibility of the provider or interfere with the provider's ability to provide information or assistance to their patients.
- ~~(17)~~(16) The provider's authorization and the carrier's obligation to include the name of the provider or the provider group in the provider directory distributed to its members.
- ~~(18)~~(17) Any process to be followed to resolve contractual differences between the carrier and the provider.
- ~~(19)~~(18) Provisions on assignment of the contract shall contain:
 - (a) The provider's duties and obligations under the contract shall not be assigned, delegated, or transferred without the prior written consent of the carrier.
 - (b) The carrier shall notify the provider, in writing, of any duties or obligations that are to be delegated or transferred, before the delegation or transfer.
- (19) A listing of the carrier's products to which the terms of the provider contract do not apply.

- (3) the delegation of clinical and administrative responsibilities.

Authority G.S. 58-2-40(1); 58-65-25; 58-67-10; 58-67-20; 58-67-35; 58-67-115; 58-67-120; 58-67-150.

11 NCAC 20 .0204 CARRIER AND INTERMEDIARY CONTRACTS

(a) If a carrier contracts with an intermediary for the provision of a network to deliver health care services, the carrier shall file with the Division for prior approval its form contract with the intermediary. The filing shall be accompanied by a certification from the carrier that the intermediary will, by the terms of the contract, be required to comply with all statutory and regulatory requirements ~~which~~ that apply to the functions delegated. The certification shall also state that the carrier shall monitor such compliance.

(b) A carrier's contract form with the intermediary shall state that:

- (1) All provider contracts used by the intermediary shall comply with, and include applicable provisions ~~of, 11 NCAC 20 .0202, of Rule .0202 of this Section and Chapter 58 of the General Statutes.~~
- (2) The network carrier retains its legal responsibility to monitor and oversee the offering of services to its members and financial responsibility to its members.
- (3) The intermediary may not subcontract for its services without the carrier's written permission.
- (4) The carrier may approve or disapprove participation of individual providers contracting with the intermediary for inclusion in or removal from the carrier's own network plan.
- (5) The carrier shall retain copies or the intermediary shall make available for review by the Department all provider contracts and subcontracts held by the intermediary.
- (6) If the intermediary organization assumes risk from the carrier or pays its providers on a risk basis or is responsible for claims payment to its providers:
 - (A) The carrier shall receive documentation of utilization and claims payment and maintain accounting systems and records necessary to support the arrangement.
 - (B) The carrier shall arrange for financial protection of itself and its members through such approaches as member hold harmless language, retention of signatory control of the funds to be disbursed, or financial reporting requirements.
 - (C) To the extent provided by law, the Department shall have access to the books, records, and financial information to examine activities

Authority G.S. 58-2-40(1); 58-2-131; 58-39-45; 58-39-75; 58-65-25; 58-65-105; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-115; 58-67-140; 58-67-150.

11 NCAC 20 .0203 CHANGES REQUIRING APPROVAL

All material changes to an approved contract form shall be filed with the Division for approval before use. For the purpose of this ~~Section~~ Rule, a "material change" includes a change ~~in the means of calculating payment to the provider (for example, change from fee for service to capitation), a change in the distribution of risk between parties, or a change in the delegation of clinical or administrative responsibilities in:~~

- (1) the means of calculating payment to the provider for example, change from fee for service to capitation;
- (2) the distribution of risk between parties; or

performed by the intermediary on behalf of the carrier. Such books and records shall be maintained in the ~~State of North Carolina. State.~~

- (7) The intermediary shall comply with all applicable statutory and regulatory requirements ~~which~~ that apply to the functions delegated by the carrier and assumed by the intermediary.

(c) If a carrier contracts with an intermediary to provide health care services and pays that intermediary directly for the services provided, the carrier shall either monitor the financial condition of the intermediary to ensure that providers are paid for services, or maintain member hold harmless agreements with providers.

Authority G.S. 58-2-40(1); 58-2-131; 58-34-10; 58-34-15; 58-65-1; 58-65-25.

SECTION .0300 - PROVIDER ACCESSIBILITY AND AVAILABILITY

11 NCAC 20 .0301 SCOPE AND DEFINITIONS (READoption WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0302 PROVIDER ACCESSIBILITY STANDARDS

Each carrier shall establish performance targets for member accessibility to primary and specialty care physician services and ~~hospital-based~~ hospital-based services. Carriers shall also establish similar performance targets for health care services provided by providers who are not physicians. Written policies and performance targets shall address the following:

- (1) ~~The Proximity~~ proximity of network ~~providers~~ providers, as measured by such means as driving distance or time a member must travel to obtain primary care, ~~specialty care~~ specialty care, and hospital services, taking into account local variations in the supply of ~~providers~~ providers, and geographic considerations.
- (2) The availability to provide emergency services on a 24-hour, ~~seven~~ 7 day per week basis.
- (3) Emergency provisions within and outside of the service area.
- (4) The average or expected waiting time for urgent, routine, and specialist appointments.

Authority G.S. 58-2-40(1); 58-65-1; 58-65-25; 58-67-10; 58-67-20.

SECTION .0400 - NETWORK PROVIDER CREDENTIALS

11 NCAC 20 .0404 APPLICATION

For all providers who submit applications to be added to a carrier's ~~network on or after October 1, 2001;~~ network;

- (1) The definitions in G.S. 58-3-167 are incorporated into this Rule by reference. Each carrier that is an insurer ~~and~~ that issues a health benefit plan shall obtain and retain on file each

provider's signed and dated application on the form approved by the Commissioner under G.S. 58-3-230. All other carriers shall obtain and retain on file the provider's signed and dated application on a form provided by the carrier. All required information shall be current upon final approval by the carrier. The application shall include, when applicable:

- (a) The provider's name, address, and telephone number.
 - (b) Practice information, including call coverage.
 - (c) Education, ~~training~~ training, and work history.
 - (d) The current provider license, registration, or certification, and the names of other states where the applicant is or has been licensed, registered, or certified.
 - (e) Drug Enforcement Agency (DEA) registration number and prescribing restrictions.
 - (f) Specialty board or other certification.
 - (g) Professional and hospital affiliation.
 - (h) The amount of professional liability coverage and any malpractice history.
 - (i) Any disciplinary actions by medical organizations and regulatory agencies.
 - (j) Any felony or misdemeanor convictions.
 - (k) The type of affiliation ~~requested (for~~ requested, for example, primary care, consulting specialists, ambulatory ~~care, etc.)~~ care.
 - (l) A statement of completeness, veracity, and release of information, signed and dated by the applicant.
 - (m) Letters of reference or recommendation or letters of oversight from supervisors, or both.
- (2) The carrier shall obtain and retain on file the following information regarding facility provider credentials, when applicable:
- (a) ~~Joint Commission on Accreditation of Healthcare Organization's~~ The Joint Commission's certification or certification from other accrediting agencies.
 - (b) State licensure.
 - (c) Medicare and Medicaid certification.
 - (d) Evidence of current active malpractice insurance.
- (3) No credential item listed in Items (1) or (2) of this Rule shall be construed as a substantive threshold or criterion or as a standard for credentials that must be held by any provider in order to be a network provider.

Authority G.S. 58-2-40(1); 58-2-131; 58-3-167; 58-3-230; 58-65-1; 58-65-25; 58-65-105; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150.

11 NCAC 20 .0410 DELEGATION OF CREDENTIAL VERIFICATION ACTIVITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - SIGNIFICANT MODIFICATIONS TO HMO OPERATIONS

11 NCAC 20 .0601 APPLICATIONS FOR MODIFICATIONS TO SERVICE AREAS OR PRODUCT LINES

(a) All requests to expand an HMO's service area shall be submitted ~~submit in writing as~~ electronic format an application to the Division for review and approval. ~~An HMO shall submit an original and eight copies of the~~ The application, which shall include the following information:

- (1) A description of operational changes that will result from the expansion.
- (2) Financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605.
- (3) A description of provider interest and network development in the service area requested and information as to the HMO's existing provider network.
- (4) Copies of any form contracts to be made as a result of the expansion, including providers and subcontractors.

(b) Material changes in the product lines offered by an HMO shall ~~be submitted submit in writing as~~ electronic format an application to the Division for review and approval. For the purposes of this Section, ~~material changes~~ "material changes" include the addition of a point of service ~~product, product,~~ or the addition of or changes to the HMO's existing health care delivery model, such as the addition of an IPA product or group model product or the addition of a gatekeeper product. ~~HMOs shall submit an original and eight copies of the~~ The application, application which shall include the following information:

- (1) A description of operational changes that will result from the expansion.
- (2) Financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605.
- (3) A description of provider interest and network development in the service area requested and information as to the HMO's existing provider network.
- (4) Copies of form contracts to be made as a result of the expansion, including providers and subcontractors.

(c) Notice of the addition of an intermediary shall be submitted by an HMO in writing to the Division within 30 days after the execution of the contract for the intermediary's services.

(d) Notice of the deletion of an intermediary shall be submitted by the HMO in writing within 30 days after termination of the contract, unless termination is immediate, along with a plan to

select another intermediary or for the HMO to perform the ~~one~~ formerly delegated functions in-house.

(e) All changes to provider and intermediary contract forms shall be submitted to the Division for review and approval in accordance with ~~11 NCAC 20 Rule .0203 of this Chapter~~ prior to the use of the amended form.

(f) Each HMO shall submit written notice to the Division of its intent to engage in any arrangement through which that HMO owns or controls or manages any operations of another HMO in any other state, before entering into the arrangement.

Authority G.S. 58-2-40; 58-67-10; 58-67-150.

CHAPTER 21 - THIRD PARTY ADMINISTRATORS

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 21 .0106 PAYMENT OF CLAIMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0301, .0304, .0713, and .2005.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards/All-Commission-Forms-and-Publications.aspx>

Proposed Effective Date: January 1, 2018

Public Hearing:

Date: August 1, 2017

Time: 10:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action:

12 NCAC 10B .0301(a)(2) – Lowers the minimum age requirement for certified telecommunicators from age 21 to 18.

12 NCAC 10B .0304(a) – Allows for waiver of additional Medical History Statement (Form F-1) and Medical Examination Report (Form F-2) for individuals who have previously completed the basic Telecommunicator Certification Course and who have been continuously employed as a telecommunicator.

12 NCAC 10B .0713 – Lowers the minimum age requirement for admission of trainees into the basic Telecommunicator Certification Course from age 21 to 18.

12 NCAC 10B .2005 – Sets out the annual in-service training topics for 2018.

Comments may be submitted to: Diane N. Konopka, PO Box 629, Raleigh, NC 27602; email dkonopka@ncdoj.gov

Comment period ends: September 15, 2017

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)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 10 - SHERIFFS' EDUCATION AND
TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND
TRAINING STANDARDS COMMISSION**

**SECTION .0300 – MINIMUM STANDARDS FOR
EMPLOYMENT AND CERTIFICATION AS A JUSTICE
OFFICER**

**12 NCAC 10B .0301 MINIMUM STANDARDS FOR
JUSTICE OFFICERS**

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of ~~age~~; age for all deputies and detention officers and be at least 18 years of age for all telecommunicators;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination as set out in 12 NCAC 10B .0304;
- (6) have produced a negative result on a drug screen administered according to the following specifications:
 - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry

(GC/MS) or other reliable initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs

- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; however, individual agencies may specify other drugs to be tested;
 - (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 [<http://www.drugabuse.gov/>] at no cost at the time of adoption of this Rule;
 - (E) the test results shall be dated no more than 60 days before employment or appointment, whichever is earlier;
 - (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples; and
 - (G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (7) make the following notifications:
- (A) within five business days, notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses defined as either a Class A or B Misdemeanor as set out in 12 NCAC

- 10B .0103(10). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. Within five business days, notify the Standards Division of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) which are issued by a judicial official against the justice officer and which provide an opportunity for both parties to be present;
- (B) within 20 days of the date the case was disposed, notify the appointing department head of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C). The department head, provided he or she has knowledge of the officer's charge(s), Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), shall also notify the Division within 30 days of the date the case or order was disposed of in court.
- (C) within 30 days of the date the case was disposed, notify the Standards Division of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C);
- (D) the required notifications of adjudication must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication;
- (E) receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;
- (8) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
- (9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment as set out in Rules .0305 and .0306 of this Section;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.
- (b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.
- Authority G.S. 17E-7.*
- 12 NCAC 10B .0304 MEDICAL EXAMINATION**
- (a) Each applicant for certification or enrollee in a Commission-certified basic training course shall complete, sign and date the Commission's Medical History Statement Form (F-1) and shall be examined by a either a physician, surgeon, physician's assistant or nurse practitioner or other licensed independent practitioner who is licensed in North Carolina or who is authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine his/her fitness in carrying out the physical requirements of the position of justice officer. Effective January 1, 2018, Telecommunicators who have not previously held certification with this Commission, but who have been continuously employed by an entity other than a Sheriff's Office; and, who have previously provided a valid Medical History Statement (F-1) and Medical Examination Report (F-2) for admission into a Commission accredited Telecommunicator Certification Course shall not be required to submit additional F-1 and F-2 forms for the purpose of obtaining certification.
- (b) Prior to conducting the examination, the physician, surgeon, physician's assistant or nurse practitioner or other licensed independent practitioner shall:
- (1) read the "Medical Screening Guidelines Implementation Manual for Certification of Justice Officers" in the State of North Carolina as published by the North Carolina Department of Justice. Copies of this publication may be obtained at no cost at the time of the adoption of this Rule by contacting the North Carolina Department of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, North Carolina 27602; and
 - (2) read, sign, and date the Medical History Statement Form (F-1); and
 - (3) read the F-2A Form attached to the Medical Examination Report Form (F-2).
- (c) The examining physician, surgeon, physician's assistant or nurse practitioner or other licensed independent practitioner shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form.
- (d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid one year from the date the examination was conducted and are completed prior to:
- (1) the applicant's beginning the Detention Officer Certification Course, the Basic Law Enforcement Training Course, or the Telecommunicator Certification Course; and

- (2) the applicant's applying to the Commission for Certification.

Note: Although not presently required, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, to determine his/her suitability to perform the essential job functions of a justice officer.

Authority G.S. 17E-7.

SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 10B .0713 ADMISSION OF TRAINEES

(a) The school director shall not admit any individual as a trainee in any commission-certified basic training course who is not a citizen of the United States.

(b) The school may not admit any individual younger than 21 years of age as a trainee in ~~any commission-certified basic training course~~ the Detention Officer Certification Course and may not admit any individual younger than 18 years of age as a trainee in the Telecommunicator Certification Course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 21 years of age during the Detention Officer Certification Course ~~course~~, but prior to the ending date; and, those individuals who will turn 18 years of age during the Telecommunicator Certification Course, but prior to the ending date.

(c) The school may not admit any individual who has not provided documentation that he or she meets the educational requirement as set out in 12 NCAC 10B .0302.

(d) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.

(e) The school shall administer the reading component of a standardized test that reports a grade level for each trainee participating in either the Telecommunicator or Detention Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered within the first week of the Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion.

(f) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

(g) The school shall not admit any individual trainee in commission-certified basic training courses unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state

records for the time period where the trainee has resided within the past 10 years and where the trainee attended high school. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement. If an individual trainee has received a probationary certificate from the Commission at the time of enrollment, this records check requirement is waived.

(h) The school shall not admit any individual as a trainee in commission-certified basic training courses who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment;
- (4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction.

(i) Individuals charged with crimes as specified in this Paragraph that were dismissed or the person was found not guilty may be admitted into the commission-certified basic training courses but completion will not ensure that certification as a justice officer through the Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course commission-certified basic training courses shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (50C) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Paragraph as any offense under G.S. 20 or similar laws of other jurisdictions except those Chapter 20 offenses published in the Class B Misdemeanor Manual. Other traffic offenses under laws of other jurisdictions which shall be reported to the School Director include either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B) or Civil No Contact Order (G.S. 50C), and the final disposition and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is

enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

Authority G.S. 17C-4; 17E-7.

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

~~(b) The 2016 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: The color of Justice;~~
- ~~(3) Human Trafficking Awareness;~~
- ~~(4) NC Firearms Law: Citizens with Guns;~~
- ~~(5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(6) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2016 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) Career Survival: Stop! Think About What You Are Doing;~~
- ~~(2) Communicable Diseases;~~
- ~~(3) Detention Intelligence Update; and~~
- ~~(4) Understanding PREA; and~~
- ~~(5) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2016 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) Communicating Effectively with Crisis Callers;~~
- ~~(2) Becoming a Leader in the Communications Center;~~
- ~~(3) Handling Suicidal Callers; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e)(b)~~ The 2017 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Positively Impacting Today's Youth;
- (3) Domestic Violence: Protecting Victims of Domestic Violence;
- (4) Improving Decision Making Skills;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

~~(f)(c)~~ The 2017 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Detention Legal Update;
- (2) Detention Intelligence Update;
- (3) Recognizing Substance Abuse and Withdrawal;
- (4) Improving Decision-Making Skills; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

~~(g)(d)~~ The 2017 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Post Critical Incident Stress Management;
- (2) Protecting Victims of Domestic Violence;
- (3) Improving Decision Making Skills;
- (4) Law Enforcement Intelligence Update; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2018 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Strategies to Improve Law Enforcement Interactions and Relationships with Minority Youth;
- (3) Equality in Policing;
- (4) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2018 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Recognizing Warning Signs and Strategies Associated with Mental Illness;
- (2) Equality in Detention Practices;

- (3) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (4) Career Survival; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2018 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Communications Center Trainer;
- (2) Equality in Policing;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – STATE BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16G .0101, .0103; 16H .0203, and .0205.

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

Proposed Effective Date: November 1, 2017

Public Hearing:

Date: September 1, 2017

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, North Carolina 27560

Reason for Proposed Action: Amendments to 21 NCAC 16G .0101, .0103; 16H .0203 and .0205 are proposed to update the functions that may be delegated from a dentist to a dental hygienist, dental assistant I, and dental assistant II, and to also update the functions that dental hygienists and dental assistants are prohibited from performing.

Comments may be submitted to: Bobby D. White, Esq., 2000 Perimeter Park Drive, Suite 160, Morrisville, North Carolina 27560

Comment period ends: September 15, 2017

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)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 16G - DENTAL HYGIENISTS

SECTION .0100 - FUNCTIONS THAT MAY BE DELEGATED

21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED

A dental hygienist may be delegated functions to be performed under the control and supervision of a dentist who shall be responsible for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that a the dentist has first examined the patient and prescribed the procedure include:

- (1) ~~Taking impressions for study models and opposing casts that may be used for the construction of temporary or permanent dental appliances, adjustable orthodontic appliances, nightguards, and the repair of dentures or partials;~~
- (2) ~~Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;~~
- (3) ~~Inserting matrix bands and wedges;~~
- (4) ~~Placing cavity bases and liners;~~
- (5) ~~Placing and removing rubber dams;~~
- (6) ~~Cementing temporary restorations using temporary cement;~~
- (7) ~~Applying acid etch materials and rinses;~~
- (8) ~~Applying bonding agents;~~
- (9) ~~Removing periodontal dressings;~~
- (10) ~~Removing sutures;~~
- (11) ~~Placing and removing gingival retraction cord;~~
- (12) ~~Removing excess cement;~~
- (13) ~~Flushing, drying, and temporarily closing root canals;~~
- (14) ~~Placing and removing temporary restorations;~~
- (15) ~~Placing and tying in or untying and removing orthodontic arch wires;~~

- (16) ~~Inserting interdental spacers;~~
- (17) ~~Fitting (sizing) orthodontic bands or brackets;~~
- (18) ~~Applying dentin desensitizing solutions;~~
- (19)(1) ~~performing Performing periodontal screening;~~
- (20)(2) ~~performing Performing periodontal probing;~~
- (21)(3) ~~performing Performing subgingival exploration for or removal of hard or soft deposits;~~
- (22)(4) ~~performing Performing sulcular irrigation;~~
- (23)(5) ~~applying Applying resorbable sulcular antimicrobial or antibiotic agents;~~
- (24) ~~Performing extra oral adjustments that affect function, fit, or occlusion of any temporary restoration or appliance; and~~
- (25) ~~Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist.~~
- (6) using ultrasonic scalers for prophylaxis;
- (7) performing scaling and root planning;
- (8) applying oral cancer screening products in preparation for the dentist's examination and diagnosis of oral cancer;
- (9) using laser fluorescence detectors in preparation for the dentist's examination and diagnosis of cavities; or
- (10) applying resin infiltration treatment for incipient smooth surface lesions, following the dentist's diagnosis that the lesion is non-penetrable.

- (40)(9) performing final Final placement or cementation of orthodontic bands or brackets;
- (41)(10) performing the placement Placement or cementation of final restorations;
- (42)(11) administering Administration of any anesthetic by any route except administering the administration of topically-applied agents intended to anesthetize only cutaneous tissue; and
- (43)(12) using Intraoral use of a high-speed handpiece -handpiece intraorally;
- (13) performing cementation of endodontic posts;
- (14) condensing Amalgam;
- (15) using a transcutaneous electrical nerve stimulation (TENS) unit;
- (16) applying formocresol;
- (17) placing stainless steel crown on permanent or primary teeth;
- (18) performing pulp vitality testing;
- (19) performing curettage;
- (20) placing periodontal or surgical dressing;
- (21) performing oral brush biopsy;
- (22) taking bite registration or Elastometrics;
- (23) placing eugenol wick in dry socket;
- (24) fabricating or delivering sleep apnea appliance;
- (25) applying silver diamine fluoride; and
- (26) removing, replacing, or torqueing either impression or prosthetic implant abutments.

Authority G.S. 90-41; 90-221; 90-223(b); 90-233.

Authority G.S. 90-221(a); 90-223(b).

21 NCAC 16G .0103 PROCEDURES PROHIBITED

Those procedures that require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include:

- (1) performing comprehensive Comprehensive examination, diagnosis, and treatment planning;
- (2) performing surgical Surgical or cutting procedures on hard or soft tissues, including laser, air abrasion, or micro-abrasion procedures;
- (3) placing Placement or removing removal of therapeutic sulcular nonresorbable agents;
- (4) issuing The issuance of prescription drugs, medications, or work authorizations;
- (5) performing the final Final placement or intraoral adjustment of a fixed or removable appliance;
- (6) performing intraoral Intraoral occlusal adjustments which that affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- (7) Extra oral occlusal adjustments which affect function, fit, or occlusion of any permanent restoration or appliance;
- (8)(7) performing Performance of direct pulp capping or pulpotomy;
- (9)(8) placing Placement of sutures;

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

(a) A Dental Assistant II may perform all acts or procedures that may be performed by a Dental Assistant I as set forth in 21 NCAC 16H .0201. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be responsible for any and all consequences or results arising from the performance of such acts and functions, provided that the dentist first examined the patient and prescribed the procedure:

- (1) taking Take impressions for study models and opposing casts that may be used for the construction of temporary or permanent dental appliances, adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) applying Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) inserting Insert matrix bands and wedges;
- (4) placing Place cavity bases and liners;
- (5) placing Place and removing remove rubber dams;

- (6) cementing ~~Cement~~ temporary restorations using temporary cement;
- (7) applying ~~Apply~~ acid etch materials and rinses;
- (8) applying ~~Apply~~ bonding agents;
- (9) removing ~~Remove~~ periodontal and surgical dressings;
- (10) removing ~~Remove~~ sutures;
- (11) placing ~~Place~~ and removing ~~remove~~ a gingival retraction cord;
- (12) removing ~~Remove~~ excess ~~cement~~; cement with hand scaler supragingivally;
- (13) flushing, drying, ~~Flush, dry~~, and temporarily closing ~~close~~ root canals ~~canals~~; or pulpotomies;
- (14) placing ~~Place~~ and removing ~~remove~~ temporary restorations;
- (15) placing ~~Place~~ and tying tie in or untying ~~untie~~ and removing ~~remove~~ orthodontic arch wires, wires; ligature wires, or lock pins;
- (16) inserting ~~Insert~~ interdental spacers;
- (17) fitting (sizing) ~~Fit (size)~~ orthodontic bands or brackets;
- (18) applying ~~Apply~~ dentin desensitizing solutions;
- (19) performing ~~Perform~~ extra-oral adjustments that affect function, fit ~~fit~~, or occlusion of any restoration or appliance;
- (20) initially ~~Initially~~ forming ~~form~~ and sizing ~~size~~ orthodontic arch wires and placing ~~place~~ arch wires after final adjustment and approval by the dentist; and
- (21) polishing ~~Polish~~ the clinical crown, pursuant to Paragraph (b) of this Rule using only:
 - (A) a hand-held brush and polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and polishing ~~agents~~; agents;
- (22) exposing radiographs and cone beam images;
- (23) polishing removable appliances extra-orally;
- (24) preparing and loading amalgam in carrier;
- (25) measuring pulse, blood pressure, and temperature;
- (26) using micro-etcher extra-orally;
- (27) placing a throat shield in oropharynx during administration of general anesthesia;
- (28) delivering dentures to patient for insertion, provided the dentist approves the denture placement; or
- (29) removing or replacing healing abutments or cover screws for implants that may be accessed supragingivally.

(b) A Dental Assistant II shall complete a course in coronal polishing identical to that taught in an ADA accredited dental assisting program, or by a licensed North Carolina hygienist or dentist lasting at least seven clock hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course shall include instruction on dental morphology, the periodontal complex, operation of handpieces, polish aids, and patient safety.

A list of ADA accredited programs offering courses in coronal polishing, which is incorporated by reference along with its subsequent amendments and editions, is available at no cost on the American Dental Association's website at <http://www.ada.org/en/coda/find-a-program>. A coronal polishing procedure shall not be represented to the patient as a prophylaxis. ~~prophylaxis and no~~ No coronal polishing procedure may be billed as a prophylaxis unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

Authority G.S. 90-29(c)(9); 90-41; 90-48.

21 NCAC 16H .0205 SPECIFIC PROHIBITED FUNCTIONS OF DENTAL ASSISTANTS I AND II

Those specific functions ~~which~~ that shall not be delegated to either a Dental Assistant I or a Dental Assistant II include those procedures prohibited in 21 NCAC 16G .0103 for Dental Hygienists. In addition, ~~neither a Dental Assistant I nor a Dental Assistant II shall perform those procedures that require the professional education and skill of a Dentist or Dental Hygienist and may not be delegated to a Dental Assistant I or Dental Assistant II shall include:~~

- (1) prophylaxis, performing prophylaxis;
- (2) ~~or shall perform~~ performing periodontal screening, screening;
- (3) performing periodontal ~~probing~~, probing;
- (4) performing subgingival exploration for or removal of hard or soft ~~deposits~~, or deposits;
- (5) performing sulcular ~~irrigation~~, irrigation;
- (6) using ultrasonic scalers for prophylaxis;
- (7) applying antibiotic-coated materials;
- (8) applying resorbable antimicrobial agents;
- (9) performing root planing;
- (10) applying oral cancer screening products;
- (11) using laser fluorescence detectors in preparation for the dentist's examination and diagnosis of cavities; or
- (12) applying resin infiltration treatment for incipient smooth surface lesions, following the dentist's diagnosis that the lesion is non-penetrable.

Authority G.S. 90-29(c)(9); 90-48.

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CHAPTER 33 – MIDWIFERY JOINT COMMITTEE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Midwifery Joint Committee intends to amend the rule cited as 21 NCAC 33 .0110.

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

Proposed Effective Date: November 1, 2017

Public Hearing:

Date: August 2, 2017

Time: 2:00 p.m.

Location: NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: Amendments to this Rule will increase the number of prescribers included in the Department of Health and Human Services report as well as provide uniform reporting criteria for midwives who prescribe controlled substances.

Comments may be submitted to: Angela Ellis, Rulemaking Coordinator, NC Board of Nursing, PO Box 2129; phone (919) 782-3211 ext. 259; fax (919) 781-9461; email midwifery.public.comment@ncbon.com

Comment period ends: September 15, 2017

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)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SECTION .0100 – MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0110 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the Committee information regarding the prescribing practices of those midwives ("prescribers") whose prescribing:

- (1) falls within the top ~~one~~ two percent of those prescribing 100 morphine milligrams of ~~morphine~~ equivalents ("MME") per patient per day; or
- (2) falls within the top ~~one~~ two of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within

the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Committee information regarding midwives who have had two or more patient deaths in the preceding 12 months due to opioid ~~poisoning~~, poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) The Department may submit these reports to the Committee upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Committee shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74.

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0815.

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

Proposed Effective Date: November 1, 2017

Public Hearing:

Date: August 2, 2017

Time: 2:00 p.m.

Location: NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: Amendments to this Rule will increase the number of prescribers included in the Department of Health and Human Services report as well as provide uniform reporting criteria for nurse practitioners who prescribe controlled substances.

Comments may be submitted to: Angela Ellis, Rulemaking Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129; phone (919) 782-3211 ext. 259; fax (919) 781-9461; email public.comment@ncbon.com

Comment period ends: September 15, 2017

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 (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**SECTION .0800 - APPROVAL AND PRACTICE
PARAMETERS FOR NURSE PRACTITIONERS**

21 NCAC 36 .0815 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top ~~one~~ two percent of those prescribing 100 morphine milligrams ~~of morphine~~ equivalents ("MME") per patient per day; or
- (2) falls within the top ~~one~~ two percent of those prescribing 100 MMEs per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid ~~poisoning~~, poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74.

This Section contains information for the meeting of the Rules Review Commission June 15, 2017 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 (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

August 17, 2017	September 21, 2017
October 19, 2017	November 16, 2017

**RULES REVIEW COMMISSION MEETING
MINUTES*****June 15, 2017***

The Rules Review Commission met on Thursday, June 15, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the May 18, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27H .0207 – The rewritten rule was unanimously approved.

10A NCAC 27H .0202, .0203, .0204, .0205, and .0206 – The RRC reviewed the rewritten rules submitted by the Commission for MH/DD/SAS in response to the March 16, 2017 objections and continued their objections to these rules in accordance with G.S. 150B-21.9.

The RRC found that the Commission for MH/DD/SAS lacked the statutory authority to require that forensic evaluators be employed by an LME-MCO and objected to any such reference contained within Rules 10A NCAC 27H .0202 through .0206.

The RRC objected to 10A NCAC 27H .0203, finding that the Commission for MH/DD/SAS lacked the statutory authority to require LME-MCOs to submit and verify information required by this Rule, nor delegate this responsibility to the LME-MCOs. Further, the RRC found that it was unclear how the LME-MCO will determine whether the evaluator has expertise as set forth in Paragraph (b).

The RRC objected to 10A NCAC 27H .0204, specifically Subparagraph (a)(3), finding that it was unclear because it does not state what is meant by “required by law.”

The RRC objected to 10A NCAC 27H .0205, finding that the Commission for MH/DD/SAS lacked the statutory authority to promulgate rules regarding LME-MCO oversight of forensic evaluators. Further, the Commission found that it was unclear how the expertise of an evaluator is to be conveyed to the LME-MCO, as Rule .0205 indicates that it will be self-reporting by the evaluator, while .0203 indicates that the LME-MCO is required to determine the expertise of the evaluator. The RRC found that as written, the Rules were unclear whether these provisions conflict with each other or whether they are different processes.

The RRC found that while the Commission for MH/DD/SAS has shifted the actual termination of the certification to the Division in the rewritten version of Rule .0206, much of the termination responsibilities remained with the LME-MCO. As such, the RRC objected to .0206, finding that the Commission for MH/DD/SAS lacked the authority to delegate the responsibilities related to the termination of certifications to LME-MCOs. Further, the RRC found that it was unclear as to how the LME-MCO will know whether an individual is no longer a “licensed clinician” and whether a forensic evaluator has completed the required training.

William Walton, with the Attorney General’s Office and representing the agency, addressed the Commission.

Denise Baker, the agency rulemaking coordinator, addressed the Commission.

Department of Insurance

11 NCAC 05A .0501, .0505, .0508, and .0511 - The agency is addressing the objections from the January meeting. No action was required by the Commission.

Loretta Peace-Bunch, the agency rulemaking coordinator, addressed the Commission.

Manufactured Housing Board

11 NCAC 08 .0904 was unanimously approved.

Commission for Public Health

15A NCAC 18A .1801, .1802, .1803, .1804, .1805, .1806, .1807, .1808, .1809, .1810, .1811, .1812, .1813, .1814, .1815, .1817, .1818, .1821, .1822, .1823, .1824, .1825, .1826, .1827, .1828, .1829, .1830, .1831, .1832, .1833, .1834, .2201, .2202, .2203, .2204, .2205, .2206, .2207, .2208, .2209, .2210, .2211, .2212, .2213, .2214, .2215, .2216, .2217, .2218, .2219, .2220, .2221, .3001, .3002, .3003, .3004, .3005, .3006, .3007, .3008, .3009, .3010, .3011, .3012, .3013, .3014, .3015, and .3016 – At its May 18, 2017 meeting, the Commission objected to these rules in accordance with G.S. 150B-21.10.

The agency responded in accordance with the provisions of G.S. 150B-21.12 on May 22, 2017, and requested that the rules be returned. Pursuant to G.S. 150B-21.12(d), the above-referenced rules were returned upon the written request of the agency. No further action will be taken by the Commission on these Rules.

Locksmith Licensing Board

21 NCAC 29 .0402 and .0601 - The agency is addressing the objections from the April meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Medical Care Commission

10A NCAC 13D .2111 was unanimously approved.

Prior to the review of the rule from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because he represents the agency.

Department of Health and Human Services

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Commissioner of Insurance

11 NCAC 06A .0809 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Environmental Management Commission

15A NCAC 02B .0308 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Coastal Resources Commission

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Department of the Secretary of State

18 NCAC 12 .0214 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Department of Transportation

19A NCAC 02D .0818 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Medical Board

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Real Estate Commission

1st Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rule.

21 NCAC 58A .1703 was unanimously approved.

Prior to the review of the rule from the Real Estate Commission, Commissioner Currin recused herself and did not participate in any discussion or vote concerning the rule because she has an inactive broker's license.

Prior to the review of the rule from the Real Estate Commission, Chairman Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the Commission.

Commissioner Poley was not present during the discussion or vote concerning the rule.

EXISTING RULES REVIEW

Alcoholic Beverage Control Commission

14B NCAC 15C - The Commission unanimously approved the report as submitted by the agency.

Department of Environmental Quality

15A NCAC 07O – The Commission unanimously approved the report as submitted by the agency.

Department of Revenue

17 NCAC 05 - The Commission unanimously approved the report as submitted by the agency.

Board of Landscape Architects

21 NCAC 26 - The Commission unanimously approved the report as submitted by the agency.

Board of Funeral Service

21 NCAC 34 - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02R - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than September 30, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Auctioneer Licensing Board

21 NCAC 04 - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than February 28, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Marriage & Family Therapy Licensure Board

21 NCAC 31 - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than May 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Social Services Commission

10A NCAC 70D - Pursuant to 26 NCAC 05. 0204, the agency requested a waiver of 26 NCAC 05 .0211 for the report for 10A NCAC 70D. The request was subsequently withdrawn by the agency's chairman at the meeting.

10A NCAC 70M - Pursuant to 26 NCAC 05. 0204, the agency requested a waiver of 26 NCAC 05 .0211 for the report for 10A NCAC 70M.

The waiver request for 10A NCAC 70M was approved, with Commissioners Doran and Hyde voting against. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its December 2017 meeting.

Michael A. Becketts, with the Department of Health and Human Services, addressed the Commission.

Wayne E. Black, with the agency, addressed the Commission.

Nancy Dunn, with the Attorney General's Office and representing the agency, addressed the Commission.

Drew Pledger, the Chairman of the Social Services Commission, addressed the Commission.

Department of the Secretary of State

18 NCAC 02, 08, 11, 12 - Pursuant to 26 NCAC 05 .0205, the agency requested a waiver of 26 NCAC 05 .0211 for the reports for 18 NCAC 02, 08, 11, and 12.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the reports, and amended 26 NCAC 05 .0211. The Commission will review the agency's reports at its July 2017 meeting.

Commissioner Poley was not present during the discussion or vote concerning the request.

COMMISSION BUSINESS

The Chairman gave an update of Senate Bill 16/ Business & Agency Reg. Reform Act of 2017.

The Chairman discussed the moving of pre-reviewed permanent rules to the beginning of the Permanent Rules portion of the Agenda starting in July.

Staff gave an overview of the Readoption Process and the Chairman led a discussion on the topic with the Commission. The Commission agreed to send a letter to the Joint Legislative Administrative Procedure Oversight Committee to clarify what is the intended outcome when an agency does not readopt rules by the RRC deadline.

Ann Wall, from the Secretary of State, addressed the Commission.

Commissioner Poley was not present during the Commission Business portion of the meeting. Commissioner Bryan left during the Commission Business portion of the meeting.

The meeting adjourned at 12:35 p.m.

The next regularly scheduled meeting of the Commission is Thursday, July 20th 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,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

June 15, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Drew Pledger	Social Services Commission
JOE SARDLER	NC DOI - ^{MANUFACTURED} HOUSING BOARD
Loretta Bunch	NC DOI
Michael A Beckett	NC DHHS
William Walton	NC DOJ
Spence Baker	NC DMH / DHHS
Karin Kelle	NC DHHS - DSS
Wayne E Beard	NC DHHS - DSS
Marta T. Hester	NC DHHS - DMH / SAS
Nadine Pfeiffer	NC DHHS - DHSR
Jennifer Everett	DEQ
Carlotta Dixon	DSS
Wanda Long	NCEM
John Vander	DOT
Gavin Bennett	DOJ
Will Forrestal	DOJ
Regina Currenlo	DOJ
Gail Carell	DOJ
Brian Puckett	DOR
Ann Wall	SOS
Catherine Lee	NCBES

RULES REVIEW COMMISSION

June 15, 2017

Rules Review Commission
Meeting
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[illegible]



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 15, 2017

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02R**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the June 15, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than September 30, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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An Equal Employment Opportunity Employer

3/31/2016

RRC Determination - Periodic Rule Review

Generated 3/31/2016 at 11:45 AM

**RRC DETERMINATION
PERIODIC RULE REVIEW
April 01, 2015 through November 30, 2015
Environmental Management Commission
Total: 10**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>15A NCAC 02R .0101</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0102</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0201</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0202</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0203</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0301</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0302</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0401</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0402</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0403</u>	Necessary with substantive public interest	June 20, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1



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Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 15, 2017

Charles Diehl, Rulemaking Coordinator
Auctioneer Licensing Board
108 Ber Creek Drive
Fuquay-Varina, North Carolina 27526

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 04**

Dear Mr. Diehl:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the June 15, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 28, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script, reading "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
March 16, 2017
APO Review: May 20, 2017
Auctioneer Licensing Board
Total: 47**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>21 NCAC 04B .0101</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0102</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0103</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0104</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0201</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0202</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0301</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0302</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0303</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0401</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0402</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0403</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0404</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0405</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0501</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0502</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0503</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0504</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0505</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0506</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0601</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0602</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0603</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0604</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0605</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0606</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0607</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0701</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0801</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0802</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0803</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0804</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0805</u>	Necessary with substantive public interest

<u>21</u>	<u>NCAC 04B .0806</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0807</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0808</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0809</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0810</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0811</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0812</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0813</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0814</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0815</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0816</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0817</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0818</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0819</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA
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Street address:
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Raleigh, NC 27609-6285

June 15, 2017

Wanda Nicholson, Rulemaking Coordinator
Marriage & Family Therapy Licensure Board
201 Shannon Oaks Circle, Suite 200
Cary, North Carolina 27511

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 31**

Dear Ms. Nicholson:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the June 15, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
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Rules Review
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Civil Rights
Division
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**RRC DETERMINATION
PERIODIC RULE REVIEW**

March 16, 2017

APO Review: May 20, 2017

Marriage and Family Therapy Licensure Board

Total: 19

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>21 NCAC 31 .0201</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0202</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0203</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0301</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0401</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0403</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0404</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0501</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0502</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0503</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0504</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0505</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0506</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0609</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0701</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0801</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0802</u>	Necessary with substantive public interest
<u>21 NCAC 31 .1001</u>	Necessary with substantive public interest
<u>21 NCAC 31 .1002</u>	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES
June 15, 2017 Meeting

MEDICAL CARE COMMISSION

Administrative Penalty Determination Process 10A NCAC 13D .2111

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

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June 15, 2017**

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**RRC Determination
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Necessary without substantive public interest

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**RRC Determination
Periodic Rule Review
June 15, 2017
Unnecessary**

**Alcoholic Beverage Control
Commission**

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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

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton

A. B. Elkins II
Selina Brooks
J. Randolph Ward
Stacey Bawtinheimer

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
	<u>PUBLISHED</u>						
16	DHR	09606	5/8/2017	James B Mundell	v.	Department of Health and Human Services	Elkins
17	DHR	02611	5/30/2017	Andreas Arellano, The San Jose Corp d/b/a San Jose Tienda	v.	NC Department of Health and Human Services, Division of Public Health	Brooks
16	EHR	07190	5/22/2017	Aberdeen Carolina & Western Railway	v.	NC Dept of Air Quality	May
16	INS	12188	5/4/2017	Henry McGee	v.	North Carolina State Health Plan	Sutton
17	INS	00987	5/25/2017	Deborah K Romanow	v.	North Carolina State Health Plan	Brooks
16	OSP	10372	5/5/2017	Lonnice B Walton	v.	Elizabeth City State University	Culpepper
16	UNC	11955	5/4/2017	Martha I. Howard	v.	UNC Healthcare System North Carolina	Ward

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17	ABC	00173	5/11/2017	NC Alcoholic Beverage Control Commission	v.	Redspurs Ventures Inc T/A Oval Park Grille	Ward	
17	ABC	00991	5/1/2017	NC Alcoholic Beverage Control Commission	v.	Patton Public House Inc T/A Byrish Haus and Pub	Sutton	
17	ABC	01502	5/5/2017	NC Alcoholic Beverage Control Commission	v.	Boulos Inc T/A Spring Garden Shell	Sutton	
17	ABC	01604	5/5/2017	NC Alcoholic Beverage Control Commission	v.	Zaiinab Epress Inc T/A C Store	Sutton	
17	BOE	01298	5/19/2017	Robert Williams	A v.	Cleveland County Board of Elections	May	
17	CPS	01973	5/24/2017	Orlando A Lee	v.	Office of Administrative Hearings NC Dept of Public Safety NC Victim Comp Com Victim Services	May	
15	CSE	07739	5/2/2017	Caleb S Wyland IV-D 0006776982	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins	
15	CSE	07740	5/2/2017	Cabel S Wyland IV-D 0006140753	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins	
15	CSE	08856	5/15/2017	Fredrick Bostrom	K v.	North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins	
16	CSE	04119	8/8/2017; 5/3/2017	Garett Lamb	Oliver v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Brooks	partial/full
16	CSE	09982	5/2/2017	Yvonne Burgess	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins	
16	CSE	10360	5/9/2017	Monica Morgan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter	
16	CSE	10390	5/31/2017	Sandra Freeman	v.	NC Department of Health and Human Services, Division of	Bawtinhimer	

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16	CSE	10396	5/2/2017	Adrian Smith Sr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	10689	5/2/2017	Roberick R Roberts	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	10705	5/15/2017	Jamal Daniels	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Brooks
16	CSE	11144	5/24/2017	Mohammad Dahbour	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
16	CSE	11151	5/9/2017	James Cooper	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
16	CSE	11564	5/26/2017	William D Britt Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
17	CSE	01748	5/30/2017	Kyle K Hollifield	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
17	CSE	01782	5/9/2017	Jason S Ballew	v.	North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	02220	5/15/2017	Joshua H Wrenn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Brooks
17	CSE	02278	5/31/2017	Curtis W Burk/Patricia Y Burk	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
17	CSE	02394	5/10/2017	Daniel L Brannon	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter

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17	CSE	03047	5/26/2017	Correy Winston	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
16	DHR	02788	5/8/2017	Estate of Dallas Dudley/Carolyn Dudley	v.	NC Dept of Health & Human Services	Elkins
16	DHR	11127	5/1/2017	D's Lovin Day Care	v.	NC DHHS, Division of Child Development and Early Education	Brooks
17	DHR	00001	5/8/2017	Clinton Health Holdings LLC	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Ward
17	DHR	00511	5/5/2017	Tammie Taylor	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Ward
17	DHR	01381	5/8/2017	Crystal Danielle Johnson	v.	Office of Administrating Hearings	Culpepper
17	DHR	01462	5/9/2017	Regge Cooper	v.	NC Department of Health and Human Services	Mann
17	DHR	01675	5/3/2017	Charity Johnson Keen	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	01694	5/2/2017	Green Acres Family Care Home Latrisha Green	v.	Megan Lamphere NC DHSR	Lassiter
17	DHR	01753	5/16/2017	Home Care Solutions of NC LLC, Latonya Jones	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	02062	5/19/2017	Caesar's Lil Palace	v.	Division of Child Development and Early Education	Brooks
17	DHR	02499	5/10/2017	Frances Coleman	v.	DHSR Mental Health & Licensure Certification	Overby
17	DHR	02674	5/12/2017	A Plus Results Independent Living Inc.	v.	North Carolina Department of Health and Human Services, Division of Medical Assistance, and its Agent Trillium Health Resources	Lassiter
17	DHR	02873	5/22/2017	Angenique Bethea Davis	v.	NC Department of Health and Human Services, Division of	Ward

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17	DOJ	01909	5/16/2017	Taylor Handsel	Leroy	v.	NC Sheriffs and Training Commission	Education Standards	Brooks	
15	EHR	07009	5/19/2017	R Richardson and Celie Richardson	Phillip and B	v.	NC Department Environmental Quality	of	Ward	
17	INS	01048	5/4/2017	Florence Adams		v.	North Carolina Health Plan	State	Mann	
17	INS	01216	5/9/2017	Jonathan Nero		v.	The State Plan/Durham Schools	Health Public	Mann	
17	INS	01301	5/24/2017	Arlene McAdams	Cox	v.	North Carolina Health Plan	State	May	
17	INS	01455	5/4/2017	Holly Hayes		v.	Blue Cross & Shield	Blue	Mann	
17	INS	01660	5/12/2017	Shirley Purdy	Faye	v.	State Health Plan Cross Blue Shield	Blue	Overby	
17	MIS	02192	4/21/2017; 4/28/2017; 5/5/2017	Tornello Fontaine El Bey [e]state thru beneficiary Tornello Pierce El-Bey	Pierce	v.	State of North Carolina Foryth County & Guildford County District Attorney James(Jim) R. O'Neill District Attorney J.D. Henderson Guilford County Sheriff BJ Barnes aka Eschol Barnes Jr. Forsyth County Sheriff William T Schatzman City of Winston Salem Chief of Police Barry D. Rountree State of North Carolina Department of Transportation/Division of Motor Vehicles/James H. Trogdon III		Brooks	4 partial, 1 full
16	OSP	11714	5/10/2017	Wen Chiann Yeh		v.	Department of Health and Human Services, Ms. Joe Lentz, Director Human Resource Department		Elkins	
17	SOS	01854	5/15/2017	Keni Senakhte El Bey		v.	Office Administrative Hearings	of	May	