

NORTH CAROLINA REGISTER

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July 15, 2020

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Contact List for Rulemaking Questions or Concerns

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

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

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Raleigh, North Carolina 27603-8005

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984-236-0689

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215 North Dawson Street

Raleigh, North Carolina 27603

919-715-2893

contact: Amy Bason

amy.bason@ncacc.org

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919-715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

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545 Legislative Office Building

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Raleigh, North Carolina 27611

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919-715-5460 FAX

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
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35:04	08/17/20	07/27/20	09/01/20	10/16/20	10/20/20	11/19/20	12/01/20	05/14/21
35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

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.



State of North Carolina

ROY COOPER
GOVERNOR

June 19, 2020

EXECUTIVE ORDER NO. 146

**EXTENDING CERTAIN TRANSPORTATION-RELATED PROVISIONS IN
PREVIOUS EXECUTIVE ORDERS**

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, and 138-144; and

WHEREAS, more than forty-nine thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over one thousand people in North Carolina have died from the disease; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, slowing the community spread of COVID-19 is critical to ensuring that our healthcare facilities remain able to accommodate those who require intensive medical intervention; and

WHEREAS, Executive Order No. 116, issued on March 10, 2020, included certain suspensions of Federal Motor Carrier Safety Regulations; and

WHEREAS, 49 C.F.R. § 390.23(a)(1)(ii)(B) allows for the undersigned to extend the suspension of the regulations in 49 C.F.R. Parts 300-399, the Federal Motor Carrier Safety Regulations, for an additional thirty (30) day period if the undersigned determines that an emergency condition continues to exist; and

WHEREAS, the undersigned has determined that the Executive Order needs to remain in place to allow for the continued expedited movement of vehicles in the state; and

WHEREAS, Executive Order No. 119, issued on March 20, 2020, the undersigned facilitated critical motor vehicle operations; and

WHEREAS, Executive Order No. 140, issued on May 18, 2020, extended the transportation related provisions in Executive Order Nos. 116, 119 and 133; and

WHEREAS, the provisions concerning the Division of Motor Vehicles (“DMV”) in Executive Order No. 119 are set to expire unless the undersigned takes further action; and

WHEREAS, the undersigned has determined that these DMV-related provisions should be extended; and

WHEREAS, on June 8, 2020, the Federal Motor Carrier Safety Administration issued the Extension of Expanded Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority.

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

Section 1. Extensions and technical amendments

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

A. Executive Order Nos. 116 and 119.

1. Sections 3 to 5 of Executive Order No. 119 (which were extended by Executive Order No. 133) are hereby extended through the end of the calendar day on July 14, 2020.

2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119 and extended by Executive Order Nos. 133 and 140) is amended as follows:

Executive Order No. 116 Section 5 is amended as follows:

Section 5. Maximum Hours of Service

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381, if the driver is transporting medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; and supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19, such as masks, gloves, hand sanitizer, soaps and disinfectants, essential fuels, food, water, livestock, poultry, feed for livestock and poultry and other supplies and equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19, through the duration of the State of Emergency or until further notice.

3. Section 6 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119 and extended by Executive Order Nos. 133 and 140) and Sections 7 and 8 of Executive Order No. 116, which interpret and implement this section, is terminated. Nothing in this Executive Order modifies the effectiveness of any provisions of Executive Order No. 116 other than Sections 5 through 8.
4. This Executive Order does not amend the sixty (60) day postponement of DMV-related hearings established in Section 3.f of Executive Order No. 119.
5. The first sentence of Section 8 of Executive Order No. 119 is amended to read:

"This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on July 14, 2020, or until rescinded or superseded by another applicable Executive Order; provided, however, that expiration of this Executive Order will not invalidate postponements of DMV-related hearings that occurred under Section 3.f of this Executive Order."

B. Miscellaneous provisions. For avoidance of doubt:

1. Future Executive Orders may extend the term of the restrictions, delegations, and requirements listed above.
2. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

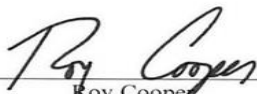
Section 2. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect until July 14, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 19th day of June in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



Public Notice
North Carolina Environmental Management Commission
Division of Water Resources/Water Quality Permitting Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Notice of Intent to Reissue an NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG500000 for the discharge of non-contact cooling water, cooling tower and boiler blowdown, condensate, exempt stormwater, cooling waters associated with hydroelectric operations and similar wastewaters.

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website:

<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/public-notice>

For questions or comments about NPDES General Permit NCG500000, please contact Sydney Carpenter at (919) 707-3712 or via e-mail: sydney.carpenter@ncdenr.gov.

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

The Division of Energy, Mineral, and Land Resources (DEMLR) invites public comment on, or objections to, the following NPDES Industrial Stormwater General Permits to be revised and re-issued. The public comment period begins at 9:00 am on 07/15/2020 and ends at 5:00 pm on 08/14/2020.

Persons wishing to comment on or object may submit written comments to the address below during the public comment period. All comments received during the public comment period will be considered in the final determinations regarding permit issuance. Public comments may result in changes to the proposed permitting actions. All comments should reference the specific permit number listed below.

- NCG020000 for Mining Operations, proposed issuance date 10/01/2020
- NCG190000 for Marinas, proposed issuance date 10/01/2020
- NCG250000 for Construction Activities not subject to the NC Sediment Pollution Control Act, proposed issuance date 10/01/2020 (a new NPDES Industrial Stormwater General Permit)

The General Permits and Fact Sheets may be viewed at: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-public>

Please direct comments or questions to:

Annette Lucas
Stormwater Program
NC Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, NC 27699-1612
Telephone number: (919) 707-3639
annette.lucas@ncdenr.gov

Public Notice
North Carolina Environmental Management Commission
Division of Water Resources/Water Quality Permitting Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Notice of Intent to Reissue an NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG520000 for the discharge of in-stream sand mining wastewater, associated storm water and similar wastewaters.

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website:

<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/public-notice>

For questions or comments about NPDES General Permit NCG520000 for the discharge of in-stream sand mining wastewater, associated storm water and similar wastewaters, please contact Emily Phillips at (919) 707-3621 or via e-mail: emily.phillips@ncdenr.gov.

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-21.3A(c)(2)g. that the Department of Health and Human Services/Division of Health Service Regulation intends to readopt with substantive changes the rules cited as 10A NCAC 14C .0202, .0203, .0205, .0303, .2101, .2103, .2201, .2203, .3901 and .3903.

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

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: August 25, 2020

Time: 10:00 a.m.

Location: Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 14C, Certificate of Need Regulations, these 10 proposed rules for readoption were part of the 39 rules determined as “Necessary With Substantive Public Interest,” requiring readoption. With input from stakeholders, substantive changes have been made to these proposed rules.

Definitions revise listed terms that apply throughout this Subchapter in the filing of Certificate of Need (CON) applications with the agency, and terms that apply to CON application performance standards for dialysis services and new gastrointestinal endoscopy rooms. References to the annual State Medical Facilities Plan are updated in the proposed rules.

The proposed rules clearly define the circumstances that a non-expedited review may be extended for a CON application and add the requirement for applicant notification when the review period has been extended. The replacement equipment exemption requirements are clarified with terms defined and criteria listed for when replacement equipment would not be comparable.

The performance standards are revised in proposed rule 10A NCAC 14C .2103 to be in compliance with the annual State Medical Facilities Plan for applicants proposing to increase operating rooms.

The proposed rules revise performance standards criteria for establishing a new dialysis facility for in-center services and increasing the number of in-center dialysis stations. Rule 10A

NCAC 14C .2203 was amended with temporary procedures Eff. February 1, 2020 and published in 34:16 NCR 2/17/20. Criteria was added to the performance standards for new facilities for home hemodialysis or peritoneal dialysis services and increasing the number of home hemodialysis or peritoneal dialysis facility stations.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: September 14, 2020

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .0200 – APPLICATION AND REVIEW PROCESS

10A NCAC 14C .0202 ~~DETERMINATION OF REVIEW~~ DEFINITIONS

~~(a) After receipt of a letter of intent, the agency shall determine whether the proposed project requires a certificate of need.~~

~~(b) When any of the equipment listed in G.S. 131E-176(16)(f1) or (p) is acquired in parts or piecemeal fashion, the acquisition shall be determined to require a certificate of need on the date that the components are assembled.~~

~~(c) If the agency determines that the project requires a certificate of need, the agency shall determine the appropriate review category or categories for the proposed project, the type or types of application forms to be submitted, the number of separate applications to be submitted, the applicable review period for each application, and the deadline date for submitting each application, as contained in this Subchapter.~~

~~(d) Copies of the application forms may be obtained from the agency.~~

~~(e) Proposals requiring review shall be reviewed according to the categories and schedule set forth in the duly adopted State Medical Facilities Plan in effect at the time the scheduled review period commences, as contained in this Subchapter.~~

~~(f) Applications are competitive if they, in whole or in part, are for the same or similar services and the agency determines that the approval of one or more of the applications may result in the denial of another application reviewed in the same review period. The following definitions shall apply throughout this Subchapter:~~

- ~~(1) "Applicant" means each person identified in Section A of the application forms listed in 10A NCAC 14C .0203(a).~~
- ~~(2) "Application deadline" means no later than 5:00 p.m. on the 15th day of the month preceding the month that the review period begins. If the 15th day of the month falls on a weekend or a State holiday as set forth in 25 NCAC 01E .0901, which is hereby incorporated by reference including subsequent amendments and editions, the application deadline is the next business day.~~
- ~~(3) "Competitive review" means two or more applications submitted to begin review in the same review period proposing the same new institutional health service in the same service area and the CON Section determines that approval of one application may require denial of another application included in the same review period.~~
- ~~(4) "CON Section" means the Healthcare Planning and Certificate of Need Section of the Division of Health Service Regulation.~~
- ~~(5) "Full fiscal year" means the 12-month period used by the applicant to track and report revenues and operating expenses for the services proposed in the application.~~
- ~~(6) "Health service" shall have the same meaning as defined in G.S. 131E-176(9a).~~
- ~~(7) "New institutional health service" shall have same meaning as defined in G.S. 131E-176(16).~~
- ~~(8) "Person" shall have the same meaning as defined in G.S. 131E-176(19).~~
- ~~(9) "Proposal" means a new institutional health service that requires a certificate of need.~~
- ~~(10) "Related entity" means a person that:~~

- ~~(a) shares the same parent corporation or holding company with the applicant;~~
- ~~(b) is a subsidiary of the same parent corporation or holding company as the applicant; or~~
- ~~(c) participates with the applicant in a joint venture that provides the same type of health services proposed in the application.~~

~~(11) "Review category" means the categories described in Chapter 3 of the annual State Medical Facilities Plan.~~

~~(12) "Review period" means the 90 to 150 days that the CON Section has to review a certificate of need application and issue a decision pursuant to G.S. 131E-185 and G.S. 131E-186. There are eleven review periods each calendar year. Each review period starts on the first day of the month and the first review period starts on February 1. There is no review period beginning January 1.~~

~~(13) "State Medical Facilities Plan" shall have the same meaning as defined in G.S. 131E-176(25). For purposes of this Subchapter, the annual State Medical Facilities Plan is hereby incorporated by reference including subsequent amendments and editions. This document is available at no cost at <https://info.ncdhhs.gov/dhsr/ncsmfp/index.html>.~~

~~(14) "USB flash drive" means a device used for data storage that includes a flash memory and an integrated universal serial bus interface.~~

Authority G.S. 131E-177.

10A NCAC 14C .0203 FILING APPLICATIONS

~~(a) A certificate of need application shall not be reviewed by the Certificate of Need Section until it is filed in accordance with this Rule.~~

~~(b) An original and a copy of the application shall be file stamped as received by the agency no later than 5:30 p.m. on the 15th day of the month preceding the scheduled review period. In instances when the 15th of the month falls on a weekend or holiday, the filing deadline is 5:30 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the formula as stated in G.S. 131E-182(c).~~

~~(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:~~

- ~~(1) the requisite fee has not been received by the agency; or~~
- ~~(2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.~~

~~(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant~~

~~within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.~~

~~(e) Information requested by the agency to complete the application must be received by the agency no later than 5:30 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.~~

~~(a) "Application form" refers to one of the following:~~

- ~~(1) the Certificate of Need Application form; or~~
- ~~(2) the Dialysis or End Stage Renal Disease Services Application form.~~

~~(b) An application form may be obtained from the CON Section by:~~

- ~~(1) sending an email to DHSR.CON.Applications@dhhs.nc.gov; or~~
- ~~(2) calling (919) 855-3873.~~

~~(c) An email request for an application form shall:~~

- ~~(1) describe the proposal;~~
- ~~(2) identify the city or county where the proposal would be located; and~~
- ~~(3) include the estimated capital cost for the proposal.~~

~~(d) For each proposal, the CON Section shall determine based on Chapter 3 of the annual State Medical Facilities Plan in effect at the time the review begins the:~~

- ~~(1) review category; and~~
- ~~(2) review period.~~

~~(e) An application is complete for inclusion in the review period if the CON Section determines that all of the following are true:~~

- ~~(1) the original application is printed, placed between a front and back cover, and bound using metal paper fasteners;~~
- ~~(2) the original and one copy of the application were received by the CON Section on or before the application deadline for the review period;~~
- ~~(3) the entire application fee required by G.S. 131E-182(c) was received by the CON Section; and~~
- ~~(4) each applicant identified in Section A of the application form signed the certification page that asks the applicant to certify that the information in the application is correct and they intend to develop and offer the project as described in the application.~~

~~(f) The copy of the application shall be printed and bound consistent with Paragraph (d)(1) of this Rule or in an electronic format saved on a USB flash drive. The files on the USB flash drive shall not be encrypted or password protected.~~

~~(g) No later than the fifth business day following the application deadline, the CON Section shall notify the contact individual identified in Section A of the application if the application is complete.~~

~~(h) If the application is not complete pursuant to Paragraph (e) of this Rule, the CON Section shall notify the contact individual identified in Section A of the application of what is missing or~~

incorrect. The applicant shall only provide the items listed below in order to complete the application after the application deadline:

- (1) a signed certification page; or
- (2) the copy of the application.

(i) Signed certification pages or the copy of the application shall be received by the CON Section no later than 5:00 p.m. on the last business day of the month preceding the first day of the review period.

(j) The CON Section shall not include the application in the review period if it is not complete pursuant to Paragraph (e) of this Rule by 5:00 p.m. on the last business day of the month preceding the first day of the review period.

Authority G.S. 131E-177; 131E-182.

10A NCAC 14C .0205 EXTENSION OF REVIEW PERIOD

~~(a) The review of an application for a certificate of need shall be completed within 90 days from the beginning date of the review period for the application, except as provided in Paragraph (b) of this Rule.~~

~~(b) Except in the case of an expedited review, the period for review may be extended for up to 60 days by the agency if it determines that, for one or more of the following reasons, it cannot complete the review within 90 days:~~

- ~~(1) the extension is necessary to consider conflicting, contradictory, or otherwise relevant matters;~~
- ~~(2) the total number of applications assigned to the project analyst for review, including those in other review periods, preclude the project analyst from completing the review within 90 days;~~
- ~~(3) the complexity of the application or applications to be reviewed make it necessary to extend the review period;~~
- ~~(4) the review of an applicant's response to the agency's request for additional information has not been completed;~~
- ~~(5) the timing of the public hearing which was held for the application or applications under review does not allow sufficient time to consider the information presented;~~
- ~~(6) extension of previous reviews necessitated that the project analyst delay the commencement of the review; or~~
- ~~(7) the unavailability of the project analyst due to illness, annual leave, litigation associated with other reviews, or other duties and responsibilities.~~

~~(c) In the case of an expedited review, the review period may be extended only if the Agency has requested additional substantive information from the applicant in accordance with G.S. 131E-185(e).~~

~~(d) Applicants will be provided written notice of the extension of the review period after the agency determines that an extension is necessary. Failure to receive such notice prior to the last day of the scheduled review period, however, does not entitle an~~

~~applicant to a certificate of need nor authorize an applicant to proceed with a project without one.~~

~~(a) If the review is not expedited, the review may be extended for the following reasons:~~

- ~~(1) the total number of applications, including those in other review periods, prevents the CON Section from completing the review in 90 days;~~
- ~~(2) the applicant has not submitted a response to a request from the CON Section for clarifying information; or~~
- ~~(3) the CON Section received clarifying information from the applicant but is not able to complete the review in 90 days.~~

~~(b) The CON Section shall notify the contact individual identified in Section A of the application if the review period is extended. Failure to receive such notice prior to the last day of the review period does not entitle the applicant to a certificate of need nor authorize the applicant to proceed with the proposal in the application without a certificate of need.~~

Authority G.S. 131E-177; 131E-185.

SECTION .0300 - EXEMPTIONS

10A NCAC 14C .0303 REPLACEMENT EQUIPMENT

~~(a) The purpose of this Rule is to define the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).~~

~~(b) "Activities essential to acquiring and making operational the replacement equipment" means those activities which are indispensable and requisite, absent which the replacement equipment could not be acquired or made operational.~~

~~(c) "Comparable medical equipment" means equipment which is functionally similar and which is used for the same diagnostic or treatment purposes.~~

~~(d) Replacement equipment is comparable to the equipment being replaced if:~~

- ~~(1) it has the same technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; and~~
- ~~(2) it is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use and is not used to provide a new health service; and~~
- ~~(3) the acquisition of the equipment does not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment is acquired.~~

~~(e) Replacement equipment is not comparable to the equipment being replaced if:~~

- ~~(1) the replacement equipment is new or reconditioned, the existing equipment was purchased second hand, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or~~

- ~~(2) the replacement equipment is new, the existing equipment was reconditioned when purchased, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or~~
- ~~(3) the replacement equipment is capable of performing procedures that could result in the provision of a new health service or type of procedure that has not been provided with the existing equipment; or~~
- ~~(4) the replacement equipment is purchased and the existing equipment is leased, unless the lease is a capital lease; or~~
- ~~(5) the replacement equipment is a dedicated PET scanner and the existing equipment is:
(A) a gamma camera with coincidence capability; or
(B) nuclear medicine equipment that was designed, built, or modified to detect only the single photon emitted from nuclear events other than positron annihilation.~~

(a) This Rule defines the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).

(b) "Currently in use" means that the equipment to be replaced has been used by the person requesting the exemption at least 10 times to provide a health service during the 12 months prior to the date the written notice required by G.S. 131E-184(a) is submitted to the CON Section.

(c) Replacement equipment is not "comparable" if:

- (1) the replacement equipment to be acquired is capable of providing a health service that the equipment to be replaced cannot provide; or
- (2) the equipment to be replaced was acquired less than 12 months prior to the date the written notice required by G.S. 131E-184(a) is submitted to the CON Section and it was refurbished or reconditioned when it was acquired by the person requesting the exemption.

Authority G.S. 131E-177(1).

SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS

10A NCAC 14C .2101 DEFINITIONS

The following definitions apply to all rules in this Section:

- (1) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the ~~Healthcare Planning and Certificate of Need Section (Agency) CON Section~~ prior to the date on which the applicant's proposed project was submitted to the Agency, but that have not been licensed.
- (2) "Dedicated C-section operating room" means an operating room as defined in Chapter 6 in the 2018 annual State Medical Facilities Plan. ~~For purposes of this Section, Chapter 6 in the 2018~~

~~State Medical Facilities Plan is hereby incorporated by reference including subsequent amendments and editions. This document is available at no cost at <https://www.ncdhhs.gov/dhsr/nsmfp/index.html>.~~

- (3) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals that were reported in the Ambulatory Surgical Facility License Renewal Application Form or in the Hospital License Renewal Application Form submitted to the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation, and that were licensed prior to the beginning of the review period.
- (4) "Health System" shall have the same meaning as defined in Chapter 6 in the ~~2018~~ annual State Medical Facilities Plan.
- (5) "Operating room" means a room as defined in G.S. 131E-176(18c).
- (6) "Operating Room Need Methodology" means the Methodology for Projecting Operating Room Need in Chapter 6 in the ~~2018~~ annual State Medical Facilities Plan.
- (7) "Service area" means the Operating Room Service Area as defined in Chapter 6 in the ~~2018~~ annual State Medical Facilities Plan.

- (2) ~~"Renal transplantation center" means a hospital unit which furnishes directly renal transplantation and other medical and surgical specialty services required for transplant candidates or patients.~~
- (3) ~~"Renal dialysis center" is a hospital unit which furnishes the full spectrum of diagnostic, therapeutic, and rehabilitative services.~~
- (4) ~~"Renal dialysis facility" is a unit, usually freestanding, which furnishes dialysis service to ESRD patients.~~
- (5) ~~"Dialysis" means the artificially aided process of transferring body wastes from a person's blood to a dialysis fluid to permit discharge of the wastes from the body.~~
- (6) ~~"Hemodialysis" means the form of dialysis in which the blood is circulated outside the body through an apparatus which permits transfer of waste through synthetic membranes.~~
- (7) ~~"Peritoneal dialysis" means the form of dialysis in which a dialysis fluid is introduced into the person's peritoneal cavity and is subsequently withdrawn.~~
- (8) ~~"Maintenance dialysis" is the term used to describe routine repetitive dialysis treatments necessary to sustain life of patients with ESRD.~~
- (9) ~~"Self care dialysis or home dialysis training" means the systematic training of patients and their helpers in the techniques of self care dialysis.~~
- (10) ~~"Self care dialysis" means the self administration of maintenance dialysis treatments in ESRD facility or elsewhere and may be assisted by an aide who is either a family member or a non family member assistant.~~
- (11) ~~"Dialysis station" means a unit in an ESRD facility equipped with the apparatus for performing hemodialysis or peritoneal dialysis on a single patient. Stations may designated for maintenance dialysis, self care dialysis, self care training, or isolation.~~
- (12) ~~"Isolation station" means a dialysis station located apart from other maintenance dialysis stations to serve patients who either have or are suspected to have an infectious disease, i.e., hepatitis.~~
- (13) ~~"Shift" means the scheduled time when a group of patients are provided their dialysis treatment.~~
- (14) ~~"Transplantation" means a surgical procedure in which a functioning kidney is removed from a donor and implanted in the patient with ESRD.~~
- (15) ~~"Organ procurement" means the process of acquiring kidneys for transplantation from potential donors.~~
- (16) ~~"Histocompatibility testing" means laboratory testing procedures which determine~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2103 PERFORMANCE STANDARDS

(a) An applicant proposing to increase the number of operating rooms ~~(excluding dedicated C section operating rooms)~~ excluding dedicated C-section operating rooms in a service area shall demonstrate the need for the number of proposed operating rooms in addition to the existing and approved operating rooms in the applicant's health system in the applicant's third full fiscal year following completion of the proposed project based on the Operating Room Need Methodology set forth in the ~~2018~~ annual State Medical Facilities Plan. Plan in effect at the time the review began. The applicant is not required to use the population growth factor.

(b) The applicant shall ~~document~~ provide the assumptions and ~~provide data supporting the~~ methodology used for ~~each projection in the projected utilization required by this Rule.~~

Authority G.S. 131E-177; 131E-183(b).

SECTION .2200 – CRITERIA AND STANDARDS FOR END-STAGE RENAL DISEASE SERVICES

10A NCAC 14C .2201 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section:

- (1) ~~"End stage renal disease (ESRD) services" means those dialysis or transplantation services necessary for the treatment of patients with end stage renal disease provided by transplantation centers, dialysis centers or dialysis facilities.~~

~~compatibility between a potential donor organ and a potential organ transplant recipient.~~

The following definitions shall apply to this Section:

- (1) "Dialysis" means the artificially aided process of transferring body wastes from a person's blood to a dialysis fluid to permit discharge of the wastes from the body.
- (2) "Dialysis facility" means a kidney disease treatment center as defined in G.S. 131E-176(14e).
- (3) "Dialysis station" means the treatment area used to accommodate the equipment and supplies needed to perform dialysis on a single patient.
- (4) "Hemodialysis" means the form of dialysis in which the blood is circulated outside the body through equipment that permits transfer of waste through synthetic membranes.
- (5) "Home hemodialysis" means hemodialysis performed in the patient's home by the patient after the patient is trained in a dialysis facility to perform the hemodialysis.
- (6) "In-center hemodialysis" means hemodialysis performed in a dialysis facility.
- (7) "Peritoneal dialysis" means the form of dialysis in which a dialysis fluid is introduced into the person's peritoneal cavity and is subsequently withdrawn. This form of dialysis is performed in the patient's home after the patient is trained in a dialysis facility to perform the peritoneal dialysis.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2203 PERFORMANCE STANDARDS

~~(a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility, with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.~~

~~(b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility or one that was not operational prior to the beginning of the review period but which had been issued a certificate of need shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional stations.~~

~~(c) An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.~~

(a) An applicant proposing to establish a new dialysis facility for in-center hemodialysis services shall document the need for at least 10 dialysis stations based on utilization of 2.8 in-center patients per station per week as of the end of the first full fiscal year of operation following certification of the facility. An applicant may document the need for fewer than 10 stations if the application is submitted in response to an adjusted need

determination in the State Medical Facilities Plan for fewer than 10 stations.

(b) An applicant proposing to increase the number of in-center dialysis stations in:

- (1) an existing dialysis facility; or
- (2) a dialysis facility that is not operational as of the date the certificate of need application is submitted but has been issued a certificate of need;

shall document the need for the total number of dialysis stations in the facility based on 2.8 in-center patients per station per week as of the end of the first full fiscal year of operation following certification of the additional stations.

(c) An applicant proposing to establish a new dialysis facility dedicated to home hemodialysis or peritoneal dialysis services shall document the need for the total number of home hemodialysis stations in the facility based on six home hemodialysis patients per station per year as of the end of the first full fiscal year of operation following certification of the facility.

(d) An applicant proposing to increase the number of home hemodialysis stations in a dialysis facility dedicated to home hemodialysis or peritoneal dialysis services shall document the need for the total number of home hemodialysis stations in the facility based on six home hemodialysis patients per station per year as of the end of the first full fiscal year of operation following certification of the additional stations.

(e) The applicant shall provide the assumptions and methodology used for the projected utilization required by this Rule.

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3900 - CRITERIA AND STANDARDS FOR GASTROINTESTINAL ENDOSCOPY PROCEDURE ROOMS IN LICENSED HEALTH SERVICE FACILITIES

10A NCAC 14C .3901 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- ~~(1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).~~
- ~~(2) "Gastrointestinal (GI) endoscopy room" means a room as defined in G.S. 131E-176(7d) that is used to perform one or more GI endoscopy procedures.~~
- ~~(3) "Gastrointestinal (GI) endoscopy procedure" means a single procedure, identified by CPT code or ICD-9-CM procedure code, performed on a patient during a single visit to the facility for diagnostic or therapeutic purposes.~~
- ~~(4) "Operating room" means a room as defined in G.S. 131E-176(18e).)~~
- ~~(5) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).~~

- (6) "Service area" means the geographical area, as defined by the applicant using county lines, from which the applicant projects to serve patients.
- (1) "Approved gastrointestinal (GI) endoscopy rooms" means GI endoscopy rooms that were approved for a certificate of need by the CON Section prior to the date the application was submitted but that are not licensed as of the date the application is submitted.
- (2) "Existing GI endoscopy rooms" means GI endoscopy rooms that were licensed prior to the beginning of the review period.
- (3) "GI endoscopy procedure" means each upper endoscopy, esophagoscopy, or colonoscopy procedure performed on a patient during a single visit to the licensed health service facility.
- (4) "Licensed health service facility" means either a hospital as defined in G.S. 131E-176(13) or an ambulatory surgical facility as defined in G.S. 131E-176(1b).
- (5) "New GI endoscopy room" means a GI endoscopy room that is not included in the inventory of GI endoscopy rooms in the State Medical Facilities Plan as of the date the application is submitted.
- (6) "Service area" means the county where the proposed GI endoscopy room will be developed.

- (1) ~~if the applicant or a related entity performs GI endoscopy procedures in any of its surgical operating rooms in the proposed service area, reasonably project that during the second operating year of the project the average number of surgical and GI endoscopy cases per operating room, for each category of operating room in which these cases will be performed, shall be at least: 4.8 cases per day for each facility for the outpatient or ambulatory surgical operating rooms and 3.2 cases per day for each facility for the shared operating rooms; or~~
- (2) ~~demonstrate that GI endoscopy procedures were not performed in the applicant's or related entity's inpatient operating rooms, outpatient operating rooms, or shared operating rooms in the last 12 months and will not be performed in those rooms in the future.~~

~~(e) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop an additional GI endoscopy room in an existing licensed health service facility shall describe all assumptions and the methodology used for each projection in this Rule.~~

An applicant proposing to develop a new GI endoscopy room in a licensed health service facility shall:

- (1) identify the proposed service area;
- (2) identify all existing and approved GI endoscopy rooms owned or operated by the applicant or a related entity located in the proposed service area;
- (3) provide projected utilization for each of the first three full fiscal years of operation following completion of the project for all GI endoscopy rooms identified in Item (2) of this Rule;
- (4) project to perform an average of at least 1,500 GI endoscopy procedures per GI endoscopy room during the third full fiscal year of operation following completion of the project in the GI endoscopy rooms identified in Item (2) of this Rule; and
- (5) provide the assumptions and methodology used to project the utilization required by this Rule.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3903 PERFORMANCE STANDARDS

~~(a) In providing projections for operating rooms, as required in this rule, the operating rooms shall be considered to be available for use 250 days per year, which is five days per week, 52 weeks per year, excluding ten days for holidays.~~

~~(b) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall reasonably project to perform an average of at least 1,500 GI endoscopy procedures only per GI endoscopy room in each licensed facility the applicant or a related entity owns in the proposed service area, during the second year of operation following completion of the project.~~

~~(c) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall demonstrate that at least the following types of GI endoscopy procedures will be provided in the proposed facility or GI endoscopy room: upper endoscopy procedures, esophagoscopy procedures, and colonoscopy procedures.~~

~~(d) If an applicant, which proposes to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility, or a related entity to the applicant owns operating rooms located in the proposed service area, the applicant shall meet one of the following criteria:~~

Authority G.S. 131E-177; 131E-183(b).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02I .0105, repeal the rules cited as 15A NCAC 02I .0104, .0301, .0402; 02J .0101, readopt with substantive changes the rules cited as 15A NCAC 02I .0101-.0103, .0203, .0501-.0503, .0601-.0603, and repeal through readoption the rules cited as 15A NCAC 02I .0106, .0302, .0504; 02J .0102-.0104 and .0106-.0111.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

Proposed Effective Date: January 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Contact by email: jennifer.everett@ncdenr.gov; Or by mail: Jennifer Everett, NCDEQ, 1601 Mail Service Center, Raleigh NC 27699-1601*

Reason for Proposed Action: *Agencies are required to review their rules every 10 years pursuant to GS 150B-21.3A.*

15A NCAC 02I addresses the requirements for hearings, petitions for rulemaking, and declaratory rulings by the North Carolina Environmental Management Commission (EMC) and Department of Environmental Quality (DEQ) divisions. The scope of these rules includes all of the EMC's regulatory programs. Of the 17 rules in the proposed rulemaking, 11 are proposed for re adoption with changes and 6 are proposed for repeal. The rules proposed for repeal are either obsolete or duplicative of North Carolina General Statutes and, therefore, unnecessary.

15A NCAC 02J addresses the assessment, remission, mitigation and appeal of civil penalties by the EMC and DEQ divisions. The scope of these rules includes penalties for violations of water quality, oil, air, water capacity use areas, solid waste, dry cleaning, dam safety, and well construction requirements. All rules in 15A NCAC 02J are proposed for repeal because they are duplicative of North Carolina General Statutes and, therefore, unnecessary.

Comments may be submitted to: Jennifer Everett, NCDEQ, 1601 Mail Service Center, Raleigh, NC 27699-1601; jennifer.everett@ncdenr.gov

Comment period ends: September 14, 2020

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02I - HEARINGS

SECTION .0100 - SCOPE: DEFINITIONS: DELEGATIONS

15A NCAC 02I .0101 PURPOSE OF THIS SUBCHAPTER

~~These rules and regulations~~ In instances where Rules related to hearings conducted by a Division are not codified, these Rules authorize the designation of certain employees of the Department of Natural Resources and Community Development as hearing officers, sets out the types of hearings which the designated employees are authorized to conduct, and delineates and references the rules of procedure for conducting rule making, rulemaking or other hearings. administrative, and special hearings.

Authority G.S. 143-215.3(a)(1),(3).

15A NCAC 02I .0102 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-213 and 150B-2 and as follows:

- (1) "Commission" means the North Carolina Environmental Management Commission.
- (2) "Department" means the Department of Environmental Quality, Natural Resources and Community Development, and its successor.
- (3) "Director" means ~~the Director, Division of Environmental Management~~ Director of the Division of Air Quality, Director of the Division of Energy, Mineral, and Land Resources, Director of the Division of Mitigation Services, Director of the Division of Water Resources or Director of the Division of Waste Management and their successors.
- (4) "Division" means the Division of ~~environmental management~~ Air Quality, the Division of Energy, Mineral, and Land Resources, the Division of Mitigation Services, the Division of Water Resources or the Division of Waste Management and its their successor successors.

Authority G.S. 143-215.3(a)(1).

15A NCAC 02I .0103 DELEGATIONS

Unless otherwise directed by the Chair of the Commission, pursuant to Rule .0105 of this Section, the ~~The~~ Director is authorized to designate hearing officers, establish the hearings, issue notices and perform other administrative functions in accordance with these Rules, regulations. The Director shall advise the Commission at its regularly scheduled meetings of any public hearings held or scheduled since the Commission's last meeting.

Authority G.S. 143-215.3(a)(3),(4); 150B-32.

15A NCAC 02I .0104 AUTHORIZED HEARING OFFICERS

Authority G.S. 143-215.4(e); 150B-32.

15A NCAC 02I .0105 REQUIREMENTS OF HEARING OFFICER OR PANEL

~~One or more hearing officers may be designated to sit as a hearing panel for all hearings. Notwithstanding Rule .0103 of this Section, the Chair of the Commission may designate one or more of Commission members as hearing officer(s) for any hearing. The Commission may, in its discretion, sit as a whole or designate one or more of its members to sit as hearing officers for any hearing.~~

Authority G.S. 143-215.3(a)(3).

15A NCAC 02I .0106 DEPARTMENT HEARING RULES

Authority G.S. 87-87; 87-92; 143-215.3(a)(1); 143-215.4; 150B-14.

SECTION .0200 - RULE MAKING HEARINGS: NOTICE: PROCEDURES

15A NCAC 02I .0203 PROCEDURES

(a) Any person desiring to comment on the proposed action may do so either in writing or by oral presentation. Any person may file a written statement or argument concerning the proposed action prior to the close of the hearing record.

(b) The hearing officer(s) shall consider all written and oral submissions and submit recommendations concerning the proposed action to the Commission following the close of the hearing record.

~~(c) Requests for reasons for or against adoption shall be responded to in accordance with G.S. 150B-12(e).~~

Authority G.S. 150B-12; 143-214.1(e); 143-215.13(c); 87-87.

SECTION .0300 - ADMINISTRATIVE HEARINGS

15A NCAC 02I .0301 OPPORTUNITY FOR HEARING

Authority G.S. 87-87; 87-92; 143-215.3(a); 143-215.4; 150B-2.

15A NCAC 02I .0302 REQUEST FOR HEARING

Authority G.S. 143-215.3(a)(1); 150B-23.

SECTION .0400 - SPECIAL HEARINGS

15A NCAC 02I .0402 WATER QUALITY DISCHARGE PERMITS: NOTICE: PROCEDURES

Authority G.S. 143-215.1(c)(3).

SECTION .0500 - PETITIONS FOR RULEMAKING

15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the ~~Environmental Management~~ Commission (~~hereinafter referred to as the Commission~~) shall make the request in a petition addressed to the Director of the appropriate division of the Department of Environmental Quality, and a copy in electronic ~~or digital~~ form shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

Director
Division of Mitigation Services
1652 Mail Service Center
Raleigh, North Carolina 27699-1652

Director
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

Recording Clerk of the Commission
Directors Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@ncdenr.gov

- (b) The petition shall contain the following information:
- (1) the text of the proposed rule(s) for adoption or amendment;

- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) the name(s) and address(es) of the petitioner(s); and
- (5) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.

(c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the ~~rules(s);~~ rule(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

(d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0502 REVIEW BY A COMMITTEE OF THE COMMISSION

(a) The ~~Chairman~~ Chair of the Commission ~~shall~~ may refer complete petitions to the appropriate subject area committee of the Commission for review and recommended action. Copies of ~~Petitions~~ petitions for ~~Rulemaking~~ rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) Within 10 days of the assignment of the complete petition, the ~~chairman~~ Chair of the committee ~~assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.~~

(c) At least 15 days before the committee meeting, notice of the committee meeting shall be sent to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) ~~If the petition is referred to a Committee, The~~ the petitioner shall be afforded the opportunity to present the petition for rulemaking to the committee. The ~~Director, Director, division staff or their legal counsel through staff,~~ Director, division staff or their legal counsel may make a presentation to the ~~committee, Committee,~~

(e) The ~~Chairman~~ Chair of the committee ~~shall allow one interested person to present the viewpoint of those who~~

~~oppose initiating rulemaking. The~~ Chair of the ~~committee~~ Committee may determine whether additional interested persons shall make oral presentations before the ~~committee, Committee.~~ At least 10 days before the Committee meeting, interested ~~Interested~~ persons ~~must~~ shall request the opportunity to make a presentation to the ~~committee~~ Committee through the Director. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

(f) During the ~~committee's~~ Committee's review, members of the Commission, other than committee members, who are present may participate as a member of the ~~committee~~ Committee in discussions of the petition but may not vote on the recommended action on the petition.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for ~~rulemaking~~ Rulemaking, after review by the appropriate committee under 15A NCAC 02I .0502, shall be presented to the ~~Environmental Management~~ Commission for its consideration and determination at a ~~regularly scheduled~~ meeting of the Commission within 120 days following the date of ~~referral~~ submittal of the petition to the appropriate ~~committee, Division~~ Division pursuant to Rule .0501 of this Section. If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0502 of this Section, the ~~The Petition~~ petition for Rulemaking and the ~~committee's~~ Committee's recommended action shall be presented through the ~~committee chairman~~ Chair of the Committee or other designated member of the ~~committee~~ Committee during the business session of the Commission. Unless the ~~Chairman~~ Chair of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, ~~and the Director, Director, or the Division's legal counsel and the petitioner or its legal counsel.~~

(b) For petitions not referred to a Committee, the Chair of the Commission shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Chair of the Commission may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Director. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

~~(b)(c)~~ Within 120 days following ~~submittal~~ referral of the petition to the appropriate ~~committee, Division~~ the Environmental Management Commission shall:

- (1) grant the petition in writing, notify the petitioner and initiate rulemaking proceedings in accordance with G.S. 150B-20; and notify the person(s) who submitted the petition of the decision in writing; or

- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0504 RECOURSE TO DENIAL OF PETITION

Authority G.S. 143B-282; 150B-20.

SECTION .0600 - DECLARATORY RULINGS

15A NCAC 02I .0601 ISSUANCE OF DECLARATORY RULING

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the ~~Environmental Management~~ Commission ~~shall~~ may issue a declaratory ruling as provided in G.S. ~~150B-4~~ 150B-4 and the rules of this Section.

Authority G.S. 150B-4.

15A NCAC 02I .0602 PROCEDURE FOR SUBMISSION OF PETITION

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division ~~of the Department of Environment and Natural Resources, and 25 complete copies shall also be sent to the~~ and a copy in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

Director
Division of ~~Water Quality~~ Mitigation Services
~~1617 1652~~ Mail Service Center
Raleigh, NC ~~27699-1617~~ 27699-1652

Director
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611

EMC Recording Clerk
1617 Mail Service Center
Raleigh, NC 27699-1617

Recording Clerk of the Commission
Directors Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@ncdenr.gov

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or~~ rule or;
 - (B) ~~on~~ the applicability of a rule, order or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~ the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order, or statute ~~must~~ shall include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling on the validity of a Commission rule ~~must~~ shall state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the conflict or inconsistency, the relevant Division(s) and program area(s), the interpretation provided by the agency, and the law or rule in question. A person may ask for multiple ~~or both~~ types of declaratory rulings in a single request.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the ~~Chairman~~ Chair of the Commission.

Authority G.S. 150B-4.

15A NCAC 02I .0603 DISPOSITION OF REQUEST

(a) The ~~Commission Chairman~~ Chair of the Commission shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this ~~Section~~ Section, ~~and he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.~~

(b) Before the Commission decides ~~deciding~~ the merits of the request, the Chair of the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department staff or any other person; ~~and~~
- (3) allow the petitioner to file a reply to the response submitted in Subparagraph (2) of this Paragraph; or
- ~~(3)(4)~~ request hear oral arguments from the petitioner(s) and Department staff or their legal counsel.

(c) The Commission shall deny the request upon making any of the following findings:

- (1) the request is not complete;
- (2) the petitioner is not a person aggrieved;
- (3) there has been a similar determination in a previous contested case or declaratory ruling;
- (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (5) no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented;
- (6) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (7) the information provided by the petitioner, the Department and any interveners does not support a determination that a rule is invalid; or
- (8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.

~~(c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(d) "Good cause" as set out in Paragraph (c) of this Rule shall include:~~

- ~~(1) finding that there has been a similar determination in a previous contested case or declaratory ruling;~~
- ~~(2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;~~
- ~~(3) finding that no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented; or~~
- ~~(4) finding that the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.~~

~~(e) The Commission shall respond to a request of a declaratory ruling in accordance with G.S. 150B-4(a1).~~

(d) The Commission shall make a decision to grant or deny the request according to G.S. 150B-4.

(e) The Commission shall keep a record of each declaratory ruling, which shall include ~~at a minimum~~ the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the given state of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
- (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) the Commission changes the declaratory ruling prospectively; or,
- (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of ~~Environment and Natural Resources~~ and the party requesting the ruling.

~~(h) The requesting party may agree to allow the Commission to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.~~

~~(i) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

Authority G.S. 150B-4.

SUBCHAPTER 02J - CIVIL PENALTIES

15A NCAC 02J .0101 PURPOSE AND SCOPE

Authority G.S. 143-215.3(a)(1).

15A NCAC 02J .0102 DEFINITIONS

Authority G.S. 143-212(6); 143-213(18); 143-214.2; 143-215.3(a)(1).

15A NCAC 02J .0103 WHO MAY ASSESS

Authority G.S. 87-94; 143-215.3(a)(4); 143-215.6(A); 143-215.17(b); 143-215.36(b); 143-215.88A; 143-215.114(a).

15A NCAC 02J .0104 WHEN ASSESSABLE

Authority G.S. 87-87; 87-94; 143-215.3(a); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a).

15A NCAC 02J .0106 STANDARDS

Authority G.S. 87-87; 87-94; 143-215.3(a)(1); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a).

**15A NCAC 02J .0107 PROPOSED ASSESSMENT:
ASSESSMENT: MODIFICATION**

Authority G.S. 87-87; 87-94; 143-215.3(a)(1); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a).

**15A NCAC 02J .0108 PAYMENT: HEARING:
REMISSION/MITIGATION**

Authority G.S. 143-215.3(a)(1); 143-215.6(a); 143-215.91(a); 143-215.114(a).

**15A NCAC 02J .0109 TENDERS OF PAYMENT:
REMISSION/MITIGATION: HEARING REQUEST**

Authority G.S. 143-215.3(a)(1),(3).

15A NCAC 02J .0110 REFERRAL

Authority G.S. 143-215.3(a)(1),(3); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a).

**15A NCAC 02J .0111 REPORTS TO THE
COMMISSION**

Authority G.S. 143-215.3(a)(1).

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND
COMMISSIONS**

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rules cited as 21 NCAC 36 .0121, .0122 and amend the rules cited as 21 NCAC 36 .0226, .0228 and .0323.

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

Proposed Effective Date: November 1, 2020

Public Hearing:

Date: August 20, 2020

Time: 1:00 p.m.

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

Reason for Proposed Action:

21 NCAC 36 .0121 *Petitioning for Rulemaking: In accordance with G.S. 150B-20(a), "Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition." In reviewing Chapter 36 Board of Nursing, it was determined the Board needs to promulgate a rule on Petitioning for Rulemaking.*

21 NCAC 36 .0122 *Petitions for Declaratory Rulings: In accordance with G.S. 150B-4(a), "The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued." In reviewing Chapter 36 Board of Nursing, it was determined the Board needs to promulgate a rule on Petitions for Declaratory Rulings.*

21 NCAC 36 .0226 *Amendments to this Rule include: addition of language regarding eligibility for recognition as a nurse anesthetist, change in title of national certifying body, and modernization of language.*

21 NCAC 36 .0228 *Amendments to this Rule includes: modernization of language and clarification regarding requirements for approval to practice.*

21 NCAC 36 .0323 *Amendment to this Rule updates language regarding program completion.*

Comments may be submitted to: Angela Ellis, PO Box 2129
Raleigh NC 27602-2129, email public.comment@ncbon.com

Comment period ends: September 14, 2020

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 36 .0121 PETITIONING FOR RULEMAKING

(a) Any person wishing to submit a petition to the Board requesting the adoption, amendment, or repeal of a rule shall file the petition with the Board's chief executive officer.

(b) The petition shall contain the following information:

- (1) a proposed draft of the rule to be adopted or amended or a citation to the rule to be repealed;
- (2) a statement of the reason for the proposal, including statutory authority;
- (3) effect of the proposed rule change on the practice of nursing;
- (4) any data supporting the proposal including cost factors; and
- (5) name, address, and telephone number of each petitioner.

(c) The Board will determine whether the public interest would be served by the adoption, amendment, or repeal of the requested rule. Prior to making this determination, the Board may:

- (1) request additional information from the petitioner;
- (2) contact interested persons or those likely to be affected by the proposed rule and request comments; and
- (3) it may use any other appropriate method for obtaining information on which to base its determination. It will consider all the contents of the petition submitted plus any other information obtained by the means described herein.

(d) The Board shall act on a petition within the timeframe outlined in G.S. 150B-20.

Authority G.S. 90-171.23(b); 150B-20.

21 NCAC 36 .0122 PETITIONS FOR DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be written and mailed to the Board at Post Office Box 2129, Raleigh, NC 27602-2129. The envelope containing the request shall bear the notation: "REQUEST FOR DECLARATORY RULING."

(b) Each Request for Declaratory Ruling shall include the following information:

- (1) the name and address of the person requesting the ruling;
- (2) the statute or rule to which the request relates;
- (3) a concise statement of the manner in which the requesting person is affected by the statute or rule or its potential application to that person;
- (4) a statement whether an oral hearing is desired and, if so, the reason.

(c) Upon receipt of a Request for Declaratory Ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

(d) When the Board determines that the issuance of a declaratory ruling is inappropriate, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(e) The Board shall decline to issue a declaratory ruling where:

- (1) there has been a similar controlling factual determination made by the Board in a contested case;
- (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule;
- (3) the subject-matter of the request is involved in pending litigation in any state or federal court in North Carolina; or
- (4) the petitioner fails to show that the circumstances are so changed since the adoption of the statute or rule that a ruling is warranted.

Authority G.S. 90-171.23(b); 150B-4.

SECTION .0200 – LICENSURE

21 NCAC 36 .0226 NURSE ANESTHESIA PRACTICE

(a) To be eligible for recognition as a nurse anesthetist, a nurse shall:

- (1) have an active unencumbered license to practice as a registered nurse in North Carolina or privilege to practice pursuant to licensure in a compact state and, when applicable, an active unencumbered recognition, approval, registration, or license as a nurse anesthetist in another state, territory, or possession of the United States;
- (2) submit a completed application for recognition, attesting under oath or affirmation that the information on the application is true and complete and authorizing the release to the Board of all information pertaining to the application. Application for Examination is posted on the Board's website at www.ncbon.com;
- (3) have successfully completed a nurse anesthetist education program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs (CANAEP);
- (4) be credentialed as a certified registered nurse anesthetist by the CANAEP; and
- (5) supply additional information necessary to evaluate the application as requested.

In the event any of the above required information indicates a concern about the applicant's qualifications, an applicant may be required to appear in person for an interview with the Board if the Board determines in its discretion that more information is needed to evaluate the application.

(a)(b) Only a registered nurse who completes a program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs, is credentialed as a certified registered nurse anesthetist by the ~~Council on Certification of Nurse Anesthetists~~, National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA), and who maintains recertification through the ~~Council on Certification of Nurse Anesthetists~~, NBCRNA, shall perform nurse anesthesia activities

in collaboration with a physician, dentist, podiatrist, or other lawfully qualified health care provider. A certified registered nurse anesthetist shall not prescribe a medical treatment regimen or make a medical ~~diagnosis except under the supervision of a licensed physician.~~ diagnosis.

~~(b)(c)~~ For the purpose of this Rule, collaboration means a process by which the certified registered nurse anesthetist works with one or more qualified health care providers, each contributing his or her respective area of expertise consistent with the appropriate occupational licensure laws of the State and according to the established policies, procedures, practices, and channels of communication that lend support to nurse anesthesia services and that define the roles and responsibilities of the ~~qualified~~ certified registered nurse anesthetist within the practice setting. The individual certified registered nurse anesthetist shall be accountable for the outcome of his or her actions.

~~(e)(d)~~ Nurse Anesthesia activities and responsibilities that the ~~appropriately qualified~~ certified registered nurse anesthetist may safely ~~accept~~ perform shall depend upon the individual's knowledge, skills, and other variables in each practice setting as outlined in 21 NCAC 36 .0224(a), including:

- (1) Preanesthesia preparation and evaluation of the client, including:
 - (A) performing a pre-operative health assessment;
 - (B) recommending, requesting, and evaluating pertinent diagnostic studies; and
 - (C) selecting and administering preanesthetic medications.
- (2) Anesthesia induction, maintenance, and emergence of the client to include:
 - (A) securing, preparing, and providing safety checks on all equipment, monitors, supplies, and pharmaceutical agents used for the administration of anesthesia;
 - (B) selecting, implementing, and managing general anesthesia; monitored anesthesia care; and regional anesthesia modalities, including administering anesthetic and related pharmaceutical agents, consistent with the client's needs and procedural requirements;
 - (C) performing tracheal intubation, extubation, and providing mechanical ventilation;
 - (D) providing perianesthetic invasive and non-invasive monitoring, recognizing abnormal findings, implementing corrective action, and requesting consultation with appropriately qualified health care providers as necessary;
 - (E) managing the client's fluid, blood, electrolyte, and acid-base balance; and
 - (F) evaluating the client's response during emergence from anesthesia and

implementing pharmaceutical and supportive treatment to ensure the adequacy of client recovery from anesthesia.

- (3) Postanesthesia Care of the client, including:
 - (A) providing postanesthesia follow-up care, including evaluating the client's response to anesthesia, recognizing potential anesthetic complications, implementing corrective actions, and requesting consultation with appropriately qualified health care professionals as necessary;
 - (B) initiating and administering respiratory support to ensure adequate ventilation and oxygenation in the immediate postanesthesia period;
 - (C) initiating and administering pharmacological or fluid support ~~of the cardiovascular system~~ during the ~~immediate~~ postanesthesia period;
 - (D) documenting all aspects of nurse anesthesia care and reporting the client's status, perianesthetic course, and anticipated problems to an appropriately qualified postanesthetic health care provider who assumes the client's care following anesthesia, consistent with 21 NCAC 36 .0224(f); and
 - (E) releasing clients from the postanesthesia care or surgical setting in compliance with established agency policy.

~~(d)(e)~~ Other clinical activities for which the ~~qualified~~ certified registered nurse anesthetist may accept responsibility shall include:

- (1) inserting central vascular access catheters and epidural catheters;
- (2) identifying, responding to, and managing emergency situations, including initiating and participating in cardiopulmonary resuscitation;
- (3) providing consultation related to respiratory and ventilatory care and implementing such care according to established policies within the practice setting; and
- (4) initiating and managing pain relief therapy using pharmaceutical agents, regional anesthetic techniques, and other accepted pain relief modalities according to established policies and protocols within the practice setting.

Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21; 90-171.23; 90-171.42(b).

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) ~~Effective July 1, 2015, only~~ Only a registered nurse who meets the qualifications outlined in Paragraph (b) of this Rule shall be ~~recognized~~ approved by the Board as a clinical nurse specialist to perform advanced practice registered nursing activities listed in Paragraph (f) of this Rule.

(b) The Board shall ~~recognize~~ approve an applicant who:

- (1) has an active, unencumbered license to practice as a registered nurse in North Carolina or a state that has adopted the Nurse Licensure Compact;
- (2) has an unrestricted previous approval, registration, or license as a clinical nurse specialist if previously approved, registered, or licensed as a clinical nurse specialist in another state, territory, or possession of the United States;
- (3) has successfully completed a master's or higher level degree program that is accredited by a nursing accrediting body approved by the United States Secretary of Education or the Council for Higher Education Accreditation and meets the qualifications for clinical nurse specialist certification by an approved national credentialing body under Part (b)(4)(A) of this Rule; and
- (4) either:
 - (A) has current certification as a clinical nurse specialist from a national credentialing body approved by the Board, as defined in Paragraph (h) of this Rule and 21 NCAC 36 .0120(26); or
 - (B) meets requirements that are equivalent to national certification if no clinical nurse specialist certification is available in the ~~specialty~~, ~~meets requirements that are equivalent to national certification~~, specialty. The Board shall determine equivalence based on consideration of an official transcript and course descriptions validating Subparagraph (b)(3) of this Rule, a current curriculum vitae, work history, professional recommendations indicating evidence of at least 1,000 hours of clinical nurse specialist practice, and documentation of certificates indicating 75 contact hours of continuing education applicable to clinical nurse specialist practice during the previous five years.

(c) An applicant certified as a clinical nurse specialist by a national credentialing body prior to January 1, 2007, and who has maintained that certification and active clinical nurse specialist practice and holds a master's or higher degree in nursing or a related field shall be ~~recognized~~ approved by the Board as a clinical nurse specialist.

(d) New graduates seeking first-time clinical nurse specialist ~~recognition~~ approval in North Carolina shall hold a master's or doctoral degree or a post-master's certificate from a clinical nurse specialist program accredited by a nursing accrediting body approved by the U.S. Secretary of Education or the Council for Higher Education Accreditation and shall meet all requirements in Subparagraph (b)(1) and Part (g)(3)(A) of this Rule.

(e) A clinical nurse specialist seeking Board ~~recognition~~ approval who has ~~not~~ never practiced as a clinical nurse specialist or ~~has not practiced~~ in more than two years shall complete a clinical nurse specialist refresher course approved by the Board in accordance with 21 NCAC 36 .0220(o) and (p), consisting of common conditions and their management related to the clinical nurse specialist's area of education and certification. A clinical nurse specialist refresher course participant shall be granted limited clinical nurse specialist recognition that is ~~limited~~ specific to clinical activities taught in the refresher course.

(f) The scope of practice of a clinical nurse specialist shall incorporate the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced practice registered nurse level in the area of clinical nursing specialization in which the clinical nurse specialist is educationally prepared and for which competency is maintained, including:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within an advanced practice nursing framework;
- (3) assessing for and monitoring the usage and effect of pharmacologic agents within an advanced practice nursing framework;
- (4) formulating strategies to promote wellness and prevent illness;
- (5) prescribing and implementing therapeutic and corrective non-pharmacologic nursing interventions;
- (6) planning for situations beyond the clinical nurse specialist's expertise and consulting with or referring clients to other health care providers as appropriate;
- (7) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals, and individuals whose decisions influence the health of individual clients, families, and communities;
- (8) initiating, establishing, and using measures to evaluate health care outcomes and modify nursing practice decisions;
- (9) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (10) integrating education, consultation, management, leadership, and research into the clinical nurse specialist role.

(g) A registered nurse seeking recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application that includes the following:
 - (A) evidence of a master's or doctoral degree or a post-master's certificate, as set out in Subparagraph (b)(3) or Paragraph (d) of this Rule; and either
 - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body, set out in Part (b)(4)(A) of this Rule; or
 - (C) meet requirements set out in Part (b)(4)(B) of this Rule;
- (2) renew the recognition every two years at the time of registered nurse renewal; and
- (3) either:
 - (A) submit evidence of initial certification and re-certification by a national credentialing body at the time such occurs in order to maintain Board recognition, consistent with Paragraphs (b) and (h) of this Rule; or
 - (B) if subject to Part (b)(4)(B) of this Rule, submit evidence of at least 1,000 hours of practice and 75 contact hours of continuing education every five years.

(h) The Board shall approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty that have established the following minimum requirements:

- (1) ~~unrestricted active unencumbered~~ licensure as a registered nurse; and
- (2) certification as a clinical nurse specialist that is limited to applicant prepared with a master's or doctoral degree or a post-master's certificate.

Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b).

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0323 RECORDS AND REPORTS

- (a) The controlling institution's publications describing the nursing program shall be current and accurate.
- (b) The controlling institution shall maintain a system for maintaining official records. Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.
- (c) Both permanent and current records shall be available for review by Board staff.
- (d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.
- (e) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:
 - (1) documentation of admission criteria met by the student;

- (2) documentation of high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and
 - (3) a transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.
- (f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section, including:
- (1) an annual report to be filed with the Board by November 1 of each year;
 - (2) a program description report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review by the Board; and
 - (3) notification by institution administration of any change of the nursing program director. This notification shall include a curriculum vitae for the new director and shall be submitted no later than 10 business days before the effective date of the change.

(g) All communications relevant to accreditation shall be submitted to the Board at the same time that the communications are submitted to the accrediting body.

(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its controlling institutions.

(i) The part of the application for licensure by examination to be submitted to the Board by the nursing program shall include a statement verifying satisfactory completion of all requirements for graduation program completion and the date of completion. The nursing program director shall verify completion of requirements to the Board no later than one month following completion of the Board-approved nursing program.

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

* * * * *

CHAPTER 40 – BOARD OF OPTICIANS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Opticians intends to amend the rules cited as 21 NCAC 40 .0202 and .0206.

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

Proposed Effective Date: November 1, 2020

Public Hearing:

Date: August 4, 2020

Time: 10:30 a.m.

Location: 3809 Computer Drive, Suite 102, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 40 .0202 - *Changes to the Board's fee structure includes a separate registration for optician-in-charge at an optical place of business.*

21 NCAC 40 .0206 - *With numerous requirements associated with COVID-19 and the implications for mass gatherings, and to allow availability to an array of educational opportunities, changes were sought to allow the Board's regulated audience access and education credits via online resources.*

Comments may be submitted to: Sue Hodgins, Board of Opticians, PO Box 675, Raleigh, NC 27628

Comment period ends: September 14, 2020

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SECTION .0200 - CONDUCT OF REGISTRANTS

21 NCAC 40 .0202 REGISTRATION OF OPTICAL PLACE OF BUSINESS AND OPTICIAN IN CHARGE

(a) As used in this Rule, "optical place of business" means the principal office as well as each branch office of such a business.

- (1) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation or change of ownership. The registration fee shall be paid for each registration.
- (2) Registration of an optical place of business automatically expires on the last day of June of each year, and it shall not engage in business until it is registered for the next annual period.
- (3) An optical place of business registration is the responsibility of the owner. Any business

which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254. An injunction closing an unregistered optical place of business may also be obtained.

- (4) An optical place of business registered in compliance with this Rule is eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

(b) Every optical place of business shall ~~have register~~ a licensed optician in charge, who shall serve as the ~~registered~~ license in charge of only one optical place of business.

- (1) Every optician in charge shall be registered with the Board within 10 days of a business opening, or change of optician in charge. The registration fee shall be paid for each registration.
- (2) Registration of an optician in charge automatically expires on the last day of June of each year, and the optical business shall not engage in dispensing activities under G.S. 90-236 until it has a registered optician in charge for the next annual period.
- (3) An optician in charge registration is the responsibility of both the licensed optician in charge and the owner. Any optician in charge of an optical place of business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1 and G.S. 90-252.

(c) ~~Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation, change of ownership or change of licensed optician in charge. The registration fee shall be paid for each registration.~~

(d) ~~Registration of an optical place of business automatically expires on the first day of July of each year, and it shall not engage in business until it is registered for the next annual period.~~

(e) ~~Registration is the responsibility of both the licensed optician in charge and the owner. Any licensed optician in charge of an optical place of business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1. An injunction closing an unregistered optical place of business may also be obtained.~~

(f) ~~An optical place of business registered in compliance with this Rule is eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.~~

Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253.

21 NCAC 40 .0206 PROFESSIONAL RESPONSIBILITY; CONTINUING EDUCATION

(a) With the goal of keeping the vision health and welfare of the client uppermost at all times, promoting optimal public health for North Carolina's citizens, striving to continuously develop educational and technical proficiency, and informing himself or

herself as to new developments within the profession, a licensed optician shall:

- (1) maintain ~~adequate~~ equipment and instruments in his or her office at all times to assure professional service to the ~~public~~; public, and for use in training apprentices and interns as set forth in 21 NCAC 40 .0321;
- (2) ~~assist his or her clients in whatever manner possible in obtaining further care when, in his or her opinion, additional care is needed; make a referral to other healthcare provider when, in the licensee's professional opinion, such referral would benefit the client;~~
- (3) ~~maintain records;~~
- (4)(3) treat all information concerning his or her clients as privileged and not to be communicated to others except when authorized or required by a law or rule, or with express consent of the client;
- (5)(4) take annual courses of study in subjects related and essential to the practice of opticianry for the purpose of enhancing his or her scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of laws and rules governing the practice of ~~opticianry~~; opticianry, as set forth in Paragraph (b) of this Rule.

(b) Licenses issued after July 1 shall be exempt from the continuing education requirement for renewal by December 31 of the same year. Otherwise, each ~~Each~~ North Carolina-licensed optician shall take a total of at least eight hours of continuing education each calendar year as follows:

- (1) three hours of study on the practice of contact lens ~~fitting~~; fitting and dispensing; in lieu thereof, two hours of study on contact lens fitting and dispensing, and one hour of study may be on ~~either~~: optical business ~~management~~ or management, consumer ~~protection~~; and either: protection, or ethics;
- (A) ~~When there have been no amendments or changes to the North Carolina opticianry laws or rules during the previous year, five hours of study on eyeglass fitting and dispensing; in lieu thereof, four hours of a study on eyeglass fitting and dispensing and one hour of study may be on laws and rules affecting North Carolina opticians, or ethics; or~~
- (B) ~~When there has been an amendment or change to North Carolina opticianry laws or rules during the previous year, all licensed opticians practicing opticianry in the state shall take one hour of continuing education on the laws and rules relating to such amendment or change and four hours of study as described in Part (A) of this Subparagraph. The Board shall notify~~

~~licensees when amendments or changes are made that would require each licensee's attendance at law/rule continuing education.~~

- (2) four hours of study on eyeglass fitting and dispensing;
- (3) one hour of education on the laws and rules affecting North Carolina opticians.

(c) All hours shall be currently-approved by the American Board of Opticianry or the National Contact Lens Examiners.

(d) Courses of self-study, meant to be taken by individuals through journal articles or online, where organized material is presented and written evaluations are made prior to or after completing the course(s), are eligible for credit provided the vendor or sponsor has submitted the course or courses for approval to the Board as described in Paragraph (k) of this Rule prior to its being offered to licensed opticians. However, no licensee shall receive credit for more than four hours of continuing education credit by this self-study means in any calendar year.

(2)(e) Any licensed optician who is not practicing opticianry in the state shall annually obtain a total of at least eight hours of courses of study: three hours shall be ~~essential to~~ on the practice of contact lens ~~fitting~~; fitting and dispensing, and five hours shall be ~~essential to~~ on eyeglass fitting and dispensing. One In lieu thereof, one of the eight hours may be on optical business management or management, consumer protection, protection, or ethics. No other state's hours pertaining to its laws or rules shall be allowed as credit. All hours shall be currently approved by the American Board of Opticianry or the National Contact Lens Examiners.

(f) All hours must be taken within the prior or current calendar year for which credit is sought, and a licensee shall not receive continuing education credit for any course that the licensee already has completed during the same calendar year.

(g) Continuing education hours in excess of the number required at the time of renewal shall not be applied to future requirements.

(h) Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to disciplinary action.

(i) The hours of study set forth in this Rule may not be waived, except by: upon presentation of evidence of illness rendering the licensee's attendance impossible, or by presentation of active duty orders for the licensee serving in a branch of the US armed forces.

- (1) declared Board waiver as defined in 21 NCAC 40 .0113;
- (2) presentation of evidence of illness, or residency outside the United States, rendering the licensee's attendance impossible; or
- (3) presentation of active-duty orders for the licensee serving in a branch of the US armed forces.

(e)(j) Courses of study for which a licensee desires continuing education credit must be approved by the Board, meeting the following criteria:

- (1) Courses must be directly related to the practice of a dispensing optician as defined in G.S. 90-235 and G.S. 90-236. The education of opticians must be the primary and customary objective of the education provider.

- (2) Each course must be made available to all NC licensed opticians.
 - (3) The following information shall be submitted to the Board office no later than 45 days prior to the date the course ~~to be presented~~ is to be made available for presentation. The following information is required for course submission and consideration:
 - (A) ~~Location and scheduled time for~~ Method of course presentation; if on-site presentation, the location and scheduled time;
 - (B) Title of course;
 - (C) Instructor's name, address and qualifications. Instructors must be qualified by education and experience to provide instruction in the course subject;
 - (D) Course description, including course length, instructional objectives, or course outline;
 - (E) Indication of course's approval status with the American Board of Opticianry or National Contact Lens Examiners;
 - (F) Name and address of provider agency, and primary contact information;
 - (G) Description of the provider's attendance certification process; and
 - (H) Agreement to provide electronic attendance roster to Board, and certified attendance documentation to attendees.
 - (4) Course content shall be presented in ~~an objective~~ a manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology shall not include a specific brand/manufacture of the technology in the title or content. Product-specific "info-commercials" and sales pitches shall not be approved.
 - (5) Courses shall consist of a minimum 50 minutes' education for each hour credit.
 - (6) Online courses may not exceed two hours in length, and on-site instructors ~~Instructors~~ may not present more than ~~four~~ two consecutive hours of continuing education.
- ~~(d)~~(k) Each course to be presented on-site shall be submitted for approval separately and completely each time credit is sought.
- (l) Post-presentation approval of continuing education courses will not be granted.
- ~~(e)~~(m) All approved courses for on-site presentation shall allow complimentary on-site review by representatives from the Board.
- ~~(f)~~(n) Course sponsors ~~shall~~ shall, no later than 30 days following the presentation of on-site courses:
- (1) Certify opticians' attendance for the requisite period;
 - (2) Submit to the Board ~~an electronic attendance roster, including names and credit hours received; and~~ documentation of attendance in a format provided by the Board for compatibility to its data management system to include:
 - (A) Course title and classification verification;
 - (B) Vendor or sponsor identification;
 - (C) Name of and license number of North Carolina licensee;
 - (D) Sponsor's attestation or verification of attendance.
 - ~~(3) Certify attendance documentation by the provider agency.~~
- (o) Any licensee may submit completed online hours directly to the Board, provided that the attendance is documented by the vendor or sponsor of the education, on a form given the licensee attending the course(s) attesting to their attendance, and the original form, not a photocopy or facsimile, is submitted to the Board.
- (p) Course sponsors shall maintain for three years records of the names of those attendants who complete continuing education hours.
- ~~(g)~~(q) Opticians and course attendees shall:
- (1) Retain documentation for a minimum 2-year period beginning with the next renewal year immediately following the date the courses were taken; and
 - (2) Present the documentation to Board as required during the license renewal ~~process~~ process, or at any time if in the Board's opinion such documentation is necessary.

Authority G.S. 90-235; 90-236; 90-249; 90-249.1.

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 04 – DEPARTMENT OF COMMERCE

Rule-making Agency: Department of Commerce, Division of Employment Security

Rule Citation: 04 NCAC 24G .0104

Effective Date: June 26, 2020

Findings Reviewed and Approved by the Codifier: June 18, 2020

Reason for Action: The Emergency rule is needed because of a serious and unforeseen threat to the public health, safety and welfare, recent act of the U.S. Congress with the passage of the Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D 1402 (2020); Executive Order 118 issued by Governor Roy Cooper on March 17, 2020; and guidance from the U.S. Department of Labor in Unemployment Insurance Program Letter (UIPL) Nos. 16-20 (issued April 5, 2020); 13-20 (issued March 22, 2020) and 10-20 (issued March 12, 2020).

On March 10, 2020, the Governor of North Carolina issued Executive Order No. 116 and declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of Coronavirus Disease 2019 (COVID-19), a respiratory disease that results from the coronavirus. On March 11, 2020, the World Health Organization declared the coronavirus an international pandemic. The World Health Organization, the Centers for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency.

On March 17, 2020, the Governor of North Carolina issued Executive Order No. 118 and directed the Secretary of Commerce and Assistant Secretary for the Division of Employment Security to ensure that individuals who are separated from employment, had hours reduced, or are prevented from working due to a medical condition caused by COVID-19 or due to communicable disease control measures are eligible for unemployment benefits to the maximum amount permitted by federal law.

On March 18, 2020, the President of the United States signed the Families First Coronavirus Response Act (Pub. L. 116-127). The legislation makes emergency supplemental appropriations in response to the spread of COVID-19 and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA) at Division D. EUISSA sets forth requirements for emergency administrative grants to states, and authorizes emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full

federal funding during extended benefit periods through December 31, 2020.

The Governor's Executive Order No. 121 ordered that all non-essential businesses and operations cease operating effective March 30, 2020. The employer entities ceased operations and laid off its employees pursuant to the Governor's Executive Order. Currently, the Governor is reopening the state's economy in phases and easing COVID-19 restrictions; the employer entities are reopening and are recalling employees to return to work. This rule is necessary for the determination of whether to continue unemployment insurance benefits for individuals who refuse to return to work after being recalled by the employer. Furthermore, N.C. Session Law 2020-3 made changes to Chapter 96 of the North Carolina statutes. Part of the law, codified as G.S. 96-14.15, provides for flexibility to DES to administer the unemployment compensation to unemployed individuals in response to the coronavirus emergency.

SUBCHAPTER 24G – UNEMPLOYMENT COMPENSATION DUE TO PUBLIC HEALTH EMERGENCY OR DISASTER DECLARATION

SECTION .0100 - UNEMPLOYMENT COMPENSATION DUE TO CORONAVIRUS AND COVID-19

04 NCAC 24G .0104 TEMPORARY COVID-19 SUITABLE WORK PROVISIONS

A claimant who has refused suitable work for one of the following COVID-19 related reasons will be deemed to have a legally sufficient reason for the refusal, and may continue to be eligible for unemployment benefits:

- (1) The claimant has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and has been advised by a medical professional to not attend work.
- (2) A member of the claimant's household has been diagnosed with COVID-19 or the claimant is providing care for a family member who has been diagnosed with COVID-19.
- (3) The claimant is high risk of severe illness from COVID-19. The Centers for Disease Control and Prevention (CDC) defines a high-risk individual as a person 65 years of age or older, or a person of any age, who has serious underlying medical conditions including being immunocompromised, or has chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease and undergoing dialysis, or liver disease.

- (4) The claimant is the primary caregiver of a child or person in the claimant's household who is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency, and the school or facility is required for the claimant to work.
- (5) The claimant is unable to report to the claimant's place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency or the claimant has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (6) In order to comply with any governmental order regarding travel, business operations and mass gatherings, the claimant must refuse an offer of suitable work.
- (7) The claimant reasonably believe there is a valid degree of risk to the claimant's health and safety due to a significant risk of exposure or infection to COVID-19 at the employer's place of business due to a failure of the employer to comply with guidelines as set out by the CDC, other governmental authorities or industry groups as may be found in CDC guidance, the Governor's Executive Orders, or other binding authority; or due to objective reasons that the employer's facility is not safe for the claimant.

History Note: Authority G.S. 96-2; 96-4; 96-15(a); 150B-21.1A; 166A-19.30; Families First Coronavirus Response Act. Pub. L. No. 116-27; Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020; E.O. 121, Governor Roy Cooper, 2020; Emergency Adoption Eff. June 26, 2020.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

Rule-making Agency: Board of Massage and Bodywork Therapy

Rule Citation: 21 NCAC 30 .0704, .0804

Effective Date: June 30, 2020

Findings Reviewed and Approved by the Codifier: June 22, 2020

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare has arisen with the coronavirus outbreak

in North Carolina. The Governor declared a state of emergency on March 10, 2020, to coordinate a response and enact protective measures to help prevent the spread of COVID-19. On March 12, 2020, the Governor of North Carolina and the NC Department Health and Human Services recommended high risk persons stay at home, the schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone and modify these events or offer online services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools and urged social distancing. On March 23, 2020, the Governor issued Executive Order No. 120 that required certain establishments to close. To allow massage and bodywork therapists to continue taking continuing education courses to renew their license, the Board proposes to waive the in-classroom requirement and allow all hours to be completed by distance learning.

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 30 .0704 WAIVER OF REQUIREMENTS DURING DISASTER OR EMERGENCY

- (a) If the governor declares a state of emergency, the Board may waive or extend the continuing education requirement set forth in 21 NCAC 30 .0701(b) to allow all hours of the required continuing education to be by distance learning.
- (b) The exceptions in this Rule shall only apply during the effective period of the state of emergency.

History Note: Authority G.S. 90-626(9); 150B-19(6); Emergency Adoption Eff. June 30, 2020.

SECTION .0800 - RULES

21 NCAC 30 .0804 WAIVER OR EXTENSION

The Board may waive or extend any rule in this Chapter that is not statutorily required if a licensee submits a written request. The Board may also waive or extend any rule in this Chapter that is not statutorily required upon its own initiative. Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
- (5) notice to and opposition by the public;
- (6) need for the waiver or extension; and
- (7) previous requests for waivers or extensions submitted from the requesting party.

History Note: Authority G.S. 90-626(9); 150B-19(6); Emergency Adoption Eff. June 30, 2020.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: Medical Care Commission

Rule Citation: 10A NCAC 130 .0301

Effective Date: June 26, 2020

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In conjunction with government guidance, on March 16, the state-approved vendor, Pearson VUE, suspended all nurse aide testing in North Carolina until conditions are deemed safe to re-open. In order to assist the healthcare work force and the citizens of North Carolina who need medical care, the Division of Health Service Regulation seeks to amend 10A NCAC 130 .0301 under temporary procedures by requesting reciprocity for out-of-state nurse aides who are active and in good standing on another state's Nurse Aide I Registry.

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 130 – HEALTHCARE PERSONNEL REGISTRY

SECTION .0300 - NURSE AIDE I REGISTRY

10A NCAC 130 .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION

(a) To be eligible to be listed on the NC Nurse Aide I Registry by the Health Care Personnel Education and Credentialing Section, a person ~~shall~~ shall:

- (1) pass a Nurse Aide I training program approved by the Department in accordance with 42 CFR Part 483.151 through Part 483.152 and the State of North Carolina's Nurse Aide I competency ~~exam.~~ exam; or
- (2) apply to the Department for approval to be listed on the NC Nurse Aide I Registry by reciprocity of a nurse aide certification or

registration from another State to North Carolina.

(b) In applying for reciprocity of a nurse aide certification or registration to be listed on the NC Nurse Aide I Registry pursuant to Subparagraph (a)(2) of this Rule, the applicant shall:

- (1) submit a completed application to the Department that includes the following:
 - (A) first, middle, and last name;
 - (B) the applicant's prior name(s), if any;
 - (C) mother's maiden name;
 - (D) gender;
 - (E) social security number;
 - (F) date of birth;
 - (G) mailing address;
 - (H) email address;
 - (I) home telephone number;
 - (J) any other State registries of nurse aides upon which the applicant is listed;
 - (K) certification or registration numbers for any State nurse aide registries identified in Part (b)(1)(J) of this Rule;
 - (L) original issue dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule;
 - (M) expiration dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule; and
 - (N) employment history;
- (2) provide documentation verifying that his or her registry listing is active and in good standing in the State(s) of reciprocity, dated no older than 30 calendar days prior to the date the application is received by the Department; and
- (3) provide a copy of his or her Social Security card and an unexpired government-issued identification containing a photograph and signature.

(c) For the applicant to be approved for reciprocity of a nurse aide certification or registration and be listed on the NC Nurse Aide I Registry, the Department shall verify the following:

- (1) the applicant has completed an application in accordance with Subparagraph (b)(1) of this Rule;
- (2) the applicant is listed on another State's registry of nurse aides as active and in good standing;
- (3) the applicant has no pending or substantiated findings of abuse, neglect, exploitation, or misappropriation of resident or patient property recorded on other State registries of nurse aides;

- (4) if the applicant has been employed as a nurse aide for monetary compensation consisting of at least a total of eight hours of time worked performing nursing or nursing-related tasks delegated and supervised by a Registered Nurse, then the applicant shall provide the employer name, employer address, and dates of employment for the previous 24 consecutive months;
- (5) the name listed on the Social Security card and government-issued identification containing a photograph and signature submitted with the application matches the name listed on another State's registry of nurse aides or that the applicant has submitted additional documentation verifying any name changes; and
- (6) the applicant completed a State-approved nurse aide training and competency evaluation program that meets the requirements of 42 CFR 483.152 or a State-approved competency evaluation program that meets the requirements of 42 CFR 483.154.

(d) The Department shall within 10 business days of receipt of an application for reciprocity transfer of a nurse aide certification or registration or receipt of additional information from the applicant:

- (1) inform the applicant by letter whether he or she has been approved; or
- (2) request additional information from the applicant.

The applicant shall be added to the NC Nurse Aide I Registry within three business days of Department approval.

~~(b)(e)~~ This Rule incorporates 42 CFR Part 483 Subpart D by reference, including all subsequent amendments and editions. Copies of the Code of Federal Regulations may be accessed electronically free of charge from www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

~~(e)(f)~~ The State of North Carolina's Nurse Aide I competency exam shall include each course requirement specified in the Department-approved Nurse Aide I training program as provided for in 42 CFR Part 483.152.

~~(d)(g)~~ The State of North Carolina's Nurse Aide I competency exam shall be administered and evaluated only by the Department or its contracted testing agent as provided for in 42 CFR Part 483.154.

~~(e)(h)~~ The Department shall include a record of completion of the State of North Carolina's Nurse Aide I competency exam in the NC Nurse Aide I Registry within 30 business days of passing the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154.

~~(f)(i)~~ If the State of North Carolina's Nurse Aide I competency exam candidate does not pass the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154, the candidate shall be advised by the Department of the areas that the individual did not pass.

~~(g)(j)~~ Every North Carolina's Nurse Aide I competency exam candidate shall have, as provided for in 42 CFR Part 483.154,

have the opportunity to take the exam at maximum three times before being required to retake and pass a Nurse Aide I training program.

~~(h)(k)~~ A person who is currently listed on any state's Nurse Aide I Registry shall not be required to take the Department-approved Nurse Aide I training program to be listed or, if his or her 24-month listing period has expired, relisted on the NC Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

~~(i)(l)~~ U.S. military personnel who have completed medical corpsman training and retired or non-practicing nurses shall not be required to take the Department-approved Nurse Aide I training program to be listed or relisted on the Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

History Note: Authority G.S. 131E-255; 42 CFR ~~Part~~ 483; 483.150; 42 CFR 483.151; 42 CFR 483.152; 42 CFR 483.154; 42 CFR 483.156; 42 CFR 483.158;

Eff. January 1, 2016;

Emergency Amendment Eff. April 20, 2020. 2020;

Temporary Amendment Eff. June 26, 2020.

* * * * *

Rule-making Agency: DHHS/Division of Health Benefits

Rule Citation: 10A NCAC 21A .0304

Effective Date: June 26, 2020

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19, previously unidentified in humans, spreads easily from person to person that can result in serious illness or death. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 27, 2020, the Governor issued Executive Order No. 121 directing Essential Business and Operations to have employees utilize telework to the greatest extent possible. The temporary rule is needed to permit conducting county appeals hearings by phone or other electronic means to ensure the health and safety of our beneficiaries, county staff and state staff while continuing to adjudicate appeals. This measure is in the public interest and promotes the ends of justice as delaying appeal hearings would be detrimental in a time of greater health needs and economic fragility of North Carolinians.*

CHAPTER 21 - MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 21A - GENERAL PROGRAM ADMINISTRATION

SECTION .0300 - APPEALS

**10A NCAC 21A .0304 CONDUCTING DEPARTMENT
IN-COUNTY APPEAL HEARINGS BY TELEPHONE OR
ELECTRONIC MEANS**

For public assistance and social services de novo ~~appeals~~ appeals, including appeals of cases involving disability filed pursuant to G.S. 108A-79(i):

- (1) The Department ~~may~~ shall ~~require conducting in county such~~ conduct the appeal hearings by telephone or ~~feasible~~ electronic means ~~feasible to the appellant and Department during a public health emergency declared under section 319 of the Public Health Service Act, Pub. L. 98-49, or a state of emergency declared pursuant to G.S. 166A-19.20.~~
- (2) The Department shall notify the appellant when ~~in county such~~ the hearings are required to be conducted in this manner by First Class U.S. Mail and make hearing arrangements considering the ~~technology medium~~ telephone or electronic means available to the appellant.
- (3) The Department shall continue such appeal hearings as necessary to fulfill procedural rights of the appellant as defined by 42 C.F.R. 431.242, which is incorporated by reference including subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov>.

History note: Authority G.S. 108A-54;108A-79; 42 C.F.R. 431.205; 42 C.F.R. 431.240; 42 C.F.R. 431.242;
Emergency Adoption Eff. May 4, 2020;
Temporary Adoption Eff. June 26, 2020.

TITLE 11 - DEPARTMENT OF INSURANCE

Rule-making Agency: Code Officials Qualification Board

Rule Citation: 11 NCAC 08 .0735

Effective Date: July 1, 2020

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare. On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency.

On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

**CHAPTER 08 - ENGINEERING AND BUILDING CODES
DIVISION**

**SECTION .0700 - QUALIFICATION BOARD-STANDARD
CERTIFICATE**

11 NCAC 08 .0735 TEMPORARY CERTIFICATE

- (a) A temporary certificate shall be issued without examination or additional application to any code enforcement official (CEO) who currently possesses a probationary certificate that expires between March 12, 2020 and December 31, 2020. The application the CEO initially submitted to obtain the probationary certificate shall provide the basis for issuing the temporary certificate.
- (b) A temporary certificate shall authorize the CEO, during the effective period of the certificate, to hold the position of the type, level, and location that corresponds to the probationary certificate the applicant previously received. The certificate shall specify the type and level of code enforcement in which the CEO may engage and may be conditioned upon his or her having supervision from an official with the specified certification or qualifications included on the CEO's probationary certificate application.
- (c) The temporary certificate shall be effective for one year only for the period of March 12, 2020 through March 12, 2021 and shall not be renewed. During the one-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate.
- (d) A CEO who is issued a temporary certificate that the CEO no longer needs or wants shall return the temporary certificate, within 30 days, to the Engineering and Codes Division of Department of Insurance for cancellation.
- (e) A temporary certificate shall remain valid only so long as the person certified is employed by the State or a local government as a code enforcement official of the type and level indicated on the certificate. If the person certified leaves such employment for any reason, he or she shall return the certificate to the Board.
- (f) A CEO with only a temporary certificate and no standard or limited certificate is not required to complete any continuing education courses.

History Note: Authority G.S. 143-151.12; 143-151.13;
Emergency Adoption Eff. April 20, 2020;
Temporary Adoption Eff. July 1, 2020.

**TITLE 18 – DEPARTMENT OF THE SECRETARY OF
STATE**

Rule-making Agency: Department of the Secretary of State

Rule Citation: 18 NCAC 06A .2120

Effective Date: July 1, 2020, to expire on April 1, 2026

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: A Local Public Offering (LPO) is a kind of "crowdfunding" for the benefit of North Carolina businesses. North Carolina is currently the only state offering the LPO path. Although LPO crowdfunding is similar to Kickstarter and other types of crowdfunding, LPOs involve the offer and sale of securities (debt or equity). An LPO is a securities offering issued by a North Carolina business to North Carolina investors. The issuer has 12 months to raise up to \$250,000 in capital. LPO crowdfunding is a way for businesses to raise small amounts of money from a large number of investors.

North Carolina businesses asked for the LPO rules. The rules allow for responsible capital formation exclusively for NC businesses. The rules included a sunset designed to allow evaluation of the innovative LPOs. There are two Paragraphs in Rule 18 NCAC 06A .2120, "Sunset Provision." Paragraph (a) permits the Secretary to accept new LPO filings and Paragraph (b) sets the date for the expiration for all of the LPO rules. There is a 12 month difference between these two dates because 12 months is the period of time in which a business using the LPO rules would solicit investors to invest in the business.

In January 2020, the Department was considering whether or not to extend the Sunset Provision. At about that time, the Department began to receive inquiries regarding the sunset provision from the NC business community. The inquirers were supportive of the LPO rules. They urged the Department to extend the LPO rules.

The Department began work on an extension of the Sunset Provision. Then the COVID-19 pandemic was declared. The Department could not have foreseen the devastating effects of COVID-19 on businesses in March 2020 and since that time. COVID-19 has caused, and will continue to cause, substantial economic disruption to businesses. The Department is seeking to alleviate some of the burdens on small businesses that would avail themselves of LPOs to sustain themselves during these challenging economic times.

CHAPTER 06 - SECURITIES DIVISION

SUBCHAPTER 06A – RECODIFIED RULES

SECTION .2100 – RULES FOR LOCAL PUBLIC OFFERINGS (LPO)

18 NCAC 06A .2120 SUNSET PROVISION

- (a) The Administrator shall not accept any new Form NCE-LPO or other filing related to a new LPO after April 1, ~~2020~~ 2025.
- (b) The rules in this Section shall expire on April 1, ~~2024~~ 2026.

History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017 to expire on April 1, 2021;

Temporary Amendment Eff. July 1, 2020, to expire on April 1, 2026.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 25 - INTERPRETER AND TRANSLITERATOR LICENSING BOARD

Rule-making Agency: Interpreter and Transliterator Licensing Board

Rule Citation: 21 NCAC 25 .0501

Effective Date: June 26, 2020

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: On March 10, 2020, the Governor of North Carolina by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. Through several additional Executive Orders, the Governor of North Carolina has prohibited mass gatherings, closed schools, urged social distancing, ordered North Carolinians to stay at home, with exceptions, and placed limitations on travel because of the COVID-19 public health threat and emergency. These Orders and declarations prohibit or discourage in-person continuing education offerings. In compliance with the Governor's Executive Orders, the NCITLB, through a temporary Rule, seeks to lift the in-person continuing education requirements solely for the 2019-20 licensure year and allow licensees to take all of their continuing education requirements electronically.

SECTION .0500 – CONTINUING EDUCATION

21 NCAC 25 .0501 CONTINUING EDUCATION REQUIREMENTS

- (a) A licensee shall earn at least two continuing education units ("CEUs") each licensure year. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a setting in which three or more persons come together at the same location at the same time as a group to listen to a lecture, to view a demonstration, to participate in group discussions, or to learn through any combination of these or similar activities.

- (b) A licensee may carry over up to two surplus CEUs earned in one licensure year to the next licensure year to meet the requirements of Paragraph (a) of this Rule. The licensee shall demonstrate that he or she earned the CEU credits sought to be

carried over in the licensee's license renewal application packet submitted for the carry over year in order to receive credit therefore. Except as specifically provided hereby, surplus CEUs shall only be carried forward from the licensure year in which they were earned to the next subsequent licensure year and not beyond.

(c) A licensee may not earn CEUs while interpreting, whether or not the licensee is compensated for his or her services.

(d) The Board shall waive the continuing education requirements in this Section for any individual who is currently licensed by and in good standing with the Board if the individual is serving in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The waiver shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

(e) For the 2019-20 licensure year only, the Board waives the in-person course requirements of Paragraph (a) and licensees may take all of their CEUs for the 2019-20 licensure year electronically. However, this waiver shall not apply to any surplus CEUs earned during the 2019-20 licensure year and sought by the licensee to be carried over to the 2020-21 licensure year.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 93B-15; Eff. March 21, 2005;
Amended Eff. May 1, 2011; August 1, 2007;
Readopted Eff. June 1, 2018;
Temporary Amendment Eff. June 26, 2020.

CHAPTER 28 - LANDSCAPE CONTRACTORS' LICENSING BOARD

Rule-making Agency: *Landscape Contractors' Licensing Board*

Rule Citation: 21 NCAC 28B .0406

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *In accordance with Executive Order No. 116 declaring that a state of emergency exists and to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19, previously unidentified in humans, spreads easily from person to person is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency and have encouraged social distancing to reduce infection rates. The North Carolina Landscape Contractors' Licensing Board seeks to assist licensed landscape contractors who are unable to locate a sufficient number of hours of in person continuing education classes that are required by 21 NCAC 28B .0400 by granting a one-time extension of the annual requirement set forth in that rule under the authority of G.S. 87D-20(b). In addition, the North Carolina Landscape Contractors' Licensing*

Board seeks to actively support the social isolation efforts that have been directed by the Federal and State Government for its licensed landscape contractors by this action.

SUBCHAPTER 28B – LICENSING BOARD RULES

SECTION .0400 - CONTINUING EDUCATION

21 NCAC 28B .0406 EMERGENCY EXTENSIONS OF CONTINUING EDUCATION REQUIREMENTS: LICENSED LANDSCAPE CONTRACTORS

(a) All active licensees shall be granted a ~~one-year~~ one-year extension of all continuing education requirements for the license year ending July 31, 2020. The required hours shall be reported no later than July 31, 2021.

(b) The Board shall accept Board-approved continuing education credits previously obtained in compliance for the license year ending July 31, 2020 and shall apply those credits to the license year ending July 31, 2021.

(c) This ~~rule~~ Rule does not affect any other licensure renewal requirements set forth in G.S. 89D and the rules set forth in this Subchapter.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); ~~150B-19(6);~~
Emergency Adoption Eff. April 16, 2020;
Temporary Adoption Eff. June 26, 2020.

CHAPTER 32 - MEDICAL BOARD

Rule-making Agency: *Medical Board*

Rule Citation: 21 NCAC 32B .1707, .1708; and 32M .0119

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action:

21 NCAC 32B .1707 – *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Since the COVID-19 outbreak began, it has been difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared the COVID-19 a public health threat and emergency. Section 16 of Executive Order No. 116 temporarily waived licensure requirements for health care providers licensed in other states, territories, and the District of Columbia. The Medical Board seeks to help increase the pool of qualified health care providers who can provide assistance with a COVID-19 outbreak by creating an expedited process by which physicians and physician*

assistants with inactive North Carolina medical licenses may obtain a temporary emergency license. The adoption of the Medical Board's Emergency rule has helped alleviate health care provider shortages resulting from the COVID-19 outbreak in North Carolina and the Medical Board wishes to extend the health care provider's assistance.

21 NCAC 32B .1708 - On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs. On March 24, 2020, the North Carolina Secretary of Health and Human Services and the State Health Director requested that the Medical Board and the Board of Pharmacy adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them. They subsequently asked the Board of Nursing to adopt the same rule.

21 NCAC 32M .0119 - On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs. On March 24, 2020, the North Carolina State Health Director requested that the Medical Board and the Board of Pharmacy adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them.

SUBCHAPTER 32B – LICENSE TO PRACTICE MEDICINE

SECTION .1700 – OTHER LICENSES

21 NCAC 32B .1707 LIMITED LICENSE FOR DISASTERS AND EMERGENCIES FOR PHYSICIANS AND PHYSICIAN ASSISTANTS WITH INACTIVE NORTH CAROLINA LICENSES.

- (a) The Board shall waive the requirements for licensure in the circumstances set forth in G.S. 90-12.5.
- (b) Limited Emergency License: Physicians and physician assistants who do not have an active medical license issued by any jurisdiction, but who at one time had a full and unrestricted North Carolina medical license, may apply for a limited emergency license on the following conditions:

- (1) The applicant must certify and provide information sufficient to prove that he or she has practiced clinical medicine for at least eighty hours within the past two years;
- (2) The applicant must have maintained an active and unrestricted medical license continuously for the ten-year period prior to going inactive;
- (3) The applicant shall not have received any public discipline or inactivated his or her license while under investigation with such inactivation being reported to the National Practitioner Data Bank; and
- (4) During the declared state of emergency, the physician or physician assistant shall limit his or her medical practice to the area of practice that he or she engaged in prior to going inactive or another area in which he or she is competent to provide medical care.

~~(c) The applicant must complete a limited emergency license application.~~

~~(d)(c)~~ The Board ~~may~~ shall verify that the applicant practiced clinical medicine for at least eighty hours in the immediate two-year period complied with Subparagraph (b)(1) of this Rule.

~~(e)(d)~~ In response to a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician's or physician assistant's scope of practice. The physician or physician assistant shall practice within his or her scope of practice. In response to a complaint, the Board may initiate disciplinary proceedings and limit the individual's scope of practice to best serve the public interest.

~~(f)(e)~~ The Board shall have jurisdiction over all physicians and physician assistants practicing under this Emergency Rule for all purposes set forth in or related to Article 1 of Chapter 90 of the North Carolina General Statutes, and ~~such~~ this jurisdiction shall continue in effect even after such physician and physician assistant has stopped practicing medicine under this Emergency Rule or the Limited Emergency License has expired.

~~(g)(f)~~ This license shall be in effect for the shorter of:

- (1) ninety days from the date it is issued; or
- (2) thirty days after a statement by an appropriate authority is made that the state of emergency emergency or disaster declaration has been withdrawn or ended ended, and, at such time, the license issued shall become inactive.

~~(h)(g)~~ The physician assistant must practice under the direct supervision of an on-site physician ~~and the supervising physician must be who is~~ licensed in this State, ~~State~~ or approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-12.5, G.S. 90-12.5, ~~or approved under this Rule;~~ For the purposes of this Rule, "direct supervision" is defined as having immediate access, either in person or electronically, to a physician who is physically on the premises.

~~(i)(h)~~ Physician assistants ~~and physicians~~ practicing pursuant to this Rule are not required to maintain documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0213.

History Note: Authority G.S. 90-5.1(a)(3); 90-12.5; Emergency Adoption Eff. March 20, 2020;

Temporary Adoption Eff. June 26, 2020.

21 NCAC 32B .1708 COVID-19 DRUG PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin;
- (5) Oseltamivir;
- (6) Darunavir; and
- (7) Azithromycin.

(b) A physician or physician assistant shall prescribe a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than a ~~fourteen-day~~ 14-day supply; and
- (3) Not be refilled, unless a new prescription is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A physician or physician assistant shall not prescribe a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the physician or the physician's agent, and that information is recorded in writing in accordance with 21 NCAC 46 .1819(e), ~~by the pharmacy along with the identity of the physician or physician's agent transmitting the prescription.~~

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

History Note: Authority G.S. ~~90-5.1(a)(3)~~, ~~90-12.5~~; 90-5.1(a)(3); Emergency Adoption Eff. April 6, 2020; Temporary Adoption Eff. June 26, 2020.

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

21 NCAC 32M .0119 COVID-19 DRUG PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin;

- (5) Oseltamivir;
- (6) Darunavir; and
- (7) Azithromycin.

(b) A nurse practitioner shall prescribe a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than a ~~fourteen-day~~ 14-day supply; and
- (3) Not be refilled, unless a new prescription is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A nurse practitioner shall not prescribe a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the nurse practitioner or nurse practitioner's agent, and that information is recorded in accordance with 21 NCAC 46 .1819(e), ~~writing by the pharmacy along with the identity of the nurse practitioner or the nurse practitioner's agent transmitting the prescription.~~

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

History Note: Authority G.S. 90-5.1(a)(3); 90-18.2; ~~90-12.5~~; Emergency Adoption Eff. April 21, 2020; Temporary Adoption Eff. June 26, 2020.

CHAPTER 36 – BOARD OF NURSING

Rule-making Agency: *Board of Nursing*

Rule Citation: *21 NCAC 36 .0817*

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs.*

SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0817 COVID-19 DRUG

PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin;
- (5) Oseltamivir;
- (6) Darunavir; and
- (7) Azithromycin.

(b) A nurse practitioner shall prescribe a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence of its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than 14-day supply; and
- (3) Not be refilled, unless a new prescription is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A nurse practitioner shall not prescribe a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the nurse practitioner, or the nurse practitioner's agent, and that information is recorded in writing in accordance with 21 NCAC 46 .1819(e).

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

History Note: Authority G.S. 90-171.23; 90-5.1; 90-8.2;
Emergency Adoption Eff April 21, 2020;
Temporary Adoption Eff. June 26, 2020.

CHAPTER 46 – BOARD OF PHARMACY

Rule-making Agency: *Board of Pharmacy*

Rule Citation: *21 NCAC 46 .1819*

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is*

a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs. On March 24, 2020, the North Carolina Secretary of Health and Human Services and the State Health Director requested that the Medical Board and the Board of Pharmacy adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them. They subsequently asked the Board of Nursing to adopt the same rule.

SECTION .1800 - PRESCRIPTIONS

21 NCAC 46 .1819 COVID-19 DRUG

PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin;
- (5) Oseltamivir;
- (6) Darunavir; and
- (7) Azithromycin.

(b) A pharmacist shall fill or refill a prescription for a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription order that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than a ~~fourteen (14) day~~ 14-day supply; and
- (3) Not be refilled, unless a new prescription order is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A pharmacist shall not fill or refill a prescription for a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the physician or the physician's agent, and that information is recorded in writing by the pharmacy, along with the identity of the physician or physician's agent transmitting the prescription.

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

History Note: Authority G.S. 90-85.6; 90-85.26; 90-85.32; Emergency Adoption Eff. April 1, 2020; Temporary Adoption Eff. June 26, 2020.

CHAPTER 58 - REAL ESTATE COMMISSION

Rule-making Agency: *Real Estate Commission*

Rule Citation: *21 NCAC 58G .0104 and .0105*

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Humans Services have declared COVID-19 a public health threat and emergency. On May 4, 2020, the Governor of North Carolina signed S.L. 2020-3, Section 4.38, that authorized state agencies to exercise regulatory flexibility during the Coronavirus emergency in order to protect the economic well-being of the citizens and businesses of the State.*

SUBCHAPTER 58G – NORTH CAROLINA REAL ESTATE COMMISSION

SECTION .0100 – GENERAL

21 NCAC 58G .0104 LIMITED EDUCATION REQUIREMENTS FOR PUBLIC HEALTH EMERGENCY

(a) Until June 30, 2020, schools and course sponsors may offer synchronous distance-learning for prelicensing and postlicensing courses. "Synchronous distance-learning" means the instructor and students are separated only by distance and not time, allowing for real-time monitoring of student participation.

(b) Schools shall allow students to make-up prelicensing and postlicensing course hours by attending another course of the same type offered by the same school. The make-up hours attended by the student shall be for the same content that the student missed.

(c) An applicant who is unable to take the licensing examination within 180 days pursuant to 21 NCAC 58A .0401 due to illness or the testing service locations being closed shall make a written request using the Commission's website. The Commission shall grant each applicant an extension of 90 days to take the licensing examination.

(d) A broker requiring an extension of time to complete the 12-hour Broker-in-Charge Course pursuant to 21 NCAC 58A

.0110(e) and .1712(b)(5) shall make a written request using the Commission's website prior to the licensee's original 120 day deadline. The Commission shall grant each broker an extension of 90 days to complete the 12-hour Broker-in-Charge Course.
(e) The Commission shall grant all brokers an extension of time of 90 days to complete postlicensing or continuing education courses.

(f) The Commission shall waive the prelicensing and postlicensing course examination requirements of 21 NCAC 58H .0207(a)(2), .0207(b)(2) and .0207(c).

History Note: Authority G.S. 93A-3(c); 93A-4.1(c); 93A-38.5; Emergency Adoption Eff. March 26, 2020; Temporary Adoption Eff. June 26, 2020.

21 NCAC 58G .0105 LIMITED INSTRUCTOR EDUCATION REQUIREMENTS FOR PUBLIC HEALTH EMERGENCY

Instructors shall not be required to comply with 21 NCAC 58H .0306(b)(4) prior to June 30, 2020, to renew instructor approval.

History Note: Authority G.S. 93A-3(c); 93A-4.1(c); 93A-38.5; Emergency Adoption Eff. March 26, 2020; Temporary Adoption Eff. June 26, 2020.

CHAPTER 62 – BOARD OF ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS

Rule-making Agency: *Board of Environmental Health Specialist Examiners*

Rule Citation: *21 NCAC 62 .0407 and .0411*

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *Due to the serious and unforeseen threat to the public health and safety caused by COVID-19, the State Board of Environmental Health Specialist Examiners adopted temporary rules simultaneously adopted as emergency rules. The Board adopted emergency rules without prior notice or hearing or upon any abbreviated notice or hearing the agency found practical, because adherence to the notice and hearing requirements of this part would be contrary to the public interest, and the immediate adoption of the rules required by a serious and unforeseen threat to the public health, safety, or welfare. On March 10, 2020, the Governor of North Carolina issued Executive Order No. 116, declaring a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. Additional Executive Orders prohibited mass gatherings and implemented a stay-at-home order for NC residents from March 20, 2020 until April 29, 2020, at the earliest. COVID-19, a respiratory disease, spreads easily from person to person and can result in serious illness or death. The Board seeks to contribute towards social isolation efforts directed*

by the Federal and State Government and assist registrants who are unable to complete required training within the timelines outlined in 21 NCAC 62 .0407(e), 21 NCAC 62 .0407(k) and 21 NCAC 62 .0411.

SECTION .0400 - RULES OF OPERATION

21 NCAC 62 .0407 RENEWAL

(a) Applications for renewal shall be filed with the Board on a form provided by the Board and available from the Board website at: www.rsboard.com or from the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630. The renewal form may also be generated by the Registered Sanitarian Training and Authorization (RSTAS) computer system at: <http://apps.bluelizard.com/RSTAS/> <https://rstas.dhhs.state.nc.us/>.

(b) The renewal application shall be completed and signed by the applicant.

(c) Renewal fees shall be paid in accordance with Rule .0405(a)(5) of this Section. The renewal application shall be posted on the Board's website at www.rsboard.com by October 1 of each year. The individual shall download and submit the application for renewal to the Board. Individuals may also contact the Board at the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630 for a copy.

(d) Registered environmental health specialists or registered environmental health specialists interns who fail to renew by December 31 shall be notified by the Board that their registration has expired and that they may not practice as a registered environmental health specialist or a registered environmental health specialists intern until they have met the requirements for renewal.

(e) Environmental health specialist interns and other persons applying for new registrations with the board shall take ~~At an~~ an environmental health law course based on North Carolina laws and rules with at least 15 contact hours approved by the Board ~~shall be completed~~ within the first four years of the date of most recent registration by the Board. This timeframe shall be extended by one additional year for anyone whose fourth year occurs in 2020.

(f) Registered environmental health specialists ~~or~~ and registered environmental health specialists interns shall complete a minimum of 15 ~~instructional clock~~ contact hours of continuing education acceptable to the Board each year, except the 15 hours shall not be required for the year ending December 31, 2020.

Continuing education acceptable to the Board includes:

- (1) the specialized training course required in Rule .0411 of this Section;
- (2) District Environmental Health Section Educational meetings;
- (3) professional association courses and educational meetings;
- (4) seminars or courses offered by the North Carolina State of Practice Committee;
- (5) completion of a ~~job-related~~ job-related course offered by a college or university accredited by the Council of Higher Education Accreditation with the hours credited for the year that the course is completed;

- (6) successful completion of a ~~job-related~~ job-related course offered by the Centers for Disease Control and Prevention, the Food and Drug Administration, or the Environmental Protection Agency;

- (7) other practice-related training which:

- (A) is technical in nature, related to the environment, environmental health or improving the practice of environmental health;
- (B) is relevant to the actual job being performed by the participants or applicant;
- (C) includes a method for determining the number of hours spent;
- (D) includes a method of documentation for verification of completion;
- (E) is available to all registered environmental health specialists and environmental health specialist interns; and
- (F) has been granted approval by the Board based on the above standards; and

(g) Registrations that have expired may be renewed within 12 months after expiration upon submittal of application and payment of the renewal fee. The applicant shall provide verification to the Board that continuing education clock hours were obtained during the year since the expiration to comply with the requirements of this Section. Registrations that have expired for more than 12 months may not be renewed.

(h) Interns that are no longer employed in the field of environmental health in North Carolina may not renew.

(i) A registered environmental health specialist or a registered environmental health specialist intern in good standing whose active military service has impaired their ability to obtain the continuing education requirements in Paragraph (f) of this Rule are exempt from the continuing education requirement if written orders from their military unit are provided to the Board. In addition, the renewal fee is waived for each calendar year the environmental health specialist is on active duty.

(j) A registered environmental health specialist or registered environmental health specialist intern who is disabled may request a variance in continuing education hours during the period of the disability. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its effect on the registered environmental health specialist or registered environmental health ~~specialist's~~ specialist intern's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(k) A maximum of five ~~clock~~ contact hours of approved continuing education, that is in excess of the required 15 clock hours, may be applied toward the continuing education requirements for the following year. Up to five hours of approved continuing education completed in the year ending December 31,

2020 may be applied toward the continuing education requirements for the following year.

History Note: Authority G.S. 90A-57; 90A-63; ~~90A-67~~; 93B-15;
Eff. February 1, 1976;
Readopted Eff. December 22, 1978;
Amended Eff. July 1, 2010; November 1, 1994; May 1, 1990; April 1, 1989; February 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Emergency Amendment Eff. April 28, 2020;
Temporary Amendment Eff. June 26, 2020.

21 NCAC 62 .0411 SPECIALIZED TRAINING

Every applicant for registration as a registered environmental health specialist intern shall complete the course entitled "Orientation and Initial Internship Training for Environmental Health Interns" offered by the Division of Environmental Health at the centralized training site within ~~42~~ 18 months of registration as a registered environmental health specialist intern.

History Note: Authority G.S. 90A-50; ~~90A-51~~; 90A-53; 90A-57;
Eff. February 1, 1983;
Amended Eff. July 1, 2010; November 1, 1994; May 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Emergency Amendment Eff. April 28, 2020;
Temporary Amendment Eff. June 26, 2020.

CHAPTER 63 - SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

Rule-making Agency: *Social Work Certification and Licensure Board*

Rule Citation: *21 NCAC 63 .0810*

Effective Date: *June 26, 2020*

Date Approved by the Rules Review Commission: *June 18, 2020*

Reason for Action: *In light of the State of National Emergency declared by President Trump as a result of the COVID-19 Virus, and the urgent need to have licensed clinical social workers available to provide clinical social work services to clients and associate licensees impacted by the COVID-19 Virus, the Board has determined to waive certain provisions in its rules, as set forth below, and during the effective period of this Temporary Rule.*

SECTION .0800 - DISCIPLINARY PROCEDURES

21 NCAC 63 .0810 WAIVER

In light of the State of National Emergency declared by President Trump as a result of the COVID-19 Virus, ~~and the urgent need to have licensed clinical social workers available to provide clinical~~

~~social work services to clients and associate licensees impacted by the COVID-19 Virus,~~ the Board has determined to waive certain provisions in its ~~rules,~~ rules during a disaster declaration by the President of the United States or the Governor, a National Emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), as set forth in this below, and during the effective period of this Temporary Rule:

- (1) The Board shall waive the requirement for licensure set forth in 21 NCAC 63 .0211(a)(4) that requires preapproval by the Board to engage in more than 20 hours of supervision provided through the use of technology. This waiver will allow for up to half of the required supervision hours to be provided through the use of technology. ~~This expanded definition will only apply until the state of emergency is lifted. All supervision provided through the use of technology shall be synchronous, involve visual and audio interactions throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication;~~
- (2) The Board shall waive the requirement for licensure set forth in 21 NCAC 63 .0301 that requires applicants for licensure to pass the qualifying examination within two years of the initial application. An applicant who is unable to take the licensing examination prior to the expiration of the associate license due to the testing service locations being closed shall make a written request to the ~~Board.~~ Board for an extension of time to take the licensing examination. The Board shall provide a limited extension of the licensee's associate license and grant each associate licensee an extension to take the licensing examination until ~~not to surpass~~ December 31, 2020.
- (3) The Board shall waive the requirement for licensure set forth in 21 NCAC 63 .0401(c)(4) that allows for half of the required continuing education accepted as distance learning ~~to~~ and shall permit all hours for renewal to be accepted through distance learning that meet the requirements of 21 NCAC 63 .0401. ~~.0401 and to include a~~ A minimum of four contact hours of distance learning continuing education shall be focused on ethics related to social work practice and ethical decision making.

History Note: Authority G.S. 90B-6; ~~150B-19(6)~~;
Emergency Adoption Eff. April 8, 2020;
Temporary Adoption Eff. June 26, 2020.

CHAPTER 64 – BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Rule-making Agency: Board of Examiners for Speech and Language Pathologists and Audiologists

Rule Citation: 21 NCAC 64 .0108, .0219, and .1101-.1105

Effective Date: June 26, 2020

Date Approved by the Rules Review Commission: June 18, 2020

Reason for Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 64 .0108 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee submits a written request. ~~The Board may also waive any rule in 21 NCAC 64 that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1).

(2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

History Note: Authority G.S. 90-304; 150B-19(6);
Emergency Adoption Eff. April 24, 2020, 2020;
Temporary Adoption Eff. June 26, 2020.

SECTION .0200 - INTERPRETATIVE RULES

21 NCAC 64 .0219 TELEPRACTICE

(a) In light of the State of Emergency declared by Executive Order No. 116, issued March 10, 2020, the Board shall temporarily waive the requirement for licensure for telepractice in order to allow speech and language pathologists to delegate authorized tasks allowed pursuant to 21 NCAC 64 .0114 by telepractice to speech and language pathology-assistants under the same level of direct supervision as required by 21 NCAC 64 .1003(e)(1),(2) and (6). This temporary waiver of licensure shall apply only to speech and language pathology-assistants and shall continue for the duration of the declared emergency as set forth in Executive Order No. 116 issued March 10, 2020.

(a)(b) For purposes of this Rule the following words shall have the following meanings:

- (1) "Patient site" means the patient's physical location at the time of the receipt of the telepractice services.
- (2) "Provider" means a licensed speech and language pathologist or audiologist who provides telepractice services.
- (3) "Provider site" means the licensee's physical location at the time of the provision of the telepractice services.
- (4) "Telepractice" means the use of telecommunications and information technologies for the exchange of encrypted patient data, obtained through real-time interaction, from patient site to provider site for the provision of speech and language pathology and audiology services to patients through hardware or internet connection. Telepractice also includes the interpretation of patient information provided to the licensee via store and forward techniques.

(b)(c) Telepractice shall be obtained in real time and in a manner sufficient to shall ensure patient confidentiality.

(e)(d) Telepractice is subject to the same standard of practice stated in Rules .0205 and .0216 of this Chapter as if the person being treated were physically present with the licensee. Telepractice is the responsibility of the licensee. ~~Licensee and shall not be delegated.~~

(d)(e) Telepractice constitutes the practice of Speech and Language Pathology and Audiology in both the patient site and provider site. Providers must hold a license in the state of the

provider site and shall be in compliance with the statutory and regulatory requirements of the patient site.

~~(e)(f)~~ Licensees and staff involved in telepractice must be trained in the use of telepractice equipment.

~~(f)(g)~~ Notification of telepractice services shall be provided to the patient and guardian if the patient is a minor. The notification shall include the right to refuse telepractice services and options for alternate service delivery.

~~(g)(h)~~ Telepractice constitutes the practice of Speech and Language Pathology and Audiology in both the patient site and provider site.

History Note: Authority G.S. 90-304(a)(3)

Eff. July 1, 2020

Amended Eff. March 1, 2014

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;

Emergency Amendment Eff. March 27, 2020. 2020;

Temporary Amendment Eff. June 26, 2020.

SECTION .1100 - REQUIREMENTS FOR THE USE OF AUDIOLOGY ASSISTANTS IN DIRECT SERVICE DELIVERY

21 NCAC 64 .1101 DEFINITIONS

(a) "Board" means the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(b) "Licensee" means an individual who holds a current permanent license in audiology from the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(1) "Primary Supervising Licensee" means the Licensee who supervises the majority of the Assistant's work, who is responsible for the Assistant's registration with the Board, and who bears the responsibility for all supervision requirements and notification responsibility to the Board of any changes in registration information set forth in the rules of this Section.

(2) "Secondary Supervising Licensee" means a Licensee who ~~may supervise~~ supervises the Assistant in the absence of the Primary Supervising Licensee to cover variations in work hours.

(c) "Assistant" means an Audiology Assistant who is registered by a Primary Supervising Licensee with the Board.

(d) "Registration" means the process through which an Assistant is approved by the Board to work with a Licensee to provide services to the public.

History Note: Authority G.S. 90-298.1; 90-304(a)(3);

Emergency Adoption Eff. April 24, 2020;

Temporary Adoption Eff. June 26, 2020.

21 NCAC 64 .1102 GENERAL REQUIREMENTS

(a) For registration, Assistants must present:

(1) Evidence of high school diploma or equivalent; and

(2) A letter certification of the Assistant's competency Evidence of training provided by a supervising audiologist that attests to one of the following: or education including specific instruction and demonstration of each task the assistant is to perform.

(A) the supervising audiologist has trained the Assistant in tasks allowed in Rule .1104 of this Section;

(B) the Assistant has provided the supervising audiologist with evidence that he or she has completed training in the tasks allowed in Rule .1104 of this Section; or

(C) the supervising audiologist has assessed and is satisfied with the competency of the Assistant to perform the tasks allowed in Rule .1104 of this Section.

~~(b) Authority to approve the curriculum or the equivalent courses for audiology assistants is vested in the Board of Examiners.~~

~~(e)(b)~~ Assistants who conduct pure tone audiometry under general supervision by the licensee must have completed a ~~board approved certificate program such as~~ Certified Occupational Hearing Conservationists (COHC) or a program with equivalent certification requirements.

~~(d)(c)~~ A Licensee who is employed full-time (30 hours/week or more) may register to be primary supervisor of no more than two Assistants at any one time. A Licensee who is employed part-time (less than 30 hours/week) may register to supervise no more than one Assistant at any one time. The Primary Supervising Licensee ~~shall be responsible for assuring ensure that the Assistant complies compliance with this Section, the registration process, these rules, and with ethical standards. standards set forth in the Board's Practice Act and rules.~~ Secondary Supervising Licensees in the same practice may also supervise the Assistant, ~~allowing for flexibility in scheduling.~~ provided that such supervision is conducted in accordance with the rules set forth in this Section.

~~(e)(d)~~ The Primary Supervising Licensee must keep the Board appraised of any changes in registration information as follows:

(1) Changes of supervising licensee(s) ~~will~~ shall require prior written approval of the Board and ~~should be requested~~ the Primary Supervising Licensee must submit the request in writing at least 10 days prior to the effective date.

(2) The Primary Supervising Licensee must submit changes ~~Changes~~ that do not directly relate to patient care, such as change of address, ~~must be reported~~ to the Board in writing within 10 business days of the effective change. Such changes do not require pre-approval from the Board.

~~(f)(e)~~ The Primary Supervising Licensee shall remit to the Board an annual registration fee for the Assistant in an amount of forty dollars (\$40.00).

History Note: Authority G.S. 90-298.1; 90-304(a)(3);

Emergency Adoption Eff. April 24, 2020. 2020;

Temporary Adoption Eff. June 26, 2020.

21 NCAC 64 .1103 LICENSEE REQUIREMENTS

(a) ~~Licensees who register an Assistant must have held a current, permanent license in North Carolina for two years or equivalent qualifications from another state. Licensees who register an Assistant shall be licensed in North Carolina, or hold equivalent qualifications from another state, for the previous two years prior to registering an Assistant with the Board. Temporary license holders shall not register Assistants.~~

(b) ~~Licensees who register an Assistant shall attest to the Assistant's must demonstrate understanding and review of the basic elements of the registration and supervision process (scope of practice, ethics, written protocols, record keeping); keeping) set forth in the rules of this Section. and should satisfactorily complete a demonstration of knowledge and skills of tasks on the registration/supervision process.~~

(c) Licensees must submit the application and annual fee for registration of the Assistant to the Board.

(d) ~~Licensees must assure that patients are informed shall inform all patients~~ when services are being provided by an Assistant and the Assistant must wear a badge that includes the job title: "Audiology Assistant."

(e) Tasks and duties that are within the scope of responsibilities for an Assistant are listed in Rules .1104 and .1105 of this Section. ~~The standards for all patient services provided by the Assistant are the full responsibility of the Supervising Licensee and cannot be delegated. The Supervising Licensee shall be responsible for all patient services performed by the Assistant. Therefore, the assignment of tasks and the amount and type of supervision must be determined by the Supervising Licensee to ensure quality of care considering: the skills of the Assistant, needs of the patient, the service setting, the tasks assigned, and any other relevant factors. The Supervising Licensee shall determine the assignment of tasks and the amount and type of supervision to ensure quality of care considering relevant factors such as the skills of the Assistant, the needs of the patient, and the service setting. Before assigning treatment tasks to an Assistant, the Licensee must have first evaluated shall evaluate the patient files and developed develop a plan for the care and/or follow an established protocol.~~

(f) ~~For every patient encounter (screening or treatment) in which an Assistant provides service, there must be documentation of the Assistant's services provided in the patient's medical record and co-signed by a Supervising Licensee 100% of the time. Any time an Assistant provides services during a patient encounter (screening or treatment), the Supervising Licensee or Assistant shall document the Assistant's services in the patient's medical record. If the Assistant documents the services, the Supervising Licensee shall sign co-sign the medical record. The Supervising Licensee has full responsibility shall be responsible for the accuracy and compliance of the documentation. These signed and dated patient encounter records must be retained as part of the patient's file for the time period specified in Rule .0209 of this Chapter and may be requested by the Board.~~

(g) The Board may do random audits of records to determine compliance with ~~the rules in this Chapter, its rules.~~

(h) When patient services are being rendered by an Assistant, the Supervising Licensee must be available to observe and supervise ~~the Assistant, when necessary, accessible to the Assistant in order~~

~~to assure that direct observation and supervision can occur when necessary.~~

(i) The Primary Supervising Licensee shall assess the Assistant's competencies during the initial 60 days of employment using a performance-based competency assessment. The completed assessment shall be submitted to the Board within 90 days of registration. A new competency assessment must be completed and filed within 90 days each time the Primary Supervising Licensee changes.

(j) ~~Any attempt to engage in those activities and responsibilities reserved solely for the Supervising Licensee Assistants shall only engage in those activities related to the practice of Audiology as set forth in Rules .1104 and .1105 of this Section. An Assistant's activities related to the practice of Audiology not set forth therein shall be regarded as the unlicensed practice of Audiology.~~

History Note: Authority G.S. 90-298.1; 90-304(a)(3)

Emergency Adoption Eff. April 24, 2020; 2020.

Temporary Adoption Eff. June 26, 2020.

21 NCAC 64 .1104 AUTHORIZED TASKS OF AUDIOLOGY ASSISTANTS

(a) ~~Direct Patient Services: An audiology assistant may engage in the following direct patient services:~~

- (1) Obtaining partial or selected case history information from patients ~~and and/or families; families.~~
- (2) Administering audiologic screening protocols, as directed by the supervising audiologist. These screening procedures, including tests and checklists or parts of tests and checklists, ~~will shall~~ have the purpose of determining the need for further ~~diagnostic (diagnostic)~~ testing by the supervising audiologist and must meet the following criteria:
 - (A) ~~Have have~~ ~~unambiguous administration protocols and methods; methods.~~
 - (B) ~~Consist consist~~ of test items ~~that which~~ require no more than a binary judgment (i.e., yes-no, present-absent); ~~present absent).~~
 - (C) ~~Require require~~ no more than a specifically-elicited single ~~response; and response.~~
 - (D) ~~Require require~~ no clinical interpretation by the ~~assistant; assistant.~~
- (3) Preparing or positioning patients for evaluation or treatment following ~~specific~~ guidelines of the supervising audiologist and of the ~~facility; facility.~~
- (4) Direct patient services for evaluation are not within the approved scope of responsibilities for assistants who are not Certified Occupational Hearing Conservationists (COHC). Audiology assistants who are not COHC may assist in the evaluation of both pediatric and adult patients, but only under the

~~direct~~ supervision of the supervising audiologist who is present in the room and attending to the assistant's activities 100 percent of the time. Audiology Assistants who are COHC may conduct unmasked pure-tone audiometry under ~~general~~ supervision by the licensee for adult patients. Direct patient services to children under the age of 21 years old are not within the approved scope of activities for assistants unless under the ~~direct~~ supervision of the supervising audiologist who is physically present in the room and attending to 100 percent of the assistant's activities; ~~activities~~.

- (5) Basic hearing device repair and trouble shooting; ~~shooting~~.
- (6) Assistance with procedures related to the fitting and dispensing of hearing devices; ~~devices~~.
- (7) Instructing patients in care and use of devices dispensed by the supervising audiologist; and ~~audiologist~~.
- (8) Providing services previously mentioned through telehealth to extend access to clinical care.

(b) ~~Indirect Patient Services~~: An audiology assistant may engage in the following indirect patient services:

- (1) ~~Respecting the rights and dignity of all individuals.~~
- (1)(2) Reporting any workplace conduct that which appears to be unethical in violation of Section .0300 of this Chapter or illegal to the supervising audiologist or to the Board of ~~Examiners~~; Examiners.
- (2)(3) Requesting assistance from the supervising audiologist, as needed, in order to ensure continuous service quality; ~~quality~~.
- (3)(4) Observing universal precautions and safety procedures; ~~procedures~~.
- (4)(5) Releasing patients only to the care of appropriate care-givers of record; and ~~care-givers~~.

- (5)(6) Participating in research activities as approved by an ~~the institution's~~ Institutional Review Board and oversight committees.

*History Note: Authority G.S. 90-298.1; 90-304(a)(3);
Emergency Adoption Eff. April 24, 2020;
Temporary Adoption Eff. June 26, 2020.*

21 NCAC 64 .1105 SUPERVISION AND CONTINUING COMPETENCE REQUIREMENTS

Following registration by a supervising audiologist, a registered assistant shall:

- (1) ~~Discussing~~ discuss job expectations with the supervising audiologist(s) in order to have a and ~~having~~ mutual understanding of job scope and specific responsibilities; ~~responsibilities~~;
- (4)(2) ~~Participating~~ participate in a specified amount of supervised training according to a written plan for all tests and clinical equipment which that will be used for assessment and ~~treatment~~; treatment of the patient;
- (2)(3) ~~Receiving~~ receive ~~regular, formal~~ employment evaluations on a scheduled basis from the supervising audiologist(s) to assess ~~one's~~ the assistant's performance, strengths, and weaknesses of the assistant and to establish development goals for continuous performance ~~improvement~~; improvement;
- (3)(4) ~~requesting~~ request assistance, additional instruction, ~~and/or~~ and additional supervision from the supervising audiologist, when ~~needed~~; needed;
- (4)(5) ~~participating~~ participate in various types of educational activities in order to enhance skill and knowledge, as assigned by the supervising ~~audiologist~~; audiologist; and
- (5)(6) ~~Reading~~ read information assigned by the audiologist.

*History Note: Authority G.S. 90-298.1; 90-304(a)(3);
Emergency Adoption Eff. April 24, 2020; 2020;
Temporary Adoption Eff. June 26, 2020.*

This Section contains information for the meeting of the Rules Review Commission June 18, 2020 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 984-236-1850. 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 (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Brian P. LiVecchi
W. Tommy Tucker, Sr.

Appointed by House

Jeanette Doran (1st Vice Chair)
Andrew P. Atkins
Anna Baird Choi (2nd Vice Chair)
Paul Powell
Garth Dunklin

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941
Karlene Turrentine	984-236-1948

RULES REVIEW COMMISSION MEETING DATES

July 16, 2020	August 20, 2020
September 17, 2020	October 15, 2020

RULES REVIEW COMMISSION MEETING**MINUTES****June 18, 2020**

The Rules Review Commission met on Thursday, June 18, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting to ensure compliance with Executive Order 121, other orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners Jeff Hyde and Tommy Tucker were present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, and Paul Powell.

Staff members present were Commission Counsel Ashley Snyder and Amanda Reeder; and Alex Burgos. Commission Counsel Amber Cronk May and Karlene Turrentine were present via WebEx.

The meeting was called to order at 9:00 a.m. with Chairman Hyde presiding.

The Chair 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 appearance of conflicts of interest.

APPROVAL OF MINUTES

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the May 21, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Temporary rules for: DHHS-Division of Health Benefits, Code Officials Qualification Board, and Medical Board - 21 NCAC 32M .0119.

FOLLOW UP MATTERS

Pesticide Board

The agency is addressing the technical changes for 02 NCAC 09L .0101, .0102, .0103, .0308, .0310, .0317, .0318, .0402, .0502, .0503, .0504, .0505, .0509, .0515, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0529, .0602, .0603, .0701, .0702, .0703, .0705, .0707, .0810, .1001, .1002, .1003, .1005, .1006, .1009, .1102, .1103, .1104, .1105, .1107, .1108, .1109, .1111, .1201, .1202, .1302, .1303, .1305, .1306, .1401, .1402, .1404, .1805, .1806, .1901, .1902, .1905, .1906, .1907, .1908, .1909, .1914, .2001, .2002, .2003, .2004, .2201, .2202, and .2203. No action was required by the Commission.

The agency is addressing the objection for 02 NCAC 09L .1913. No action was required by the Commission.

Executive Director of the Board of Elections/Temporary Rule

08 NCAC 01 .0106 – The agency responded to the objection in accordance with the provisions of G.S. 150B-21.1(b2) on June 11, 2020 and stated that the agency will not be submitting a new statement or additional findings regarding this Rule. Pursuant to G.S. 150B-21.1(b2), the rule was returned to the agency. No further action will be taken by the Rules Review Commission on this Temporary Rule.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Department of Insurance

11 NCAC 12 .0321, and .0514 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Auctioneer Licensing Board

21 NCAC 04B .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0701, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, .0815, .0816, .0817, .0818, and .0819 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Examiners for Engineers and Surveyors

21 NCAC 56 .0303, .0304, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and, .1607 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Real Estate Commission

21 NCAC 58H .0401 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rule from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the NC Real Estate Commission and has been involved in discussions regarding these Rules.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The agency is addressing the objections. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)**Department of Administration**

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Pesticide Board

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Care Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Department of Health and Human Services

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Commission for Public Health

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

State Registrar

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Crime Victims Compensation Commission

Upon the call of the Chair, the period of review was extended for the following rules to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission extended the period of review for 14B NCAC 09 .0301, .0302, and .0305 in accordance with G.S. 150B-21.10. They did so in response to a request from the Crime Victims Compensation Commission to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Upon the call of the Chair, the Commission objected to 14B NCAC 09 .0303 and .0304 by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to 14B NCAC 09 .0303 for lack of statutory authority, clarity, and necessity. The agency did not provide authority for Paragraph (b), which allows the Director to “poll the members of the Commission regarding any matter requiring the Commission’s attention.” (emphasis added). G.S. 15B-3(e) states “a majority of the Commission constitutes a quorum to transact business.” Further, North Carolina’s Open Meetings Laws provide “. . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” G.S. 143-318.10(a). As a result, the agency lacks statutory authority to make decisions regarding “any matter” without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members “at such times as it is not practicable for the members to meet as a body.” The rule does not clarify under what circumstances it is considered “not practicable” for the Commission to meet. Paragraph (b) is therefore ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a “Rule.” G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary. The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is also unnecessary.

The Commission objected to 14B NCAC 09 .0304 for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a “final decision” after a “recommended decision” from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Additionally, the Commission objected for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

Will Polk, with the agency, addressed the Commission.

Private Protective Services Board

Upon the call of the Chair, all rules except 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404 were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to 14B NCAC 16 .1001, .1002, and .1003 for lack of statutory authority. Specifically, these three Rules comprise the entirety of 14B NCAC 16 .1000, the Section named Recovery Fund.” These Rules address the process for an individual to apply to the Board for recovery of funds when he or she believes a member of the regulated public harmed them. All three Rules cite to G.S. 74C-31 as sole authority for the rules. G.S. 74C-31 was repealed by Session Law 2009-328. That Session Law further eliminated the Recovery Fund that was previously addressed in G.S. 74C, Article 2 and created an Education Fund. The roles of those funds do not appear to be similar. The Commission found that the Board does not have any statutory authority to regulate this now defunct fund.

The Commission objected to 14B NCAC 16 .1207 for lack of necessity. The Commission found that this Rule simply repeated the requirements of Rule 14B NCAC 16 .1205(b) and was therefore unnecessary.

The Commission objected to 14B NCAC 16 .1304 and .1404 for lack of statutory authority and ambiguity. Specifically, the Commission found that the use of the term “administrator” throughout the Rules was ambiguous, as changes to G.S. 74C through Session Law 2001-487 established a new position of “Director” and it does not appear that the administrator position exists anymore.

In addition, Paragraph (a) of each Rule states that there shall be “such further investigation of the applicant as deemed necessary.” The rules do not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the rules state that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency did not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph in each rule.

Coastal Resources Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None. Commissioner LiVecchi was not present for the vote or discussion on these Rules.

Wildlife Resources Commission

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Environmental Management Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Barber Examiners

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

Board of Massage and Bodywork Therapy

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

State Human Resources Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)**Medical Care Commission**

10A NCAC 13O .0301 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

DHHS-Division of Health Benefits

10A NCAC 21A .0304 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The rule was approved contingent upon a technical change to Item (2) of the rule to replace the phrase “technology medium” with “telephone or electronic means.” The Commission voted to require the rewritten rule by 5 p.m. on Monday, June 22, 2020. That technical change was subsequently received before the deadline.

Shazia Keller, with the agency, addressed the Commission.

Matthew Jordan Cochran, with Ott, Cone & Redpath, PA, addressed the Commission.

Code Officials Qualification Board

11 NCAC 08 .0735 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Thomas Felling, with the agency, addressed the Commission.

Secretary of State

18 NCAC 06A .2120 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

North Carolina Interpreter & Transliterator Licensing Board

21 NCAC 25 .0501 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Landscape Contractors' Licensing Board

21 NCAC 28B .0406 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

Medical Board

21 NCAC 32B .1707 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Board

21 NCAC 32B .1708 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Board

21 NCAC 32M .0119 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Midwifery Joint Committee

21 NCAC 33 .0113 – The rule was withdrawn at the request of the agency. No action was required by the Commission.

Board of Nursing

21 NCAC 36 .0817 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:
Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rule from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal services to the Board.

Board Pharmacy

21 NCAC 46 .1819 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Real Estate Commission

21 NCAC 58G .0104 and .0105 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the NC Real Estate Commission and have been involved in discussions regarding these Rules.

Board of Environmental Health Specialist Examiners

21 NCAC 62 .0407 and .0411 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Social Work Certification and Licensure Board

21 NCAC 63 .0810 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rule from Social Work Certification and Licensure Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal services to the Board.

State Board of Examiners for Speech and Language Pathologists and Audiologists

21 NCAC 64 .0108, .0219, .1101, .1102, .1103, .1104, and .1105 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from State Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

COMMISSION BUSINESS

The meeting adjourned at 10:43 a.m.

The next regularly scheduled meeting of the Commission is Thursday, July 16, 2020 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

**Rules Review Commission Meeting June 18, 2020
Held Via WebEx**

Name	Agency
Ann Wall	Secretary of State
Loretta Peace-Bunch	Insurance
Thomas Felling	Code Officials
Donna Coffey	Board of Environmental Health Specialist Examiners
Shazia A. Keller	Division of Health Benefits
Marcus Jimison	Medical Board
Denise Mazza	Office of State Human Resources
Gina Cammarano	Industrial Commission
Melissa A. Vuotto	Real Estate Commission
Will Polk	Crime Victims Compensation Commission
Jennifer Everett	DEQ
Matthew Cochran	Ott Cone & Redpath, P.A.
John F. Maddrey	DOA
Christina L. Waggett	Pesticide Board
Nadine Pfeiffer	Medical Care Commission
Virginia Niehaus	CPH
Charminique Williams	CJETS
Diane Konopka	SHETS
Charles McDarris	Private Protective Services Board
Carrie Ruhlman	Wildlife
Dennis Seavers	Barber Examiners
Charles Wilkins	Massage and Bodywork
Caitlin Schwab	Interpreter and Transliterator Licensing
Calvin Kirven	Landscape Contractors'
Angela H. Ellis	Midwifery Joint Committee/Nursing
Clinton R. Pinyan	Pharmacy Board
Elizabeth Pope	Social Work
Nahale Kalfas	Speech and Language Pathologists
Allan Russ	Secretary of State
Jim Burnette	Pesticide Board
Pat Jones	Pesticide Board
Jessica Montie	DEQ
John Hoomani	Insurance
Christine Ryan	OSHR
Carl Dean	OSHR
Lynne Taylor	Medical Board
Amy Fitzhugh	Midwifery/Nursing
John Barkley	Environmental Health Specialist Examiners
John Green	Attorney General

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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 984-236-1850.

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

Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer
Tenisha Jacobs

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
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19	DHR	02961	4/28/2020	Learning Early Childhood Center LLC	v.	Division of Child Development and Early Education- Department of Health and Human Services	Ward
19	DHR	06158	4/22/2020	Bridges of Hope Inc	v.	NC Department of Health and Human Services, Division of Health Benefits	Bawtinheimer
19	DHR	06607	4/15/2020	Marika Bright	v.	NC Department of Health and Human Services	Ward
19	DOJ	04778	4/9/2020	Stephanie McGhee	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	05064	4/27/2020	Lamar Krider	v.	North Carolina Sheriffs Education and Training Standards Commission	Jacobs
19	DOJ	06722	4/17/2020	Matthew Joseph Jankowski	v.	North Carolina Alarm Systems Licensing Board	Jacobs
19	INS	04536	4/13/2020	Kelly Kavit	v.	North Carolina State Health Plan for Teachers and State Employees	Jacobs
19	INS	05717	4/22/2020	Elizabeth Nickels	v.	North Carolina State Health Plan	Lassiter
19	OSP	05480	4/1/2020	Wei Wen Gou	v.	North Carolina State University	Bawtinheimer
19	OSP	05604	4/8/2020	Amie Roberts	v.	Transylvania County Department of Social Services Director Darrell Renfroe	Sutton
19	SOS	06198	4/17/2020	Linda Verdi Rice	v.	NC Department of the Secretary of State	Lassiter
19	SOS	06568	4/21/2020	Gardenia Johnson	v.	NC Department of the Secretary of State Attn: Ann Wall General Counsel	Malherbe
19	UNC	03351	4/16/2020	Kim Smith	v.	University of North Carolina Hospitals	Ward

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20	ABC	00402	4/3/2020	NC Alcoholic Beverage Control Commission	v.	Naeem Ahmed Bhatti T/A Washington Quick Mart	May
20	CPS	00358	4/14/2020	Tina B Cline	v.	North Carolina Crime Victims Compensation Commission	Malherbe
19	CSE	05598	4/7/2020	Nathan J Trautman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05719	4/27/2020	Christopher Harrell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
19	CSE	05796	4/27/2020	Fritz S Chevalier	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	05805	4/28/2020	Aslam Tawhid	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	05833	4/21/2020	David L Wright	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton
19	CSE	05906	4/22/2020	Ian Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	05955	4/3/2020	James Scott Whitaker	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05964	4/15/2020	Ariel J Moreiras	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	06001	3/19/2020; 4/30/2020	Geoffrey R Vincent	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Malherbe
19	CSE	06004	4/21/2020	Jeffrey B Sluder	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton
19	CSE	06005	4/6/2020	William J Matson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Service	Culpepper
19	CSE	06023	4/2/2020	Kenneth J Wolford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	06024	4/15/2020	Joshua C Nelson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Lassiter
19	CSE	06055	4/6/2020	Fredrick L Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Lassiter
19	CSE	06128	4/21/2020	Thomas J Weaver	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton

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19	CSE	06134	4/22/2020	Calop Thomason	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	06177	4/23/2020; 4/27/2020	Jermaine A McNair	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinheimer
19	CSE	06253	4/27/2020	Johan Rosario	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
19	CSE	06261	4/3/2020	Fernando A rivera	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06343	4/7/2020	William E Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06382	4/13/2020	Howard Michael Stein Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
19	CSE	06475	4/8/2020	Joe Nelms	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DCS	06057	4/16/2020	Ronald L Waterman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	DHR	06026	4/8/2020	Lori Ann Buie	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Jacobs
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20	DHR	00729	4/1/2020	Aqcrevcia Japhuer Jones	v.	Golden Year Nursing Home Department of Health and Human Services Division of Health Service Regulation	Overby
20	DHR	01242	4/17/2020	Jeffrey Levenbook	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinheimer
20	EHR	00470	4/8/2020	KG Plaza LLC	v.	NC Department of Environmental Quality	Jacobs
20	EHR	00761	4/24/2020	Derrick Stroud	v.	North Carolina Department of Environmental Quality	Overby
20	OAH	00087	4/22/2020	Cheryl A Jenkins	v.	Office of Administrative Hearings	Mann
20	SOS	00426	4/21/2020	Rhondra Simpson	v.	Department of the Secretary of State	Malherbe
20	SOS	00548	4/21/2020	Samantha E Foster	v.	North Carolina Department of the Secretary of State Notary Public Division	Malherbe